

TAX FLASH NEWS

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CBDT notifies new Faceless Appeal Scheme 2021

Background

The Finance Act, 2020 amended Section 250 of the Income-tax Act, 1961 to provide the right to the Central Government to make the Faceless Appeal Scheme, for the purposes of disposal of appeal by the Commissioner of Income-tax (Appeals) [CIT(A)], so as to impart greater efficiency, transparency and accountability.

On 25 September 2020, the Central Board of Direct Taxes (CBDT) had issued a Notification to prescribe Faceless Appeal Scheme, 2020 under Section 250(6B). Further, in exercise of powers conferred by Section 250(6C), for the purposes of giving effect to the Scheme, the CBDT also issued certain directions. The Scheme provides mechanism for the purposes of disposal of appeal by the CIT(A) and it comes into force from 25 September 2020.

Recently, CBDT has issued a Notification¹ prescribing a new Faceless Appeal Scheme, 2021 (the Scheme) framed by the Central Government in supersession of the earlier Faceless Appeal Scheme, 2020 which comes into effect on the date of its publication i.e., 28 December 2021. The key highlights of the Scheme are as follows:

Scope of the Scheme

The 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 CBDT.

Faceless appeal Centers

For the purpose of this scheme, CBDT may set up the following units/center:

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

- **Appeal units (AU)** - To facilitate the conduct of e-appeal proceedings by the Commissioner (Appeal).

The AU shall have the following authorities:

- One Commissioner (Appeals)
- Such other income-tax authority, ministerial staff, executive or consultant to assist the Commissioner (Appeals).

Communication

- All communication between the CIT(A) and the taxpayer or any other person or the Assessing Officer (AO) with respect to the information or documents or evidence or any other details under the Scheme will be made through NFAC.

Procedure in appeal

The appeal shall be disposed of under the Scheme as per the following procedure:

- NFAC shall assign the appeal for disposal to a Commissioner (Appeals) of a specific appeal unit through an automated allocation system.
- On assignment of an appeal, the Commissioner (Appeals):
 - May condone the delay in filing appeal and record the reasons for the condonation
 - Through NFAC shall give notice to the taxpayer to file his submissions within the date and time specified in the notice and also send a copy of such notice to the AO either directly or through NFAC
 - May through NFAC obtain further information, document or evidence from the taxpayer

¹ CBDT Notification No. 139/2021, dated 28 December 2021

- May obtain a report of AO either directly or through NFAC on the grounds of appeal or information, document or evidence furnished by the taxpayer
- May Request the AO directly or through NFAC to make further inquiry² and submit a report
- Shall through NFAC, serve a notice on the taxpayer or any other person, or the AO directly or through NFAC to submit such information, documents or evidence or report, as may be specified by the Commissioner (Appeals) or relevant to the appellate proceedings, on a specified date and time
- The taxpayer or any other person and the AO (either directly or through NFAC) shall furnish a report in response to the notice as per the date and time specified therein to the Commissioner (Appeals) through NFAC.
- The taxpayer may file additional grounds to the CIT(A) specifying therein the reason for omission of such ground in the appeal filed by him.
- Where the additional ground of appeal is filed:
 - The CIT(A) shall send the additional grounds to the AO for providing comments.
 - The AO shall furnish the comments within the date and time specified or such extended date and time as may be allowed on the basis of an application made to CIT(A) through NFAC.
 - NFAC, on receiving the comments from AO, shall send the comments to CIT(A), and where no such comments are furnished, shall inform the CIT(A).
 - CIT(A) shall, after taking into consideration the comments, if any, received from the AO either directly or through the NFAC
 - ❖ Admit the additional grounds if the omission is not found unreasonable or
 - ❖ Reject the additional ground by recording reasons.
- The taxpayer may also furnish additional evidence to the CIT(A) in such form as specified by NFAC specifying therein as to how his case is covered by the exceptional circumstances³.
- Where the additional evidence is furnished –
 - The CIT(A) shall send the additional evidence to AO for furnishing a report on its admissibility.
 - The AO shall furnish the report within the date and time specified or such extended date and time as may be allowed.
 - NFAC, on receiving such a report from AO, shall send such report to CIT(A) and if no report is furnished, inform the CIT(A).
 - On considering the additional evidence and report, the CIT(A) may admit or reject the additional evidence with reasons recorded in writing and the same shall be part of the appeal order.
 - If the additional evidence is admitted, CIT(A) shall, by a notice, provide an opportunity to the AO to examine such evidence and cross-examine the witness of the taxpayer or produce any evidence or document, or any witness in rebuttal and furnish a report.
 - The AO shall furnish the report within specified date and time to the CIT(A) and inform if no report is furnished
 - The AO may request CIT(A) to direct the production of the document and evidence by the taxpayer or examination of witness as relevant to the appellate proceedings, pursuant to which the CIT(A) may by notice direct the taxpayer to produce such document or to examine a person being a witness and send such notice to NFAC
 - The NFAC shall serve the notice to the taxpayer or person being the witness and the taxpayer shall furnish his response within specified date and time to CIT(A) through NFAC which shall send such the response to CIT(A) and inform if no response is furnished.
- For enhancement of assessment or penalty or reduction of refund
 - CIT(A) shall prepare a show cause notice and send it to NFAC which shall serve it upon the taxpayer.
 - The taxpayer shall furnish a response within specified date and time to NFAC which shall send it to CIT(A) and inform the same if no response is furnished

² Under Section 250(4)

³ Specified in Rule 46A(1)

- The CIT(A) shall prepare an appeal order as per provisions of Section 251 stating the reason therein with details of penalty proceedings, if any, and send it after digitally signing it to NFAC which shall communicate it to the taxpayer, AO, Principal Chief Commissioner of Income Tax (PCCIT) or Chief Commissioner of Income Tax (CCIT) or Principal Commissioner of Income Tax (PCIT) or Commissioner of Income Tax (CIT) as per Section 250(7).
- NFAC shall serve a notice to the taxpayer if penalty is recommended in the order to show cause as to why it should not be imposed.

Notwithstanding anything contained above, the appeal, may be transferred at any stage of the appellate proceedings, if considered necessary, by an order in accordance with Section 120 of the Act, to such CIT(A) as may be specified in the order.

Penalty Proceedings

- The CIT(A) may send a notice through NFAC to the taxpayer for non-compliance of any notice, direction or order, for initiation of penalty proceedings and to show cause as to why penalty should not be imposed.
- The taxpayer shall furnish a response within specified date and time as allowed in the application and send it to CIT(A) through NFAC.
- The CIT(A) after taking into account all the relevant material available on the record, including the response furnished, if any, by the appellant or any other person may either prepare a penalty order, sign it digitally and send it to NFAC or drop the penalty by recording reasons and intimate it to NFAC which shall communicate the same to the taxpayer and the AO.

Rectification Proceedings

- The Scheme provides for rectification of any order through an application with NFAC to be made by the taxpayer or CIT(A) who has passed the order or the AO.
- The NFAC shall assign the application to CIT(A) through 'automated allocation system' who would examine it and send notice to NFAC to grant an opportunity of hearing to the party other than the one who filed the application for rectification.
- CIT(A) after taking into consideration the application and response shall either rectify the mistake or reject the application with reasons recorded and send it digitally signed to NFAC which shall communicate the same to the taxpayer and the AO.

Appeal against order of CIT(A)

- An appeal against an order of CIT(A) shall lie before Income-tax Appellate Tribunal (ITAT) having jurisdiction over the jurisdictional AO of the taxpayer.
- Subject to the scope of the Scheme, where any order passed by CIT(A) is set-aside and remanded back to CIT(A) by ITAT or High Court or Supreme Court, the NFAC shall assign the order to CIT(A) for further action in accordance with the provisions of this Scheme.

Authentication of electronic record

- The CIT(A) and NFAC (through authorized signatory) shall affix their digital signatures for authentication of electronic record
- The taxpayer shall authenticate electronic records by affixing their digital signatures or under electronic verification code or by logging into his registered account in the designated portal.

Delivery of electronic record

- Every notice or order or any other electronic communication under this Scheme shall be delivered to the addressee, being the taxpayer, by way of:
 - placing an authenticated copy thereof in the appellant's registered account; or
 - sending an authenticated copy thereof to the registered email address of the taxpayer or his authorised representative; or
 - uploading an authenticated copy on the Mobile App of the taxpayer followed by a real time alert.
- 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.
- The appellant shall furnish 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 NFAC containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated.

No personal appearance in the Centres or Units

- 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 NFAC or appeal unit set up under this Scheme.
- Personal hearing can be requested by the taxpayer for making oral submissions or present his case before CIT(A).
- CIT(A) shall allow such request and provide a hearing through a telecommunication application software that supports video conferencing and telephony to the extent technologically feasible as per the procedure laid down by the CBDT.
- Scheme also provides for the examination or recording of statements of the taxpayer or any person for which the CBDT shall establish appropriate facilities to ensure that the benefits of the Scheme are accessible to the taxpayer or his authorised representative.

Power to specify format, mode, procedure and processes

The Scheme provides that PCCIT or PDGIT, in charge of the NFAC, shall with the prior approval of CBDT, lay down the standards, procedures and processes for effective functioning of the NFAC and the Appeal Unit set-up under the Scheme in an automated and mechanised environment, including format, mode, procedure and processes

Application of provisions of the Act

The Scheme clarifies that save as otherwise provided, the provisions of Sections 2(16A), 120, 129, 131, 133, 134, 136, 140, 154, 155, 282, 282A, 283, 284, Chapter XX and Chapter XXI, and other provisions of the Act, shall apply to the procedure in disposal of appeal by CIT(A).

Our comments

The new Faceless Appeal Scheme has made several changes to the earlier Scheme. In the earlier Scheme, the personal hearing was discretionary and the power to grant the same was with the tax authorities. It was subject to approval of Chief Commissioner or Director General. Such authorities were not under any compulsion to allow personal hearing when taxpayer ask for the same.

In the new Scheme, the concerned CIT(A) has to allow the request for personal hearing made by the taxpayer. By removing the discretion for allowing personal hearing to the taxpayer, issue of providing natural justice to the taxpayer in earlier Scheme would be met and effective hearing may become possible.

Another important issue that has been addressed is the multi-layered process of reviews, contained in the earlier Scheme, has been done away with. Under the new Scheme, the CIT(A) will draft and finalise its order which will be shared with the taxpayer through NFAC.

The earlier Scheme has been challenged in different High Courts on various grounds, including its constitutional validity. Though the Court orders are awaited, the new Scheme seems to address some of those issues.

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