



STEPS TOWARDS FACELESS ASSESSMENT

Preface

In the current scenario, Indian Tax litigation system takes lots of judicial time. *Delay in dispute resolution, cost involved & increased magnitude of cases.* Of course it also raises fear in investors and business community as investing without a concrete game plan is too scary ...

..... it therefore demands for an efficient administrative policy from the Government which is gradually developed and introduce in form of Faceless assessment and taxpayer charter

- in 2015, the Government introduced a pilot project to conduct assessment through Email based assessment which was gradually extended in few metro cities with an option to avail facility
- in 2017, Tax Business Application was developed to carry out E-assessment
- in 2018, this concept was introduced in the budget by Mr.Arun Jaitley
- in 2019, scheme was notified in India
- in 2020, Platform was inaugurated by Hon'ble Prime Minister

a newly introduced *Taxpayer charter also emphasis on transparent relationship between taxpayer and tax administration.* With the scheme & tax charter we wish to have a U turn in Indian tax administration. ***Author has narrated his experience with 4 case studies out of many, features of scheme and recipe*** for taxpayer and professionals to face faceless assessment

With Regards,

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I. Observation:

Before we discuss above guidelines, features and challenges of faceless assessments, let me share 4 case studies out of many which explains the value of faceless assessment if taken in right spirit

Case study 1: Explanation to sec 73

Facts of the case

- Lockdown Pvt Ltd is engaged in manufacturing business and trading in shares and MF
- Loss from mutual fund ("MF") adjusted as business loss and loss from shares trading as Speculation loss

Tax authority's contention

Loss from trading in MF should also be considered as speculation loss

Appellant's contention

Loss from trading in Mutual fund is an ordinary business loss based on the Apex court decision in the case of 'Apollo Tyres Ltd' and followed by various High Court rulings

Decision to support Appellant' contention

Reliance is placed on the following decision where it is held that the Explanation section 73 is applicable only to shares

- ❖ Apollo Tyres Ltd. vs. CIT [2002] 255 ITR 273 (SC)
- ❖ Porrits & Spencer (Asia) Ltd. vs. CIT (2010) 190 taxman 174 (P&H)
- ❖ Shree Synthetics Ltd. vs. DCIT [1997] 61 ITD 253 (Indore)
- ❖ CIT vs. Lakshmi Mills Co. Ltd. (2007) 158 taxman 420 (Mad.)

Levels of scrutiny

First phase



Second phase



Third phase



Take away for faceless assessment

Unsettling settle issues that too multiple times can be avoided

Case study 2: Wealth tax

Facts of the case

1. Mr. Lockdown acquired a property by way of gift. Property was subject to wealth tax valuation.
2. Dispute arose regarding the valuation of property according to wealth tax as per rule 3 or rule 20.
3. Department took the view of valuation as per rule 20 whereas Appellant took the view of valuation as per rule 3. Matter was subject to litigation due to aforesaid reason.

Appellant's contention

1. Property is acquired by way of gift, hence cost of acquisition is NIL
2. Property is SOP
3. Rule 3 is applicable.
4. In case of SOP whether it is acquired before or after 1974 it does not matter, as Net marketable rent should be taken for valuation in both the cases.
5. Further, if it is considered other than SOP property then also Net marketable value should be taken as it is gifted property hence cost of acquisition is Nil

The journey of case passed through different level of authorities is depicted below:

First phase



Second phase



Third phase



Take away for faceless assessment

Taxpayer side

1. It is vital for Authorized representative to present the facts at the first appeal itself will full length of clarity
2. There is saying goes “Every man has his opinion but no one has right to be wrong in facts”
3. Overriding effect of legal stand taken must be crystal clear.
4. At times case get into wrong track and shrink away from real issue. It is pertinent note that at this juncture, Authorized representative should be affixed to his fact and legal position
5. Facts should be attached with the important evidences to the extent possible.

Department side – All the facts and evidence can be taken in right spirit with due cognizance of legal positon

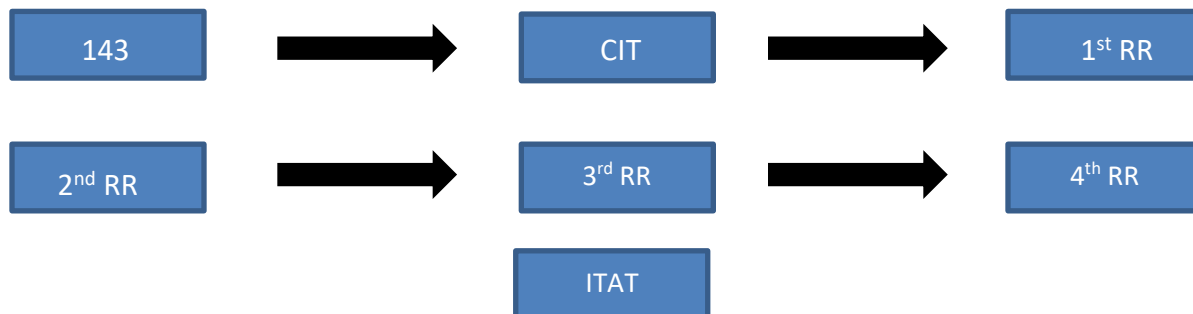
Case Study 3: Valuation of FVC for Capital Gain

Facts of the case

1. A land covered by slump was transferred at distress value
2. Since property was in urban city valuation as per DVO was higher without considering slump matter
3. Valuation considered for CG was 10 times larger
4. Fortunately, last payment was not made by buyer and so agreement got frustrated

Appellant Contention

1. Since agreement got frustrated valuation no CG
2. Without prejudice, value restricted to distress value



Take Away for faceless assessment

1. Important outcome since arrangement got frustrated for non-payment – No CG
2. Effort and time spent by H’ble CIT(A) and AO in remand proceedings can be avoided if exhaustively dealt with in first proceedings itself

Case 4: Demand of over 100 cr.

1. 50-55% of demand was due to inappropriate representation: revised by 154
2. Some 20% demand was due to absence of evidence
3. Balance was on facts and legal count

Take Away

75% of demand could have been avoided on ground of appropriate representation which is also equally important for success of faceless assessment

So a million dollar questions?

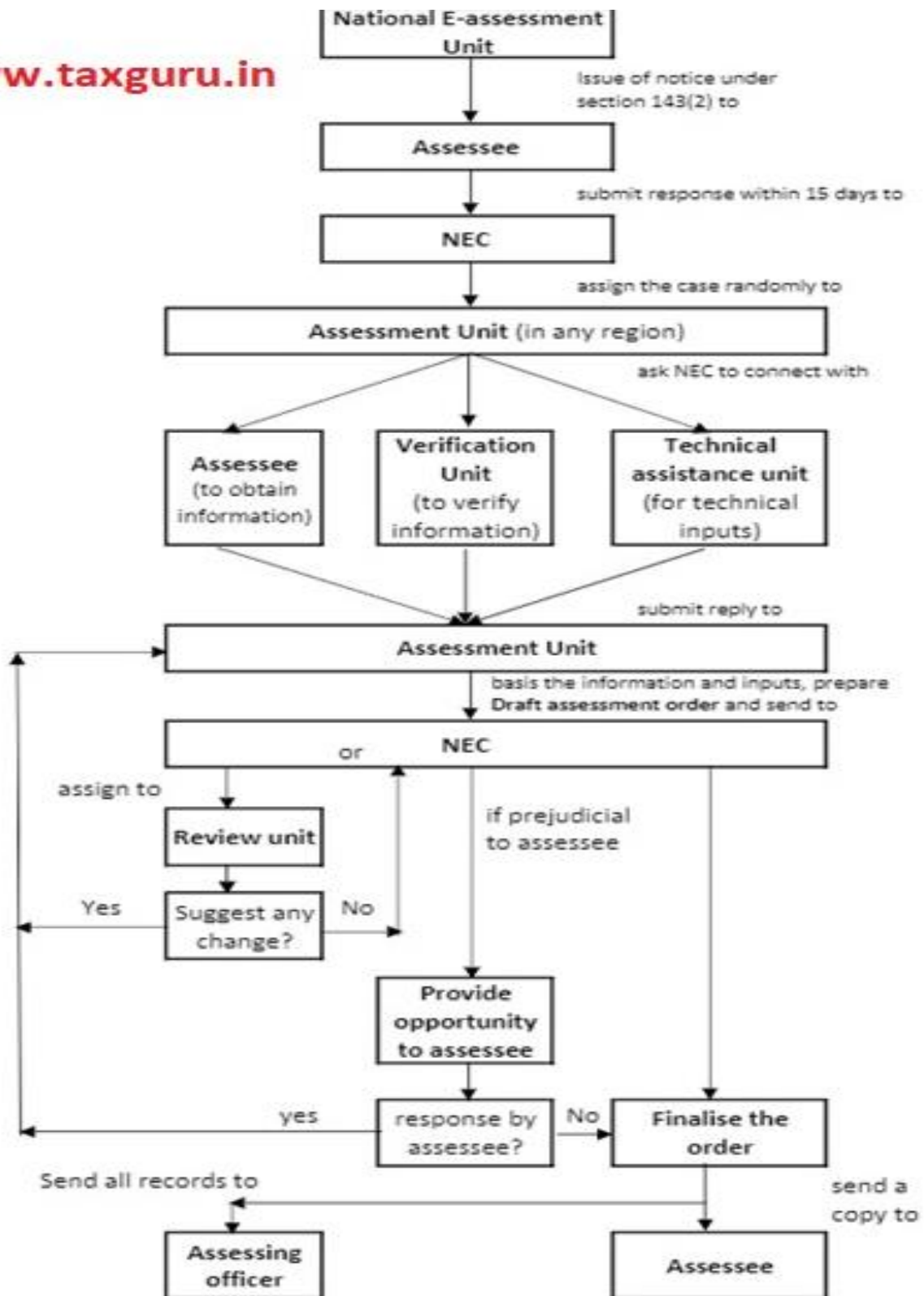
- Does tax office function in autocratic manner - actually not always?
- Is it a case developing exercise across ladders?
- Where is justice?
- Amount of time and litigation cost involved vs Result of litigation & its utility for taxpayer

II. International Practice

- International Professional Body – Tax charter – [Initiated in India](#)
- Alternate dispute resolution panel – [Practiced in India](#)
- Matters are not remanded back – facts are cleared at lower level itself – [Proposed in faceless scheme](#)
- Department cannot file appeal – [Practiced in multiple cases](#)
- Arbitration of cases
- Professional Body can suggest if a case is fit for High Court or Supreme Court

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III. New Features in Scheme

1. Scheme is applicable for 143(3) & now 144
2. There is reasonable classification and justification towards class of persons, income and territory.
3. Arbitrariness power of NEAC for selection and distribution of cases.
4. Arbitrary power to NEAC to refer case to Jurisdictional AO.
5. Risk Management Strategy by Automated examination tool, AI and machine learning.
6. Communication with taxpayer will be on registered email id, mobile app and message on registered number.
7. Adjournment option available
8. Seeking personal hearing at time of draft order by Video Conference only after approval
9. Technical unit can also undertake audit
10. Verification unit can get physical documents internally
11. Authentication by DSC and EVC
12. Regional Chief Commissioner or Director of REC will grant personal hearing
13. Reply in 15 days of receipt of notice

IV. Challenges

1. Adequate infrastructure to handle volumes of data
2. Security of data
3. Technical unit or review units' observation – opportunity of personal hearing?
4. Multiple layers and communication whether will delay the process
5. Risk of Fake emails
6. Updating of new Communications details and tracking by taxpayer

Guidelines for implementation of faceless scheme

CBDT has notified the National e-assessment Centre (NeAC) at Dehli and Various Regional e-assessment Centre across 20 cities in country.

1. Function of Faceless Hierarchy :

- Assessment Proceedings u/s 143, 144, 148 by Assessing Unit
- Verification related to assessment by Verification Unit
- Verification related to centralised dissemination of information by the directorate of the system by VU
- Review of draft orders by Review Unit
- Technical support by Technical Unit
- Passing and dispatch of the final order by the NeAC.

2. Functions of the field formation outside the NeAc/ReAC hierarchy

- **Taxpayer outreach and education** - Taxpayer facilitation - Rectification Proceeding- Grievance handling - Demand management - Collection and recovery of taxes – Remedial action for audit functions - Statutory powers u/s 263/264 of IT act 1961
- **Administration, HRD and cadre control matters** including related court matters - Custody and management of case records- Management and control of infrastructure
- **Judicial function** including giving effect to the appellate order; preparing crutiny reports and filing of appeal wherever considered necessary, defending writ petition, recommendation of SLPs., etc. Prosecution and compounding proceedings related court matters -

3. Communication with assessee/taxpayer/third party shall be made through electronic means using ITBA/Department portal

4. The power of survey u/s 133A of the Act will be exercise by the investing directorates and the TDS charges, including international taxation.

5. Hierarchy in Faceless Scheme

CCsIT → PCIT → Addl/Joint CsIT → DCsIT/ACsIT → ITO and attendant staff

6. Approach adopted for restructuring

Following norm has been adopted for creation of hierarchy in **Each ReAC**,

- **AU** will have 1 PCIT, 4 Addl/Jt CsIT, 4 DCs/ACsIT & 20 ITOs
- **VU** will have 1 PCIT, 4 Addl/Jt CsIT, 4 DCs/ACsIT & 20 ITOs
- **RU** will have 1 PCIT, 3 Addl/Jt CsIT, **6 DCs/ACsIT** & 9 ITOs
- **TU** will have 1 PCIT, 3 Addl/Jt CsIT, **6 DCs/ACsIT** & 9 ITOs

7. It is important that the Pr.CCsIT now issue order for diversion of posts of Addl. CIT/Jt. CIT, DCIT/ACIT, ITO to newly created NeAC/ReAC. Following guidelines have been adopted in identification of posts for diversion,

- At least 1 office in every building is retained in the residual hierarchy to ensure continued ownership and responsibility of case record
- Jurisdiction of AOs selected for diversion to NeAC/ReAC hierarchy is proposed to be given to another AO(not diverted) in the same building to avoid any transfer of case record
- In the residual hierarchy, each range will have at least 1 DC/ACIT. Avg no. of ITOs is 5-4 per range
- While merging the jurisdictions, there might be shortage/excesses depending upon the charge and manpower management.
 - o In case of excesses/shortages in the rank of addl. CIT/JCIT/DCIT/ACIT, same may be added to/drawn from special ranges.
 - o In case of excesses/shortages in the rank of ITOs, same may be added to/drawn from TRO and headquarters.
- Renumbering of residual charges in seriatum (sequence) will be done at later date.

- In case of 3 LTUs which have been diverted from Mumbai, delhi, Chennai, the cases will be transferred by the Pr.CCIT transferring the cases to one particular charge.

8. Guidelines for achieving administration efficiency and optimization of resources,

- Technical and review unit may be kept in bigger building.
- Verification unit may be spread out to cover large geographical
- All the orders should be passed w.e.f. 13th August 2020

V. Basic recipe for Taxpayer/Professionals

A - Audit stage - At planning stage or so called audit stage facts and supporting documents should be documented in retrievable condition.

B - Behind the scene data, building a case - Understanding of matter & detail submission of facts, numbers, financials before lower authorities.

C - Checklist for docs, counter arguments - Checklist for non standard documents to be gathered while auditing.

D - Documents - Written submission - documents filed before lower authority - true copy & certified, each documents relevant for case, highlighting relevant para's with comment if possible, Indexing it - matter wise / content wise / ground wise / facts & legal wise.

E - Enquiry – Linking of enquiry to all threads - part information also creates trouble.

F - Build a case - firstly on facts

G - Counter grounds of lower authorities

H - While in High level litigation viz TP, DRP, APA, GAAR rigours documents are must as this matter has high element of subjectivity

I - Information: Almost 57% reopening of cases are due to non submission of complete information - unintentionally also as AO didn't ask for it

L - Build a case - legal position

VI. Questions & Answers

Q1. Faceless CIT A applicable from 25-09-2020 so upto that CIT A can be attended manually?

Ans. Generally due to Corona, personal hearings are not taken and CIT(A)'s are also requesting for virtual hearings and CIT(A) are also waiting for new scheme.

Q2. CIT A jurisdiction also change from 25-09-20 faceless CIT A from existing one?

Ans. Wait for scheme

Q3. What would be relevance of "Issue of Notice" and "receipt of Notice" in faceless assessment whether these notices will be issued through mail or in Portal of Income Tax or will continue to be in physical?

Ans. It will be vide registered e-mail - Mobile App - reminder on registered mobile number.

Q4. What would happen to other applications which were decided by jurisdictional Officers earlier? Say I have a PAN surrender application or a PAN merge application etc. How would these work?

Ans. The jurisdiction of AOs posts selected for diversion to NeAC/ReACs hierarchy is proposed to be given to another AO/(s) (not diverted) in the same building to avoid any transfer of case records between buildings. And for second question the process is same as earlier.

Q5. ICAI should make a representation/explore to Govt to start recruiting CA for this faceless scrutiny and all procedural and administrative work should be left with IAS and IRS as being currently handled.

Ans. Suggestion welcome for core committee members.

Q6. How assessing officer of different state will have understand of cost of living of other state like how Bihar AO will be able to understand Mumbai assessee and its expense while doing assessment in case of faceless assessment.

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Ans. Even today in case of transfer practically officer from say Bihar transferred to Mumbai is assessing, same process will continue except now it will be virtual.

Q7. Machine Learning requires scenarios to be built by n into the Algorithm codes.
Who will be providing the baselined scenarios for Machine Learning?

Ans. There is team delegated for same.

Q8. How date of communication of notice be known to depth?

Ans. Date of uploading on server which will be communicated on real time basis to taxpayer will be considered as date of communication.

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