



WIRC OF ICAI

Faceless Assessments

8 April 2021

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Background

Background

- Concept of Self Assessment
 - Computation of income [Section 14 – 59]
 - Estimation of income and payment of advance tax [Section 207-219]
 - Filing of return of income [Section 139]
 - Payment of self assessment tax [Section 140A]
- % of returns taken up for scrutiny.
 - Less than 1%
- Assessment under Income-tax Act (Chp. XIV)
 - Section 2(8) – assessment includes reassessment
 - Summary Assessment u/s 143(1)
 - Scrutiny Assessment u/s 143(3) or 144
 - Assessment in case of search – section 153A/153C (prior to 31.03.2021)
 - Reassessment u/s 147

Background

- Revision of Assessment [Section 263 and 264]
 - Section 263 – assessment order is erroneous and prejudicial to the interest of the revenue (only scrutiny assessment orders can be revised u/s 263)
 - Section 264 – order can be revised in a manner so as to be not prejudicial to the assessee (scrutiny as well as summary assessment order can be revised u/s 264)
- Rectification of assessment [Section 154]
 - Any order can be rectified to correct any mistake apparent from record
- Concept of finality to assessment
 - 106 ITR 1(SC) Parashuram Pottery Works Co. Ltd. vs. ITO
“we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity.”

Background - Traditional Scrutiny Assessment

- Section 2(7A) r.w.s. 120 – Jurisdiction of Assessing Officer
- Section 139 – Filing of ROI
- Section 142(1) – Inquiry before assessment
 - direction to furnish ROI
- Section 143(2) – Notice for initiating assessment
 - notice requiring the assessee either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return

Background - Traditional Scrutiny Assessment

- Section 142(1) – Inquiry before assessment
 - produce, or cause to be produced, such accounts or documents
 - furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee, whether included in the accounts or not)
- Other inquires:
 - Summons u/s 131
 - Summons u/s 133(6)
 - Recording of statement etc.
- Section 143(3)/144 – Order of assessment
 - after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee

Sections as it is – only modified to suit to digitisation

Digitisation

Chronology of events

Year	Event
2006	E-Filing of TDS Returns/Statements and Income Tax Returns of Companies
Oct. 2015	CBDT initiated the concept of using email-based communication for paperless scrutiny proceedings
Dec. 2015	CBDT amended Income Tax Rules, 1962 to provide that service of notice, summons, requisition, order and other communication may be done by email. [N.N. 89/2015]
Feb. 2016 & April 2017	CBDT notified the procedures and standards to be followed to ensure secure transmission of electronic communication [N N. 2/2016 & 4/2017]
Sept. 2017	CBDT stated that its ITBA project was ready to conduct various tax proceedings electronically through the 'e-proceedings' facility in an end to end manner [Instruc. No. 8/2017]
Budget 2018	Late Arun Jaitley in his budget speech proposed to amend the Income Tax Act to notify a new scheme of assessment where the assessment will be done through electronic mode which would almost eliminate person to person contact leading to greater efficiency and transparency
Feb. 2018	CBDT directed that except for search related assessment, proceedings in other pending scrutiny assessments shall be conducted only through 'E-Proceeding' functionality in ITBA. In cases where the assessee objected to the conduct of assessment proceedings electronically, such cases may be kept on hold [Instruction No. 1/2018]
Aug. 2018	CBDT issued instructions for conduct of assessment proceedings through 'E-Proceeding' facility during 2018-19
Sept. 2019	CBDT notifies E-Assessment Scheme, 2019

ITBA Module

NOTIFICATION NO.4/2017 [DGIT(S)/DIT(S)-3/AST/PAPERLESS ASSESSMENT PROCEEDINGS/96/2015-16], DATED 3-4-2017

- An integrated platform i.e. Income Tax Business Application (ITBA) for electronic conduct of various functions/proceedings including assessments
- Synchronized with the e-filing portal
- Communications sent electronically through the 'Assessment Module' of ITBA which is delivered in e-filing account of the concerned assessee
- Response of assessee online through the portal along with the attachments
- This communication of data and document between the Income Tax Department and assessee through electronic mode is termed as 'E-Proceeding'

Features of Faceless Assessment

Features

FACELESS CENTRES



- **CCIT CENTRES**
- **OTHER OFFICES**



FACELESS ASSESSMENT AND APPEAL

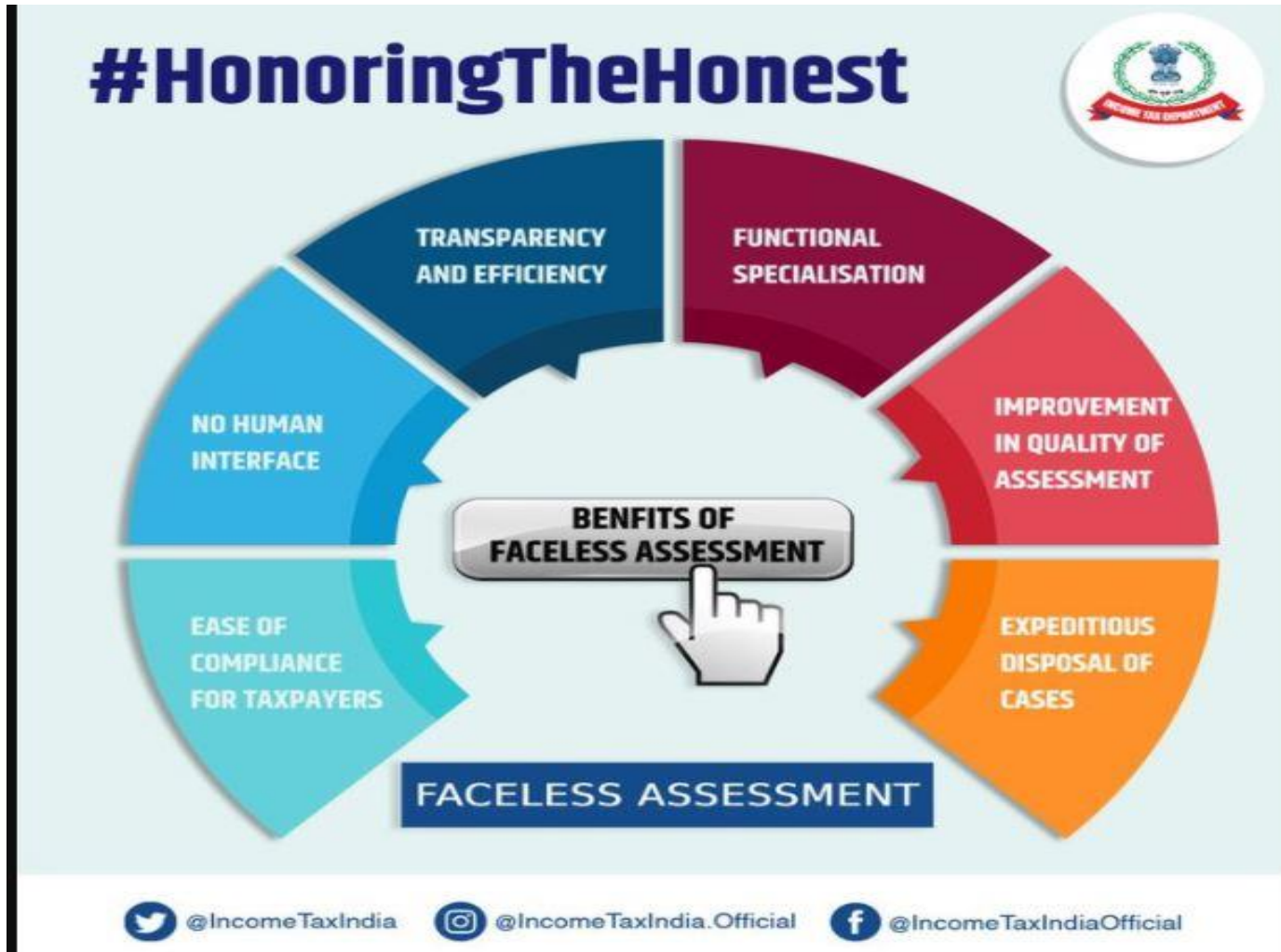
OBJECTIVES

- Imparting greater efficiency, transparency and accountability
- Eliminating physical interface between the taxpayer and tax officers

FEATURES

- Selection only through system using data analytics and AI
- Dynamic Jurisdiction – abolition of territorial jurisdiction
- Automated random allocation of cases.
- Central issuance of notices with Document Identification No. (DIN)
- No physical interface, No need to visit income tax office
- Team-based assessments and Team-based review
- Draft assessment order in one city, review in another city and finalisation in third city
- Objective, fair and just order
- 2/3rd of the manpower is utilised for faceless and balance for other functions

Features



Features & Issues

- Mandatory faceless assessment with few exceptions
- Travelling hassles are eliminated
- Bureaucratic issues removed
- Contact not completely eliminated
 - Digital signature of NEAC (earlier by originator)
 - Assessee's details are available with the Department
- Technological issues – not all assessees are well versed with computer etc.
 - Therefore, reliance on computer experts
 - Voluminous documents uploading
- Touch of personal hearing gone
- Quality of written submission – may be bulky if reference to various pages, documents and sections
- Not much impact because of the target implementation

Faceless Assessment

Legal framework - Old

Section 143(3A)

The 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 assessee under sub-section (3) or section 144 so as to impart greater efficiency, transparency and accountability by—

- 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.*

Section 143(3B)

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.

Section 143(3C)

Every notification issued under sub-section (3A) and sub-section (3B) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

Relevant Notifications

- Notification No. 61 of 2019 dated 12.09.2019
 - Notification No. 62 of 2019 dated 12.09.2019
 - Notification No. 60 of 2020 dated 13.08.2020
 - Notification No. 61 of 2020 dated 13.08.2020
 - Instruction No. F. NO. 187/3/2020-ITA-I dated 13.08.2020
 - Instruction No. F. NO. 187/3/2020-ITA-I dated 13.08.2020
 - Instruction No. F. NO. 187/3/2020-ITA-I dated 18.09.2020
 - Instruction No. F. NO. 225/126/2020-ITA-II dated 17.09.2020
 - Notification No. 6 of 2021 dated 17.02.2021
-
- Other notifications appointing officers and authorities (which becomes irrelevant since faceless)

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, inserted a new section 143(3D) which states that “*nothing contained in sub-section (3A) and sub-section (3B) shall apply to the assessment made under sub-section (3) or under section 144, as the case may be, on or after the 01.04.2021.*”

For assessments on or after 1.4.2021 – new section 144B is inserted.

THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020

Section 144B provides for the entire scheme of Faceless Assessment

1. 144B(1) – scheme of faceless assessment with 32 steps
2. 144B(2) – **“The faceless assessment under sub-section (1) shall be made 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 the Board”**
3. 144B(3) - Centres and units
4. 144B(4) – Composition of various units
5. 144B(5) and 144B(6) – internal and external communications through electronic mode
6. 144B(7) – mode of communication etc.
7. 144B(8) – In exceptional case, transfer to jurisdictional AO
8. 144B(9) – Assessment not made in accordance with the scheme – bad in law
9. Explanation – definitions.

Relevant Notifications u/s 144B

- Instruction No. F. NO. 187/3/2020-ITA-I dated 31.03.2021
- *“In pursuance of the said amendment, the Central Board of Direct Taxes, in exercise of powers under section 119 of the Act, hereby directs that all Orders, Circulars, Instructions, Guidelines and Communications issued in order to implement the Scheme shall henceforth mutatis mutandis be applicable to the Faceless Assessment under section 144B of the Act, except those specifically modified by issue of fresh Orders/Circulars etc.”*
- Notification No. 22, 23 and 24/2021 dated 31.03.2021 – appointment of authorities and conferment of concurrent jurisdiction of AO
- Notification No. 25/2021 dated 31.3.2021 –
“Assistant Commissioner of Income-tax/Deputy Commissioner of Income-tax (NaFAC) having her / his headquarters at Delhi, to act as the ‘Prescribed Income-tax Authority’ for the purpose of sub-section (2) of section 143 of the Act, in respect of returns furnished under section 139 or in response to a notice issued under sub-section (1) of section 142 of the said Act, or sub-section (1) of section 148 of the Act”

Relevant Notifications u/s 144B

- **ORDER F. NO. 187/3/2020-ITA-1, DATED 31-3-2021**
- *“all the assessment proceedings pending as on 31-3-2021 and the assessment proceedings initiated on or after 1-4-2021 (other than those in the Central Charges and International Taxation charges) which fall under the following class of cases shall be completed under section 144B of the Act”*
 - where the notice u/s 143(2) of the Act was/is issued by the (erstwhile) NeAC or by the NaFAC;
 - where the assessee has furnished her/his return of income u/s 139 or in response to a notice issued u/s 142(1) or 148(1); and a notice under section 143(2) of the Act, has been issued by the Assessing Officer or the Prescribed Income-tax Authority, as the case may be;
 - where the assessee has not furnished her/his return of income in response to a notice issued u/s 142(1) of the Act by the Assessing Officer;
 - where the assessee has not furnished her/his return of income u/s 148(1) of the Act and a notice u/s 142(1) of the Act has been issued by the Assessing Officer.

Notification driven law

THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020

Other amendments proposed by the Bill w.e.f. 1.11.2020, to give effect to the Faceless Assessment and to give power to Central Government to notify the scheme –

1. S. 92CA(8) – Reference to TPO
2. **S. 130 inserted for Faceless jurisdiction of income-tax authorities.**
3. **S. 135A inserted for Faceless collection of information.**
4. S. 142B inserted for Faceless inquiry or valuation
5. S. 151A inserted for Faceless assessment of income escaping assessment
6. S. 157A inserted for Faceless rectification, amendments and issuance of notice or intimation.
7. **S. 231 inserted for Faceless collection and recovery of tax, TDS assessments, LTDC Certificate etc.**
8. S. 264A inserted for Faceless revision of orders
9. S. 264B inserted for Faceless effect of orders
10. S. 279(4) – for granting of sanction for prosecution or for compounding of offence
11. **S. 293D inserted for Faceless approval or registration.**

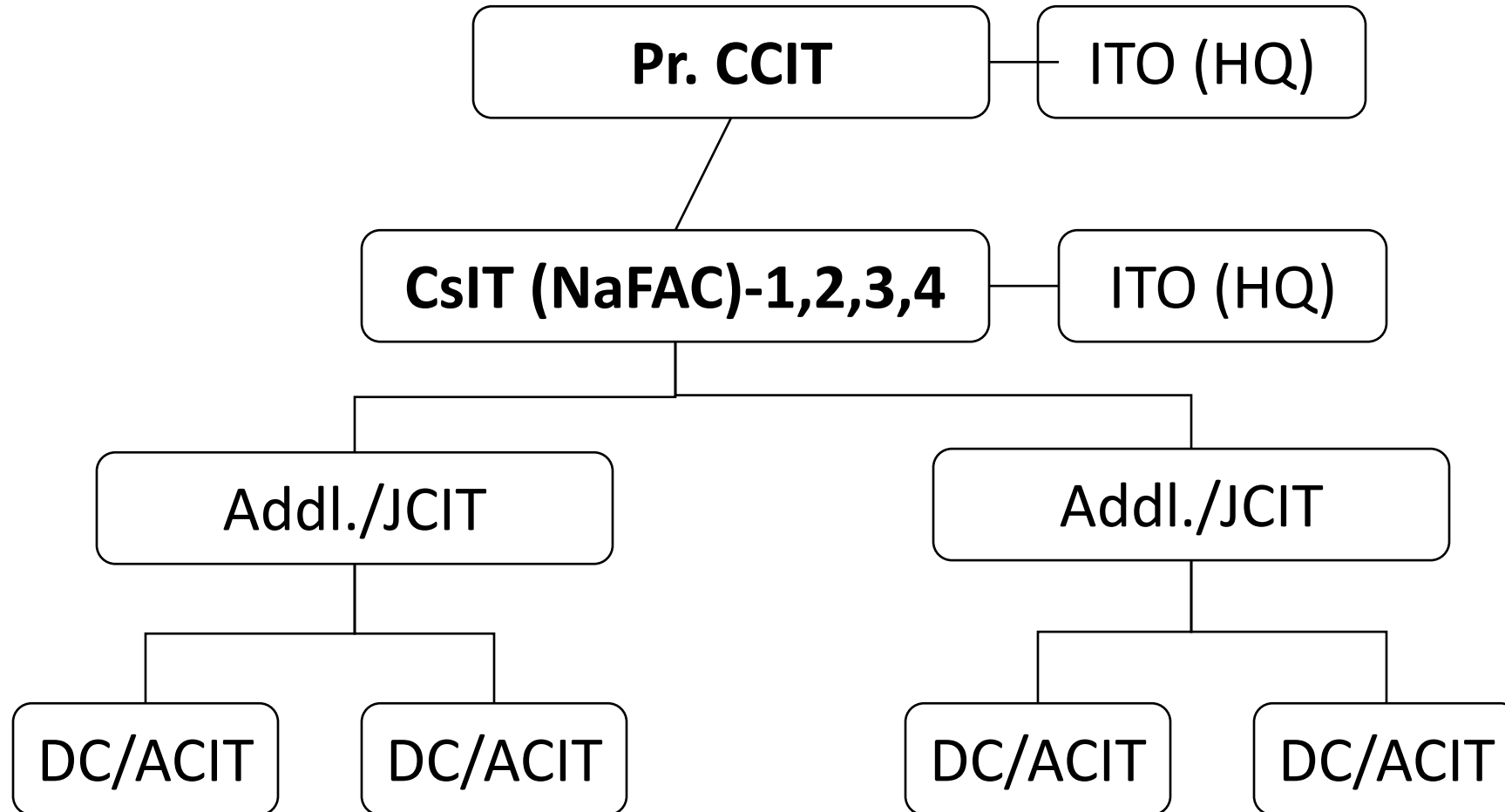
Structure and Hierarchy – **Faceless Assessment Centres**

- 1. National faceless assessment Centre** to facilitate the conduct of e-assessment proceedings in a centralised manner, which shall be vested with the jurisdiction to make assessment;
- 2. Regional faceless assessment Centres** under the jurisdiction of Regional PCCIT, which shall be vested with the jurisdiction to make assessment
- 3. Assessment units**, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under the Act, seeking information or clarification on points or issues so identified, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making assessment
- 4. Verification units** to perform the function of verification, which includes enquiry, cross verification, examination of books of accounts, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification.

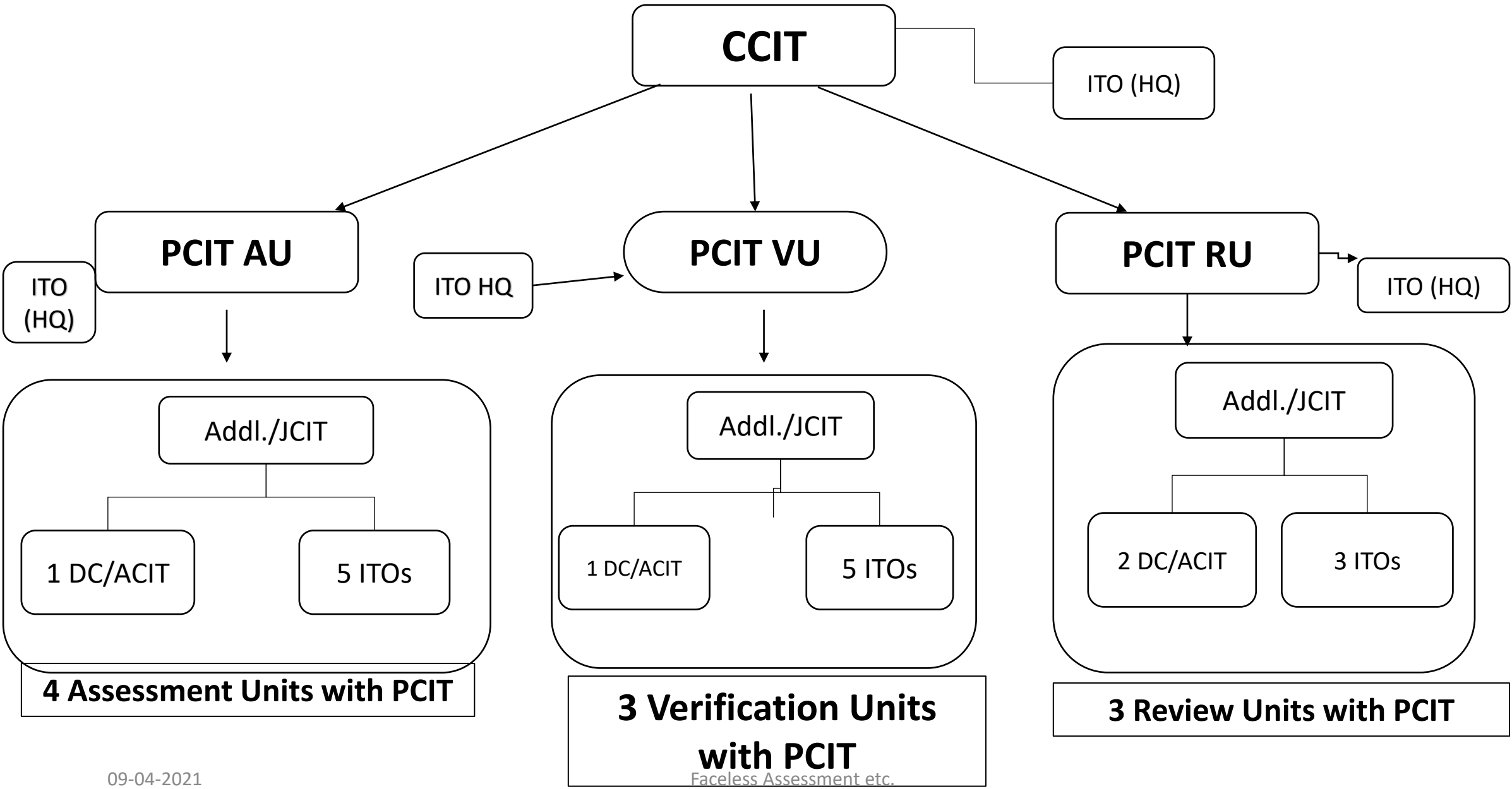
Structure and Hierarchy - E-assessment Centres

- 5. Technical units** to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, **audit**, transfer pricing, data analytics, management or any other technical matter which may be required in a particular case or a class of cases, under this Scheme.
(Audit word removed in section 144B)
- 5. Review units** to perform the function of review of the draft assessment order, which includes checking whether the relevant and material evidence has been brought on record, whether the relevant points of fact and law have been duly incorporated in the draft order, whether the issues on which addition or disallowance should be made have been discussed in the draft order, whether the applicable judicial decisions have been considered and dealt with in the draft order, checking for arithmetical correctness of modifications proposed, if any, and such other functions as may be required for the purposes of review

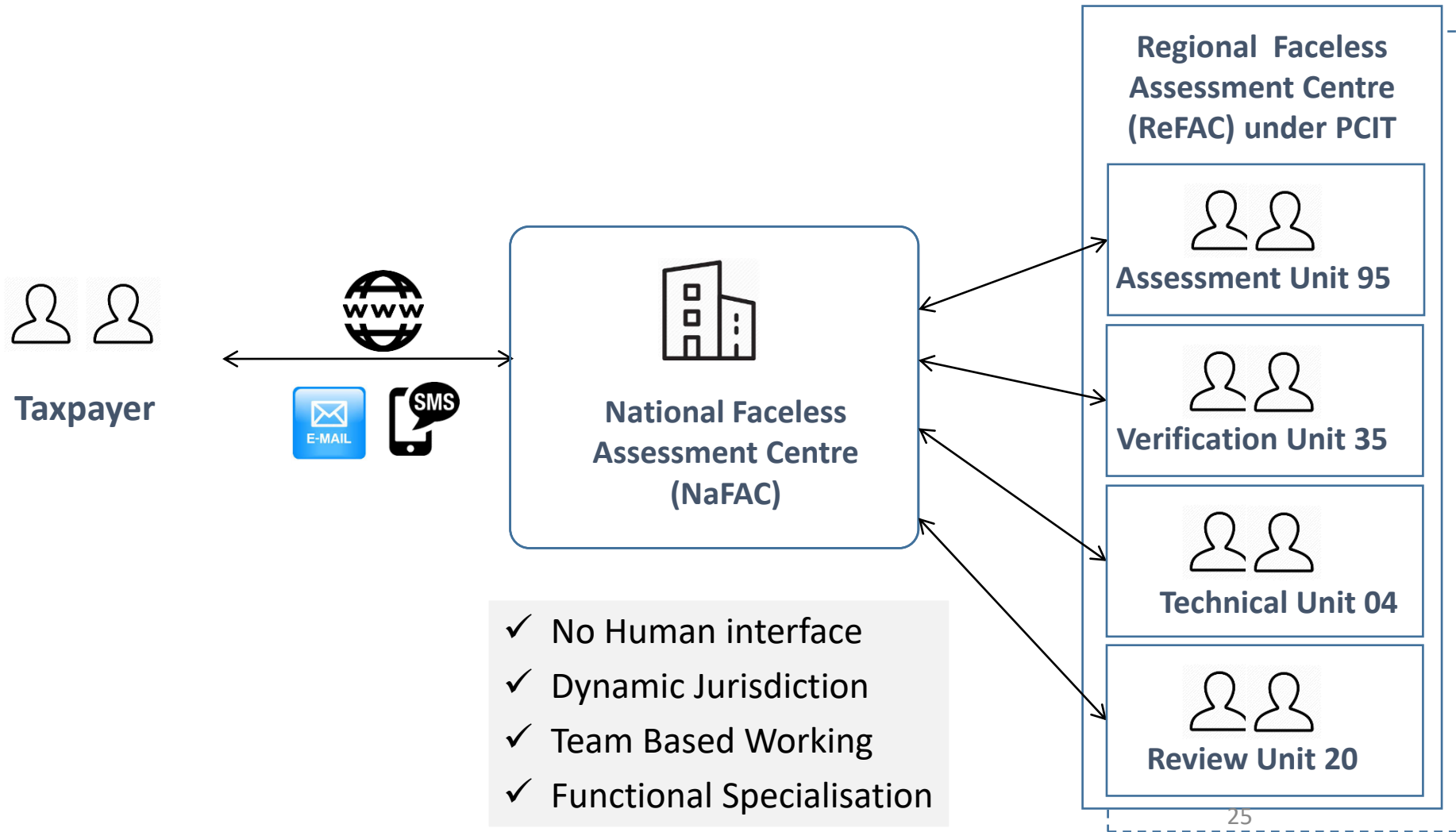
National Faceless Assessment Centre (NaFAC), Delhi



Regional Faceless Assessment Centre (ReFAC)



Faceless Assessment ecosystem



Scheme of assessment

1. NEAC shall serve a notice on the assessee u/s 143(2)
2. Assessee to file a response within 15 days from the date of receipt
3. Where any notice has already been issued by the AO either u/s 143(2) / 142(1)/ 148 etc., NEAC to intimate the assessee that assessment shall be completed under this Scheme (for the existing cases/ as well as other exceptional cases);
4. NEAC to assign the case selected to a specific assessment unit in any one Regional e-assessment Centre through an automated allocation system
5. Assessment Unit may request to NEAC for
 - a) obtaining such further information, documents or evidence from the assessee or any other person
 - b) conducting of certain enquiry or verification by verification unit
 - c) seeking technical assistance from the technical unit

Blue means communication between assessee and department

Red means internal communication of the Department

Scheme of assessment

6. If 5(a) above, then NEAC shall issue appropriate notice or requisition to the assessee or any other person for obtaining the information, documents or evidence
 - a) the assessee or any other person, as the case may be, shall file his response to the notice referred to above within the time specified therein or such time as may be extended by NEAC
7. If 5(b) above, i.e. verification request, then request shall be assigned by the NEAC to a verification unit in any one REAC through an automated allocation system
8. If 5(c) above, i.e. technical assistance request, then request shall be assigned by the NEAC to a technical unit in any one REAC through an automated allocation system
9. Report of Verification Unit and/ or Technical unit to be sent to Assessment unit.
11. In case of failure to file a reply by assessee to any notice – NEAC shall serve upon such assessee a show cause notice u/s 144 for opportunity on a date and time to be specified in the notice
 - Assessee to file a reply within the time specified
 - If assessee fails to file a reply – then NEAC to intimate such failure to assessment unit

Scheme of assessment

12. Draft assessment order by Assessment Unit –

- after taking into account all the relevant material available on the record make in writing
- In case of failure to reply - make in writing, a draft assessment order to the best of its judgment
- either accepting the income, or sum payable by, or sum refundable to, the assessee as per his return or modifying the said income or sum
- send a copy of such order to NEAC

13. Assessment unit shall, while making draft assessment order, provide details of the penalty proceedings to be initiated therein, if any

- ## 14. NEAC shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide to,
- finalise the assessment as per the draft assessment order and serve a copy of order along with notice initiating penalty and notice of demand (if no variation proposed) or
 - If modification is proposed, then show-cause notice to assessee or
 - Assign such draft order to one review unit of REAC for review

Scheme of assessment

15. If referred to Review Unit –

- It shall conduct review of draft order and
- Either concur with Draft order and intimate the same to NEAC or
- Suggest modification and send the modifications to NEAC

16. If no suggestions proposed by Review Unit then NEAC shall–

- finalise the assessment as per the draft assessment order and serve a copy of order along with notice initiating penalty and notice of demand or
- If modification is proposed originally, then show-cause notice to assessee

17. If suggestions received for modifications then NEAC shall assign the case to an assessment unit, other than the assessment unit which has made the draft assessment order, through an automated allocation system

18. Such assessment unit shall after considering the modifications suggested by the review unit, send the final draft assessment order to NEAC

- On receipt of draft order – NEAC shall either finalise the order and if modifications proposed, then issue SCN

Scheme of assessment

19. If SCN issued to assessee then

- Assessee to furnish his response to NEAC on or before the date and time specified in the notice or within the extended time

20. NEAC shall

- If no reply to SCN received, finalise the draft assessment order and issue notice of demand and penalty notice
- If reply received – send the response received to the concerned assessment unit

21. Assessment unit shall after considering the response, send the revised draft assessment order to NEAC

22. NEAC shall on receipt of revised draft assessment order,

- in case no modification prejudicial to the interest of the assessee is proposed – finalise assessment
- If modification is proposed – issue SCN to the assessee (2nd SCN) (as compared to the original order)
- Response furnished by the assessee shall be dealt with the manner above

23. NEAC shall after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act

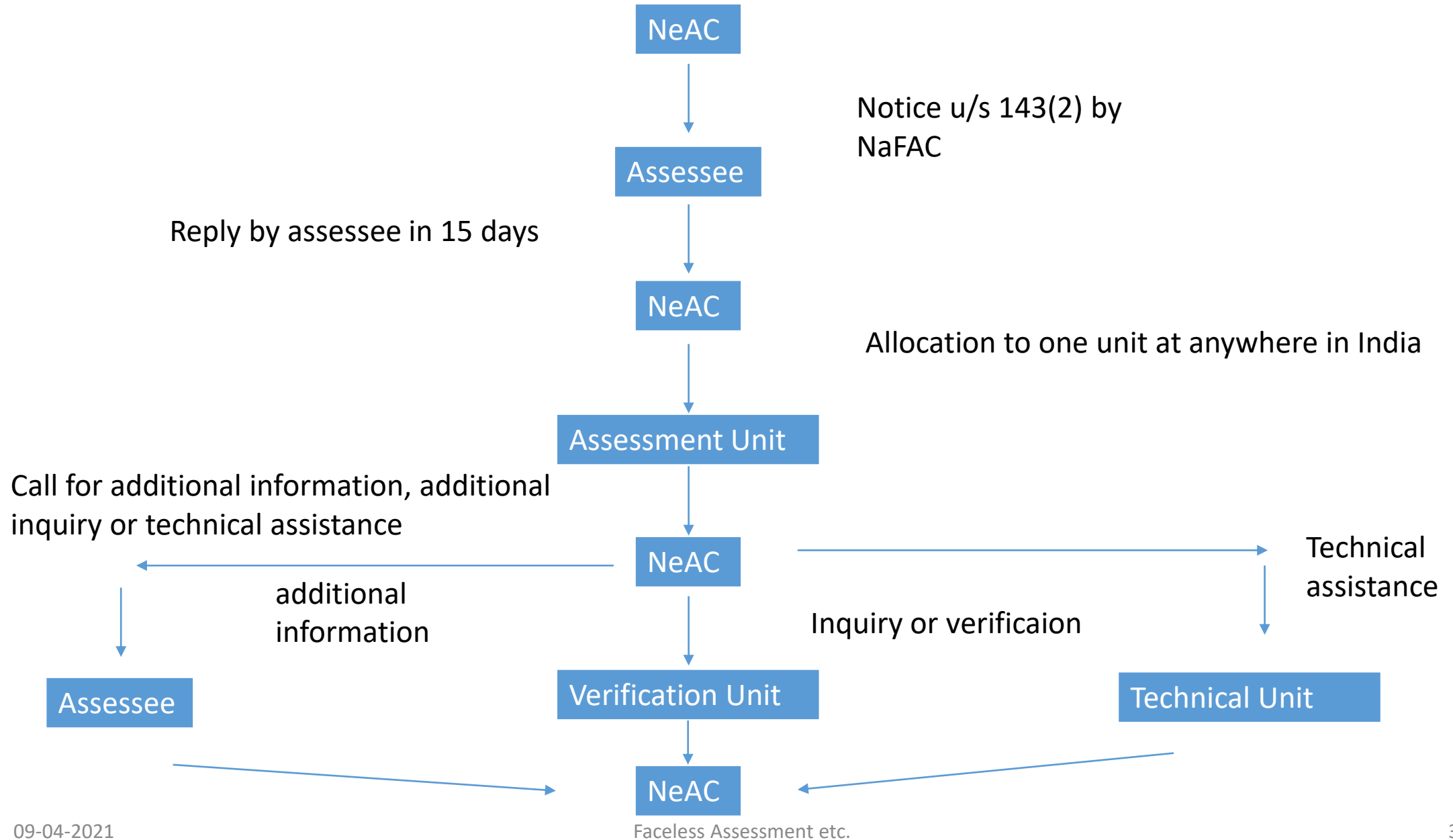
Scheme of assessment – For eligible assessee u/s 144C

- NEAC shall on receipt of revised draft assessment order (after review etc.),
 - Where draft assessment order or the final draft assessment order is in respect of an eligible assessee and proposes to make any variation which is prejudicial to the interest of such assessee, forward the draft assessment order or final draft assessment order to such assessee;
- Assessee to either:
 - File acceptance of variance
 - File objections
- If acceptance received or if no objection received within the specified limit, then NEAC shall finalise the assessment.
- If objections are filed, NEAC shall upon receipt of the directions issued by the DRP, finalise the assessment
- NEAC shall after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act

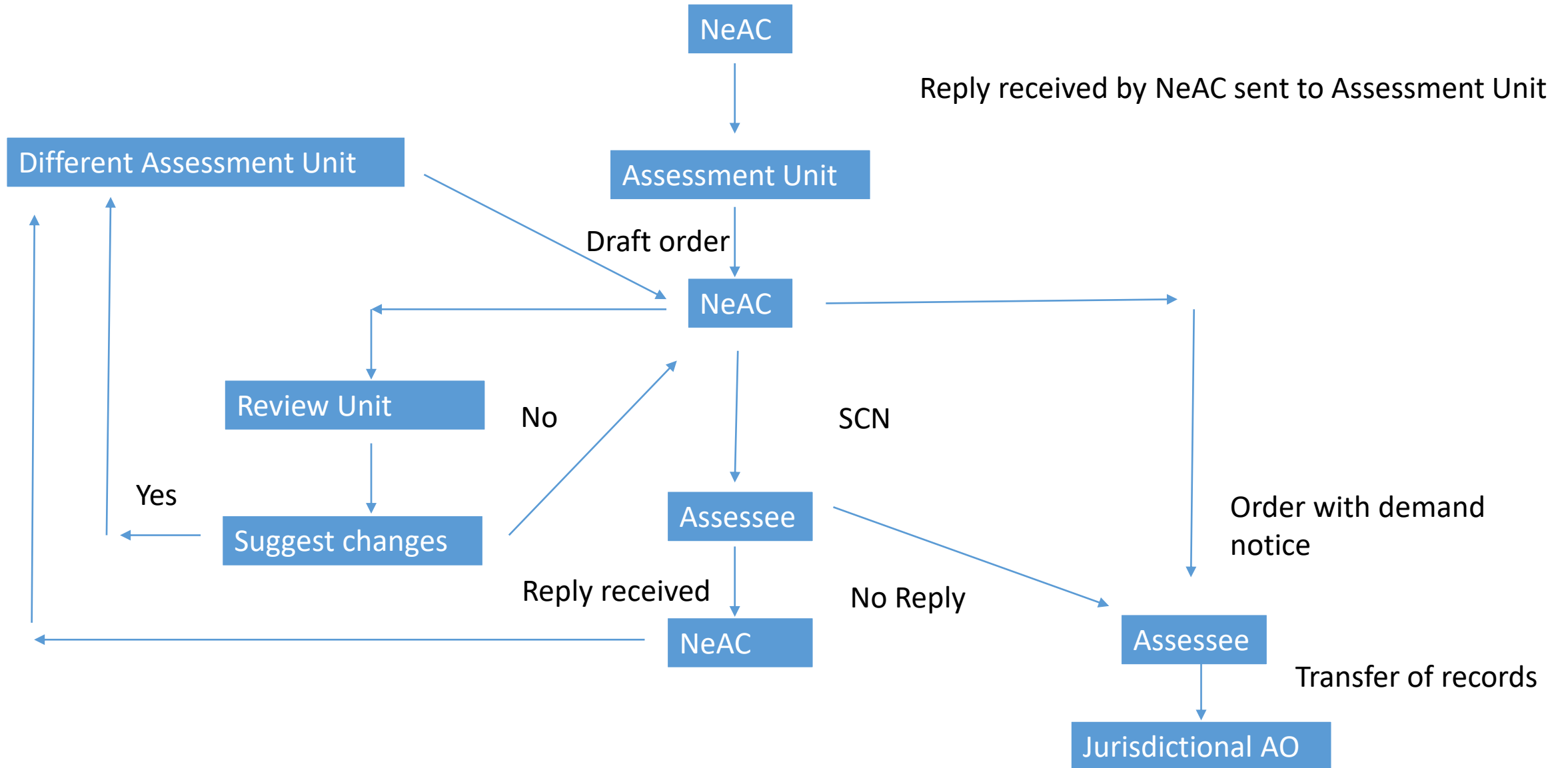
Exceptions

1. As per Instruction No. F. NO. 187/3/2020-ITA-I dated 13.08.2020, w.e.f. 13.08.2020, all assessment orders to be passed under Faceless Assessment Scheme, 2019 except as under:
 - Cases assigned to Central Circle. (Even survey cases are now assigned to central charge)
 - Assessment Order in cases assigned to International Tax Charges
2. Any assessment order passed which is not in conformity with the above shall be treated as non-est
3. Also as per section 144B(8)- Principal Chief Commissioner or the Principal Director General, in charge NEAC, may at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case, **with the prior approval of the Board.**
4. As per Media reports:
 - Serious frauds
 - Major tax evasion
 - Sensitive matters
 - Black money act and Benami act
5. Wealth tax assessments - faceless manner

Flow chart



Flow chart



Sections modified in this regard – Notification No. 61/2020

1. section 2(7A) – Assessing Officer
2. section 92CA – Reference to TPO
3. section 120 – Jurisdiction of IT Authorities
4. section 124 - Jurisdiction of AO
5. section 127 – Power to transfer cases
6. section 129 – Change of incumbent in office
7. section 131 – Power regarding discovery, production of evidence etc.
8. section 133 – Power to call for information
9. section 133A – Power of survey
10. section 133C – Power to call for information by prescribed IT Authority
11. section 134 – Power to inspect register of companies
12. Chapter XIV – Procedure for assessment
13. Chapter XXI – Penalties imposable

Personal hearing

Personal hearing

1. Person shall not be required to appear either personally or through authorised representative in connection with any proceedings under this Scheme before any authority at the NEAC or REAC or any unit.
2. If modifications are proposed in draft order **and SCN issued to assessee**, then **assessee or AR can make a request for personal hearing so as to make his oral submissions** or present his case before the income-tax authority in any unit under this Scheme;
3. The Chief Commissioner or the Director General, in charge of the **REAC**, under which the concerned unit is set up, **may approve** the request for personal hearing, if the request is covered by the circumstances to be prescribed
4. If request is approved then such hearing shall be conducted exclusively through video conferencing
5. Subject to the sub-section (6), any **examination or recording of the statement of the assessee or any other person** (other than statement recorded in the course of survey under section 133A of the Act) shall be conducted by an income-tax authority in any unit under this Scheme, exclusively through video conferencing.
6. The Board shall establish suitable facilities for video conferencing so as to ensure that the assessee or AR is not denied the benefit of this.

Issues

- Composition of Committees – How many Officers? As per the notification, assessment is by a team.
 - Not an income tax authority u/s 116
 - As per clarification, one officer to look into the assessment.
 - All actions of AU, VU, RU & TU Officers are approved by the respective Range Heads
- Are the internal communication made known to the assessee? How do we know whether the correct unit is performing the function?
- Submission of any detail suo moto even if not called for or even where no reply is pending?
- SCN whether optional or mandatory? (Changes made in the new section 144B)
 - Natural justice incorporate in the scheme itself.
 - At what stages? Each stage of modification? What if a new argument is taken by Department and no SCN is issued? (Changes made in the new section 144B)
 - Information collected from third party has to be confronted to the assessee?
- Time limit for filing of response
 - Always file in time, file partial response and take extension

Issues

- Recording of statement / Cross examination of the other party – Statement under oath.
 - Statement to be digital signed by all parties? Binding value?
 - If technological problem, can one claim no oath was administered?
 - whether video conferencing footage will be made available?
 - Physical recording of statement is permissible in certain scenarios
 - Section 135A inserted for bringing in sync with Faceless assessment.
- Reassessment – No mechanism prescribed
 - Who is to record reasons?
 - Who is to grant approval/ sanction?
 - Who is to dispose off objections?
 - Writ petition, if any against NEAC?
 - 151A inserted for faceless reassessment
 - Guj High Court has held that notice is to be issued by the person who records the reason.
 - Jurisdictional hierarchy to continue with 147 powers – Instruction dated 18.09.2020
- Remand proceedings/ Set aside cases – No mechanism - Who is to pass assessment order?
 - If denovo set-aside – then NeAC – SOPs to be released - Instruction dated 18.09.2020
 - Set aside requiring only verification/ order giving effect – Jurisdictional AO in faceless manner
 - Remand by CIT(A) – Verification Unit of NEAC
 - 264B inserted for faceless dealing of set aside cases

Issues

- Transfer pricing cases?
 - TPO will handle and give reports to the JAO/NEAC (existing reference) - Instruction dated 18.09.2020
 - Technical unit also contains transfer pricing experts - 92CA is also modified
 - 92CA(8) inserted
- Personal hearing – at the discretion of PCCIT of REAC –
 - what if they decline and I still want a hearing?
 - Can I go to High Court?
- Revision u/s 263 and 264 by whom?
 - By jurisdictional CIT (Instruction No. F. NO. 187/3/2020-ITA-I dated 18.09.2020)
 - If set aside to pass a new order, then assessment by whom, NEAC or jurisdictional AO?
 - 264A inserted
- Rectification u/s 154
 - Is there any internal communication that before rectifying any order, permission to be sought of NEAC?
 - 157A inserted for faceless rectification
- Refund and Stay proceedings with the jurisdictional AO
 - 231 inserted for faceless proceeding

Issues

- Judicial Precedents of the jurisdiction of the assessee should bind the Department?
- Should such scheme come by way of a delegated piece of legislation?
 - Now new scheme in 144B inserted
- Technological hurdles
 - File Size
 - Connectivity issues
- Accountability?
- Refund u/s 241A – who is to record reasons for withholding of refund?
- What in case of section 144A – reference to JCIT?
- Time limits to remain same
- Order u/s 201(1)/ 201(1A)
 - Section 231 inserted for faceless proceedings.

Issues

- Application for registration u/s 12AA/ 12AB/ 80G etc. – manual
 - Section 293D inserted for faceless registration
- Sanction for / compounding of offences
 - Jurisdictional CC/ PC
 - Section 279(4) inserted for faceless process
- Transfer of cases to central charges or because of change in registered address.
 - section 127 – Power to transfer cases modified.
 - Section 130 inserted gives flexibility in transfer of cases.
- Following cases to be transferred to Central Charges (Instruction No. F. NO. 187/3/2020-ITA-I dated 18.09.2020):
 - 153A/153C
 - FT&TR (Foreign Tax and Tax Research) Cases
 - Survey cases where material has been impounded
- How will the assessments to be conducted by jurisdictional AO be conducted? Physical or faceless

Penalty

Legal Framework

Section 274(2A)

The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of imposing penalty under this Chapter so as to impart greater efficiency, transparency and accountability by—

- (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 mechanism for imposing of penalty with dynamic jurisdiction in which penalty shall be imposed by one or more income-tax authorities.*

Section 274(2B)

The Central Government may, for the purposes of giving effect to the scheme made under sub-section (2A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to jurisdiction and procedure for imposing penalty shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided *that no direction shall be issued after the 31st day of March, 2022.*

Section 274(2C)

Every notification issued under sub-section (2A) and sub-section (2B) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

Scheme of Penalty - For non-compliance of notice – 271(1)(b) - By NEAC and REAC

1. Any unit may, in the course of assessment proceedings, for non-compliance of any notice, direction or order issued under this Scheme on the part of the assessee or any other person, send recommendation for initiation of any penalty proceedings under Chapter XXI of the Act, against such assessee or any other person, as the case may be, to the National e-assessment Centre, if it considers necessary or expedient to do so.
2. NEAC shall, on receipt of such recommendation, serve a SCN notice on the assessee or any other person, as the case may be
3. Response to SCN to be sent by NEAC to concerned unit
4. After considering the response, the said unit shall,
 - Drop the penalty proceeding or
 - Make a draft order and send the same to NEAC
5. NEAC shall levy the penalty as per the said draft order of penalty and serve a copy of the same on the assessee or any other person, as the case may be and then transfer the record
6. Sections modified - Chapter XXI – Penalties imposable

Not part of section 144B

Scheme of Penalty -

Faceless penalty scheme notified by Notification No. 2 and 3 /2021 dated. 12.01.2021

1. NFPC, RFPC, Penalty units, Penalty review units
2. Till the time the above units are set up, the functions to be performed by NaFAC
3. Procedure same as faceless assessment

Section 2, section 120, section 127, section 129, section 131, section 133, section 133C, section 136 and Chapter XXI of the Act modified

All the penalty cases initiated under the Income-tax Act, 1961, pending as well initiated subsequently, is assigned to the National Faceless Penalty Centre

Exceptions:

- Central charge
- International Tax Charge
- TDS charge
- Penalty proceedings arising/pending in the Investigation Wing
- Penalty proceedings arising out of any statute other than the Income-tax Act, 1961
- Penalties imposable by the officers of the level of Commissioner/Director/Commissioner(Appeals/Appeal Unit)

Communication

Communication

1. All communications between the NEAC and the assessee, or his authorised representative, or any other person shall be exchanged exclusively by electronic mode.
 2. All internal communications between the NEAC, REAC and various units shall be exchanged exclusively by electronic mode
 3. Only exception to the above: enquiry or verification conducted by the verification unit in the circumstance to be prescribed by Principal Chief Commissioner or the Principal Director General, in charge of the NEAC in consultation with Board.
 4. Authentication of the electronic record
 - an electronic record shall be authenticated by NEAC by affixing its digital signature
 - assessee 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
- Any notice/ communication/ order without DIN – invalid in law
 - Electronic submission facility shall automatically close 7 days before time barring date. (Notification No. 4/2017)

Communication

5. Every notice or order or any other electronic communication **to assessee** shall be by way of
 - placing an authenticated copy thereof in the assessee's registered account; or
 - sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative; or
 - uploading an authenticated copy on the assessee's Mobile App; and
 - **followed by a real time alert.**
6. Every notice or order or any other electronic communication **to any other person** shall be by way of
 - Email to registered email address of such person, followed by a real time alert.
7. The Assessee shall file his response under this Scheme, through his registered account, and once an acknowledgement is sent by the NEAC containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated
8. The time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000.

Communication

Some important definitions in this regard

1. “real time alert” means any communication sent to the assessee,
 - by way of Short Messaging Service on his registered mobile number, or
 - by way of update on his Mobile App, or
 - by way of an email at his registered email address,
 - so as to alert him regarding delivery of an electronic communication;
2. “registered mobile number” of the assessee means the mobile number of the assessee, or his authorised representative, appearing in the user profile of the electronic filing account registered by the assessee in designated portal;
3. “registered email account” of the assessee means the electronic filing account registered by the assessee in designated portal;

Communication

Some important definitions in this regard

4. “registered e-mail address” means the e-mail address at which an electronic communication may be delivered or transmitted to the addressee, including-
 - the email address available in the electronic filing account of the addressee registered in designated portal; or
 - the e-mail address available in the last income-tax return furnished by the addressee; or
 - the e-mail address available in the Permanent Account Number database relating to the addressee; or
 - in the case of addressee being an individual who possesses the Aadhaar number, the e-mail address of addressee available in the database of Unique Identification Authority of India ;or
 - in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs; or
 - any e-mail address made available by the addressee to the income-tax authority or any person authorised by such authority.

5. “computer resource of assessee” shall include assessee's registered account in designated portal of the Income-tax Department, the Mobile App linked to the registered mobile number of the assessee, or the email account of the assessee with his email service provider

Communication

Section 13 of The Information Technology Act, 2000 –

“Time and place of dispatch and receipt of electronic record -

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:-

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,-

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.”

Sections modified in this regard

1. section 140 – return to be verified by whom
2. section 142 – inquiry before assessment
3. Section 282 – Service of notice generally
4. Section 282A – authentication of notices and other documents
5. Section 283 – Service of notice when family is disrupted or firm is dissolved etc.
6. Section 284 – Service of notice in case of discontinued business

Issues

1. Only issue of notice by way of putting on the tax portal without any alert – valid?
 - Notification No. 4/2017

2. What if the reply time is 7 days and what if the portal is close before that?
 - Any alternate mode of service?
 - Only one mode of service that too within their control?
 - Additional evidence proof? Purpose should be to bring everything on record.
 - Send to email id of your AO or email id of officers posted in NEAC preferably the CCIT or CIT

3. What would be the legality of notice issued on an e-mail mentioned in the return filed for the subject assessment year, however, which by the time of assessment has already been changed and mentioned in the latest return filed?
 - See PCIT vs. Iven Interactive Ltd. [2019] 418 ITR 662 (SC)

Survey

Survey

Instruction No. F. No. 187/3/2020-ITA-I dated 13.08.2020

Instruction No. F. No. 187/3/2020-ITA-I dated 18.09.2020- Order u/s 119 of the Act

- Survey action u/s 133A being an intrusive action, it is expected that the same should be carried out with utmost responsibility and accountability
- Henceforth, survey to be carried out only by:
 - Directorate of Investigation (Investigation wing)
 - Commissionerates of TDS
 - **CCIT (International Tax)**
- Competent authority for approval shall be
 - DGIT(Inv) or
 - Pr. CCIT/ CCIT(TDS)
 - **Pr. CCIT/ CCIT (International Tax)**
- Before approving surveys, PC/DG etc. should ensure that all other possibilities are exhausted and survey action is only a measure of last resort.
- **It took them 56 years to realise that survey is an intrusive action.**

THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020

Proviso to section 133A

“Provided that no action under this section shall be taken by an income-tax authority without the approval of the Principal Director General or the Director General or the Principal Chief Commissioner or the Chief Commissioner”

Income-tax authority" means—

(i) a Principal Commissioner or Commissioner, a Principal Director or Director, a Joint Commissioner or Joint Director, an Assistant Director or a Deputy Director or an Assessing Officer, or a Tax Recovery Officer; and

(ii) includes an Inspector of Income-tax, for the purposes of clause (i) of sub-section (1), clause (i) of sub-section (3) and subsection (5),

who is subordinate to the Principal Director General of Income-tax (Investigation) or the Director General of Income-tax (Investigation) or the Principal Chief Commissioner of Income-tax (TDS) or the Chief Commissioner of Income-tax (TDS), as the case may be;

Issues

1. Purpose for which survey can be conducted?
2. Any necessity for recording of reasons to belief?
3. What do you mean by approval?
4. Any power with PCCIT/ CCIT (International Taxation)?
 - No provision in amended section.

Faceless Appeals

Faceless Appeals

Appeal from faceless assessment

An appeal against an assessment made by the National e-assessment Centre under this Scheme shall lie before the Commissioner (Appeals) having jurisdiction over the jurisdictional Assessing Officer and any reference to the Commissioner (Appeals) in any communication from the National e-assessment Centre shall mean such jurisdictional Commissioner (Appeals).

Section 246A modified in this regard

Faceless Appeals

Faceless appeal provisions

250(6B) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of disposal of appeal by Commissioner (Appeals), so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).

250(6C) The Central Government may, for the purposes of giving effect to the scheme made under sub-section (6B), by notification in the Official Gazette, direct that any of the provisions of this Act relating to jurisdiction and procedure for disposal of appeals by Commissioner (Appeals) shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2022.

250(6D) Every notification issued under sub-section (6B) and sub-section (6C) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

Faceless Appeals

Tradition concept of hearing:

- Part A of Chapter XX of the Act, deal with appeals to CIT(A).
- CIT(A) is a quasi-judicial and first appellate authority to adjudicate disputes between the assessee and Department. He has to act independently, though he is an employee of one of the party to dispute.
- Section 246A enumerates the orders which can be challenged before the CIT(A).
- Section 249 prescribes the form of appeal and limitation, whereas section 250 prescribes the procedure in respect of such appeal.
- Section 250(1) states that the CIT(A) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the AO against whose order the appeal is preferred.
- Section 250(2) states that the appellant, either in person or by an authorised representative as well as the AO, either in person or by a representative, shall have a right to be heard at the hearing of the appeal.
- Section 250(6A) provides that in every appeal, the CIT(A), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed.

Faceless Appeals

Notification No. 76 and 77 of 2020 dated 25.09.2020

Faceless appeal scheme is *pari materia* with the faceless assessment provisions. Some of the material features of the scheme as under:

- NFAC, RFAC, Appeal units
- An assessee would not be aware who is the concerned CIT(A), though vice versa is possible.
- An order passed by the CIT(A) will be subjected to review either by National Faceless Appeal Centre ('NFAC') or by another CIT(A).
- There doesn't appear to be a team based disposal of appeals, though provisions are made in this regard.
- Faceless scheme is not to apply in certain cases – appeals relating to serious frauds, major tax evasion, sensitive & search matters, international tax and Black Money Act.
- Steps are prescribed to specifically adjudicate on condonation of delay, allowing non-compliance of conditions prescribed in section 249(4)(b), admission of additional ground and/or evidence before proceeding with the disposal of appeal.

Faceless Appeals

Procedure involved

- NFAC shall assign the appeal to a appeal unit (AU) in any one RFAC through an automated allocation system;
- If delay in filing of appeal
 - AU satisfied with cause then admit appeal
 - If not then reject
- If exemption u/s 249(4)(b)
 - AU may admit the appeal and exempt the appellant
 - If not satisfied then reject
- NFAC to intimate admission or rejection to assessee
- AU may, through NFAC,
 - Call for further information, document or evidence from the appellant or any other person
 - Obtain report from NEAC or AO
 - Direct AO or NEAC to make further inquiry and submit a report
 - NFAC to issue a notice

Faceless Appeals

Procedure involved

- Assessee or any other person to file reply/ NFAC or AO to submit report and receipt or non-receipt of the response to be intimated to the appeal unit
- Additional ground may be filed in such form as may be specified
- If additional ground is filed:
 - NFAC shall send such ground to NEAC or AO
 - NEAC or AO to send comments
 - AU shall after taking into consideration the comments if any,
 - Admit or reject additional ground
 - Admission or rejection to be intimated to the assessee
- Additional evidences may be filed in such form as may be specified
- If additional evidences are filed:
 - NFAC shall send such evidences to NEAC or AO
 - NEAC or AO to furnish report
 - AU shall after taking into consideration the report if any,
 - Admit or reject additional evidences
 - Admission or rejection to be intimated to the assessee

Faceless Appeals

Procedure involved

- If additional evidences are admitted:
 - AU shall provide an opportunity to NEAC or AO to examine such evidence or to cross-examine
- NEAC or AO may request the NFAC to direct the production of any document or evidence by the appellant, or the examination of any witness, as may be relevant to the appellate proceedings;
 - If deem fit by AU, then it shall direct the same
 - Notice to be sent to Appellant or any person
- Enhancement an assessment/ reduction of refund
 - SCN to be issued and assessee to file reply
- AU shall after considering all the material, prepare draft order
- Review of the order
 - where the aggregate amount of tax, penalty, interest or fee, including surcharge and cess, payable in respect of issues disputed in appeal, is more than a specified amount then review by another appeal unit
 - In other cases, NFAC to examine the draft order in accordance with the risk management strategy including automated examination tool

Faceless Appeals

Procedure involved

- Review unit
 - May concur or
 - Suggest variation
- If concurred, then NFAC shall finalise the order
- If variation, then NFAC shall assign the appeal to an appeal unit other than the AU which has prepared the draft order and one which has reviewed.
 - It shall follow the same procedure as prescribed earlier
- After finalising, NFAC shall pass the order and communicate to all concerned

Faceless Appeals

Other features

- Penalty proceeding for non-compliance
- Rectification proceeding
- Communication by electronic mode
- **No personal appearance –**
 - **Assessee or his representative may make a request for oral hearing**
 - **The Chief Commissioner or the Director General, in charge of the Regional Faceless Appeal Centre, under which the concerned appeal unit is set up, may approve the request for personal hearing**
 - **Such oral hearing only via video conferencing.**

Faceless Appeals

Issues:

- Physical hearing gone and oral hearing at the discretion of the Department
- Review of order
- Delegated piece of legislation
- Penalty proceedings for non-compliance – no such provisions
- Penalty proceedings u/s 270A/ 271(1)(c) – no procedures prescribed
- Rectification proceedings – different officer
- Additional ground/ evidences to be raised/ filed in a prescribed form
- Opportunity of being heard in case of condonation of delay or application for non-compliance with section 249(4)(b) or application for admission of additional ground/ additional evidence
- Fixing date of hearing and assessee to file the submission

Faceless Appeals

Issues:

- The concept of 'hearing' and as a consequence, 'appeal' is dying
- Fear of compromise of independence- CIT(A) is a quasi judicial authority
- Travelling hassles/ Bureaucratic issues – positive outcome

THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) BILL, 2020

Faceless DRP

144C(14B) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of issuance of directions by the dispute resolution panel, so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the dispute resolution panel and the eligible assessee or any other person to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a mechanism with dynamic jurisdiction for issuance of directions by dispute resolution panel.

Faceless ITAT on cards

- FA 2021 has proposed Faceless ITAT –
- Last fact finding authority.

Drafting of submission

- Reply to SCN and other legal submission
 - Facts
 - Legal submission
 - Precedents, if any relied upon.
- Dos
 - Timely submission
 - Submission in part, if not complete
 - Seek adjournment if submission is not ready
 - Precise and concise facts
 - All factual documents are on record
 - All the issues and legal propositions are raised
 - All relevant judgments are brought on record.
- Don'ts
 - Repetition
 - Bulky submission
 - Submission of unnecessary details and documents
 - Circular submission
 - Too many judgments

Taxpayers' Charter

THE INCOME TAX DEPARTMENT

is committed to

1. provide fair, courteous, and reasonable treatment
2. treat taxpayer as honest
3. provide mechanism for appeal and review
4. provide complete and accurate information
5. provide timely decisions
6. collect the correct amount of tax
7. respect privacy of taxpayer
8. maintain confidentiality
9. hold its authorities accountable
10. enable representative of choice
11. provide mechanism to lodge complaint
12. provide a fair & just system
13. publish service standards and report periodically
14. reduce cost of compliance

and expects taxpayers to

1. be honest and compliant
2. be informed
3. keep accurate records
4. know what the representative does on his behalf
5. respond in time
6. pay in time

Apex Court in case of **CIT vs. J.H. Gotla [(1985) 156 ITR 323 (SC)]** has held that *“Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction.”*

QUESTIONS, IF ANY?

THANK YOU

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