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## FACELESS ASSESSMENT – HONOURING THE HONEST???

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**T**he global tax landscape has been witnessing dynamic changes, with tax administrations around the world continuously gearing up to keep pace with rapid technological advancements to ramp up the effectiveness of their tax administrations. The enhanced transparency and disclosure are the new norms of tax administration world wide. The process of Structural Reforms regarding taxation in the country had a historical footing on 13.08.2020 when the Hon. Prime Minister launched the platform of “Transparent Taxation – Honouring the Honest”. The Prime Minister praised the role of honest taxpayers in nation building and said that making the lives of such taxpayers easy is the responsibility of the government. *“When the life of an honest taxpayer of the country becomes easy, he moves forward and develops, then the country also develops and leaps forward”.* – PM remarked.

The ongoing reforms aim at making the tax system Seamless, Painless, Faceless. The Seamless system works to resolve the problems of a taxpayer instead of entangling him further. By being Painless, everything from technology to rules should be simple. Referring to the Faceless system there is no need for a direct contact between the Taxpayer and the Income Tax Officer in all matters of scrutiny, notice, survey or assessment.

And this platform aims to attain its objectives through implementing three schemes viz. **Faceless Assessment, Faceless Appeal** and **Taxpayers Charter**. Earlier budget speeches also had the clues for these proposed schemes. **Faceless assessment** being the new name assigned to E – Assessment scheme 2019, which is made in run from the date of announcement. Introduction of a **Taxpayers Charter** is a recognition of the ‘rights’ of the taxpayer, and is under progress.

The faceless assessment scheme was launched in 2020 with the objective of promoting an efficient and effective tax administration, minimizing physical interface, increasing accountability and introduction of team-based assessments. Faceless assessment is, no doubt, a major tax reform initiative and India is one of the few countries to adopt such a system.

### PRESENT SCENARIO – FACELESS ASSESSMENT

The experience has generally been good in most of the cases, with assessment orders being passed accepting the returned income, not seeking to make unwarranted small additions as used to happen in

the past in case of assessments completed through physical appearance before tax officers. However, in quite a few cases, taxpayers have faced problems, which need to be sorted out to improve the process and the overall experience. Taxpayers who had faced additions to their returned income in the past continued to receive identical orders, even though it had been pointed out that appellate authorities had decided the issue in favour of the taxpayers for past years since the last order. The major issues faced by the assessee are as below :

**1. Rigid approach:**

In faceless assessment, more weightage has been given to assessment based on set of instructions and SOP's. This method has its own limitations as it cannot encompass all possible business scenarios. The tax officer may in order to comply with the set of instructions and SOP's and to avoid audit risk on them, may follow the instructions and SOP's in rigid manner without any flexibility in deserving cases too. Though set of instructions and SOP's will lead to same conclusion, the same is not warranted in each and every case. A middle solution should be found for these problems to mitigate the probability of increased litigations.

**2. Infeasibilities in uploading huge data.**

The notices received by some taxpayers have asked for voluminous details not justified by the facts of the case. For instance, companies whose accounts are audited have been asked to provide copies of all bank statements, sometimes with summaries of transactions, and sometimes with the narration of each transaction. For even most small and mid-sized companies, this is a difficult and time-consuming task. Officers may need to be trained better to ask for the right type of information, depending upon the type of case that he is handling. Sometimes the AU asks to upload vouchers and supporting evidences for entire period which may end up with huge data to be uploaded. The system accepts only data file less than 10 MB and only 10 files can be attached in a single slot reply.

**3. Inadequate time to file the reply.**

Very often, given the copious amount of information sought and the format in which it was needed to be compiled, the time given to respond to the notice was insufficient. Often merely three days are found to be allotted to file the reply. The pandemic situation adds salt to the injury as many entities were not able to respond in time due to constraints caused by lockdowns or unavailability of staff. Officers need to be sensitized to the fact that taxpayers should not be put to an undue burden of supplying too much information, which may not really be needed, as it also impacts taxpayer productivity. The time given to provide the information should also be commensurate with the amount of information sought. Any adjournment sought for is also not found to be appreciated by the authority as the next notices are issued neglecting the request. Even the draft assessment orders proposing huge additions are given time to file reply with in a smaller period with in which holidays, Sundays may crept in. Such notices are been send late evenings/night that a day in between to file reply already got expired. Justice demands that taxpayers should be given at least five working days' time to respond to the notices.

**4. Non Compliance with Scheme Procedure.**

The assessment scheme specifically provide to provide an opportunity to the assessee, ***in case any variation prejudicial to the interest of assessee is proposed***, by serving a notice calling upon him

to show cause as to why the proposed variation should not be made. Many taxpayers did not receive draft assessment orders as contemplated by the scheme, but directly received the final assessment orders. Those who did receive the draft orders were often given inadequate time to respond as mentioned above. This completion of assessment without giving opportunity being heard is a violation of natural justice and would involve interference of judiciary to prevail justice.

#### **5. Non consideration of replies**

Various courts have blasted out towards various orders having huge demand, without application of mind by the respective officers. The objections filed in response to draft assessment orders were generally merrily ignored by the officers, as if the addition was pre-decided and seeking of objections was just a formality simply by adding a single line along with pre drafted SCN.

#### **6. Glitches in Video Conferencing option :**

The worst experience was in the case of requests for video-conferencing by taxpayers, who felt the issue had not been understood properly by the authorities. A majority of such requests was ignored. A few received messages asking them to request video-conferencing by a particular date, and before that, they received their final assessment orders, rendering the whole concept futile. In many situations passwords are not received before the schedule. There are instances where in pre allotted link not getting connected nor the proper authority not accepting to enter for the conferencing. The authority treats this opportunity for VC to be a discretionary power to grant whereas in practical it is the inherent right of assessee to get that opportunity to make their contentions more clearly and effectively. Moreover after successful VC there are orders which did not take any inputs, which are more than enough valid to change the draft assessment order, and passing orders detrimental to the interest of assesseees.

### **INVOLVEMENT OF JUDICIARY**

Honourable judicial system is involving to those genuine hardships faced by the assessee and passing orders in favour of them. Some of the recent relevant judgements are mentioned below :

#### **a. Ekambaram Sukumaran vs ITO NeAC and Kumaran Silk Traders vs ITO NeAC – Hon Madras Highcourt.**

Revenue held bound to wait till end of working day when matter posted for finalization – relied on 83 ITR 683 – ultimately assessment order set aside in writ proceedings. Insufficient time given thereby assessment order set aside

#### **b. D.J.Surfactants vs NeAC– Hon Delhi High Court**

Reply of assessee dated 12.03.2021 not considered in assessment order and requested personal hearing not provided to assessee – stay of operation of assessment order granted.

#### **c. Royal Lake city vs NeAC – Hon Gujarat High Court**

Assessment order passed on 25.03.2021 prior to notified closure date of reply which was 26.03.2021 so apparent violation of natural justice – operation of assessment order stayed.

#### **d. Chander Arjandas Manwani Vs National Faceless Assessment Centre & ors.- Hon Bombay High Court**

No draft assessment order has been issued at all let alone on 1st February, 2021. The notice dated 1st February, 2021, as stated earlier, is seeking further documentary evidences and those evidences

sought are for the first time. When respondent is seeking documentary evidences, that communication by no stretch of imagination can be even referred to as a draft assessment order.

**e. Mantra Industries Limited Vs National Faceless Assessment Centre - Hon Bombay High Court**

An assessment order passed by the Assessing Officer (AO) should necessarily be made with sound consideration and application of mind, and any absence thereof shall make the order liable to be set aside and would warrant imposition of substantial costs on such AO.

On the contrary to the above judgements favourable to the assessee there are decisions from the honourable courts against them also, on the view that that *we have to follow the law and we can't challenge the provisions provided in law*. Keeping in view of these contraries it would be recommendable to amend the statute to protect the interests of genuine/honest tax payers, and also to keep track of bogus tax claimers. All these interferences may lead to turmoil in the entire tax paying system.

**Conclusion**

Tax administration in India is in midst of its golden era of innovations and digital transformation. Faceless assessment and faceless appeals aim to eliminate physical interface between taxpayers and the tax authorities, thereby imparting greater efficiency and transparency to the assessment and appeal process. If implemented in letter and spirit, this will boost confidence and trust in taxpayers and encourage a wider population to pay their taxes and file their returns. Only a scientific implementation would make the scheme a 'hit' or else can be a 'miss'.

The fundamental principle SALUS POPULI EST SUPREMA LEX – meaning welfare of people is supreme of Law , inspired by principle of justice, equity and good conscience , must be ensured to make the slogan Ease of doing Business in practical otherwise the quote by Martin Luther King Jr. that 'Injustice anywhere is a threat to justice everywhere' would triumph in this era.