



SCHEME OF FACELESS APPEALS – UNDER INCOME TAX ACT

CMA Niranjana Swain
Advocate & Tax Consultant

1. Background:

At times it may happen that the taxpayer is aggrieved by an order of the Assessing Officer / Income Tax Authority. In such a case he can file an appeal against the order of the Assessing Officer / income tax authority before different appellate authorities.

1.1. Appellate hierarchy under the income tax act is as follows.

Appellate Authorities in Income-tax Act

Appeal	Appellate authority	Against which order	Appellant
1st	Commissioner (Appeals)	Against specified order of the Assessing Officer	Assessee only
2nd	Income Tax Appellate Tribunal (ITAT)	Against the order of Commissioner (Appeals)	Assessee or the Commissioner (or Principal Commissioner) of Income tax
3rd	High Court	Against the order of ITAT (the case must involve substantial question of law)	
Final	Supreme Court	Against the order of High Court	



The 1st Appellate Authority is the Commissioner of Income-tax (Appeals). The provisions related to appealable orders covered under section 246 & 246A, appeal by a person denying liability to deduct tax at source in certain cases under section 248, form of appeal and limitation in section 249, procedure in appeal in section 250 and power of the Commissioner Appeals in section 251.

1.2. The list of major orders against which an appeal can be preferred before the Commissioner of Income-tax (Appeals) is given below:

1. Order passed against the taxpayer in a case where the taxpayer denies the liability to be assessed under Income Tax Act.
2. Intimation issued under section 143(1)/ (1B) where adjustments have been made in income offered to tax in the return of income.
3. Intimation issued under section 200A(1) where adjustments are made in the filed statement.
4. Assessment order passed under section 143(3) except in case of an order passed in pursuance of directions of the Dispute Resolution Panel
5. An assessment order passed under section 144.
6. Order of Assessment, Re-assessment or Re-computation passed after reopening the assessment under section 147 except an order passed in pursuance of directions of the Dispute Resolution Panel
7. An order referred to in section 150.

8. An order of assessment or reassessment passed under section 153A or under section 158BC in case of search / seizure.
9. Order made under section 92CD(3).
10. Rectification order passed under section 154 or under section 155.
11. Order passed under section 163 treating the taxpayer as agent of non-resident.
12. Order passed under section 170(2)/(3) assessing the successor of the business in respect of income earned by the predecessor.
13. Order passed under section 171 recording the finding about partition of a Hindu Undivided Family.
14. Order passed by Joint Commissioner under section 115VP(3) refusing approval to opt for tonnage-tax scheme to qualifying shipping companies.
15. Order passed under section 201(1)/206C(6A) deeming person responsible for deduction of tax at source as assessee-in-default due to failure to deduct tax at source or to collect tax at source or to pay the same to the credit of the Government.
16. Order determining refund passed under section 237.
17. Order imposing penalty under section(s)221/271/271A/271AAA/271F/271FB/ 272A/272AA/272B/272BB/275(1A)/158B(2)/271B/271BB/271C/271CA/ 271D/ 271E/ 271AAB.
18. Order imposing a penalty under Chapter XXI.
19. Tax deducted u/s 195 and after deduction and having paid such taxes claims that no tax was required to be deducted

2. Amendments in Finance Act 2020 related to Faceless Appeals.

2.1. The filing of appeals before Commissioner (Appeals) has already been enabled in an electronic mode. However, the first appeal process under the Commissioner (Appeals), which is one of the major functions/ processes that are not yet in full electronic mode. A taxpayer can file an appeal through his registered account on the e-filing portal. However, the process that follows after the filing of an appeal is neither electronic nor faceless. In order to ensure that the reforms initiated by the Department to eliminate human interface from the system reach the next level, it is imperative that an e-appeal scheme be launched on the lines of the e-assessment scheme.

Earlier, on 13.08.2020, CBDT notified the **Faceless Assessment Scheme, 2020** vide **Notification No. 60/2020**. In line with the Faceless Assessment Scheme, 2020 the appeals filed before the CIT(A) shall be decided by a team of CITs with dynamic jurisdiction. The assessee won't know the details of the CITs deciding their appeals and has to furnish their submissions and paper-books online in their e-filing portal.

2.2. The **announcement of faceless appeal** was made by the Finance Minister Nirmala Sitaraman while presenting the Union Budget 2020 on February 1, 2020. She applauded /praised/plausible the need for **introducing faceless appeal** under the income-tax law. She said on the Parliament that

“Our government is committed to bringing in transformational changes so that maximum governance is provided with minimum government. In order to impart greater efficiency, transparency and accountability to the assessment process, a new faceless assessment scheme has already been introduced. Currently, most of the functions of the Income Tax Department starting from the filing of return, processing of returns, issuance of refunds and assessment are performed in the electronic mode without any human interface. In order to take the reforms initiated by the Department to the next level and to eliminate human interface, I propose to amend the Income Tax Act so as to enable Faceless appeal on the lines of Faceless assessment.”

Following **amendments** have been made by the **Finance Act, 2020** in section 250 of the Income Tax Act, 1961 which deals with the appeals before CIT (Appeals) to provide for the legal basis to the Faceless Assessment Scheme. In section 250 of the Income-tax Act, after sub-section (6A), the following sub-sections shall be inserted, namely:—

The amended provisions related to section 250 are reproduced below.

“(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).

(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.

(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.”

2.3. Notification of the Scheme of Faceless Appeals:

Accordingly, in exercise of the powers conferred by **sub-section (6B) of section 250** of the Income-tax Act, 1961 (43 of 1961), the Central Government has notified the **Scheme called the Faceless Appeal Scheme, 2020** vide **CBDT Notification No. 76/2020 dated 25.09.2020** and No.77/ 2020 [S.O.3297(E)] - Income Tax dated. 25th September, 2020 under the Income Tax Act, 1961 (“Act”) to **provide for e-appeal** and for the online **hearing and disposal of appeals** related to income-tax disputes by the **Commissioner (Appeals)**. This **scheme shall become effective from 25.09.2020** and shall apply to all the pending appeals and any further new appeals filed under the Income Tax Act. **Under Faceless Appeals, all Income Tax appeals will be finalised in a faceless manner under the faceless ecosystem with the exception of appeals relating to serious frauds, major tax evasion, sensitive & search matters, International tax and Black Money Act.**

Under the **Faceless Appeals**, from now on, in income tax appeals, everything from e-allocation of appeal, e-communication of notice / questionnaire, e-verification / e-enquiry to e-hearing and finally e-communication of the appellate order, the entire process of appeals will be online, dispensing with the need for any physical interface between the appellant and the Department. There will be no physical interface between the taxpayers or their counsel/s and the Income Tax Department. The taxpayers can make submissions from the comfort of their home and save their time and resources.

The Faceless Appeals system will include allocation of cases through Data Analytics and AI under the dynamic jurisdiction with central issuance of notices which would be having Document Identification Number (DIN). As part of dynamic jurisdiction, the draft appellate order will be prepared in one city and will be reviewed in some other city resulting in an objective, fair and just order. The Faceless Appeal will provide not only great convenience to the taxpayers but will also ensure just and fair appeal orders and minimise any further litigation. The new system will also be instrumental in imparting greater efficiency, transparency and accountability in the functioning of the Income Tax Department.

As per data with CBDT, as on date there is a **pendency of almost 4.6 lakh appeals at the level of the Commissioner (Appeals)** in the Department. Out of this, about 4.05 lakh appeals, i.e., about 88 % of the total appeals will be handled under the Faceless Appeal mechanism and almost 85% of the present strength of Commissioners (Appeals) shall be utilised for disposing off the cases under the Faceless Appeal mechanism.

The details of scheme are as follows.

3. Scope of the Scheme:

Para 2 of the Faceless Appeal Scheme provides the definition of different terms used in the scheme. The scope of the Scheme provides as follows.

- 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 the Board.

4. Faceless Appeal Centres:

(1) Setting Up different Centres:

For the purposes of this Scheme, the Board may set up following three centres-

(i) a National Faceless Appeal Centre to facilitate the conduct of e-appeal proceedings in a centralised manner, which shall be vested with the jurisdiction to dispose appeal in accordance with the provisions of this Scheme;

(ii) Regional Faceless Appeal Centres as it may deem necessary to facilitate the conduct of e-appeal proceedings, which shall be vested with the jurisdiction to dispose appeal in accordance with the provisions of this Scheme;

(iii) Appeal units, as it may deem necessary to facilitate the conduct of e-appeal proceedings, to perform the function of disposing appeal, which includes admitting additional grounds of appeal, making such further inquiry as thinks fit, directing the National e-Assessment Centre or the Assessing Officer, as the case may be, for making further inquiry, seeking information or clarification on admitted grounds of appeal, providing opportunity of being heard to the appellant, analysis of the material furnished by the appellant, review of draft order, and such other functions as may be required for the purposes of this Scheme; and specify their respective jurisdiction.

1.1. Constitution and Role of the Faceless Appeal Centres.

Centres	Constitution and Purpose
National Faceless Appeal Centre	<ul style="list-style-type: none"> • NFAC will be located at Delhi comprising of Principal Chief Commissioner of Income-tax, Commissioner of Income-tax ('CIT'), Additional/ Joint CIT, Deputy/ Assistant CIT- to facilitate the conduct of e-appeal proceedings in a centralised manner
Regional Faceless Appeal Centres	<ul style="list-style-type: none"> • At present, 4 RFAC (Delhi, Mumbai, Kolkata and Chennai) have been notified. Each RFAC comprises of Chief Commissioner of Income-tax ('CCIT') and other income-tax officers to facilitate the conduct of e-appeal proceedings
Appeal units	<p>As per Clause 3 of Para -1, the AU shall have the following authorities:</p> <ul style="list-style-type: none"> • One or more Commissioner (Appeals); Other income-tax authority, ministerial staff, executive or consultant to assist the Commissioner (Appeals) • AU to perform the function of disposing appeal, which includes admitting additional grounds of appeal, directing the National e-Assessment Centre or the Assessing Officer for making further inquiry, seeking information or clarification on admitted grounds of appeal, providing opportunity of being heard to the appellant, analysis of the material furnished by the appellant, review of draft order etc.

(2) Communication between Centres: All communication between the appeal unit and the appellant or any other person or the National e-Assessment Centre or the Assessing Officer with respect to the information or documents or evidence or any other details, as may be necessary under this Scheme shall be **through the National Faceless Appeal Centre.**

5. Procedure in appeal:

(1) The appeal referred to in paragraph 3 of the scheme shall be disposed of as per the following procedure, namely:

(i) **the National Faceless Appeal Centre** shall assign the appeal to a specific appeal unit in any one Regional Faceless Appeal Centre through an automated allocation system;

(ii) where the appellant has filed the appeal after the expiration of time specified in sub-section (2) of section 249 of the Act, the appeal unit may, —

(a) in case, it is satisfied that the appellant had sufficient cause for not filing the appeal within the said time, admit the appeal; or

(b) in any other case, reject the appeal, under intimation to the National Faceless Appeal Centre;

(iii) where the appellant has applied for exemption from the operation of clause (b) of sub-section (4) of section 249 of the Act, the appeal unit may, —

(a) admit the appeal and exempt the appellant from the operation of provisions of said clause for any good and sufficient reason to be recorded in writing; or

(b) in any other case, reject the appeal, under intimation to the National Faceless Appeal Centre;

(iv) **the National Faceless Appeal Centre** shall intimate the admission or rejection of appeal, as the case may be, to the appellant;

(v) where the appeal is admitted, —

*(a) **the appeal unit** may request the National Faceless Appeal Centre to obtain such further information, document or evidence from the appellant or any other person, as it may specify;*

*(b) **the appeal unit may request the National Faceless Appeal Centre** to obtain a report of the National e-Assessment Centre or the Assessing Officer, as the case may be, on grounds of appeal or information, document or evidence filed by the appellant;*

*(c) **the appeal unit** may request the National Faceless Appeal Centre to direct the National e-Assessment Centre or the Assessing Officer, as the case may be, for making further inquiry under sub-section (4) of section 250 of the Act and submit a report thereof;*

*(d) **the National Faceless Appeal Centre** shall serve a notice upon the appellant or any other person, as the case may be, or the National e-Assessment Centre or the Assessing Officer, as the case may be, to submit such information, document or evidence or report, as the case may be, as may be specified by the appeal unit or as may be relevant to the appellate proceedings, on a specified date and time;*

(vi) the appellant or any other person, as the case may be, shall file a response to the notice referred to in sub-clause (d) of clause (v), within the date and time specified therein, or such extended date and time as may be allowed on the basis of an application made in this behalf, with the National Faceless Appeal Centre;

(vii) **the National e-Assessment Centre or the Assessing Officer**, as the case may be, shall furnish a report in response to the notice referred to in sub-clause (d) of clause (v), within the date and time

specified therein or such extended date and time as may be allowed on the basis of an application made in this behalf, to the National Faceless Appeal Centre;

(viii) where response is filed by the appellant or any other person, as the case may be, or a report is furnished by the National e-Assessment Centre or the Assessing Officer, as the case may be, the National Faceless Appeal Centre shall send such response or report to the appeal unit, and where no such response or report is filed, inform the appeal unit;

(ix) the appellant may file additional ground of appeal in such form, as may be specified by the National Faceless Appeal Centre, specifying therein the reason for omission of such ground in the appeal filed by him;

(x) where the additional ground of appeal is filed-

(a) the National Faceless Appeal Centre shall send the additional ground of appeal to the National e-Assessment Centre or the Assessing Officer, as the case may be, for providing comments, if any, and to the appeal unit;

(b) the National e-Assessment Centre or the Assessing Officer, as the case may, shall furnish their comments, within the date and time specified or such extended date and time as may be allowed on the basis of an application made in this behalf, to the National Faceless Appeal Centre;

(c) where comments are filed by the National e-Assessment Centre or the Assessing Officer, as the case may be, the National Faceless Appeal Centre shall send such comments to the appeal unit, and where no such comments are filed, inform the appeal unit;

(d) the appeal unit shall, after taking into consideration the comments, if any, received from the National e-Assessment Centre or the Assessing Officer, as the case may be,—

(A) if it is satisfied that the omission of additional ground from the form of appeal was not willful or unreasonable, admit such ground; or

(B) in any other case, not admit the additional ground,

for reasons to be recorded in writing and intimate the National Faceless Appeal Centre;

Note: On analysis of above provisions, it is seen that the report of NeAC or AO on the admissibility or otherwise of additional evidence shall be shared with NFAC and with appeal Unit. After receipt of such report, appeal unit may admit or reject the additional evidence furnished before it. So there is no opportunity to the appellant to rebut the adverse report, if any, furnished by NeAC/AO on the admissibility of additional evidence, since there is no provision of sharing such report of NeAC / AO with appellant for his rebuttal.

(xi) the National Faceless Appeal Centre shall intimate the admission or rejection of the additional ground, as the case may be, to the appellant;

(xii) the appellant may file additional evidence, other than the evidence produced by him during the course of proceedings before the National e-Assessment Centre or the Assessing Officer, as the case may be, in such form, as may be specified by the National Faceless Appeal Centre, specifying therein as to how his case is covered by the exceptional circumstances specified in sub-rule (1) of rule 46A of the Rules;

(xiii) where the additional evidence is filed,—

(a) the National Faceless Appeal Centre shall send the additional evidence to the National e-Assessment Centre or the Assessing Officer, as the case may be, for furnishing a report within the specified date and time on the admissibility of additional evidence under rule 46A of the Rules;

(b) the National e-Assessment Centre or the Assessing Officer, as the case may be, shall furnish the report, as referred to in sub-clause (a), to the National Faceless Appeal Centre within the date and time specified, or such extended date and time as may be allowed on the basis of an application made in this behalf, by the National Faceless Appeal Centre.

(c) where the report, as referred to in sub-clause (a), is furnished by the National e-Assessment Centre or the Assessing Officer, as the case may be, the National Faceless Appeal Centre shall send such report to the appeal unit, and where no such report is furnished, inform the appeal unit;

(d) the appeal unit may, after considering the additional evidence and the report, if any, furnished by the National e-Assessment Centre or the Assessing Officer, as the case may be, admit or reject the additional evidence, for reasons to be recorded in writing, and intimate the National Faceless Appeal Centre;

(e) the National Faceless Appeal Centre shall intimate the admission or rejection of additional evidence, as the case may be, to the appellant and the National e-Assessment Centre or the Assessing Officer, as the case may be;

Note: The report of NeAC or AO on the admissibility or otherwise of additional evidence shall be shared with NFAC and with appeal Unit. After receipt of such report, appeal unit may admit or reject the additional evidence furnished before it.

Thus, in the above machinery, there is no opportunity to the appellant to rebut the adverse report, if any, furnished by NeAC/AO on the admissibility of additional evidence, since there is no provision of sharing such report of NeAC/AO with appellant for his rebuttal.

(xiv) where the additional evidence is admitted,—

(a) the appeal unit shall, before taking such evidence into account in the appellate proceedings, prepare a notice to provide an opportunity to the National e-Assessment Centre or the Assessing Officer, as the case may be, within the date and time specified there into examine such evidence or to cross-examine such witness, as may be produced by the appellant, or to produce any evidence or document, or any witness in rebuttal of the evidence or witness produced by the appellant, and furnish a report thereof, and send such notice to the National Faceless Appeal Centre;

(b) the National Faceless Appeal Centre shall serve the notice, as referred to in sub-clause (a), upon the National e-Assessment Centre or the Assessing Officer, as the case may be;

(c) the National e-Assessment Centre or the Assessing Officer, as the case may be, shall furnish the report, as referred to in sub-clause (a), to the National Faceless Appeal Centre, within the date and time specified, or such extended date and time as may be allowed on the basis of an application made in this behalf, by the National Faceless Appeal Centre;

(d) the National Faceless Appeal Centre shall send the report furnished by the National e-Assessment Centre or the Assessing Officer, as the case may be, to the appeal unit or where no such report is furnished, inform the appeal unit;

Note: (i) Above provisions provides that the report of the NeAC/AO in rebuttal of the additional evidence or witness produced by the appellant shall be shared by NFAC with appeal Unit only and there is no provision for sharing such adverse report with appellant for his comments thereon.

(ii) Cross examination is the sine qua non of due process of taking evidence. No adverse inference can be drawn against a party unless the party is put on notice of the case made out against him. He must be supplied the contents of all such evidences, both oral and documentary, so that he can prepare the case against him. This necessarily also postulates that he should cross examine the witness on whose statement AO relies to make addition against the assessee. [Pl refer the decisions of Hon'ble Supreme Court in case of *Andaman Timber Industries v. CCE [2015] 62 taxmann.com 3 /52 GST 355 (SC)*]

*(iii) If no opportunity is provided by the Assessing Authority to rebut the material on the basis of which the assessing authority intended to proceed, there would be violation of the principles of natural justice. **These violations of principal of natural justice needs immediate attention of the CBDT.***

Production of documents and evidence by the Appellant:

(xv) The National e-Assessment Centre or the Assessing Officer, as the case may be, may request the National Faceless Appeal Centre 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;

(xvi) where the request referred to in clause (xv) is received, –

(a) the National Faceless Appeal Centre shall send such request to the appeal unit;

(b) the appeal unit shall consider such request and may, if it deems fit, prepare a notice –

*(A) directing the appellant to produce such document or evidence, as it may specify; or
(B) for examination of any other person, being a witness;*

and send such notice to the National Faceless Appeal Centre;

(c) the National Faceless Appeal Centre shall serve the notice referred to in sub-clause (b) upon the appellant or any other person, being a witness, as the case may be;

(d) the appellant or any other person, as the case may be, shall file his response to the notice referred to in sub-clause (c), within the date and time specified in the notice or such extended date and time as may be allowed on the basis of application made in this behalf, to the National Faceless Appeal Centre;

(e) where a response is filed by the appellant or any other person, as the case may be, the National Faceless Appeal Centre shall send such response to the appeal unit, or where no such response is filed, inform the appeal unit;

Issue of Show Cause appeal unit intends to enhance an assessment or a penalty or reduce the amount of refund:

(xvii) where the appeal unit intends to enhance an assessment or a penalty or reduce the amount of refund, –

(a) the appeal unit shall prepare a show-cause notice containing the reasons for such enhancement or reduction, as the case may be, and send such notice to the National Faceless Appeal Centre.

(b) the National Faceless Appeal Centre shall serve the notice, as referred to in sub-clause (a), upon the appellant.

(c) the appellant shall, within the date and time specified in the notice or such extended date and time as may be allowed on the basis of application made in this behalf, file his response to the National Faceless Appeal Centre;

(d) where a response is filed by the appellant, the National Faceless Appeal Centre shall send such response to the appeal unit, or where no such response is filed, inform the appeal unit.

Issue of Draft Order in accordance with section 250, review of the draft order and finalization of the appeal order:

(xviii) The appeal unit shall, after taking into account all the relevant material available on the record, including the response filed, if any, by the appellant or any other person, as the case may be, or report furnished by the National e-Assessment Centre or the Assessing Officer, as the case may be, and after

considering any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised in the appeal, —

(a) prepare in writing, a draft order in accordance with the provisions of section 251 of the Act; and

(b) send such order to the National Faceless Appeal Centre along with the details of the penalty proceedings, if any, to be initiated therein;

(xix) the National Faceless Appeal Centre shall upon receipt of the draft order, as referred to in sub-clause (a) of clause (xviii), —

(a) 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, as referred to in clause (x) of paragraph 13, send the draft order to an appeal unit, other than the appeal unit which prepared such order, in any one Regional Faceless Appeal Centre through an automated allocation system, for conducting review of such order;

(b) in any other case, examine the draft 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 —

(A) finalise the appeal as per the draft order; or

(B) send the draft order to an appeal unit, other than the unit which prepared such order, in any one Regional Faceless Appeal Centre through an automated allocation system, for conducting review of such order;

(xx) the appeal unit shall review the draft order, referred to it by the National Faceless Appeal Centre, whereupon it may decide to –

(a) concur with the draft order and intimate the National Faceless Appeal Centre about such concurrence; or

(b) suggest such variation, as it may deem fit, to the draft order and send its suggestions to the National Faceless Appeal Centre;

(xxi) the National Faceless Appeal Centre shall, upon receiving concurrence of the appeal unit, finalise the appeal as per the draft order;

(xxii) the National Faceless Appeal Centre shall, upon receiving suggestion for variation from the appeal unit, assign the appeal to an appeal unit, other than the appeal unit which prepared or reviewed the draft order, in any one Regional Faceless Appeal Centre through an automated allocation system;

(xxiii) the appeal unit, to whom appeal is assigned under clause (xxii), shall, after considering the suggestions for variation —

(a) where such suggestions intend to enhance an assessment or a penalty or reduce the amount of refund, follow the procedure laid down in clause (xvii) and prepare a revised draft order as per the procedure laid down in clause (xviii); or

(b) in any other case, prepare a revised draft order as per procedure laid down in clause (xviii); and send the such order to the National Faceless Appeal Centre along with the details of the penalty proceedings, if any, to be initiated therein;

Note: As in case of Faceless assessment scheme, there is no provision of sharing draft appellate order with the appellant before its finalization under Faceless Appeal Scheme.

Communication of Appeal Order to Appellant, Pr. CCIT / CCIT/ PRCIT/CIT, NeAC:

(xxiv) the National Faceless Appeal Centre shall after finalising the appeal as per item (A) of sub-clause (b) of clause (xix) or clause (xxi) or upon receipt of revised draft order as per clause (xxiii), pass the appeal order and-

(a) communicate such order to the appellant;

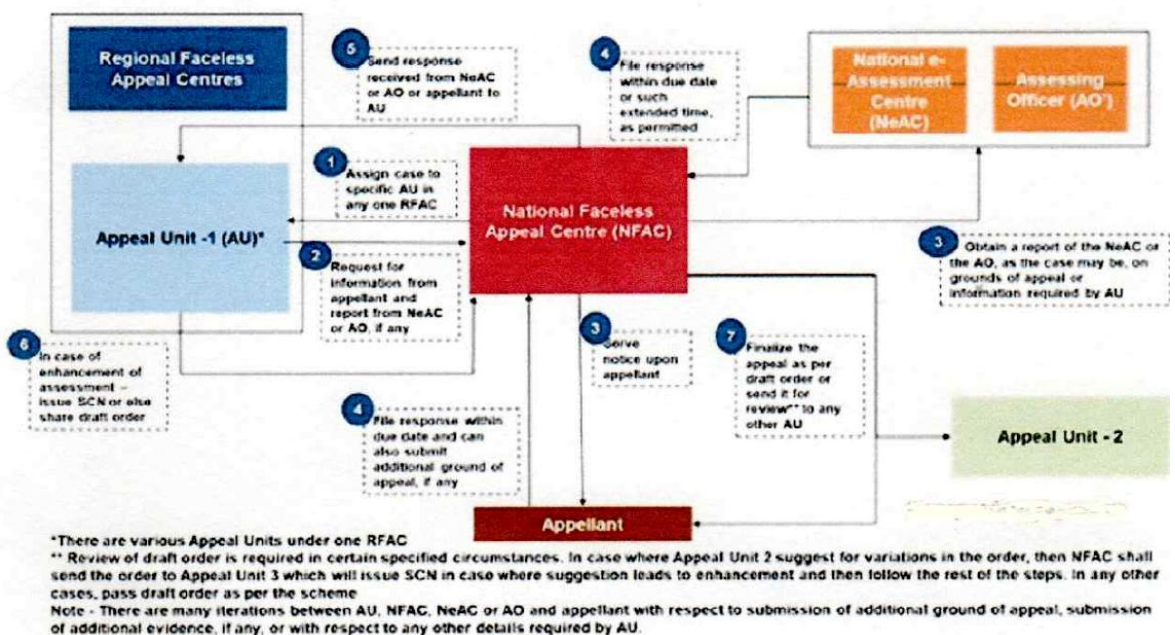
(b) communicate such order to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as per sub-section (7) of section 250 of the Act;

(c) communicate such order to the National e-Assessment Centre or the Assessing Officer, as the case may be, for such action as may be required under the Act;

(d) where initiation of penalty has been recommended in the order, serve a notice on the appellant calling upon him to show cause as to why penalty should not be imposed upon him under the relevant provisions of the Act;

(2) Notwithstanding anything contained in sub-paragraph (1), the Principal Chief Commissioner or the Principal Director General, in charge of National Faceless Appeal Centre, may at any stage of the appellate proceedings, if considered necessary, transfer, by an order, the appeal with the prior approval of the Board to such Commissioner (Appeals) as may be specified in the order.

Pictorial Presentation of the Faceless Appeal Scheme:



6. Penalty proceedings:

(1) Appeal unit may, in the course of appeal proceedings, for non-compliance of any notice, direction or order issued under this Scheme on the part of the appellant or any other person, as the case may be, send recommendation for initiation of any penalty proceedings to the National Faceless Appeal Centre.

(2) The National Faceless Appeal Centre shall, upon receipt of recommendation under sub-paragraph (1), serve a notice on the appellant or any other person, as the case may be, calling upon him to show cause as to why penalty should not be imposed upon him under the relevant provisions of the Act.

(3) The appellant or any other person, as the case may be, shall file a response to the show-cause notice referred to in sub-paragraph (2) or in sub-clause (d) of clause (xxiv) of sub-paragraph (1) of paragraph 5, within the date and time specified in such notice, or such extended date and time as may be allowed on the basis of an application made in this behalf, to the National Faceless Appeal Centre.

(4) The National Faceless Appeal Centre shall assign the recommendation for initiation of penalty proceedings, as referred to in sub-paragraph (1), along with the response filed, if any, by the appellant or any

other person, as the case may be, to a specific appeal unit in any one Regional Faceless Appeal Centre through an automated allocation system.

(5) The appeal unit shall, after taking into account all the relevant material available on the record, including the response filed, if any, by the appellant or any other person, as the case may be, —

a) prepare a draft order and send a copy of such order to the National Faceless Appeal Centre; or

(b) drop the penalty after recording reasons, under intimation to the National Faceless Appeal Centre.

(6) where the appeal unit has dropped the penalty, the National Faceless Appeal Centre shall send an intimation thereof, or where the appeal unit sends a draft order, the National Faceless Appeal Centre shall pass the order for imposition of penalty as per such draft, and communicate such order, to, —

(a) the appellant or any other person, as the case may be; and

(b) the National e-Assessment Centre or the Assessing Officer for such action as may be required under the Act.

7. Rectification Proceedings:

(1) With a view to rectifying any mistake apparent from the record the National Faceless Appeal Centre may amend any order passed by it, by an order to be passed in writing.

(2) Subject to the other provisions of this Scheme, an application for rectification of mistake referred to in sub-paragraph (1) may be filed with the National Faceless Appeal Centre by the,

(a) appellant or any other person, as the case may be; or

(b) appeal unit preparing or reviewing or revising the draft order; or

(c) the National e-Assessment Centre or the Assessing Officer, as the case may be.

(3) Where any application referred to in sub-paragraph (2) is received by the National Faceless Appeal Centre, it shall assign such application to a specific appeal unit in any one Regional Faceless Appeal Centre through an automated allocation system.

(4) The appeal unit shall examine the application and prepare a notice for granting an opportunity—

(a) to the appellant or any other person, as the case may be, where the application has been filed by the National e-Assessment Centre or the Assessing Officer, as the case may be; or

(b) to the National e-Assessment Centre or the Assessing Officer, as the case may be, where the application has been filed by the appellant or any other person, as the case may be; or

(c) to the appellant or any other person, as the case may be, and the National e-Assessment Centre or the Assessing Officer, as the case may be, where the application has been filed by an appeal unit referred to in clause (b) of sub-paragraph (2); and send the notice to the National Faceless Appeal Centre.

(5) The National Faceless Appeal Centre shall serve the notice referred to in sub-paragraph (4) upon the appellant or any other person, as the case may be, or the National e-Assessment Centre or the Assessing Officer, as the case may be, calling upon him to show cause as to why rectification of mistake should not be carried out under the relevant provisions of the Act.

(6) The appellant or any other person, as the case may be, or the National e-Assessment Centre or the Assessing Officer, as the case may be, shall file a response to the notice, as referred to in sub-paragraph (5), within the date and time specified therein, or such extended date and time as may be allowed on the basis of an application made in this behalf, to the National Faceless Appeal Centre.

(7) Where a response, as referred to in sub-paragraph (6), is filed by the appellant or any other person, as the case may be, or the National e-Assessment Centre or the Assessing Officer, as the case may be, the National

Faceless Appeal Centre shall send such response to the appeal unit, or where no such response is filed, inform the appeal unit.

(8) The appeal unit shall, after taking into consideration the application and response, if any, filed by the appellant or any other person, as the case may be, or the National e-Assessment Centre or the Assessing Officer, as the case may be, prepare a draft order, —

(a) for rectification of mistake; or

(b) for rejection of application for rectification, citing reasons thereof; and send the order to the National Faceless Appeal Centre.

(9) The National Faceless Appeal Centre shall upon receipt of draft order, as referred to in sub-paragraph (8), pass an order as per such draft and communicate such order, —

(a) to the appellant or any other person, as the case may be; and

(b) to the National e-Assessment Centre or the Assessing Officer, as the case may be, for such action as may be required under the Act.

8. Appellate Proceedings: [Appeal before Income Tax Appellate Tribunal (ITAT)].

(1) An appeal against an order passed by the National Faceless Appeal Centre under this Scheme shall lie before the Income Tax Appellate Tribunal having jurisdiction over the jurisdictional Assessing Officer.

(2) Subject to the provisions of paragraph (3) of the scheme, where any order passed by the National Faceless Appeal Centre or Commissioner (Appeals) is set-aside and remanded back to the National Faceless Appeal Centre or Commissioner (Appeals) by the Income Tax Appellate Tribunal or High Court or Supreme Court, the National Faceless Appeal Centre shall pass the order in accordance with the provisions of this Scheme.

9. Exchange of communication exclusively by electronic mode:

For the purposes of this Scheme,—

(a) all communications between the National Faceless Appeal Centre and the appellant, or his authorised representative, shall be exchanged exclusively by electronic mode; and

(b) all internal communications between the National Faceless Appeal Centre, the Regional Faceless Appeal Centres, the National e-Assessment Centre, the Assessing Officer and the appeal unit shall be exchanged exclusively by electronic mode.

10. Authentication of electronic record:

For the purposes of this Scheme, an electronic record shall be authenticated by the—

(i) National Faceless Appeal Centre by affixing its digital signature;

(ii) the appellant 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;

Explanation. – For the purpose of this paragraph, “electronic verification code” shall have the same meaning as referred to in rule 12 of the Rules.

11. Delivery of electronic record:

(1) Every notice or order or any other electronic communication under this Scheme shall be delivered to the addressee, being the appellant, by way of-

(a) placing an authenticated copy thereof in the appellant's registered account; or
(b) sending an authenticated copy thereof to the registered email address of the appellant or his authorised representative; or
(c) uploading an authenticated copy on the appellant's Mobile App; and
followed by a real time alert.

(2) 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.

(3) The appellant shall file 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 National Faceless Appeal Centre containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated.

(4) 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 (21 of 2000).

12. No personal appearance in the Centres or Units:

(1) 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 National Faceless Appeal Centre or Regional Faceless Appeal Centre or appeal unit set up under this Scheme.

(2) The appellant or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the appeal unit under this Scheme.

(3) 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 referred to in subparagraph (2), if he is of the opinion that the request is covered by the circumstances referred to in clause (xi) of paragraph 13.

(4) Where the request for personal hearing has been approved by the Chief Commissioner or the Director General, in charge of the Regional Faceless Appeal Centre, such hearing shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, in accordance with the procedure laid down by the Board.

(5) Any examination or recording of the statement of the appellant or any other person shall be conducted by Commissioner (Appeals) in any appeal unit under this Scheme, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony in accordance with the procedure laid down by the Board.

(6) The Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the appellant, or his authorised representative, or any other person is not denied the benefit of this Scheme merely on the ground that such appellant or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end.

13. Power to specify format, mode, procedure and processes:

The Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Appeal Centre shall, with the prior approval of Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Appeal Centre, Regional Faceless Appeal Centres and the appeal unit set-up under this Scheme, in an automated and mechanised environment, including format, mode, procedure and processes in respect of the following, namely:—

(i) service of the notice, order or any other communication;

- (ii) receipt of any information or documents from the person in response to the notice, order or any other communication;
- (iii) issue of acknowledgment of the response furnished by the person;
- (iv) provision of “e-appeal” facility including login account facility, tracking status of appeal, display of relevant details, and facility of download;
- (v) accessing, verification and authentication of information and response including documents submitted during the appellate proceedings;
- (vi) receipt, storage and retrieval of information or documents in a centralised manner;
- (vii) general administration and grievance redressal mechanism in the respective Centres and units;
- (viii) filing of additional ground of appeal;
- (ix) filing of additional evidence;
- (x) specified amount referred to in sub-clause (a) of clause (xix) of sub-paragraph (1) of paragraph 5;
- (xi) circumstances in which personal hearing referred to in sub-paragraph (3) of paragraph 12 shall be approved.

14: Few more issues related to Grant of Stay of demand(Not covered under the faceless Appeal Scheme):

As per settled principles, CIT(A) has inherent power to grant stay on demand if appeal is pending before him. If appeal is pending before CIT(A), then CIT(A) should decide the stay matter on an application made before him in this behalf. **[Pl refer few decisions as follows]**

- *Maheshwari Agro Industries v. UOI* [2012] 17 taxmann.com 68/206 Taxman 375/346 (Raj),
- *Sanjay Kumar Sohd v. ITO* [2013] 40 taxmann.com 242/2014] 222 Taxman 140 (Mag.)/354 ITR 177 (MP),
- *Smita Agrawal (HUF) v. CIT* [2009] 184 Taxman 59/[2010] 321 ITR 491 (All)
- *Devraj Pande v. ITO* [2013] 39 taxmann.com 1/219 Taxman 120 (Karnataka) (Mag.),

In era of manual appeal filing, appellants used to file stay applications along with appeal Memo. Even in e-filing era, appellants were allowed to attach stay application with other necessary attachments while e-filing the appeals. **However, there is no scope or procedure defined under the new faceless machinery for handling and deciding on the stay application filed by the appellant.**

15. Conclusion:

Now it is the initial stages of the implementation of the Scheme. The Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Appeal Centre, with the prior approval of Board will lay down the standards, procedures and processes for effective functioning of the National Faceless Appeal Centre, Regional Faceless Appeal Centres and the appeal unit set-up under this Scheme, in an automated and mechanised environment, including format, mode, procedure and processes etc. It is expected from the CBDT to address the issues proactively on real time basis through various amendments / FAQs' which will help to take forward of the implementation of the scheme and speedy disposal of the appeals.