



TYPES OF ASSESSMENT- CRITICAL ANALYSIS OF FACELESS ASSESSMENT SCHEME, 2020

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CHAPTER 1

1.1 INTRODUCTION

Tax is a charge on a person, which is the primary source of revenue for the Sovereign Authority. There are two types of taxation- direct and indirect. In order to possess a quality and virtuous tax system, it is essential to take into consideration certain principles which are also known as Canons of taxation. The Natives or inhabitants of the State must contribute to its revenue by paying taxes proportionate to their abilities, where the said tax is not arbitrary but rather certain, and the modus operandi of collecting tax is convenient for the taxpayers and economical for the State.¹

One of the most prominent kinds of direct taxation is Income Tax. The legislation governing this type is Income Tax Act, 1961. The term person under this legislation includes within itself individuals, Hindu undivided family, Companies, Association of people, juristic person etc.² The Statute charges income tax only to the residents³ and the rate of tax is prescribed under the Finance Act for the respective assessment year.⁴ Assessment process is one of the significant aspects and its recent trends make it pertinent to analyze it. Assessment is the process by which the Income tax department

examines the Income tax return. In other words, assessment means determination of tax. This paper will discuss in detail, the various types of assessment and the procedure involved in each type.

The assessment procedure under the Act and the new regulation regarding faceless assessment will be discussed further.

1.2 RESEARCH QUESTIONS

- What are the various types of Assessments provided under Income Tax Act, 1961?
- What are the issues pertaining to the Faceless Assessment Scheme, 2020?

1.3 AIMS AND OBJECTIVES

The paper mainly focuses on types of assessment. The paper seeks to analyze the procedure involved in the e- assessment Scheme and the issues pertaining to it. The paper also covers general aspects of the provisions pertaining to assessment procedures, the faceless assessment Scheme and the judicial interpretation of the provisions.

1.4 RESEARCH METHODOLOGY:

The researcher had followed doctrinal method to accomplish the project. The paper is more of a theoretical research. Primary sources like the statute and judicial precedents as well as secondary sources like articles and websites have been relied upon for accomplishment of this paper.

CHAPTER 2

2.1 TYPES OF ASSESSMENT

The Income Tax Act provides for various types of Assessment namely self-assessment,

¹ An Inquiry into nature and causes of Wealth of Nations, Adam Smith, P.640

² Income Tax Act, 1961, §2(31)

³ Defined under Income Tax Act, 1961, at §2 (42) & §6

⁴ Income Act, 1961, §4



summary assessment, best judgment assessment etc. The term assessment means the process by which the Income tax department examines the income tax return filed by the assessee and it also includes re-assessment.⁵ Filing of return of income is the first step in the assessment process and §139 of the Act is its governing provision. According to this provision any person, company or firm whose total income assessable in the previous year exceeds the maximum amount not chargeable under the Act, any resident being a beneficial owner or beneficiary of assets located outside India, must file a return of income which the prescribed due dates. The various types of assessment are briefed under:

➤ **SELF-ASSESSMENT:**

It is a simple procedure by which a person assesses the total income and tax liability for a particular previous year. Tax deductions⁶, tax credits, other miscellaneous reliefs⁷ and interest charged for delay in filing the returns⁸ provided under the Statute are taken into consideration while calculating the tax payable under type of assessment. The assessee will pay tax based on his/her return and such tax is treated as assessed tax. Therefore, until it is disturbed by any further regular assessment, it remains as tax levied and collected in accordance with law.⁹

➤ **SUMMARY ASSESSMENT:**

Summary Assessment under § 143(1) of the Act is a preliminary checking of the return of income filed by the assessee under § 139, without any scrutinization. The total income or losses is computed after making necessary

adjustments provided under the said provision. The Income tax department should intimate the computation made to assessee and this intimation serves as a demand notice in case of a tax liability. This intimation should be made within 1 year from the end of the financial year in which the return of income is filed.

➤ **SCRUTINY ASSESSMENT:**

This type of Assessment provides the assessee an opportunity to substantiate the incomes, deductions, allowances etc. which are mentioned or claimed in the return of income. Where a return has been made under §139, or in response to a notice under Sub-section (1) of §142, the Assessing Officer shall, if he considers necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return.¹⁰ The notice under this provision should be served within 6 months from the end of financial year in which return of income is filed. The Assessing Officer, after considering the relevant materials and the evidences produced by the assessee, shall make the assessment order.

➤ **BEST JUDGMENT ASSESSMENT:**

The assessee, under this type of assessment is provided with the right of being heard. The provision dealing with this type of assessment is §144 of the Act, under which

⁵ §2(8), Id

⁶ Id, §90&91

⁷ Id, §89

⁸ §234F

⁹ Commissioner of Income tax v. Shelly Products and another, WP No. 7501-7504 of 1997

¹⁰ Income Tax Act, 1961, § 143(2)



the Assessing Officer makes the assessment after considering the relevant materials and providing assessee the opportunity of being heard. This provision shall apply when a person fails to file the return or revised return under §139(1), (4) & (5) or fails to comply with the terms of notice issued under §142(1) or §143 (2) or directions issued under §142(2A).¹¹ If the Assessing officer makes additions with respect to two grounds but provided only one ground in show-cause notice, then such assessment order will be set aside and the matter would be remanded back for redoing assessment after considering reply of assessee to both the grounds.¹² This type of assessment adheres to the principles of natural justice.

➤ **RE-ASSESSMENT :**

This type of assessment is done, if the Assessing Officer has a reason believe that any income chargeable under the Act has escaped the assessment for any assessment year. In such case the Assessing Officer shall assess or reassess the escaped income or recompute any loss or allowance for the relevant assessment year. Where an assessment under §143(3) or §147 has been made for the relevant assessment year, no action shall be taken under §147 after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under [§139](#) or in response to a notice issued under sub-section (1) of [§ 142](#) or [§ 148](#) or to disclose fully and truly all material facts necessary for his assessment, for that

assessment year. However this rule will not apply if the income that escaped assessment is an income from asset situated outside India.¹³ The process of reassessing the escaped income that is chargeable under the Act is known as Re-Assessment.

➤ **BLOCK ASSESSMENT:**

The assessment process in which the Income Tax department blocks few years and assess each year is known as Block assessment. The prerequisite for this type of assessment is a search conducted under § 132 or requisitioning of documents under § 132 A. The Assessing Officer under § 153A, shall issue notice to the said person directing him/her to furnish return on income for each assessment year of preceding six years from the assessment year of the relevant previous year in which the search under § 132 or requisitioning under § 132A was made. The officer shall also assess or reassess the total income of each of those assessment years. The assessment or reassessment pending at the time of search being made will be abated. The time limit for completion of such assessment is 21 months from the end of financial year in which the search or requisitioning was executed. The assessment under § 153 A cannot be made arbitrary or without any nexus to the seized material but rather the assessment should be made on the basis of the seized material.¹⁴ In the assessment under the block period only the undisclosed income, which is found from the seized material can only be considered for the addition as in the total income of the assessee. If the assessee had already disclosed contrived loss by making necessary entries in

¹¹ Id, §144

¹² Kandan & Kannan Medical Agency v. Income Tax Officer, Non Corp Ward 10(2), Chennai, [2020] 113 taxmann.com 340 (Madras)

¹³ Income Tax Act, 1961, §147

¹⁴ S K Gandhi, Scope of incriminating material in Block Assessment, [2016] 71 taxmann.com 190, ¶ 4



books of accounts, then the assessee is allowed to claim deductions of the same.¹⁵ Therefore only the undisclosed income found by executing § 132 & § 132A will be subjected to block assessment under § 153A of the Act.

CHAPTER 3

FACELESS ASSESSMENTS

The Government of India has introduced a new Scheme for Assessment under Income Tax Act. It is significant to modify or amend laws according to the societal changes and technological developments. Therefore, few of the existing procedures have transmogrified into a modern, efficient and effective one through this Scheme. The faceless assessment Scheme aims to reduce or banish, to the extent that is accomplishable with the available technology, the interface between the assessee and the assessing officer or any other authority. Optimum utilisation of resources and establishment of dynamic jurisdiction are also the objectives of the said Scheme. The Central Government, under §143(3A) of the Income Tax Act, is empowered to introduce such Scheme. The faceless assessment Scheme was introduced by the Central board of direct taxation on 13/08/2020, through notification no. 60/2020. This Scheme is an amendment to the e- assessment Scheme which was introduced in the previous year.

3.1 AUTHORITIES UNDER THE SCHEME:

- **NATIONAL E- ASSESSMENT CENTRE:** This Body is established for the purpose of facilitating the assessment proceedings in a centralized manner. It is also vested with jurisdiction to make assessment with accordance to the provisions of the Scheme.

NeAC will facilitate the communications between the Income Tax department and the taxpayers or assessee.

- **REGIONAL ASSESSMENT CENTRES:** These are set up in major cities for the purpose of conducting and overseeing the assessment through various sub- units. The centres will be headed by a Chief Commissioner.
- **ASSESSMENT UNITS:** Assessment units will actually perform the assessment by determining the liability, point of issues, collecting and evaluating materials submitted by the assessee and by performing other miscellaneous functions required for the assessment.
- **VERIFICATION UNITS:** In order to facilitate the e-assessment procedure, this unit will perform the function of verification. The verification process include functions like conducting enquiries, examination of materials, witnesses, books of accounts and cross examinations, recording statements etc.
- **TECHNICAL UNITS:** The functions of this unit is to provide technical assistance with respect to legal, audit, data analytics, accounting, information technology, forensic, transfer pricing etc. according to the requirement of the case.
- **REVIEW UNITS:** It performs the duty of reviewing the draft assessment order. This unit will scrutinize so as to make sure that the material evidences are brought on record, the relevant points of fact and law are duly incorporated in the draft order, and the applicable precedents are duly considered. It will also check arithmetical correctness and modifications proposed, if any.

3.2 PROCEDURE FOR FACELESS ASSESSMENT UNDER PROVISION 5 OF THE SCHEME:

¹⁵ Commissioner of Income Tax v. Naman Associates, [2020] 118 taxmann.com 165 (Gujarat)



- The Scheme provides the procedure for conducting a faceless assessment. Like every other procedure, a notice is served upon the assessee. This notice under §143(2) is served by the National e-Assessment Centre (NeAC) and a response to the said notice shall be filed within a period of 15 days from receiving such notice. The assessment under this Scheme refers to assessment under §143(3) and §144 of the Act. It is the role of National e-Assessment to select and assign a case for conducting the e-Assessment, to an Assessment Unit in a particular Regional e-Assessment Centre. This process of assigning is done through automated allocation system.
- The Assessment Unit following the allocation of case by NeAC, if required, may request NeAC for obtaining any additional information, evidences, and documents from the assessee or any other person as the case maybe. Acknowledging such request, the NeAC will issue notice to the concerned person demanding for the requested documents and a response to the said notice shall be made by that person within the time specified. The Unit can also request NeAC to assign such case to Verification Unit and Technical Unit for the purpose of conducting enquiry and seeking technical assistance respectively, and such request will be forward to the concerned Unit by means of automated allocation system. The NeAC will send the report received from these Units to the concerned Assessment Unit.
- The NeAC, upon failure of assessee to file response to the issued notice, shall issue a notice under §144 for making a best judgment assessment. If the assessee fails to file response to the said notice, the concerned Assessment Unit will prepare a draft assessment order under §144.
- The Assessment Unit shall prepare a draft assessment order after taking into consideration all the relevant documents and such draft order shall be sent to the NeAC. Upon receiving the draft assessment order, the NeAC may,
- Forward it to the Review Unit and seek suggestions, if any; or
 - Finalise the Assessment and serve a copy of such order to assessee along with notice in case of penalty proceedings or demand notice for the sum payable/refund based on the assessment; or
 - Issue show cause notice to the assessee in case of modification of return of income and the response to such notice shall be intimated to the Assessment Unit, which in return shall revise the draft order. If the assessee fails to respond, the draft order shall be finalised.
- The NeAC shall finalise the revised order after providing opportunity to assessee if the modification is prejudicial to the assessee. If the modification proposed is not prejudicial to the assessee, the NeAC shall directly finalise the revised order. The NeAC, after completion of assessment or at any stage during the course of assessment, shall transfer all the electronic records to the Assessing officer having jurisdiction. An appeal to Commissioner (Appeals) having jurisdiction over the jurisdictional Assessing officer, is available against the e-Assessment order.
- All the communications or notices under this Scheme will be made through electronic mode i.e. email or E- filing portal of the assessee etc. If the notice is served upon any other person other than the assessee, it shall be communicated through email. The assessee can respond to such communications or notices only through his/her registered account (Income tax E-filing portal account). §13 of Information Technology Act regulate the determination of date and time of service of notice.



- No personal hearing is conducting under this Scheme except in cases of oral submissions by assessee or his/her representative as requested in response to show-cause notice issued in accordance to the proposed modification and recording of statements of assessee. This procedure is done exclusively through video conferencing.

3.3 ISSUES PERTAINING TO THE SCHEME:

One of the main objectives behind this Scheme is to eliminate any interface between the assessee and the Assessing officer. But it cannot be achieved at the cost of assessee's right to be heard. The E- Assessment Scheme of 2019 granted assessee the right to personal hearing but this provision is amended by the current Scheme. There are only two exceptions to this rule regarding personal hearing and refusal to grant this in all the cases might lead to a violation of principles of natural justice. According to the Scheme, the assessee does not have a right to personal hearing by default. However the assessee can request for personal hearing through the response to the show-cause notice and this request will be approved or granted only if the case falls under the list of specified circumstances. This might lead to arbitrary decisions. The Scheme allows assessee to respond to the show-cause notice but that alone would not be sufficient to prove his/her contention. The Scheme, under provision 2 (i) suggests that assessment includes assessment under §144 of the Act. The Assessing Officer, under §144 is required to provide opportunity to the assessee to exercise his/her right to be heard. The Income Tax Tribunal observed that it is inherent in the very nature of assessment under §144 that

the assessee should be given the opportunity of being heard with respect to the materials gathered by the Assessing officer, otherwise it would be a violation of principles of Natural justice.¹⁶ Thus, by providing personal hearing only to specific cases, the Scheme is contradicting the procedure given under §144 of the Act. The researcher believes that mere right to make submissions against a notice will not suffice Audi Alteram Partem. The issue with the Scheme is that, it allows personal hearing only for specific cases and that list of specified circumstances is not clear or in other words is yet to be clarified by the CBDT.¹⁷ The assessment made under this Scheme could be arbitrary. Article 14 of the Indian constitution nullifies the arbitrary decisions of the State.

The Scheme also provides for reviewing the draft order by review Unit but it is silent about the requiredness of consideration of the report or suggestions made by the Review Unit to Assessment Unit. The scope of the Scheme is also narrow since it does not address certain aspects like procedure for transfer pricing assessment. The Scheme also failed to address the issue regarding the procedure relating to documentation of the statements provided by assessee during the personal hearing conducted through video conferencing.

The researcher is of the opinion that the Scheme suggests a complicated procedure thereby defeating the purpose of simplifying the assessment process. According to this Scheme, all the communications go through NeAC. The request by Assessment Unit is placed before NeAC, which in turn will pass

¹⁶ Harjinder Singh V. ITO, ITAT (7391) ITAT Amritsar (62)

¹⁷ Mayank Mohanka , Faceless Assessments: Few Critical Suggestions to Make them Flawless, 119 taxmann.com 127 (Article), 2020



it on to the concerned Units and the reports received will be reach the Assessment Unit in the same manner.¹⁸ Although the Scheme states that the communication is made through automated allocation system, clarification with respect to application of this software with respect to each step is required to avoid ambiguity.

The Scheme is also silent about communication between Verification Unit and the assessee. The Verification Unit performs functions like conducting enquires, etc. which requires communication with the assessee.¹⁹ While the Scheme suggests that communications between NeAC, ReAC, Review Unit and Assessment Unit be made through electronic mode, the mode of communication between assessee and the Verification Unit is yet to be notified.²⁰ Further the Scheme requires clarification with respect to certain overlapping functions of Jurisdictional Assessing Officer and NeAC.

The Commissioner, under §263& §264 of the Act, is vested with the power to revise the orders prejudicial to the revenue department or the assessee. The Act, through § 264A & §264 B enables the central government to make a Scheme with regard to faceless revision. But under the Scheme, NeAC is authorised to send the draft applications to Review Unit and the CBDT failed to address the issue of overlapping functions of the NeAC and the Commissioner with respect to revision of orders. The possible solution to this issue would be to amend either §263& §264 of the Act or provide appropriate

clarifications with regard to the functions of NeAC under the Scheme.²¹

3.4 SALEM SREE RAMVILAS CHIT COMPANY (P) LTD V. DEPUTY COMMISSIONER OF INCOME TAX²²

Madras high court opined that the faceless assessment Scheme will lead to erroneous assessment if the officers are not able to understand the statement of record or transactions of assessee without personal hearing. The court set aside the impugned order and remitted the case back to the department to pass fresh order.

It can be concluded from the above mentioned points that, the Scheme requires modifications and amendments before full implementation in-order to avoid erroneous or arbitrary assessments.

CHAPTER 4

CONCLUSION:

The Faceless Assessment Scheme, 2020 launched by the Central Government, is indeed a revolutionary change in reforming the tax administration. The Scheme is still subjected to many clarifications and modifications but the idea of initiating such assessment methods should be appreciated. Dynamic jurisdiction is a great reform because it will curb the undesirable practices prevailing in the system. Since it is new to both the department and the public, resistance to such change is not surprising but in course of time, the Scheme will be proved advantageous if the necessary amendments are made. The laws or legislations require reforms or changes according to the societal changes, technological advancements etc.

¹⁸ Refer ¶ 2.2

¹⁹ Refer ¶1.4

²⁰ Supra 10

²¹ Shubham Mishra, Faceless Assessment Scheme: Well Thoughts With Certain Lags, [2020] 120 taxmann.com 380

²² [2020] 114 taxmann.com 492 (Madras)



The ambiguity in the Scheme can be solved by certain clarifications from the CBDT and interpretations by the judicial body. Assessment is one of the significant aspects of taxation and reforming it was a great move by the government. It is a well thought plan but with certain lags which eventually can be clarified. The Scheme centralised the assessment process and hence both the Tax department and the taxpayers must be prepared to adapt to the change.

