

Walking through the faceless regime and drafting skills for assessments & appeals

FACELESS

PAINLESS

SEAMLESS

TRANSPARENT

HONOURING THE HONEST

Background

Old framework:

Based on concept of two stage procedure of assessment

- First Stage: Summary processing of ITR
- Second Stage: A certain percentage of tax returns are selected for scrutiny assessment

First stage became completely faceless & electronic by a scheme called “Centralised Processing of Returns Scheme, 2011” notified vide N.N. 2/2012 dtd 4th January, 2012.

However, second stage continued to be manual which required personal hearing.

Background

Budget 2016: Speech

“Use of Technology for creating accountability

182. *Technology is a boon for mankind. We plan to use technology in taxation Department in a big way to make life simpler for a law abiding citizen, and also for data mining to track tax evaders.*

183. A **pilot was run in 2015-16** for e-assessment to obviate the requirement for tax payers to visit the Income-tax offices. I **propose to expand the scope of e-assessments to all assessees in 7 mega cities** in the coming years. The cases selected for scrutiny will be **scrutinized in e-environment** whereby unless the assessee himself wants to be heard, or for special reasons to be recorded, the assessing officer wants to hear the party, there will be no face to face contact of IT Department with assessee.

184. *Income-tax Department (ITD) will fully expand the pilot initiative of ‘e-Sahyog’ with a view to reduce compliance cost, especially for small taxpayers. The objective of the ‘e-Sahyog’ pilot project is to provide an **online mechanism to resolve mismatches in Income-tax returns without requiring taxpayers to attend the Income-tax office.**”*

Background

Budget 2016: Memorandum

*It is proposed to **amend sub-section (1) of section 282A** so as to provide that **notices and documents required to be issued** by income-tax authority under the Act shall be issued by such authority either in paper form or in **electronic form** in accordance with such procedure as may be prescribed.*

- ▶ Definition of the term 'hearing' added in the Act by Finance Act, 2016, w.e.f. 01.06.2016
- ▶ 2(23C) *“hearing” includes communication of data and documents through electronic mode;*

Background

Budget 2017: Speech

“180. In the Annual Conclave of Tax officers called ‘Rajaswa Gyan Sangam’ held in June 2016, the Prime Minister had expressed his desire to bring reforms in tax administration in the form of an approach of RAPID which stands for Revenue, Accountability, Probity, Information and Digitisation. This approach precisely reflects the strategy of Tax Department which is now formulated. While revenue considerations always remain the focus of Revenue Department, we are trying to bring in maximum use of Information Technology to remove human contact with assesses as well as to plug tax avoidance. We will try to **maximise our efforts for e-assessment in the coming year**. We are also using a lot of data mining capability, both in-house and outsourced. We plan to enforce greater accountability of officers of Tax Department for specific act of commission and omission. I would like to assure everyone that honest, tax-compliant person would be treated with dignity and courtesy.”

Background

Budget 2018: Speech

*“157. We had introduced e-assessment in 2016 on a pilot basis and in 2017, extended it to 102 cities with the objective of reducing the interface between the department and the taxpayers. With the experience gained so far, **we are now ready to roll out the E-assessment across the country**, which will transform the age-old assessment procedure of the income tax department and the manner in which they interact with taxpayers and other stakeholders. Accordingly, **I propose to amend the Income-tax Act to notify a new scheme for assessment where the assessment will be done in electronic mode which will almost eliminate person to person contact leading to greater efficiency and transparency.**”*

Budget 2018: Memorandum

“It is proposed to prescribe a new scheme for the purpose of making assessments so as to impart greater transparency and accountability, by eliminating the interface between the Assessing Officer and the assessee, optimal utilization of the resources, and introduction of team-based assessment.

*Therefore, it is proposed to amend the section 143, by **inserting a new sub-section (3A), after sub-section (3)**, enabling the Central Government to prescribe the aforementioned new scheme for scrutiny assessments, by way of notification in the Official Gazette.*

*It is further proposed to **insert sub-section (3B) in the said section**, enabling the Central Government to direct, by notification in the Official Gazette, that any of the provisions of this Act relating to assessment shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified therein. However, no such direction shall be issued after the 31st March 2020.*

*It is also proposed to **insert sub-section (3C) in the said section**, to provide that every notification issued under the sub-section (3A) and sub-section (3B), shall be laid before each House of Parliament, as soon as may be.”*

Interim Budget 2019 (February 1, 2019): Speech

*“59. The Income Tax Department now functions online. Returns, assessments, refunds and queries are all undertaken online. Last year, 99.54% of the income-tax returns were accepted as they were filed. Our Government has now approved a path breaking, technology intensive project to transform the Income-tax Department into a more assessee friendly one. All returns will be processed in twenty-four hours and refunds issued simultaneously. **Within the next two years, almost all verification and assessment of returns selected for scrutiny will be done electronically** through anonymised back office, manned by tax experts and officials, without any personal interface between taxpayers and tax officers.”*

Budget 2019 (July 5, 2019): Speech

“Faceless e-assessment

124. The existing system of scrutiny assessments in the Income-tax Department involves a high level of personal interaction between the taxpayer and the Department, which leads to certain undesirable practices on the part of tax officials. To eliminate such instances, and to give shape to the vision of the Hon'ble Prime Minister, **a scheme of faceless assessment in electronic mode involving no human interface is being launched this year in a phased manner.** To start with, such eassessments shall be carried out in cases requiring verification of certain specified transactions or discrepancies.

125. **Cases selected for scrutiny shall be allocated to assessment units in a random manner and notices shall be issued electronically by a Central Cell, without disclosing the name, designation or location of the Assessing Officer. The Central Cell shall be the single point of contact between the taxpayer and the Department. This new scheme of assessment will represent a paradigm shift in the functioning of the Income Tax Department.”**

Background

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September 12, 2019: Notifications

Two notifications issued:

- N.N. 61/2019 dtd. 12th September 2019 which contains the new scheme: “ **E-Assessment Scheme, 2019**”
- N.N. 62/2019 dtd. 12th September 2019 contains government directions for exceptions, modifications and adaptations required to the existing provisions of the Act, to give effect to provisions of scheme.

Background

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October 7, 2019

E-Assessment scheme launched by Revenue Secretary with the **inauguration of the National e-Assessment Centre (NeAC)** at New Delhi.

Background

Budget 2020 :

- Proposed to provide faceless appeal.
- Proposed to widen the scope of faceless assessment scheme to cover ex-parte.
- Proposed to provide that the CBDT shall adopt a Taxpayer's Charter. (sec 119A inserted)
- Sub section (6B) and (6C) were added to section 250 in order to give legal sanctity to the proposal of faceless appeals

Key announcements from PM Speech on 13.08.2020:

- ▶ Faceless Assessment : w.e.f. 13.08.2020
- ▶ Taxpayer's Charter : w.e.f. 13.08.2020
- ▶ Faceless Appeal : w.e.f. 25.09.2020
- ▶ Order u/s 119 dtd 13.08.2020 – Power of survey u/s 133A
- ▶ Order u/s 119 dtd 13.08.2020 – Faceless Assessment
- ▶ Transfer order dtd 13.08.2020 wherein number of field officers transferred under NeAC

Faceless Assessments

Sec 143(3A) (inserted by F.A. 2018)

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The CG 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.**

**Inserted by FA 2020*

Sec 143(3B) (inserted by F.A. 2018)

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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:

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

Substituted by FA 2020

FACELESS SCHEME

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- ▶ Change of procedure not law

Faceless Assessment – Salient Features

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- ▶ Assessment orders which are not in conformity with the faceless assessment scheme shall be treated as non-est w.e.f. 13.08.2020.
- ▶ Scrutiny Selection only through automated system using Data Analytics and Artificial Intelligence.
- ▶ Abolition of territorial jurisdiction.
- ▶ Central issuance of notice with DIN.
- ▶ No physical interface, no need to visit Income Tax office.
- ▶ Team based assessments and team-based review
- ▶ All communications through NeAC:
 - a) With the assessee
 - b) Among all the units
 - c) With any person

Assessment orders not covered under Faceless scheme:

Central Board of Direct Taxes (CBDT) vide Order u/s 119 dated 13th August, 2020 directs that **all assessment orders shall hereafter be passed by NeAC** through the Faceless Scheme 2019, **except as provided hereunder:**

- Assessment orders in cases assigned to **Central Charges.**
- Assessment orders in cases assigned to **International Tax Charges.**

Authentication of Electronic Record:

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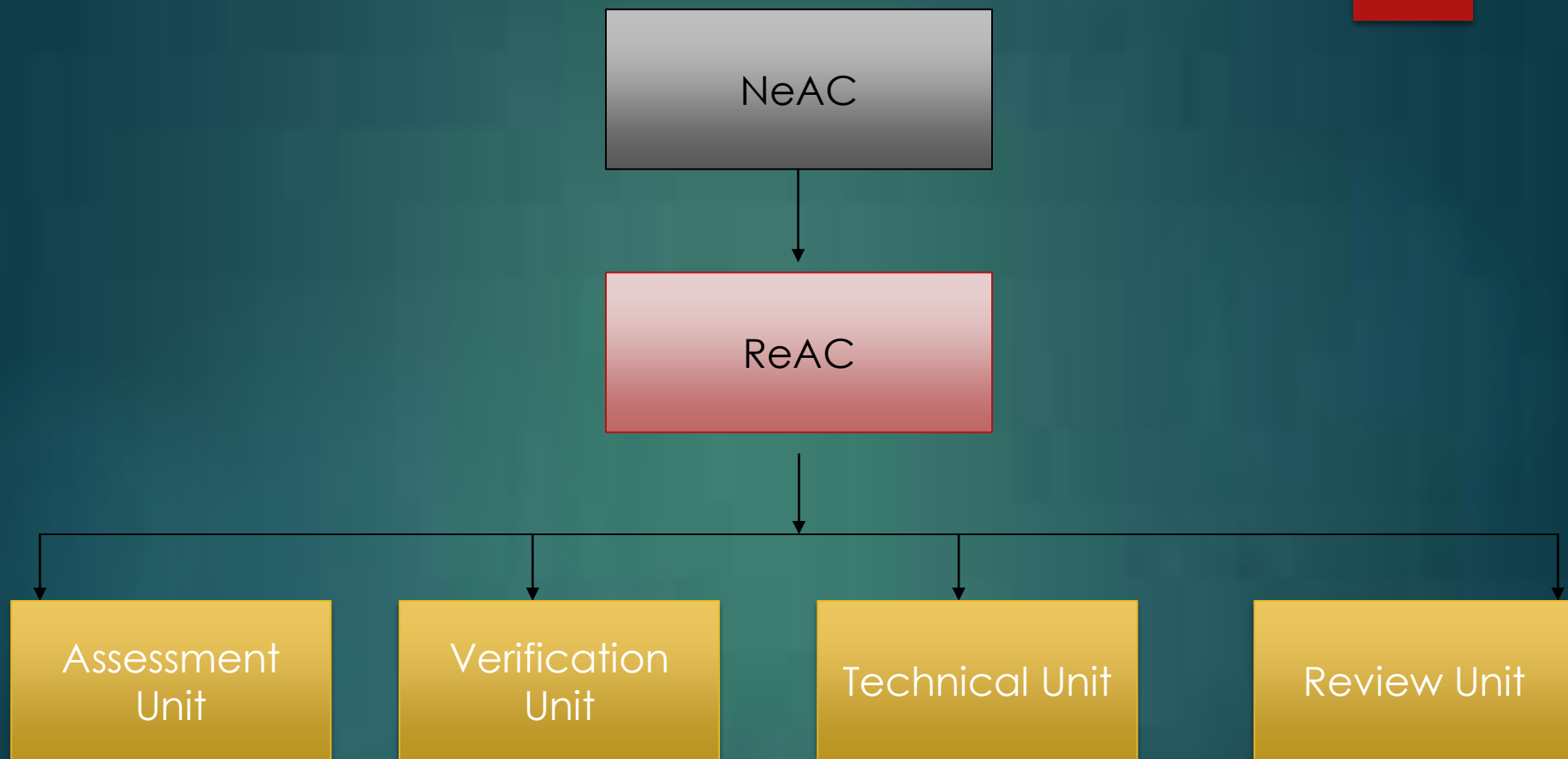
- ▶ By NeAC:
 - Affixing its digital signature

- ▶ By Assessee or any other person:
 - affixing his digital signature if required under the Rules to furnish return of income under digital signature; or
 - in any other case by affixing his digital signature or electronic verification code.

DELIVERY OF RECORDS

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- ▶ From NeAC to assessee through:
 - In his registered account- portal, or
 - On his registered Email ID, or
 - On his mobile App, andFollowed by real time alert
- ▶ From NeAC to any other person, through:
 - His registered account, followed by Real Time alert
- ▶ From assessee to NeAc:
 - Through registered account only, duly acknowledged



Assessee will not be aware of the assessment unit/ verification unit/ review unit/ technical unit who is handling their assessment.

National e-Assessment Centre (NeAC)	Shall facilitate centralised conduct of e assessment proceedings. NeAC is the communication channel between the different units as well as with the taxpayer. Located in Delhi and to be headed by Principal Chief Commissioner of Income Tax.
Regional e-Assessment Centre (ReAC)	Facilitate conduct of e assessment proceedings, vested with the jurisdiction to make assessment. 8 ReAC: Ahmedabad, Bangalore, Chennai, Delhi, Hyderabad, Mumbai, , Kolkata and Pune. Each ReAC to be headed by CCIT.
Assessment Units	To identify the points or issues material for the determination of any liability (including refund) under the IT Act, seeking and analysing information, etc and making of draft order.
Verification Units	To enquire, cross verify, examine books of account, witness and record statements, etc.
Technical Units	To provide technical assistance which includes assistance or advice on legal, accounting, forensic, valuation, audit, transfer pricing, data analytics, etc.
Review Units	To review the draft assessment order and to check whether the relevant and material evidence, facts, provisions of law, applicable judicial precedents, etc. have been incorporated in the draft assessment order

Broad functions various e- Assessment centers / units:

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- ▶ Assessment proceedings u/s 143, 144, 148 read with 143(2) / 142(1) by the Aus, initiated by NeAC
- ▶ Verification related to assessment by the VUs.
- ▶ Verification related to centralized dissemination of information by the Directorate of Systems, by the VUs.
- ▶ Review of draft orders by the RUs.
- ▶ Technical support by the TUs.
- ▶ Passing and dispatch of the final orders by the NeAC.

Cases covered under Faceless scheme: TRANSITION

- ▶ Assessee has furnished return of income u/s 139 or in response to notice u/s 142(1) or sec 148(1); and a notice u/s 143(2) has been issued;
- ▶ Not furnished return of income in response to notice u/s 142(1);
- ▶ Not furnished return of income u/s 148(1) and a notice u/s 142(1) has been issued by AO.

Faceless Assessment Procedure:

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Notice u/s 143(2) issued by NeAC specifying the issues due to which case of the assessee has been picked up for scrutiny.

Assessee will be required **to give reply** on the mentioned issues within a period of **15 days**.

On receipt of reply from assessee, case will be **assigned to an assessment unit (AU) in any ReAC** through automated allocation system by NeAC.

AU after going through the reply can **request the NeAC:**

to **call for further information or documents** from the assessee

OR

refer the matter to Verification unit (VU) for the purpose of verifying the information

OR

refer the matter to Technical unit (TU) for its opinion

Faceless Assessment Procedure:

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NeAC shall issue notice to assessee/ other person to call for further information or **shall refer the matter to VU or TU of any ReAC** through automated system.



Where assessee fails to comply with the notice issued by NeAc, NeAC shall **serve upon such notice u/s 144** giving him opportunity to show cause.



Assessee shall file response in respect of notice received and **where the assessee fails to make a response** within time specified, **NeAC shall intimate** such failure to AU.



After collecting the information or verification or opinion of Technical Unit, the **matter will again be referred to AU** and the Assessment unit after going through further details or report of VU or TU or after receiving intimation of failure of response by assessee, **prepare the draft assessment order** along with details of penalty proceedings (if any) and send to NeAC.

Faceless Assessment Procedure:

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NeAC shall examine the draft assessment order in accordance with **risk management strategy** specified by CBDT by way of an automated examination tool.

After examination, NeAC will either:

Issue the final order and notice for initiating penalty proceedings.

OR

Send draft order to assessee **to provide an opportunity to show cause** why additions proposed in the draft order should not be made.

OR

Assign the draft assessment order to a Review unit (RU) in any ReAC through an automated allocation system, for conducting review of such order.

Faceless Assessment Procedure:

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Review of draft order by RU

RU concurs with the draft order,
NeAC shall either:

send draft order to assessee to provide an opportunity to show cause why additions proposed in the draft order should not be made

Issue final order

Where RU suggests some modifications in the draft assessment order, **NeAC shall assign the case to some other AU** through an automated allocation system.

The **AU shall send the final draft assessment order after making the required modifications** suggested by review unit **to the NeAC for issuing final order or sending the draft order** to the assessee to provide opportunity where modification is proposed.

Faceless Assessment Procedure:

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Response on Draft Assessment Order by Assessee:

Response not received

In case **no response** is received from the Assessee **in respect of** the draft order in which **modifications** are proposed, **NeAC shall finalize the assessment** as per draft assessment order.

Response received

NeAC shall **send back the matter to AU** and the Assessment Unit will prepare the revised draft order and send it to NeAC.

Faceless Assessment Procedure:

33

NeAC after receiving the revised draft order from AU shall either:

Finalize the assessment
in case no modification
is proposed

Provide an opportunity by serving notice,
in case modification is proposed and the
response to such notice shall be dealt in
the **same manner as mentioned earlier.**

Personal Hearing if requested by the assessee shall be provided only
through video conferencing subject to certain conditions and approval of
Chief Commissioner or the Director General, in charge of ReAC.

Final assessment order will be issued by NeAC.

After the Final Assessment Order or Penalty order has been passed,
electronic record will be forwarded by the NeAC to the Jurisdictional AO
for further action in the case such as recovery etc.

Penalty proceedings for non-compliance:

Any unit may during assessment proceedings, **for non compliance** of any notice, direction or order on part of assessee or any other person **send recommendation** for initiation of any penalty proceedings against such person **to NeAC**.

NeAC on receipt of such recommendation, **serve a notice** on such person **to show cause** why penalty should not be imposed.

Response of such show cause notice furnished by such person shall be **sent by NeAC to the concerned unit** which has made recommendation for penalty.

Said unit after considering the response:
- **make a draft copy of penalty** and **send** such draft **to NeAC**; or
- **drop the penalty** after recording reasons and **intimate to NeAC**

NeAC shall levy the penalty as per the said draft order of penalty.

Risk Management System (RMS):

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To be used by NeAC for considering draft order

Risk management system has two-fold purpose:

- ▶ To ensure risk criteria under which cases are looked into
- ▶ To prevent high pitched addition
- ▶ Whether required additions made or not.

Cases flagged by RMS are sent for review.

Request for personal hearing:

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- ▶ No personal hearings.
- ▶ However, if modification is proposed in the draft assessment order, the assessee may request for personal hearing.
- ▶ CCIT/DGIT, in charge of the ReAC to approve such request,
- ▶ Personal hearing shall be conducted exclusively through video conferencing only and not through personal meeting.

RECORDING OF STATEMENT

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- ▶ Through VC only in any of the units

- ▶ PCIT or the Principal Director General, in-charge of NeAC, may at any stage of assessment, if considered necessary, transfer the case to the Jurisdictional AO after obtaining prior approval of board i.e. CBDT.

FUNCTIONS OF JURISDICTIONAL A.O.

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- ▶ Recovery proceedings
- ▶ Refund
- ▶ 154- rectification of apparent mistakes
- ▶ Remand reports
- ▶ Appeal effect
- ▶ Prosecution

POSITIVES OF THE SCHEME

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- ▶ Definite transparency
- ▶ Corruption free
- ▶ No hassles of physical hearing
- ▶ Time saving- better representation
- ▶ Automated systems- fewer errors likely
- ▶ Quality assessment with specialised team
- ▶ Reduced litigation

APPREHENSIONS

- ▶ Time management
- ▶ Data load
- ▶ Burdensome to not too tech savvy assesses
- ▶ Need more professional services
- ▶ Lack of infrastructure
- ▶ Jurisdictional difficulties
- ▶ Principles of natural justice
- ▶ No more use of court tactics

ISSUES BECOMING REDUNDANT

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- ▶ Jurisdictional issues- section 120, 124 and 127
- ▶ Issue of notice
- ▶ Service of notice
- ▶ Revisional jurisdiction u/s 263
- ▶ 144A
- ▶ Limited scrutiny/ complete scrutiny
- ▶ DRP regime????

Survey

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Order u/s 119 dtd 13.08.2020

- ▶ Officers posted in Directorates of Investigation (Investigation Wing) and Commissionerates of TDS, only and exclusively shall act as “Income-tax Authority” for purposes of power of survey u/s 133A.
- ▶ Competent authority for approval of such survey – DGIT(Inv) for investigation wing & Pr.CCIT/ CCIT(TDS) for TDS charges.

▶ RESTRUCTURING

HIERARCHY

- ▶ The hierarchy in faceless scheme will work with 30 CCsIT, 154 PCsIT, 565 Addl/Joint CsIT, 645 DCsIT/ACsIT, 2830 ITOs and attendant staff.
- ▶ The Board has diverted these posts vide order No.149 of 2020 dated 13.8.2020.
- ▶ As a result of which the residual jurisdiction will now rest with 32 CCsIT, 96 PCsIT, 252 Addl/Joint CsIT, 261 DCsIT/ACsIT, 1274 ITOs and attendant staff.

Functions of Residual Hierarchy:

- ▶ Taxpayer outreach education & facilitation.
- ▶ Rectification proceedings.
- ▶ Grievance handling.
- ▶ Demand management & collection and recovery of taxes.
- ▶ Audit functions including handling matters pertaining to Revenue and Internal Audit and taking remedial actions.
- ▶ Judicial functions including giving effect to the appellate orders of CsIT(A), ITAT, High Court, Supreme Court, Settlement Commission; preparing scrutiny reports and filing of appeal wherever considered necessary; defending writ petitions; recommendation of SLPs etc.

Functions of Residual Hierarchy:

- ▶ Statutory powers under sec 263/ 264 of the IT Act, 1961.
- ▶ Prosecution and compounding proceedings and related court matters.
- ▶ Administrative, HRD and cadre control matters including related court matters.
- ▶ Custody and management of Case records.
- ▶ Management and control of infrastructure.

Diversion of Manpower

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	<u>Faceless Scheme</u> <u>(2/3rd)</u>	<u>Residual jurisdiction</u> <u>(1/3rd)</u>
CCIT	30	32
PCIT	154	96
Addl. / Jt. CIT	565	252
DCIT/ ACIT	645	261
ITOs and attendant staff	2830	1274

Hierarchy in each ReAC:

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	<u>Assessment Units</u>	<u>Verification Units</u>	<u>Technical Units</u>	<u>Review Units</u>
PCIT	1	1	1	1
Addl. / Jt. CsIT	4	4	3	3
DCs/ ACsIT	4	4	6	6
ITOs	20	20	9	9

Faceless Appeals

(w.e.f. September 25, 2020)

CBDT vide its Notification No. 76/2020, dated September 25, 2020 has notified “Faceless Appeal Scheme, 2020”

Budget Speech (union budget 2020)

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“125. Faceless appeals

*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.**”*

Sec 250(6B) (inserted by F.A. 2020)

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The CG 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).

Sec 250(6C) (inserted by F.A. 2020)

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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.

Following cases would not be covered in the faceless appeal:

- ▶ Serious fraud, major tax evasion & search matters.
- ▶ International tax.
- ▶ Black Money Act and Benami Transactions.

Faceless Appeal Centres:

National Faceless Appeal Centre (NFAC)

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.

All communication b/w the appeal unit and the appellant or any other person or the NeAC or the assessing officer with respect to information or documents or evidence or any other detail, as may be necessary under this Scheme shall be through the National Faceless Appeal Centre (NFAC).

Regional Faceless Appeal Centre (RFAC)

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.

Faceless Appeal Centres:

Appeal Units

To facilitate the conduct of e-appeal proceedings, to perform the function of disposing appeal including:

- Admitting additional grounds of appeal,
- Making such further inquiry as thinks fit,
- 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
- Such other functions as may be required for the purpose of this Scheme.

Salient Features of Faceless Appeals:

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- ▶ Appeals will be allotted to Random officers.
- ▶ Identity of officers will be unknown.
- ▶ Proceedings to be conducted through online platform.
- ▶ All communication between the appeal unit **and** the appellant **or** any other person **or** the NeAC **or** the assessing officer with respect to information or documents or evidence or any other detail, as may be necessary under this Scheme shall be through the National Faceless Appeal Centre (NFAC).

Admission of delayed appeals

- ▶ Where the appellant has filed the appeal after the expiration of time specified in section 249(2) of the Act, the Appeal Unit may under the intimation to NFAC-
 - Admit the appeal, if satisfied with the sufficient cause for not filing the appeal within the stipulated time; or
 - Reject the appeal

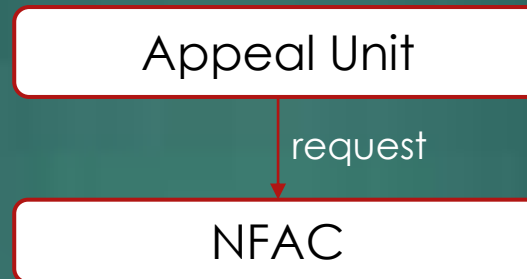
EXEMPTION U/S 249(4)(b)

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- ▶ Where the appellant has applied for exemption from the operation of section 249(4)(b) of the Act, the Appeal Unit may under the intimation to NFAC-
 - 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
 - Reject the appeal
- ▶ The NFAC shall intimate the admission/rejection of appeal to the appellant.

Faceless Appeal Procedure:

➤ After admission of appeal:



To Obtain information, document or evidence from the appellant

To Obtain a report from NeAC/AO on grounds of appeal or information, document, or evidence filed by the appellant

To Direct NeAC/AO to make further inquiry u/s 250(4) and submit report

Response or report to be filed with NFAC within the date/time or extended date and time as specified by NFAC

- Where response is filed, NFAC shall send such response to AU.
 - Where no response is filed, inform the AU.

Faceless Appeal Procedure:

➤ Additional Ground of Appeal:

Appellant may file additional ground in such form, as specified by NFAC, specifying the reason for omission of such ground in the appeal filed by him

NFAC shall send such additional grounds to

Appeal unit

- Where comments are received, send such comments to AU.
- Where no such comments are filed, inform to AU.

NeAC or Assessing officer
for providing comments

NeAC or AO shall provide comments to NFAC within the date/time or extended date and time as specified by NFAC

Appeal Unit after considering the said comments, if any, and for reasons to be recorded in writing under the intimation to NFAC:

- Admit such grounds, if satisfied that omission was not wilful or unreasonable; or
- Not admit additional grounds, in any other case.

NFAC intimate the admission or rejection of additional ground, as the case may be to appellant.

Faceless Appeal Procedure:

➤ Additional Evidence:

Appellant may file additional evidence in such form, as specified by NFAC, specifying how this case is covered by exceptional circumstances specified in Rule 46A(1) of Income tax Rules, 1962.

NFAC shall send such additional evidence to NeAC or AO, for furnishing a report within the specified date and time on the admissibility of additional evidence under Rule 46.

- Where such report is received, NFAC shall send such report to AU.
- Where no such report is received, inform to AU.

Appeal unit

Appeal Unit after considering the additional evidence and the report, if any, furnished by NeAC or AO, as the case may be, admit or reject the additional evidence, for reasons to be recorded in writing and intimate the NFAC.

NFAC intimate the admission or rejection of additional evidence, as the case may be, to appellant and NeAC or AO, as the case may be.

Faceless Appeal Procedure:

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➤ When Additional Evidence is admitted:

- ✓ Appeal unit shall before taking such evidence into account in the appellate proceedings, prepare a notice to provide an opportunity to the NeAC or AO, as the case may be, within the date and time specified there into:
 - a) to examine such evidence; or
 - b) to cross-examine such witness, as may be produced by the appellant; or
 - c) 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 NFAC.
- ✓ NFAC shall serve the notice upon NeAC or the AO, as the case may be.
- ✓ NeAC or the AO, as the case may be, shall furnish such report to NFAC, within the date and time specified, or such extended date and time as may be allowed by the NFAC.
- ✓ NFAC shall send the report furnished by the NeAC or the AO, as the case may be, to the AU or where no such report is furnished, inform the AU.

Faceless Appeal Procedure:

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➤ Where NeAC/AO requests NFAC for production of evidence or examination of any witness:

- ✓ NFAC shall send such request to the AU.
- ✓ 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 NFAC.
- ✓ NFAC shall serve the notice upon the appellant or any other person, being a witness, as the case may be.
- ✓ Appellant or any other person, as the case may be, shall file his response to NFAC, within the date and time specified in the notice, or such extended date and time as may be allowed by the NFAC.
- ✓ Where response is filed by the appellant or any other person, as the case may be, NFAC shall send such response to the AU, or where no such response is filed, inform the AU.

Faceless Appeal Procedure:

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- Where AU intends to enhance an assessment or penalty or reduce the amount of refund:

AU shall prepare a show-cause notice containing the reasons for such enhancement or reduction, and send such notice to NFAC.

NFAC shall serve the notice upon the appellant.

Appellant shall file his response to NFAC, within the time specified in the notice or such extended time as may be allowed by NFAC

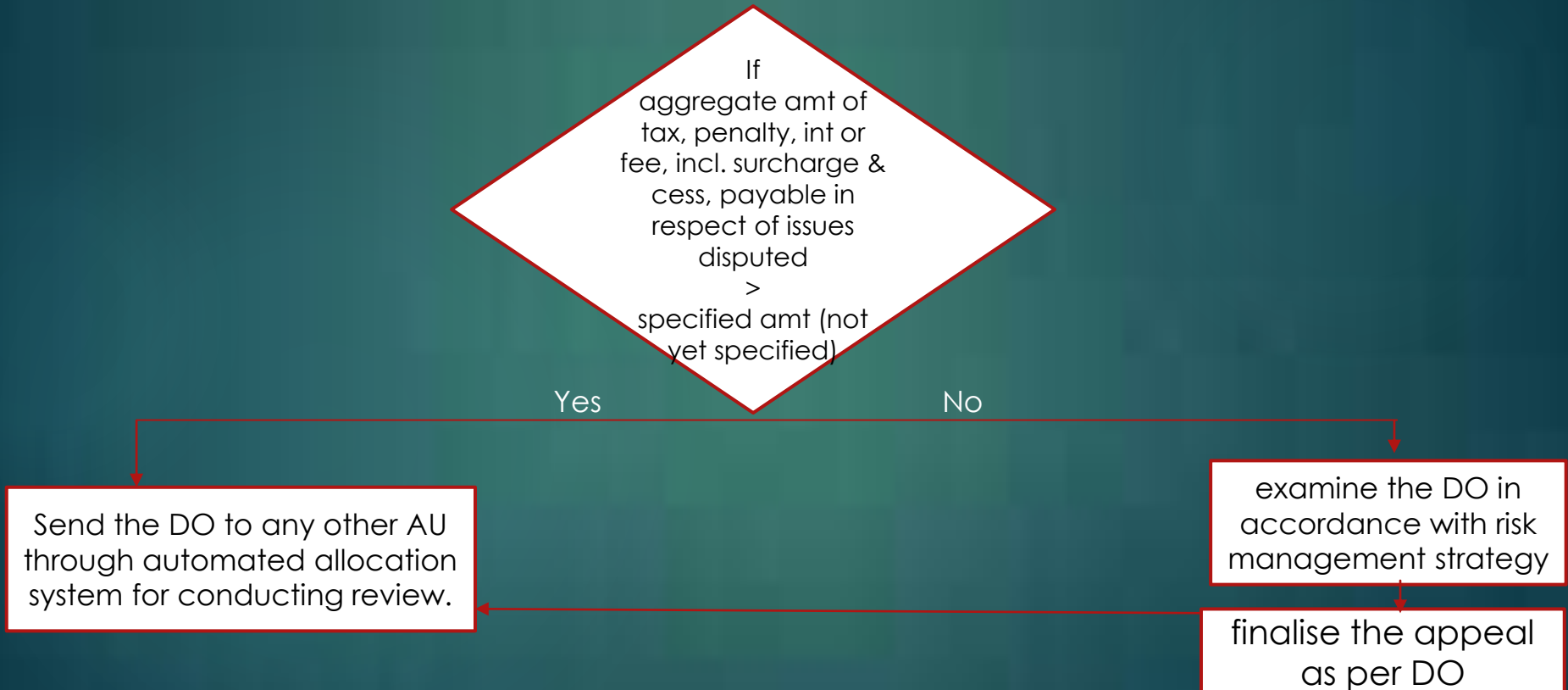
Where response is filed by the appellant, NFAC shall send such response to the AU, or where no such response is filed, inform the AU.

Faceless Appeal Procedure:

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➤ Passing the Appellate order:

AU prepares a draft order (DO) in writing in accordance with sec 251 of the Act, after taking into account all the relevant material and after considering any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding such matter was not raised in the appeal, and send it to NFAC along with the details of the penalty proceedings if required to be initiated.



Faceless Appeal Procedure:

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➤ Review of Draft order by another AU:

Another Appeal unit shall review the DO and may decide to:

Concur with the DO

intimate to

NFAC

finalise the appeal as per DO

Suggest such variation, as it may deem fit

intimate to

NFAC

assign the appeal to some other AU

If suggestions intends to enhance an assessment or a penalty or reduce refund

Follow the same procedure as explained earlier

In any other case, prepare a revised draft order and again follow the same procedure as explained earlier

Faceless Appeal Procedure:

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➤ Communication of Appeal order:

- ✓ NFAC shall pass the final order and communicate such order to:
 - a) Appellant ;
 - b) PCIT/CCIT/CIT ;
 - c) NeAC or AO, as the case may be for such action as may be required

- ✓ NFAC shall serve a show-cause notice to the appellant in case penalty is recommended to be initiated against such appellant by the Appeal Unit.

Penalty proceedings for non-compliance:

Appeal unit may during appeal proceedings, for **non compliance** of any notice, direction or order on part of appellant or any other person **send recommendation** for initiation of any penalty proceedings **to NFAC**.

NFAC on receipt of such recommendation, **serve a notice** on such person **to show cause** why penalty should not be imposed.

Response of such show cause notice furnished by such person along with recommendation for initiation of penalty shall be **sent/ assigned by NFAC to specific appeal unit** in any one RFAC (regional) through automated allocation system.

Appeal unit after considering the relevant material & response:
- **prepare a draft order of penalty & send** such draft **to NFAC**; or
- **drop the penalty** after recording reasons and **intimate to NFAC**

If AU dropped the penalty, NFAC shall send an intimation,
In other case, **NFAC shall pass final penalty order** as per such draft order and communicate that to:
a) appellant or such other person; and
b) NeAC or AO for such action as may be required.

Faceless Appeal Procedure:

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➤ Rectification Proceedings:

Application of Rectification

- Appellant or any other person, as the case may be; or
- Appeal unit preparing or reviewing or revising the draft order; or
- NeAC or AO, as the case may be

NFAC

- Shall assign such application to a specific appeal unit in any one RFAC through an automated allocation system

Appeal Unit

- Shall examine the application and prepare a notice for granting an opportunity to the Appellant or/and NeAC/AO and send the Notice to NFAC.

Show-cause Notice

- NFAC Shall serve the Notice upon the Appellant/NeAC/AO required to show-cause as to why rectification of mistake should not be carried out.

Response to show-cause Notice

- The Appellant/NeAC/AO shall file a response to the Notice within the specified time to NFAC.

NFAC

- NFAC shall send the response to appeal unit.

Appeal Unit

- AU after considering the application and response, if any, under intimation to NFAC prepare a draft order for:
 - a) for rectification of mistake; or
 - b) for rejection of application, citing reasons thereof.

NFAC

- NFAC shall pass final order as per as per such draft and communicate such order to:
 - a) Appellant; and
 - b) NeAC or AO

- ▶ No physical hearing is envisaged before any authority, Centre or Unit. "Hearing" has been defined in Section 2(23C) of the Act as "including communication of data and documents through electronic mode"
- ▶ A personal hearing may be granted on the request of the Appellant, but it shall be approved by Chief Commissioner of Income Tax (CCIT) or in-charge of RFAC.
- ▶ Any personal hearing or recording of statement or examination of appellant or any person shall be conducted exclusively through video conferencing.

- ▶ PCCIT or Principal Director General, in charge of NFAC, may at any stage of 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.

Drafting skills for assessments and appeals

Assessment:

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Replies

Assessee here is required to focus on the replies filed in response to the notices issued to him:

- The writing has to be crisp and clear. The intention and arguments shall be well versed and written in an understandable language (English).
- Try to keep the arguments crisp Seeking information or clarification on admitted grounds of appeal,
- The case laws shall be relied upon and well mentioned with citations and relevant extract being reproduced.
- A proper record of notices received, replies filed shall be maintained (like an order sheet- to be placed on the file cover)
- In case of reassessment, the reasons for reassessment shall be asked for.

Appeals – CIT(A):

Form 35

The addresses, Phone no., DIN, Figures shall be filled in without any negligence and with due care.

Grounds of Appeal

- The grounds shall be well versed and clear.
- It is okay to take more than necessary grounds than missing out on few.
- Be sure and well aware of the sections quoted and their relevance.
- Make sure to take the following ground:

“The appellant craves leave to add, amend or alter any of the grounds of appeal.”

Appeals – CIT(A):

Grounds of Appeal

- Example of Grounds of Appeal:

“1. On the facts and circumstances of the case, the order passed by the learned A.O. is bad, both in the eye of law and on the facts.

2. On the facts and circumstances of the case, Id. A.O. has erred both on facts and in law, in making assessment at Rs. _____/- as against the income of Rs. _____/- declared by the assessee.

3. (i) On the facts and circumstances of the case, the learned A.O. has erred both on facts and in law in making addition of an amount of Rs. _____/- on account of unsecured loans under section ____ of the Act.

(ii). That the addition has been made rejecting the explanation and evidences filed by the assessee.

4.....

On the facts and circumstances of the case Id. A.O. has erred both on facts and in law in levying interest under section 234A/B/C of the Act.

The appellant craves leave to add, amend or alter any of the grounds of appeal”

Appeals – CIT(A):

Facts of the case:

- The fact can be provided at the time of filing the appeal or can be filed on a later stage while filing the submissions as a part of written submissions.
- In case opted for filing it at the time of filing of written submission, mention *“will be filed at the time of hearing along with written submissions”* in form 35.
- The facts shall be clear and crisp.
- Proper Pg no. reference of the paper book be given.
- Clear references of the notices and replies shall be made.
- Move in a chronological order while mentioning the facts.
- Don't conclude in the facts, remember the facts are not the arguments but a written form of what has happened in the assessment.

Appeals – CIT(A):

Facts of the case:

- Start writing the facts by mentioning the very basic details of the assessee such as the name, PAN, ITR details, addresses, nature of business.

Eg:

“1. The assessee is a public company having PAN _____. The said company is having registered office at _____.

2. The assessee is a leading Manufacturer & Supplier of a wide assortment of Synthetic Yarns. The company has carved a niche for itself in the domestic arena for its flawless product quality and impeccable service. It offer products, which include _____.

3. The assessee is a regular tax payer and has been filing its return of income along with the financials on timely basis. For the year under consideration the assessee has filed its return of income on ____ vide acknowledgement no. _____ declaring an income of Rs. _____. The copy of the same is placed in PB Pg”

Appeals – CIT(A):

Facts of the case:

- While mentioning the additions made, refer to the specific point no. of the questionnaires received dealing with the matter of concern.

Eg:

“the Id. AO vide its questionnaire dated _____ , Point no. ___ asked the assessee to give complete details of the share capital issued during the year. Copy of the same is placed in PB Pg ”

Appeals – CIT(A):

Written Submissions

- The submissions may be divided into two parts: Legal and Merits
- Legal Ground: Case laws shall be properly mentioned along with citations and relevant extract; the language shall be crisp and clear.
- Merits: The facts shall be mentioned properly, reliance on the replies filed during the assessment proceedings shall be made, Case laws shall be properly mentioned along with citations and relevant extract, the language shall be crisp and clear

Appeals – CIT(A):

Paper Book

- The paper book shall contain:
 - a) Basic documents such as the ITRs, Financials etc.
 - b) Relevant replies along with annexures filed during the assessment proceedings.
 - c) The notices received.
- The Index shall be made for every paper book.
- The Paper book shall be properly numbered.

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