

NEW FACELESS APPEAL PROCEDURE UNDER THE INCOME TAX ACT

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The Finance Act, 2020, has amended Section 250 of the Income Tax Act (Act) dealing with the procedure in Appeal before the Commissioner of the Income Tax (Appeals). At present, appeal before CIT(A) is to be filed through electronic media. Thereafter, the assessee or his Counsel has to attend before CIT(A) and argue the appeal. The Assessing Officer can also appear before CIT(A) at the time of this hearing. In order to reduce human interface from the system, Section 250 has been amended from 1.4.2020 to provide for a new E-Appeal Scheme on lines similar to E-Assessment Scheme. By this amendment, the Central Government is given power to notify an E-Appeal Scheme for disposal of appeal by CIT(A) so as to (a) impart greater efficiency, transparency and accountability, (b) eliminate interface between CIT(A) and the appellant or any other person in the course of the appellate proceedings to the extent technologically feasible, (c) optimise utilisation of the resources through economics of scale and functional specialisation and (d) introduce a team based appellate system with dynamic jurisdiction in which an appeal will be disposed of by one or more CIT(A). For this purpose, the Central Government may direct for exemption, modification and adaptation as may be specified in the Notification. To give effect to the above amendment, the Central Government has, by a Notification dated 25.09.2020, notified "Faceless Appeal Scheme, 2020". This Scheme has come into force on 25.09.2020. In this Article, the important provisions relating to the new procedure for disposal of appeals before the CIT(A), as contained in the above scheme, are discussed.

1. Authorities to Administer the Scheme

For the purposes of this Scheme, the CBDT will set up and specify the respective jurisdiction of-

(i) National Faceless Appeal Centre –

National Appeal Centre will be set up to facilitate the conduct of e-appeal proceedings in a centralised manner. All communications between the appeal unit and the appellant, any other person, the National e-Assessment Centre or the Assessing Officer shall be through the National Appeal Centre. It may be noted that the National Appeal Centre will be in charge of the Principal Commissioner or the Principal Director General.

(ii) Regional Faceless Appeal Centres –

Regional Appeal Centres to facilitate the conduct of e-appeal proceedings will be set up for disposal of appeals under the Scheme. It may be noted that Regional Appeal Centre will be in charge of the Chief Commissioner of Income-tax or the Director General of Income-tax.

(iii) Appeal units-

Appeal Units to facilitate the conduct of e-appeal proceedings and for disposal of appeals will be set up. This will include admission of additional grounds of appeal, making further inquiry, directing the National e-Assessment Centre or the Assessing Officer, (hereinafter referred to as Assessing Authority) for making further inquiry, providing opportunity of hearing 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.

The appeal unit shall have the following authorities, namely:—

- a) one or more Commissioner(Appeals);
- b) such other income-tax authority, ministerial staff, executive or consultant to assist the Commissioner (Appeals) as considered necessary by the CBDT.

2. Procedure in appeal

The procedure for Faceless Appeal proceedings will be as under:—

- (i) The National Appeal Centre shall assign the appeal to a specific Appeal Unit in any one Regional Appeal Centre through an automated allocation system. The Principal Commissioner or the Principal Director General in charge of the National Appeal Centre can transfer the appellate proceedings to any other CIT(A) with the permission of CBDT.
- (ii) Where the appellant has filed the appeal after the expiration of time specified in section 249(2) of the Act, the Appeal Unit may--
 - (a) Admit the appeal on satisfaction that the appellant had sufficient cause for delay in filing the appeal within the said time ;or
 - (b) Reject the appeal by intimating the National Appeal Centre.
- (iii) where the appellant has applied for exemption from the operation of section 249(4)(b) of the Act, the Appeal Unit may:
 - (a) Admit the appeal and exempt the appellant from the operation of provisions of said clause by recording reasons in writing; or
 - (b) Reject the appeal by intimating the National Appeal Centre.
- (iv) The National 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 intimate the National Appeal Centre to obtain any required information, document or evidence from the appellant or any other person,
 - (b) The appeal unit may request the National Appeal Centre to obtain a report (Remand Report) of the Assessing Authority with regard to any grounds of appeal or information, document or evidence filed by the appellant;
 - (c) The appeal unit may request the National Appeal Centre to direct the Assessing Authority, for making further inquiry and submit a report under section 250(4) of the Income Tax Act;
 - (d) The National Appeal Centre shall serve a notice upon the appellant, any other person or the Assessing Authority to submit such information, document or evidence or report, as specified by the appeal unit on a specified date and time.
- (vi) The appellant or any other person, can file a response to the notice referred to in clause (v)(d) above, on or before the specified date and time.
- (vii) The Assessing Authority can furnish a report in response to the notice referred to in clause (v)(d) above , on or before the specified date and time.
- (viii) The National Appeal Centre shall send the response filed by the appellant or any other person, or the report furnished by the Assessing Authority 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 Appeal Centre, specifying 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 Appeal Centre shall send the same to the Assessing Authority, for its comments and to the appeal unit;
 - (b) The Assessing Authority, shall furnish its comments, within the specified date and time ;
 - (c) The National Appeal Centre shall send the comments filed by the Assessing Authority to the appeal unit, and where no such comments are filed, inform the appeal unit;
 - (d) Based on the comments received, the appeal unit may admit such additional ground if it is satisfied that the omission of such ground from the form of appeal was not wilful or unreasonable,; or may not admit the additional ground, for reasons to be recorded in writing and intimate the same to the National Appeal Centre; The National Appeal Centre shall intimate the admission or rejection of the additional ground, to the appellant;

- (xi) The appellant may file additional evidence, in such form, as may be specified by the National Appeal Centre, specifying therein as to how his case is covered by the exceptional circumstances specified in rule 46A(1) of the Income Tax Rules. Where the additional evidence is filed the procedures stated in Clause (x) above will be followed for admission or rejection of the additional evidence.
- (xii) Where additional evidence is admitted,—
 - (a) The appeal unit shall, before taking such evidence into account in the appellate proceedings, provide an opportunity to the Assessing Authority, within the specified date and time, to 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, to the National Appeal Centre. For this purpose, the Assessing Authority will have to approach the appellant through the National Appeal Centre to collect the details.
 - (b) The Assessing Authority, shall furnish the report, to the National Appeal Centre, within the specified date and time;
 - (c) The National Appeal Centre shall send the report furnished by the Assessing Authority, to the appeal unit or inform about non-receipt of any such report.
- (xiii) If the Appeal Unit wants to enhance the Income, rectify its order or levy any penalty, detailed procedure, as stated above, of routing the matter through the National Appeal Centre is to be followed.

3. Appellate Order:

The procedure for passing the Appellate Order is as under:

- (i) The appeal unit shall, after taking into account all the relevant material and response or report furnished by the Assessing Authority —
 - (a) prepare a draft order in accordance with the provisions of section 251 of the Act; and
 - (b) send such order to the National Appeal Centre, along with the details of the penalty proceedings, if any, to be initiated in the case.
- (ii) on receipt of the draft order, the National Appeal Centre shall—
 - (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, send the draft order to an appeal unit, other than the appeal unit which

- prepared such order, in any one Regional 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 CBDT, including by way of an automated examination tool, whereupon it may decide to finalise appeal order as per the draft order or send the draft order to another Appeal Unit in any other Regional Appeal Centre through an automated allocation system, for conducting review of such order.
- (iii) Such other Appeal Unit shall review the draft order, referred by the National Appeal Centre, and it may decide to –
- (a) concur with the draft order and intimate the National Appeal Centre ; or
- (b) suggest such modification to the draft order to the National Appeal Centre;
- (iv) In the case of any modification suggested by the appeal unit, the National Appeal Centre shall assign the appeal to any other appeal unit in any one Regional Appeal Centre through an automated allocation system;
- (v) The appeal unit, to whom appeal is assigned under clause (iv)above, shall, –
- (a) where such suggestions intend to enhance income or a penalty or reduce the amount of refund, follow the procedure laid down above and prepare a revised draft order.
- (b) in any other case, prepare a revised draft order and send such order to the National Appeal Centre along with the details of the penalty proceedings, if any, to be initiated therein;
- (vi) The National Appeal Centre shall after finalising the appeal as per the above procedure, pass the appeal order and communicate such order to the appellant as well as to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as per section 250(7) of the Act and to the Assessing Authority, for further course of action as required under the Income tax Act. If any penalty has been recommended by the Appeal Unit, the National Appeal Centre shall issue Show Cause Notice to the assessee.

4. Further Appeals before the ITA Tribunal

An appeal against an order passed by the National Appeal Centre can be filed before the jurisdictional Income-tax Appellate Tribunal. Where any order passed by the National Appeal Centre or Commissioner (Appeals) is set-aside and remanded back to the National Appeal Centre or Commissioner (Appeals) by the Income-tax Appellate Tribunal or High Court or Supreme Court, the National Appeal Centre shall pass the order following the procedure of this Scheme.

5. Exchange of communication exclusively by electronic mode

It is provided that all communications between the National Appeal Centre and the appellant or his authorised representative, as well as, all internal communications between the National Appeal Centre, the Regional Appeal Centres, the National e-Assessment Centre, the Assessing Officer and the Appeal Unit shall be exchanged exclusively by electronic mode.

6. No personal appearance in the Centres or Units

- 6.1. Neither appellant nor his authorised representative is required to appear personally in connection with any appellate proceedings under this Scheme before the National Appeal Centre or Regional Appeal Centre or Appeal Unit. However, the appellant or his authorised representative, may request for personal hearing so as to make his oral submissions or present his case before the appeal unit under this Scheme. The Chief Commissioner or the Director General, in charge of the jurisdictional Regional Appeal Centre, may approve the request for personal hearing of the appellant, if he is of the opinion that the request is covered by the circumstances as laid down by the Principal Chief Commissioner or the Principal Director General, in charge of the National Appeal Centre. Where the request for personal hearing has been approved, such hearing shall be conducted exclusively through video conferencing or video telephony in accordance with the procedure laid down by CBDT. It may be noted that this provision giving such power to the Chief Commissioner or the Director General is against the principles of natural justice.
- 6.2. Any examination or recording of the statement of the appellant or any other person shall be conducted by Commissioner (Appeals) in any appeal unit, exclusively through video conferencing or video telephony in accordance with the procedure laid down by CBDT.
- 6.3. The Board shall establish suitable facilities for 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 access to video conferencing or video telephony at his end is not provided.

7. Other Appeals, Revision, etc.

- 7.1. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, has amended some sections of the Income Tax Act from 01.11.2020. These amendments give statutory recognition to provisions relating to Faceless Assessments, Appeals, etc. The Amendment Act amends the following sections and gives power to the Central Government to notify Schemes for Faceless Appeals, Revision and other matters.

- 7.2. Accordingly, the following sections are amended from 1.11.2020
- (i) Section 253 :- This section deals with appeals to ITA Tribunal. It is now provided that the Scheme to be notified shall introduce a team based mechanism for appeals to ITA Tribunal with dynamic jurisdiction.
 - (ii) Section 264A:- This is a new section. The Scheme to be notified will provide for Faceless Revision of Orders to be passed by the CIT under Sections 263 and 264, revising the orders of lower authorities.
 - (iii) Section 157A:- This is also a new section. The section provides that the Scheme to be notified will provide for Faceless Rectification of orders under section 154, other amendments under section 155, issue of Demand Notice under section 156 or issue of Intimation of loss under section 157.

8. To sum up

- 8.1. Reading the provisions of the Scheme notified under section 250 for Faceless conduct of the Appeals before the Commissioner (Appeals), it will be noticed that the scheme is very complicated. At present, such appeals are decided by one officer of the rank of the Commissioner (Appeals). Under the scheme the matter will be considered by a number of officers. This will be a time consuming process. It is, therefore, suggested that the Scheme should be restricted to appeals where the disputed tax amount exceeds Rs. 1 Crore. In other appeals , involving disputed tax of smaller amounts, the existing procedure of jurisdictional CIT(A) deciding the appeals should continue.
- 8.2. An issue which will arise relates to documents to be produced electronically. If such documents are in languages viz. Gujarati, Marathi, Bengali, Tamil, Telugu, Hindi, etc., the question will arise whether the appellant can upload the documents in that language or he will have to get them translated in English before sending the same to the Appeal Unit.
- 8.3. It may be noted that the above Scheme does not provide for a situation where high pitched assessment is made and huge tax liability is created. In such a case if the assessee wants a stay of demand from CIT(A) or an early hearing for the appeal there is no provision for approaching the National Appeal Centre to grant stay of demand or to expedite the disposal of appeal.
- 8.4. The fundamental objection which can be raised against the above Scheme relates to independence of Commissioner (Appeals) in the discharge of his appellate functions. Section 119(1) provides that CBDT cannot issue any orders, instructions or directions so as to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions. Reading the above Scheme, it is evident that Appeal Unit which consists of one or more Commissioner (Appeals) has now to pass only draft appellate order. As stated above, if the

Appellant or his Counsel wants hearing before the CIT(A), through Video Conference, the same will be allowed at the discretion of the Chief Commissioner or the Director General in charge of the Regional Appeal Centre and not at the discretion of the Commissioner (Appeals) dealing with the appeal in the Appeal Unit. This draft order is to be submitted to National Appeal Centre which is in charge of the Principal Commissioner or the Principal Director General. If the National Appeal Centre is not satisfied with this draft order, it can refer it to another Appeal Unit for review. This other Appeal Unit can revise the draft appellate order and submit it to the National Appeal Centre. On the above basis, the National Appeal Centre will pass the appellate order and issue the same to the Appellant and the Assessing Authority. In other words, the above Scheme provides that the final appellate order will be passed by the National Appeal Centre which is in charge of the Principal Commissioner or the Principal Director General. Therefore, it can be stated that this will amount to interference with the discretion of the Commissioner (Appeals) in exercise of his appellate functions. This is certainly against the provisions of Section 119(1) of the Income Tax Act. As stated above, if the final appellate order is to be passed by the Principal Commissioner or the Principal Director General, who is in charge of the National Appeal Centre, the assessee is not likely to get any relief at the first appellate stage. It appears that the above Scheme ignores the basic principles of natural justice and, therefore, if it is challenged in the Court it may not stand the test of judicial scrutiny.

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