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Faceless Assessments: Problems to be Addressed for the Tax Reform Clock Not To be Turned Back!!**MAYANK MOHANKA**

Senior Partner in M/s. S M Mohanka & Associates & Founder Director in Tax Aaram India Pvt. Ltd.

Friends, just as the baby caterpillar sheds its cocoon and metamorphose itself into a beautiful butterfly, the faceless assessment scheme, which was introduced as a pilot scheme for just 58,000 odd assessment cases in October, 2019, has now blossomed itself into its 'PAN India Avatar', with its full-scale implementation across the Country, covering almost the entire gamut of assessments and reassessments, barring just search and international taxation cases.

However, five years down the line, in the run up to the Union Budget 2024-25, speculations and rumours were rife that the Indian Tax Administration is considering introducing a hybrid mode of assessments, wherein the assesseees will be given an option to choose from the faceless mode or the conventional manual mode of assessments. The basis of this speculation was certain media reports.

With no budget amendments pertaining to the faceless assessments' regime in the Finance (No.2) Act, 2024, all the speculations of the tax administration's purported inclination towards turning the tax reform of the faceless assessment clock, back to the conventional manual mode of assessments, had been put to an end. Still, it is true that there is no smoke without fire.

In hindsight, there are several real and burning issues and problematic areas and ground level difficulties, which this otherwise revolutionary, tax reform of the faceless assessments, has to address in its true spirit, so that in future, the need or the desire of rolling back to the conventional manual assessments doesn't come to the fore, again.

Some of such issues requiring immediate redressal by the Legislature in the ongoing comprehensive review of the Income Tax Act, are discussed below.

1.NaFAC is merely acting as a Postman or a Messenger

The National Faceless Assessment Centre (NaFAC) was being projected as a powerful nodal authority to regulate, supervise and monitor the conduct of assessments in a faceless manner, and to serve as an effective and meaningful bridge between the assessee and the assessment authority. It was supposed to vet the quantity and quality of the scrutiny notices, requisitions and questionnaire being issued by the faceless assessment authority as well as the assessment order being passed by the faceless assessment officer. However, the last five years of ground-level implementation of the faceless assessments have made it very clear and duly evident that the NaFAC has been reduced merely to a postman or a messenger between the assessee and the faceless assessment authority. In order to inculcate a much-needed check and control in the quality of the assessment orders being churned out by the faceless hierarchy, it is high time, the NaFAC

risers to its perceived stature of an effective and efficient quality controller and supervisor of the conduct of the faceless assessments, in a true and fair and hassle-free manner.

2. Absence of the 'Team-Based' Assessment in Real Sense

The second problematic issue is the absence of the 'team-based' conduct of assessment in the faceless mode, in real sense. When the faceless assessment regime was first introduced in the year 2019, the most promising and meritorious advantage of this new tax reform, as projected by the Legislature was the conduct of the faceless assessments in a team-based manner and not by an individual. But the Finance Act 2022, amended the definition of the 'Assessment Unit (AU) to be comprising of an individual assessing officer only and not any team of assessing officers. Though there are different prescribed functional income tax authorities like the technical unit, verification unit and the review unit, but their respective role and involvement is also subject to the discretion of an individual assessing officer forming the assessment unit (AU).

Thus, currently the only difference between the conventional manual mode of erstwhile assessments and the faceless assessments is that in the faceless regime, the assessing officer is not the jurisdictional assessing officer of the assessee, but belongs to a dynamic jurisdiction and located in some different geographical location. The assessing officer happens to be an individual person only, with its identity not revealed to the assessee. So, there is no 'team-based' assessment happening in real sense, at the ground level implementation of the faceless assessments. The only 'team-based' conduct, which is unfortunately happening is the slowly creeping in of the back-door malfeasance, resulting in the faceless assessment regime, gradually losing its credence.

3. Overlapping Jurisdiction of JAO & FAO

The aspects of the overlapping jurisdiction of the jurisdictional and the faceless income tax authorities in some grey areas, are also resulting in some unintended and undesired consequences. The widely popularised merits of the faceless assessments over the conventional manual assessments are often proving to be merely a lip service, as the so called team-based faceless assessments conducted by the dynamic jurisdiction have been made subject to the reopening and tinkering by the jurisdictional assessing officer under section [148A](#) of the Income Tax Act, merely on the basis of a so called 'information in possession' or 'an audit objection' made by the jurisdictional internal revenue audit party. Similarly, the finality of an already concluded team-based faceless assessment, is always at the mercy of the discretionary revisionary exercise by the jurisdictional Commissioner of Income tax under section [263](#) of the Income tax Act. Further, the overlapping jurisdiction of the Jurisdictional Assessing Officer (JAO) and the Faceless Assessment Officer (FAO) in the conduct of the faceless reassessments in the new reassessment regime, after the insertion of section [151A](#) in the Income Tax Act, w.e.f. 1.11.2020 and the implementation of the corresponding notified scheme of 'e-Assessment of Income Escaping Assessment Scheme, 2022' w.e.f. 29.3.2022, has already become a serious bone of contention and litigation between the assesseees and the revenue authorities.

4. Well thought-out Safeguards in Earlier Faceless Assessment Schemes Gradually being Diluted

It is surprising to see that some of the well-intended and well thought out inherent safeguards ensuring the adherence of the principles of natural justice in the conduct of faceless assessments, incorporated in the earlier versions of the faceless assessment scheme/ section [144B](#) of the Act, have gradually been diluted, in the disguise of bringing in certainty. Omission of sub-section (9) of section 144B of the Act, by the Finance Act, 2022, with retrospective effect, is one such unfortunate development. Similarly, the earlier mandatory requirement of issuing the draft assessment order to the assessee before passing the final assessment order has also been diluted and now only the show cause notice is to be issued to the assessee by the faceless assessment authority, before passing the final order. The faceless assessment orders being passed in gross violation of the principles of natural justice, are not being quashed in their entirety by the hon'ble High Courts, but are being remanded back to the same erring assessment officers for de-novo adjudication. This is a classic paradox of deriving the benefit out of one own's wrong doing, as the erring assessing authority conveniently gets a second opportunity and more time to improve upon its earlier committed mistakes in assessments, and to pass more detailed but adverse assessment order.

5. Technical Glitches

One of the most basic yet serious issue is the creeping in of unwanted technical glitches in the carrying out of the faceless assessments. Often, the archived notices and their corresponding replies being filed by the assessee, stop reflecting in the e-Proceedings utility of the Income tax portal. Sometimes, the scrutiny notices are only sent to the assessee's emails by the NaFAC and are not uploaded in their registered e-filing accounts in the Income-tax portal. The replies being filed by the assessee in response to the scrutiny notices, also sometimes don't appear and get reflected at the end of the assessing authority, though the acknowledgement receipt gets generated. The most glaring technical glitch is the sub-standard video conferencing facility of the Income tax portal, wherein either the audio is not working properly or the video, and the presentation feature to present submissions during the course of the video conferencing, never works. The income tax department has announced the collaboration with Bharti Airtel for its Taxnet Version.2 project, with a view to improve upon these technical glitches and provide both the assessee as well as the assessing authority a more superior and smoother, glitch free experience in the carrying out of the faceless assessment proceedings and the virtual hearings therein. Let us hope, the new version provides us all a seamless, hassle-free and glitch-free experience in the carrying out of the faceless assessments.

6. The DIN Controversy

With a view to bring greater transparency in the functioning of the tax-administration and improvement in service delivery and to maintain proper audit trail of all communication, the CBDT in pursuance of the hon'ble FM announcement, has, vide Circular No.19/2019 dated 14.08.2019, laid down parameters specifying the manner in which any communication issued by any income- tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person will be dealt with. All such communication issued on or after the 1st of October, 2019 shall carry a computer- generated Document Identification Number (DIN) duly quoted in the body of such communication.

The CBDT Circular, in clear and unambiguous terms, mandates that any communication which is not in conformity with the prescribed guidelines shall be treated as invalid and shall be deemed to have never been issued. Thus, all scrutiny notices, requisitions and orders issued and passed in the faceless assessment regime, are mandatorily required to be quoted with a DIN. However, inspite of this very clear mandate, many a times, the scrutiny notices and orders being issued and passed by the faceless assessment authorities, fail to mention the DIN on the body of such communication.

Relying upon this CBDT Circular, the hon'ble Delhi High Court in the case of '*CIT (International Taxation) v. Brandix Mauritius Holdings Ltd.*' [\[2023\] 149 taxmann.com 238/293 Taxman 385/456 ITR 34](#), has quashed the DIN-less assessment order. However, the revenue had challenged this order before the hon'ble Supreme Court and the learned ASG representing the revenue had argued before the SC that the said DIN Circular is merely an internal circular and can't be used against the Parliament's mandate. The hon'ble SC has granted an interim stay on the said Delhi High Court judgement in the Brandix case observing that non mentioning of DIN in the order, may be an irregularity but not an illegality *CIT v. Brandix Mauritius Holdings Ltd.* [\[2024\] 158 taxmann.com 247/297 Taxman 228 \(SC\)](#).

It is pertinent to mention here that the hon'ble FM had earlier gone on record and stated that any Income tax or GST communication, notice or order issued on or after 1.10.2019, without mentioning DIN, is invalid and can be thrown in the dustbin, as if it never existed. The respected Revenue Secretary has also reiterated the said formal stand of the CBDT w.r.t. the invalidity of any DIN-less communication from the Income tax department.

However, the learned ASG representing the revenue before the hon'ble SC has undermined such assurance of our hon'ble FM and the respected Revenue Secretary and also the binding nature and sanctity of the said CBDT [Circular No. 19/2019 dated 14.8.2019](#), u/s 119 of the Income Tax Act. The learned ASG has argued before the hon'ble SC that the Delhi HC judgment has ramifications on assessments conducted in past 3 years or so and spreads into GST regime also. He has contended that its impact has already exceeded Rs. One Lac Crore of revenue. He has further argued that the CBDT Circular enforced by the ITAT and Delhi HC is an administrative circular which cannot override the statute and the judgments, and the impugned judgment is spreading like a pandemic and deserves to be stayed.

It is interesting to note that the objective and the language of the said CBDT Circular No. 19/2019 mandating mentioning of DIN in all income tax communications, has been adopted and replicated from the erstwhile Section [282B](#) of the Income Tax Act, which was omitted by the Finance Act 2011 w.e.f. 1.4.2011. The said section 282B contained the exact same language as has been used in the said CBDT Circular No. 19/2019, and mandated that any DIN-less order, notice or any communication from the Income Tax department shall be treated as invalid and shall be deemed never to have been issued.

In order to sanctify the legislative intent of the Ministry of Finance in bringing the said DIN mandate and the binding nature of the said CBDT Circular No 19/2019, in real and effective terms and not just as a mere lip service, it is desirable that the erstwhile section 282B, is being re-inserted in the Income Tax Act, with retrospective effect from 1.10.2019, and the CBDT own Circulars are not being undermined, contested and challenged by the learned standing counsels of the CBDT in the Courts.

Concluding Remarks: Therefore, the above discussed pinching and discomforting, but nonetheless real and actual ground level issues and problematic areas need an urgent and effective resolve by the Legislature and the Executive, in the ongoing comprehensive review of the Income Tax Act, so that the well-intended and revolutionary tax reform of the faceless assessments, live up to its true potential, and is not mired with unwanted controversies and litigations.

Useful Reference

For more details and complete understanding of the nitty-gritties and nuances of the 'Faceless Taxation Regime', the recently published and critically acclaimed 7th Edition of the Book titled "**Faceless Assessment Appeals & Penalty Ready Reckoner with Practical Guide to Handling Income Tax Notices**", authored by the author of this article, **Sh. Mayank Mohanka, FCA, and published by Taxmann Publications**, may be referred, which is a very useful and handy ready reckoner and a user manual to help and assist the assesseees and the assessing authorities in their 'faceless assessment pursuits'. An honest and sincere effort has been made in this Book to explain and demonstrate the practical aspects and nitty-gritties of 'faceless assessments' in a 'step-by-step-manner' through 'real-time practical case studies' encompassing crucial and significant scrutiny issues having immense relevance and practical utility for all the assesseees and the assessing authorities. The manner and practical aspects of 'e-filing of Rectification Application' u/s 154 of the Act and 'e-filing of Responses against the outstanding Income Tax demand have also been explained and demonstrated in a 'step-by-step' manner.

This Book characterizes a 'natural blend of law and practice' and Your 'Go-TO-GUIDE' for each and everything, which You may wish to Know, Understand & Learn about the New 'Faceless Taxation Regime'. This Book also includes the Country-specific Best International Practices in Tax Administration and the measures taken up by the Indian Tax Administration Authorities to ramp up the effectiveness and efficiency of the governance levels and to transform into a 'digitally mature' tax administration.

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