

DIRECT TAXES PROFESSIONALS' ASSOCIATION

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Ref. No. – DTPA/Rep/21-22/002

28th September, 2021

To,
The Chairman,
Central Board of Direct Taxes,
North Block, First Floor,
New Delhi 110 001

Respected Sir,

Re: Representation regarding problems in Faceless Assessments & Faceless Appeals and Issues relating to VSV Matters

We are happy that there is considerable stress by the Government on improving functioning of Income Tax department and commendable actions have been taken mainly in the area of computerization and faceless functioning. However, we would like to make the following suggestions for better functioning of the **Faceless Assessment & Appeal System**:

A. FACELESS ASSESSMENTS:

- 1) Sir, there is practice of harassment and passing high pitched assessment in some cases in faceless assessment scheme.
- 2) There is lack of accountability. This substantially affects Indian taxpayers as well as NRI investments adversely and thus national economic interest also suffers.
- 3) We feel that action against erring officials will be instrumental in completion of assessments in a judicious manner and the officials will carry out the assessment proceedings following the principles of natural justice. Your honour is aware that **Delhi High Court has set aside** some high pitch faceless assessments on the ground of violation of principles of natural justice. Some such cases are:
 - a) **Centum Finance Limited v. NFAC, Delhi WP(C) 6977/2021 Order Dated 12.08.2021:** It has been held that where assessee could not respond due to technical glitches on IT portal and insufficient time was provided by the AO, the assessment order passed is in violation of Principles of Natural Justice and hence the assessment was set aside.
 - b) **Civitech Developers Pvt. Ltd. v. National E-Assessment Centre, New Delhi WP(C) 6669/2021 Order dated 22.07.2021:** It has been held that that where the option to opt for personal hearing was not enabled, the petitioner due to technical glitches could not request for personal hearing on the e-portal but it requested for the same in communication made by it. Consequently, it cannot be said that the petitioner did not opt for personal hearing in the present case and as such the assessment was set aside.

- 4) The assesseees are generally fearful of complaining against erring officials for fear of revengeful actions by the authorities. Hence in order to improve functioning of department it is suggested as under:
 - a) Section 166 of Indian Penal Code provides for criminal action against officers who are abusing their powers. Prosecution under this section can be filed by the assessee himself.
 - b) Lodging of a compliant by the assessee requires prior approval u/s 197 of Cr. P.C. from the Disciplinary authority who are generally reluctant; and such approvals do not come or does not come in time. The complainant then has to file writ in High Court for direction for giving such approval. This is expensive as well as tedious procedure. Such approval is very rarely sought by assessee as only few have courage to invite ire of officers. Hence it is suggested that as a policy such approval should be accorded within at best 60 days, where abuse of power is apparent.
 - c) Sir, if such approval is given in at least one case per month, functioning of whole department would drastically improve. Officers would be objective in approach and would be more accountable. Tax payers would also be satisfied and above all, there would be better goodwill and reputation of the Income Tax department in national as well as international circle.
 - d) The high officials admit that there is "TRUST DEFICIT". Such meaningful actions, as aforesaid, will help in winning the trust of taxpayers. At the same time, the Government would achieve the objective of improving the department and the dream of Hon'ble Prime Minister Shri Narendra Modi ji would also be realized.
- 5) There is need to reduce litigation. **The high pitch assessments without evidence and in flagrant violation of natural justice made by the authorities lead to unnecessary litigation at the level of first appeal and then the usual practice of preferring appeals by the department in ITAT and High Courts also add salt to the injury. In at least 80 per cent cases, the departmental appeals are dismissed. The monetary limits prescribed by CBDT for departmental appeals has been praiseworthy but the action at the ground level Assessing Officers also need to be properly monitored for winning the trust of taxpayers and for the ends of transparency and justice.**
- 6) It is seen from faceless assessments and appeals that even though the submissions and explanations are filed and are on portal, yet without looking into them fresh notices are issued on the same issue.
- 7) It is seen that high pitched assessments are made ignoring the submissions and evidences put on portal, visible from naked eye and even mentioning to the extent that no reply was filed.
- 8) For every query reasonable time i.e. **two weeks should be given to reply**. However it is seen that not more than one- or two-days' time is given and in some cases time is given to comply within hours. Such practice is a farce, totally unjustified and needs to be immediately corrected. After getting Notice the taxpayer needs to compile papers and details and also needs to consult his Lawyer/ CA which takes time. Therefore, urgent Instructions should be issued for allowing **two weeks time to reply**.
- 9) No real time alert is given, the assessee every time has to keep some body on the portal, which is not practical for a general taxpayer.
- 10) When submissions of the taxpayer is on portal and high-pitched assessments are made completely ignoring the evidences and even not discussing the same either in the

subsequent show cause notices or in the assessment orders, proper monitoring is needed for the ends of justice, and action should be taken against erring officers.

- 11) There is no clarity in law with regard to the jurisdictions and it has become an era of notification (Notification Raj). Instead of issue of frequent Notification for jurisdiction, it is better to take up the jurisdiction issue with annual action plan.
- 12) The Notices for faceless assessments etc are being uploaded on the portal account of the assessee. It so happens that the assessee does not log on every single day to check the portal. We suggest that the NFeC or ANY communication from the department faceless centre MUST also be forwarded on the registered e-mail and an SMS should also be sent on the registered Mobile number of the taxpayer. Both these info is available on the assessee's profile.

B. FACELESS APPEALS:

- 13) The Faceless Appeal Center is granting inadequate time (say only 2 to 3 days) for compliance of their notices etc. This TWO day time is TOO short a period. After getting Notice the taxpayer needs to compile papers and details and also needs to consult his Lawyer/ CA which takes time. Therefore, urgent Instructions should be issued for allowing **two weeks time to reply**.
- 14) The Notices for NFAC appeals, and faceless notices etc are being uploaded on the portal account of the assessee/ appellant. It so happens that the assessee does not log on every single day to check the portal. We suggest that the NFAC OR NFeC or ANY communication from the department faceless centre MUST also be forwarded on the registered e-mail and an SMS should also be sent on the registered Mobile number of the taxpayer. Both these info is available on the assessee's profile.
- 15) It is seen from faceless appeals that even though the submissions and explanations are filed and are on portal, yet without looking into them fresh notices are issued on the same issue.
- 16) Appeals are not disposed of for months even though the submissions are filed and no further query is raised. Many times refixation notices are received without looking into the portal.
- 17) The faceless CIT(A) should be given target to dispose of the appeals within time framework and there should be some mechanism to dispose of the appeal within the time allowed u/s 250. It will not only reduce the pendency but also reduce the anxieties of small tax payers and reduce the arrears.
- 18) On Income Tax Portal, there is no grievance, rectification, early hearing mechanism or petition to be filed before faceless CIT(A). It is quite necessary which will avoid filing of second appeals in many cases before the ITAT.
- 19) Appeals in case of High pitched assessments where the assessed income is more than 3-4 times should be speedily taken up, the assessment and the appeal orders should be monitored by independent quasi-judicial authority, which may be constituted for the purpose so that the officers get tuned in making just and reasonable assessment.

C. OTHER SUGGESTIONS:

- 20) **Re-registration u/s 12AB & 80G:** Though the time limit for applying for re-registration u/s 12AB and u/s 80G has been extended till 31st March 2022, No clarification has been issued for the ALREADY existing registration, whether the existing 12AA and 80G will be deemed to be valid and the NGO who haven't yet

applied for re-registration, and whether donations received by such NGOs will continue to qualify for benefit of sec. 12AA and the donor will continue to get deduction u/s 80G. This clarification may please be issued for benefit of taxpayers.

- 21) Many NGOs who have already uploaded form 10A and applied for re-registration u/s 12AB & 80G have not yet been issued form 10AC . What would be the status of such NGOs and whether the donors will get 80G deduction in Asst. Year 2021-22 and in Asst. Year 2022-23 in cases the re-registration is not given by the authorities, within the FY 2021-22.
- 22) FORM 5 VsV still pending in many cases. We suggest that where all compliances made and payment under the VsV etc has also been made, the certificates MUST be issued, for so that Form 5 can be filed / uploaded in compliance to pending penalty notices being issued at random (though the date for completion of penalty proceedings has been extended). The feature VSV is not available on Income Tax Portal. CBDT need to act in the matter so that the matter does not keep hanging on.
- 23) Conclusion: We are hopeful that your honour would be kind enough to consider the above suggestions and take appropriate action at earliest.

Thanking you,

Yours faithfully,



(Adv K.K. Jain President)



(Narayan Jain, Chairman, Rep Comt)