

# FAQs & SURVEY ON FACELESS ASSESSMENT

**FROM THE PANEL DISCUSSION**  
At the National Tax Conference, 2020

Organised By : All India Federation of Tax Practitioners

Released on 2nd October, 2020

**Be the Change... You wish to see in the World!**

*-Mahatma Gandhi*



**ALL INDIA FEDERATION OF TAX PRACTITIONERS**  
(An Association of Advocates, Chartered Accountants & Tax Practitioners of India)

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# Quotable Quotes From The Panel Discussion

*"A concern has been expressed at many forums, whether FAS would result in High Pitched Assessments. I wish to affirm that it would be a Fair, Just and Objective Assessment!"*

*"Hitherto we were being perceived in the role of a 'Tax Enforcer.' We would now like to be perceived as a 'Tax Facilitator.'"*

*"Each Assessment Order passed by NeAC will be accompanied by a Feedback Form, which would allow the Taxpayer to share his experience of FAS."*

**- CBDT Chairman Mr. P. C. Mody**

*"You, I and all Stakeholders, that collaborate together to make the FAS successful, are the Pioneers in the World. FAS, in this manner is not yet implemented in any other country."*

*"FAS is a Data-Driven System where what is Red Flagged by our Risk Analysis will be asked from you. Beyond that No Roving Inquiry would be conducted! The overarching aim of the Scheme is to get Voluntary Compliance from the Taxpayers and to Minimise Disputes."*

*"The Vision of Hon'ble PM is very clear! He wants firstly, Cost of Compliance to be reduced. He wants those persons who have honestly complied with Taxes to be Honoured! Faceless Scrutiny shall be fully Transparent, disclosing all points of dispute from the very beginning, with a view to reduce cost of compliance."*

**- Pushpinder Puniha, PCCIT, NeAC**

*"FAS enjoys the three unique features of Transparency, Efficiency and Accountability. It will ensure that uniform decisions, free from any bias and based on merits are taken for all taxpayers, across all regions."*

**- Kamlesh Varshney, Joint Secretary, TPL**

*"If we want to have faith in the efficacy of our FAS, the cases under Section 263 must be extremely miniscule, otherwise we are challenging our own jurisdiction."*

*"The Board should give a Window in the Portal wherein the taxpayer can point out any mis-match in the information regarding 'Specified Financial Transactions' as reported in his Form 26AS, so that unnecessary scrutiny does not come to be initiated by NeAC."*

**- Mukesh Patel, International Tax Expert**

# Introduction

Evolution of the New Tax Regime of 'FACELESS ASSESSMENT' was envisioned by Hon'ble Prime Minister Shri Narendra Modi to usher in a New Era of Transparency, Efficiency and Accountability in India's Tax Administration through ease of compliance for Taxpayers.

With this objective in view, on 13th August, 2020, he launched the platform for 'Transparent Taxation - Honoring the Honest' to fast forward India's Direct Tax Reforms through the introduction of Faceless Assessments, Faceless Appeals and Taxpayers Charter. Faceless Assessment has come to be implemented from August 13, 2020, on PAN India basis.

The All India Federation of Tax Practitioners (AIFTP), at its National Tax Conference on 12th September, 2020, organised a Panel Discussion to discuss threadbare several important issues relating to the 'Faceless Assessment Scheme.' Taxman was invited to cover the Event as a Media and Research Partner.

Eminent Experts from the Tax Administration and Profession, who joined the Panel Discussion included:

- a. Mr. PC Mody [Chairman, Central Board of Direct Taxes (CBDT)]
- b. Dr. Pushpinder Puniha [Principal Chief Commissioner of Income-tax, National e-Assessment Centre]
- c. Mr. Kamlesh Varshney [Joint Secretary TPL, CBDT]
- d. Mr. Mukesh Patel [International Tax Expert and Member of Task Force on Income-tax Law]
- e. Sr. Adv. Ganesh Purohit [Senior Advocate and Past President, AIFTP]
- f. Mr. Samir Jani [Advocate and Secretary General, AIFTP]

The proceedings of Panel Discussion came to be very widely viewed by all Stakeholders across the country, through the medium of Zoom Video Conferencing, Facebook and You Tube.

Complete proceedings of the event can be viewed from this link. [https://www.facebook.com/watch/live/?v=604308516906937&ref=watch\\_permalink](https://www.facebook.com/watch/live/?v=604308516906937&ref=watch_permalink)

On this eventful occasion Taxman and AIFTP undertook a unique and unprecedented initiative by inviting Stakeholders to contribute to this Tax Revolution by participating in a Survey covering 10 Key Issues concerning the Faceless Assessment Scheme (FAS). The Objective of this Survey is to help Central Board of Direct Taxes (CBDT) and National e-Assessment Centre (NeAC) to fine-tune the provisions of FAS to meet the expectations of all Stakeholders.

This E-Book presents important highlights of the Panel Discussion in the form of FAQs and also share the very interesting and insightful results of the Survey on FAS.

## 2.

# Excerpts from the Speech of CBDT Chairman

At the start of the Panel Discussion, the Hon'ble CBDT Chairman Mr. P. C. Mody gave his Keynote Address. Here are the key excerpts from the Chairman's Speech:

- a. Faceless Assessment Scheme means moving from territorial jurisdiction to dynamic jurisdiction. Dynamic jurisdiction means assessment of one place can be done by Assessment Unit at other places.
- b. Each order passed by NeAC shall be accompanied by a feedback form so that a taxpayer can share his feedback. This shall be a big move in the direction to bring accountability factor. Further, there shall be helpline to monitor constantly and continuously to fix accountability.
- c. Hitherto the Form 26AS used to display the information pertaining to income and TDS. Now, the Department is trying to enhance the scope of Form 26AS and make available all the information in Form 26AS which are in the possession of the Department. So that taxpayers can file accurate Income-tax returns.
- d. There will be a facility of video conferencing or interaction between Assessment Unit and the taxpayer.
- e. The jurisdictional hierarchy will continue to hold the PAN and related records of the taxpayer. They will be handling post-assessment works, like rectification, appeal effect.
- f. The Department is enhancing the scope of SFT to bring the entire information in Form 26AS so that a taxpayer does not miss certain information in his Income-tax returns. It will ensure accurate filings of return and less of scrutiny.
- g. If particular information does not belong to taxpayer and it is reflecting in Form 26AS, he can flag that information that it does not belong to him. A taxpayer will be provided with the option to mark any information in Form 26AS as 'Confirm', 'Deny' and 'Amend'.
- h. If any adverse view is proposed to be taken against the taxpayer and he submits a response against the draft assessment order, that response shall go to a different assessment unit. So that Assessment Unit can take an independent view and not the same mind which has made the draft assessment order.

# 3.

## Frequently Asked Questions (FAQs)

The Experts discussed the vital issues relating to Faceless Assessment Scheme to give clarity on several new concepts under FAS. All the issues raised in the Panel Discussion were answered by the Department Officials Dr. Pushpinder Puniha and Mr. Kamlesh Varshney. The issues for consideration were highlighted by Mr. Mukesh Patel, Mr. Ganesh Purohit and Mr. Samir Jani. The important answers and clarifications given on the occasion have been duly compiled in the form of FAQs presented hereinafter:

### *Part A - Scope and Status of certain existing provisions of the Income-tax Act in light of new provisions of the Faceless Assessment Scheme.*

**3.1 What will be the scope of operation of the current provisions under Section 144A in relation to the Powers of a Joint Commissioner to Issue Directions, either suo motu or on a reference by the AO or the Taxpayer? [Issue of Directions by JCIT - Section 144A]**

Section 143(3A) empowers the Central Government to notify a scheme for the e-assessment of total income or loss of the taxpayer under section 143(3). Further, to give effect to such scheme, Section 143(3B) empowers the Central Govt. to issue directions to make certain provisions not applicable or make them applicable with certain exceptions, modifications or adoptions.

Section 144A provides that the Joint Commissioner may issue necessary directions to the Assessing Officer to guide him to complete the assessment proceedings. Such directions can be issued if it is necessary to do so having regard to the nature of the case or the amount involved or for any other reason. During the webinar, it was assured that if there are team-based assessments the provisions of Section 144A shall not apply. For the assessments other than faceless assessments the scope of section 144A shall remain intact.

**3.2 Section 142A empowers an AO to make a reference to a Valuation Officer. What will be the status of Section 142A, in view of the role of the Technical Unit as envisaged under the FAS?**

*[Reference to Valuation Officer – Section 142A]*

For the purpose of making assessment or re-assessment, the Assessing Officer may make a reference to the Valuation Officer to estimate the value, including fair market value, of any asset, property or investment. Such reference can be made by the Assessing Officer whether or not he is satisfied about the correctness or completeness of the accounts of the taxpayer.

During the webinar, it was explained that the Department has prepared an SOP (which was under approval) that in the faceless regime the assessment unit shall make a reference to the Technical Unit.

*PS: Pursuant to the webinar, the Taxation Laws Amendment Act has introduced a new section 142B in regard to Faceless Valuation.*

**3.3 What will be the scope of Section 144BA in relation to reference by an AO to a PCIT for Declaration of an Impermissible Avoidance Arrangement in accordance with GAAR?**

*[Declaration under GAAR – Section 144BA]*

If an Assessing Officer considers an agreement as an Impermissible Avoidance Agreement, at any stage of the assessment or reassessment, he may make a reference to the Principal CIT or CIT. If CIT is not satisfied with the objections raised by the taxpayer, then he shall make a reference to the Approving Panel for declaration of arrangement as an Impermissible Avoidance Arrangement within the meaning of GAAR.

As hitherto there isn't any arrangement which has been declared as Impermissible Avoidance Agreement, it has been assured that this issue will become clear in future when SOPs are issued. These provisions can be invoked only during assessment proceedings and not before that. If there is a requirement to invoke GAAR to declare any arrangement as Impermissible Avoidance Agreement, the proceedings may be transferred to normal jurisdiction. It will be covered under SOPs to be issued by the Department.

**3.4 Since a review of the Draft Assessment Order has been contemplated by an independent 'Review Unit,' is there a need to continue with the provisions of Section 263?**

*[Revision by Commissioner – Section 263]*

Section 263 empowers the Commissioner (and Principal Commissioner) to call for and examine the record of any proceedings under the Act to exercise the revisionary power under this provision. If Commissioner considers that an order passed by the assessing officer in a proceeding is prejudicial to the interest of the revenue, he may pass a revisionary order.

On the scope of the revisionary power under Section 263, it was clarified that such powers are warranted as some assessments are outside the purview of faceless scheme assessments. Moreover, there could be a possibility of mistakes in faceless assessments and the orders passed by the NeAC and there was a necessity to maintain Section 263 intact.

However, responding to the point that if faith was to be instilled in the efficacy of Faceless Assessment, the cases u/s. 263 must be extremely miniscule, else it would mean challenging own jurisdiction, it was observed by both the Departmental authorities that this was a fair point and very well taken. It was also assured that it will be the endeavour of the Department in group based assessment that firstly, such mistakes which can be called as prejudicial to revenue are avoided and secondly if at all it happens, such action will be open to audit trail. It was further observed that in this context, there will be a responsibility on the Officers and they will thus not take this kind of action very easily. No Commissioner would venture into a decision that has been taken maturely, considerately by application of mind by group of Officers.

*PS: Pursuant to the webinar, the Taxation Laws Amendment Act has introduced a new section 264A in regard to Faceless Revision.*

**3.5 What will be the scope and powers of 'reopening' under Section 147? Should it be restricted to the issues which were not duly considered, either by the 'Assessment Unit' or 'Review Unit' under FAS?**

*[Reopening by Jurisdictional AO – Section 147]*

Section 147 provides that if an Assessing Officer has a reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess/reassess such income. When an assessment has been reopened, any other income which has escaped assessment and which comes to the notice of the Assessing Officer subsequently in the course of the proceeding can also be included in the assessment.

On the scope of this provision, it was explained that if the assessment team has not examined any particular issue, they were supposed to examine the same and to that extent the provisions of Section 147 shall remain intact.

*PS: Pursuant to the webinar, the Taxation Laws Amendment Act has introduced a new section 151A in regard to Faceless Reassessment.*

**3.6 What shall be the scope for dealing with rectification application under Section 154 by the Jurisdictional AO? Clarity is needed on this aspect as AO may not be in a mindset to rectify any mistake, which has been passed by a team of officers.**

*[Rectification by Jurisdictional AO – Section 154]*

Section 154 provided that if there is any mistake in the order passed by the Income-tax authorities, the said authority can rectify such a mistake. The power to rectify the mistake may be exercised by the authority

concerned on his own initiative or when it is brought to his notice by the taxpayer concerned.

On this aspect, the Panel of tax officials explained that although the possibility of mistake shall be minimal in faceless assessment scheme, but there are chances of mistake apparent from the record. In this case, these powers will remain with the Jurisdictional AO to rectify any apparent mistake in the orders passed by NeAC.

*PS: Pursuant to the webinar, the Taxation Laws Amendment Act has introduced a new section 157A in regard to Faceless Rectification.*

### **3.7 What will be the scope of Section 241A under the new FAS and how will it be administered?**

*[Withholding of Refund – Section 241A]*

With effect from Assessment Year 2017-18, processing of Income-tax return under section 143(1) is mandatory before issuing any notice for scrutiny assessment. Thus, it becomes mandatory for the Assessing Officer to pay the amount of refund determined after processing of return. To address the concern of recovery of revenue in doubtful cases, a new Section 241A has been inserted in the Income-tax Act to provide that where, after processing of return, Income-tax refund is found due to the taxpayer and Assessing Officer is of the opinion that the grant of the refund is likely to adversely affect the revenue, he may withhold the refund up to the date on which the assessment is made.

On the scope of this provision, it was assured that Department is working to build a window wherein it will take inputs from the faceless team and the jurisdictional assessing officer to identify if the refund is required to be withheld in a particular case. It will be ensured that it will be done only after taking the views of faceless team and jurisdictional Assessing officers.

### **3.8 Will Scrutiny Assessments involving Orders by Transfer Pricing Officers, who are part of the International Tax Charge, be covered under FAS?**

On this aspect, it was explained that domestic companies covered under Transfer Pricing norms shall be covered under the faceless regime and Department is developing SOPs to refer to the TPO. The work of TPO shall be in a normal manner like it is happening in the current regime.

### **3.9 What shall be the modus operandi in cases where assessments are required to be completed under Section 144C?**

Section 144C allows an taxpayer to approach the Dispute Resolution Panel (DRP) against any variation in the returned income or loss proposed by the Assessing Officer in the draft assessment order. DRP can be approached by any non-resident, not being a company, or any foreign company or any person in whose case variation arises as a result of the order of Transfer Pricing Officer. In the FAS, there is also a provision to prepare a draft assessment order.

Whether in a case covered by FAS, there will be two draft assessment orders, one under the provisions of FAS and the other as per the provisions of Section 144C? On this aspect, it has been explained that the Department will issue SOPs to clarify that the draft assessment order would be issued under the faceless scheme where there is a variation in income because of Section 144C.

*PS: Pursuant to the webinar, the Taxation Laws Amendment Act has introduced a new sub-sections (14B) to (14D) in section 144C in regard to Faceless Proceedings before the DRP*

### **3.10 Whether small cases of NRIs (within the International Tax Charges) need to be covered under FAS through transfer to normal jurisdictions?**

The Department officials assured that they will take up this matter with higher authorities at CBDT level, requesting them to ensure that such cases of NRIs within the International Tax Charges are duly covered within the scope of the faceless assessment scheme.

## ***Part B - Practical Issues relating to Procedural Aspects of Faceless Assessment***

### **3.11 FAS provides that NeAC shall serve a notice to the taxpayer under Section 143(2) specifying the issues for selection of his case for assessment. While in cases selected for 'Limited Scrutiny', all the issues would be duly specified, what would be the framework of the notice in a case intimating 'Full Scrutiny'?**

The CBDT has introduced the concept of 'Limited Scrutiny' to limit the scope of income tax scrutiny. Limited scrutiny is converted into complete scrutiny if Assessing Officer finds some evidence of possible escapement of income.

Department officials ensured that limited scrutiny will be converted into full scrutiny in only the 'rarest of rare cases'. The officials further explained that the faceless scheme is based on the data-driven system. If anything is red-flagged by the risk-based assessment mechanism, it shall be asked from the taxpayer. Besides this, no further roving enquiries shall be made. Department will be working through strict SOPs and it will make sure that the points under dispute are provided to the taxpayer at the very initial stage to minimise the cost of compliance.

### **3.12 FAS provides that a taxpayer shall be required to file his response to the NeAC within 15 days from the date of receipt of the notice. It needs to be clarified that such a period shall be granted for submission of responses to all subsequent Notices as well.**

It was assured that, in any case, the taxpayer shall not be given less than 15 days to respond to all notices issued by NeAC.

**3.13 Where there are multiple issues of a complex nature raised under a single notice, should the NeAC permit the taxpayer to submit his response in parts?**

The Panellists from the Dep. said that this issue is under consideration. They are tweaking their SOPs to allow the taxpayer to file multiple replies where complex issues are involved.

**3.14 Where a Taxpayer is prevented by a reasonable cause for timely compliance of a Notice from NeAC and requests for further time, whether suitable accommodation of time may be permitted?**

The officials assured that the Department will allow sufficient time to the taxpayer to respond to notices. It will take recourse to section 144 proceedings only in a very rare situation. The new functionality will be brought in to allow the taxpayer to seek adjournment where they have been prevented by reasonable cause to submit their response well within the allowed time.

**3.15 What will be the circumstances and the time frame within which proceedings initiated under the Faceless Assessment may be transferred to the Jurisdictional AO?**

The present FAS provides that at any stage of the assessment the NeAC may, if considered necessary, transfer the case of the taxpayer to the Jurisdictional Assessing Officer. However, the officials assured that as far as possible transfers of cases shall be discouraged in the faceless regime.

**3.16 The e-filing website does not permit a taxpayer to upload more than 10 attachments, not exceeding 10 Mb each. Is Dep. considering the possibility to cure this defect?**

It was assured that the Dep. will enhance the capabilities to accept responses by the taxpayer. It was categorically assured that the dep. will make sure that pointed and relevant questions only are asked from the taxpayer. However, the Panellists also said that if taxpayers provide focused replies then these limits should be more than enough to capture the information asked in notices.

**3.17 How would NeAC deal with Documents in Vernacular Languages?**

It is very common to see several documents, that is, title deeds of properties, communications with local and state government authorities, accounts by small businesses, are maintained in the vernacular languages. Presently, within the territorial jurisdiction, taxpayers are not put through the ordeal of submitting translations of such documents, as officers or inspectors are familiar with the vernacular language.

On this aspect, it was explained that there are government-approved setups which handle the job of converting vernacular languages.

Department will deal on its own to convert the vernacular languages. Although taxpayers should try to make submissions in understandable languages. Thus, no burden will be on the taxpayer to get such documents converted.

**3.18 How can a taxpayer submit (to an Assessment Unit) a clarification on or rectification of any information or document submitted earlier during the assessment proceedings?**

It may be necessary at times for a taxpayer to address a suo motu communication to an Assessment Unit for clarification on or rectification of any information or documents submitted earlier during the assessment proceedings. The officials took note of this requirement as no such functionality is in place. They assured that the Department will take up this issue with system directorate to put it into this practice.

***Part C - Questions on Issues relating to the Role of the Four Designated Units & AO and Inter-se Coordination***

**3.19 What will be the role of the Verification Unit about the issue of summons and calling of information?**

Under the FAS, an Assessment Unit (AU) to whom a case is assigned can make a request to the NeAC for obtaining further information, documents or evidence from the taxpayer or any other person. Similarly, the AU can also request NeAC for conducting of certain inquiry or verification, by a Verification Unit (VU) or seek technical assistance from a Technical Unit (TU). When a VU is entrusted by NeAC to conduct an inquiry or verification by resorting to the provisions under Section 131 through the issue of summons and recording of a statement under Section 133 or 133C, the VU would do the needful in this regard.

*PS: Pursuant to the webinar, the Taxation Laws Amendment Act has introduced a new section 135A in regard to Faceless collection of information.*

**3.20 Where a statement is recorded or information is collected, which has a material bearing with the assessment of a taxpayer, at what stage shall he be confronted with the same and how will he be given an opportunity of cross-examination?**

The officials said that dep. is very conscious of these requirements. They already have SOPs in place on this matters but there are certain issues like cross-examination where the Department has yet to draft the SOPs. The cross-examination shall not be denied considering the Principles of Natural Justice. However, it shall not happen physically, but through video conferencing and written communication.

### **3.21 Under what circumstances would an Assessment Unit make a reference to the Verification Unit?**

It was explained that there are SOPs to take care of this and which are under approval.

### **3.22 What shall be the role of a Technical Unit?**

An AU can approach the NeAC for seeking Technical Assistance from the four Technical Units (TUs) set-up in the country for providing Technical Inputs on issues such as Transfer Pricing, Legal, Technical, Data Analytics, Forensic, Accounting, Information Technology, Valuation and Audit. On certain issues such as Forensic, Valuation etc., the concerned TU will need to independently deal with several persons, including the taxpayer.

The Panellists added that the Technical units will be like the back office of experts. There will be only 4 technical units throughout the country that will be working under the Principal Commissioner of NeAC. The purpose of technical units will be to settle the issue. These units are not answerable to any ReAC and they are answerable only to Principal Commissioner NeAC. They are functional specialists, so as to ensure that the consistency of decision making is implemented throughout the country.

### **3.23 What shall be the binding nature of the Judicial Pronouncements in the regime of dynamic Jurisdiction?**

The Panellists were requested to clarify whether the decisions of the relevant High Court within whose jurisdiction the taxpayer is situated shall prevail over the jurisdictional domain of the ReAC under which the AU is functioning.

The officials replied that this point will become important at the time of faceless appeals, for which scheme was to be notified. However, it was clarified that the taxpayers jurisdiction will prevail over the ReAC location.

### **3.24 How taxpayers can seek the copies of material impounded during the survey proceedings?**

It was explained that such cases where material is impounded shall go to the Central Charges and will not be under faceless assessment.

### **3.25 Should Dep. make available the information regarding Judicial pronouncements accepted by them in the public domain?**

The focus of the FAS is on transparency, efficiency and accountability. Thus, it is of paramount importance that the uniformity is maintained in applying the ratio of judicial pronouncements on all issues of crisp and clear legal interpretation, where the subjectivity of facts has no bearing

or significance. To ensure that taxpayers rely on the settled legal position in their assessments and the AUs within the different ReACs also follow the same, the TU should notify all judicial pronouncements, the ratio of which is accepted by the Department in principle and on which there is no challenge or dispute raised by the Department. This would greatly assist in ensuring certainty in the finalization of assessments as well.

On this issue, the Panellist from the Department responded positively that this was a very meaningful suggestion which would be duly considered for implementation.

**3.26 What shall be the procedure to dispose of the objections relating to a reopened assessment?**

The FAS states that the jurisdiction for reopening of an assessment under Section 147 shall rest with the Officer who enjoys territorial jurisdiction over the Taxpayer. Accordingly the reasons for such reopening would be recorded by the AO and thereafter the reassessment would be framed by NeAC. Where a taxpayer files objections against the reasons recorded for reopening, it would be necessary to ensure that the same is disposed of by the AO in time, so that the assessment proceedings by NeAC can be conducted and completed within the prescribed time limit.

The Officials said that the Department was examining this issue and CBDT is yet to decide on it. This shall be taken care off in the Departmental SOPs.

**3.27 Who should be approached where assessment is set-aside by an appellate authority?**

It was explained that it will go to the faceless assessment unless it falls under Central Charge or International Tax Charge.

**3.28 Who should be approached for making a claim in regard to the valuation of a property for Section 50C or Section 56(2)?**

It was explained that if the assessment is under faceless regime it will go to the Verification Unit.

**3.29 Who should be approached for making a claim to record a total partition of a HUF under Section 171 or giving notice for discontinuance of business under Section 176?**

It was clarified that the taxpayer can give notice to the territorial jurisdiction. Pre and Post assessment work shall remain with territorial jurisdiction. For assessment work, jurisdiction is to be shared with the faceless team.

## ***Part D - Some Key issues requested to be incorporated in the FAS***

### **3.30 Request to Align the Time for Passing a Penalty Order, keeping in view the provisions of Section 275.**

It was pointed out that the FAS, as duly modified by Notification Nos: S.O. 2745 and 2746 dated 13th August, 2020, states that, "the NeAC shall levy penalty as per the Draft Order of Penalty and serve a copy of the same alongwith the Demand Notice on the Taxpayer or any other person, as the case may be and thereafter transfer electronic record of penalty to JAO for necessary action."

The above provision in the FAS created an impression that the Penalty Proceedings shall come to be simultaneously finalised alongwith the completion assessment proceedings by the AU. It needed to be clarified as to the time and stage at which the Penalty Order shall be passed by the NeAC, more particularly keeping in view the provisions of Section 275, in regard to limitation of time for passing the penalty order.

It was therefore urged that the Penalty Order for underreporting or misreporting of income under Section 270A should not be finalised until the quantum proceedings are duly adjudicated. If this equitable principle is not followed, the same would give rise to several complications and severe hardships being inflicted on the taxpayer.

In response to the above, the Departmental Experts explained that the introduction of a separate Scheme for monitoring Faceless Penalty Proceedings was being contemplated, which would take due care of the above concerns.

## 4.

# TAXMANN - AIFTP Survey Results on Faceless Assessment

Taxmann and All India Federation of Tax Practitioners (AIFTP) conducted a Survey to help Central Board of Direct Taxes (CBDT) and National e-Assessment Centre (NeAC) to fine-tune the Faceless Assessment Scheme (FAS) to meet the expectations of all Stakeholders, including Taxpayers and Tax Professionals. Responses for the Survey were received from a cross-sample of participant stakeholders across the country, during the Survey Period 12th to 21st September, 2020. The Responses received under this Survey have been duly analysed and presented hereunder, with a view to enable CBDT and NeAC to understand and appreciate the Views of Stakeholders in regard to some key issues concerned with the policy and implementation of the Faceless Assessment Scheme.

### 4.1 Tackling Mismatches in Form 26AS to avoid Futile Scrutiny:

Mismatches in Form 26AS due to the erroneous reporting of Specified Financial Transactions not only causes anxiety to Taxpayers but also leads to futile scrutiny putting unwanted strain on the NeAC. How can this be effectively resolved?

Options	Results
There should be a Window on the Income-tax Portal for Taxpayer to submit his response pointing out the discrepancies in Form 26AS	61.84%
Income-tax Return should carry a column where a Taxpayer can point out such discrepancies	29.73%
Taxpayer should approach Reporting Agency to make correction	7.79%
Leave it to the discretion of NeAC to deal with this issue	0.64%

#### 4.2 Need to restrict the Scope of Revision and Reopening under FAS:

FAS contemplates a quality assessment and also an independent 'Review' of the Draft Assessment Order. In this context, would you agree that the scope of Revision by a Commissioner under Section 263 on the ground that it is erroneous and prejudicial to Revenue or Reopening by an AO under Section 147 on an issue which was duly considered under FAS needs to be restricted?

Options	Results
Scope of Revision or Reopening should be restricted only to issues on which there was no inquiry under FAS	56.19%
Powers for Revision and Reopening must vest with NeAC	21.11%
Existing provisions may continue	14.60%
Can't Say	8.10%

#### 4.3 Power of Withholding of Refund:

Under the current provisions of Section 241A, the power of withholding a Refund, if grant of the same is likely to adversely affect the Revenue, is vested with the Jurisdictional AO. Who should be granted the power under FAS?

Options	Results
The power should vest with NeAC	39.02%
The power should remain with Jurisdictional AO	33.97%
The power should be granted to concerned PCCIT	19.59%
Can't Say	7.42%

#### 4.4 Specifying Issues for Scrutiny in the First Notice of Assessment:

Would you agree that the First Notice under Section 143(2) issued by NeAC to a Taxpayer should specify the nature, whether Limited or Full Scrutiny and further specify all the issues for Scrutiny? Would you also agree that in a Limited Scrutiny, any subsequent questionnaire should not enlarge the scope of such Limited Scrutiny?

Options	Results
Yes, fully agree	85.51%
Partially Agree	9.61%
Do Not Agree	4.09%
Can't Say	0.79%

#### 4.5 Time Limit for Compliance to Notices issued by NeAC:

FAS allows a Taxpayer 15 days' time to submit his response to the first Notice issued by the NeAC under Section 143(2). What do you think about time for compliance for subsequent Notices issued under Section 142(1) seeking information and details?

Options	Results
In case of large number of queries, Taxpayer should be permitted to make compliance in parts	67.94%
Such time of 15 days for submitting response should be allowed for each subsequent Notice as well	21.90%
Such reasonable time as may be decided by NeAC	9.05%
Can't Say	1.11%

#### 4.6 Time-Limit for Issuance of Draft Assessment Order:

To enable the Taxpayer to respond to the Modifications as proposed under the Draft Assessment within a reasonable time-frame, it is important that a Time-Limit must be prescribed by the NeAC for Issuance of Draft Assessment Order. What time-limit in your opinion would be reasonable?

Options	Results
At least One Month prior to the Time Barring Limit	40.38%
Within 4 months from the issuance of the First Notice	31.70%
Such reasonable time as may be decided by NeAC	23.34%
Can't Say	4.57%

#### 4.7 Taxpayer to be confronted with Evidences in Draft Assessment Order:

Under FAS, a Verification Unit is authorised to undertake verifications on issues concerning the Scrutiny Assessment, as requested by an Assessment Unit. If such evidences are to be used against the Taxpayer, natural justice requires that a Taxpayer should be confronted with Evidences. At what stage of the assessment proceedings should a Taxpayer be confronted with evidences that are proposed to be used in the Draft Assessment Order?

Options	Results
As soon as collected by Verification Unit, giving an opportunity to Taxpayer for Rebuttal	54.94%
Along with Show Cause Notice accompanying Draft Assessment Order	28.34%
At such stage of assessment as considered reasonable by NeAC	10.83%
Can't Say	5.89%

#### 4.8 Stage of Show Cause Notice and Hearing through Video Conferencing:

If as per current FAS guidelines, a Show Cause Notice is served along with the Draft Assessment Order, the concerned Assessment Unit may not have an open mind to appreciate the merits of the Taxpayer's submissions. Would you support the proposition that FAS should provide for issue of a Show Cause Notice seeking the Tax Payer's Response and/or permitting Video Conferencing, only after which the Draft Assessment Order may be framed?

Options	Results
Yes, FAS should be modified for the above	79.27%
No, Existing FAS guidelines are sufficient	8.70%
As may be decided by NeAC	6.17%
Can't Say	5.85%

#### 4.9 Opportunity to Taxpayer for Seeking Review of Draft Assessment Order:

While the present provision for assigning a Draft Assessment Order to a Review Unit ensures the quality of an assessment qua the Department, would you agree that a Taxpayer should also be permitted to request for a review of such Order, where the modification involved in comparison to the returned income is very substantial?

Options	Results
Yes, Review should be permitted, subject to Guidelines by NeAC	83.97%
Existing Provisions may continue	9.84%
If not objected by Assessment Unit	3.49%
Can't Say	2.70%

#### 4.10 Time and Manner of Passing an e-Penalty Order, post Assessment:

A reading of the present FAS gives an impression that the Penalty Proceedings may come to be simultaneously finalised alongwith the completion of proceedings by the Assessment Unit, since the Records are proposed to be transferred to the Jurisdictional AO.

Would you support the view that a Penalty Order for under reporting or misreporting of income under Section 270A should not be finalised until the quantum proceedings are duly adjudicated, in absence of which it would not only result in undesirable litigation, but also create grave hardships for the Taxpayer?

Options	Results
Yes, e-Penalty should wait until adjudication of Quantum Appeal	77.53%
E-Penalty Order may be passed, but Recovery to be in abeyance	13.77%
Can't Say	5.22%
No, e-Penalty cannot wait beyond Assessment	3.48%

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