



सत्यं और सत्वरं न्यायं ॥

Income Tax Appellate Tribunal Bar Association

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To,
The Hon'ble Prime Minister
Govt. of India, North Block
New Delhi

Dear Sir,

Sub: Representation with respect to 'Faceless Appeal Scheme' proposed to be introduced in the functioning of Income Tax Appellate Tribunal (ITAT), by the Finance Bill 2021

Background

Under Central Government's ('CG') drive for automation of various proceedings conducted under the Income Tax Act ('Act') in faceless manner, various steps have been taken in past such as substantial amendments in the Act for enabling CG to notify faceless schemes, such as introduction of faceless assessment scheme 2019, faceless appeal scheme 2020, faceless penalty scheme etc. As a step further, the Finance Bill, 2021 now seeks to transfigure ITAT in the same manner, thus making the final fact-finding authority also faceless, by migrating the appeal process online.

Finance Bill 2021 proposes to insert new provisions under section 255 of the to enable CG to frame a faceless scheme for conducting ITAT proceedings so as to impart greater efficiency, transparency and accountability by -

- Eliminating the interface between the ITAT and parties to the appeal in the course of appellate proceedings to the extent technologically feasible;



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- Optimising utilisation of the resources through economies of scale and functional specialization
- introducing an appellate system with dynamic jurisdiction

The CG is further empowered to issue directions by March 2023 to the effect that any provision of the Act shall not apply or shall apply with exceptions, modifications and adaptations for giving effect to such scheme.

Despite the provisions and procedure pertaining to faceless assessments and appeals being already subject to significant criticism, moving the ITAT in faceless system, thereby making the three significant changes in the journey of a tax dispute almost at the same point of time signals impending disaster.

Likely Hardships / issues requiring serious deliberation and consultation

Oral arguments vs. Written Submission

- Since golden days, the concept of hearing is an indispensable part of appellate proceedings and justice delivery system. The word 'hearing' has to be understood in its natural avatar i.e. to listen.
- In any appellate proceedings, oral arguments have an altogether different impact as compared to the written submissions. During the course of hearing, there are arguments and debates and there are questions and answers which goes on simultaneously, which leads to clearance of many doubts and issues which is harboured by or which crops up in the mind of the appellate authority. Every taxpayer has the right of being heard and to the assured adherence to principle of natural justice. How effective will the faceless ITAT be in complying with and adhering to the same is yet to be addressed?



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- Explaining very peculiar factual matrix needs physical demonstration before the Hon'ble Members of the Tribunal. Faceless ITAT would restrict such explanation / conveyance of facts only to the extent possible through written submissions. Further, no body can deny that it is far easier to explain the factual matrix and legal propositions of one's appeal orally than by reproducing and conveying it in writing.
- While faceless appeal system can be beneficial for simple matters, it is quite a different story for complex disputes. The challenges include lack of adequate infrastructure for uploading data, limitations on file size, number of documents, difficulties in explaining complex facts, business structures and intricate legal aspects, etc.

ITAT as Final Fact-Finding Authority

- ITAT is the final fact-finding appellate authority as the High Court & Supreme Court admits substantial questions of law only and not of facts. It is worth noting that majority of the cases argued before ITAT involve careful study and consideration of factual aspects of the case, verification of documents including agreements etc. If the system moves to faceless regime, how this task will be undertaken, is hard to even visualize
- Matters pertaining to transfer pricing and international tax needs vast amount of references made to factual documents and bilateral treaties. It would become increasingly difficult to justify the taxpayers point-of-view only by the way of written submissions. So it is very essential and desirable that the proposed faceless scheme should be drafted very meticulously and not simply to be borrowed from the existing Faceless CIT(A) Appeal Scheme.
- There is already faceless mechanism for assessments and appeals. With faceless ITAT coming into effect, there will be



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extreme difficulty in disposal of appeals and bringing the facts on record for cases which are extremely factual in nature.

Dynamic Jurisdiction

- In tax disputes, precedents play an important role. If Ahmedabad Bench of the ITAT is hearing a dispute and the same issue has been decided one way or other by a Co-ordinate Bench, then the said decision is binding. In case the Bench does not agree with the views expressed, the matter will have to go to a larger Bench. Similarly, where different views are expressed by different Benches, Special Benches are constituted. A Bench normally follows a decision of the jurisdictional High Court. All these well settled concepts will be at peril when the concept of 'dynamic jurisdiction' is attempted.
- Under the faceless regime, the term "Jurisdiction" will need to re-evaluated to understand its meaning and importance in the context of faceless appeal with dynamic jurisdiction.

We further respectfully submit that there appears to be a fundamental misconception as to the proposed objective for bringing the proposed amendment. The proposed amendment seeks to bring "economies of scale". We wonder how that could be achieved. It is not as if by conducting appeals on faceless basis there would be reduction in the time or efforts; in fact they would increase because even a smallest detail would have to be documented, explained and proved. Similarly the other objective of "functional specialisation" is also impossible to achieve firstly because there is nothing like functional speciality of the Hon'ble members of the Tribunal and secondly, in any case, they are not under the Ministry of Finance at all. In any case the matters can not be allocated among the Benches of the Tribunal on any such perceived speciality. Therefore these objects are, to say the least, illusory.



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Recommendation

In the interest of justice and fair play, it is our humble request to:

- Drop the idea of faceless ITAT and allow the first two experiments of faceless assessment and faceless CIT(A), some more years before embarking upon the faceless ITAT
- **Alternatively**, the virtual hearing may be implemented only in optional basis i.e. no virtual hearing may be conducted, unless the parties to the appeal or Hon'ble members expressly desire that they wish to conduct the hearing of the matter in faceless regime

Conclusion

In view of above discussion, we make a humble request to kindly drop the proposed idea of Faceless ITAT and consider our representation.

Yours faithfully,

For, ITAT Bar Association, Ahmedabad

- sd -

Saurabh N. Soparkar
President

1) ✓ The Hon'ble Finance Minister,
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New Delhi

2) The Hon'ble Minister of Law and Justice
Govt. of India, North Block
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3) Hon'ble Revenue Secretary



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