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The Faceless Regime in the Income-tax Department and Its Impact on Principles of Natural justice

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ABSTRACT

After the successful implementation of the Faceless assessment scheme, the Income-tax department has also launched a faceless penalty scheme and faceless Appeals system before CIT(Appeals). It is claimed that Faceless Assessments & Faceless Appeals have drastically reduced unwanted interaction of the department with the assesses, helped in speedier disposal & transparency, and instilled an environment of mutual trust between the department and the assesses. In the Finance Bill, 2021, it has been proposed to make the Income Tax Appellate Tribunal (ITAT) faceless by amending section 255 of the Income Tax Act, 1961.

This paper seeks to enquire about the impact of the e-initiatives in proceedings related to assessment, e-penalty, and appeals to the natural justice principles with special emphasis on the faceless assessment initiative undertaken by the Income-tax department. For this purpose, recent rulings of Income Tax Appellate Tribunals and higher appellate forums have been analysed, where the issue involved related to the violation of natural justice through orders passed by the department in the faceless regime.

I. INTRODUCTION

The Income-tax department has been at the forefront among various departments of the Government of India when it comes to embracing the latest technology. The benefits have been twofold, viz. Enhancement in ease of compliance for taxpayers and faster processing at the end of the department. The department has embarked on several Information Technology driven ambitious programs like CPC-ITR (Centralized Processing Center for processing of Income-tax Returns), e-Filing of Income-tax Returns (ITRs), e-TDS (Tax Deduction at Source), Online Tax Accounting System (OLTAS), Income Tax Business Application (ITBA), Refund Banker, e-Nivaran, e-issuance of PAN (Permanent Account Number) and Project Insight to provide better taxpayer services which are at par with the best in the world by leveraging technology. The CPC and e-Filing are two such key projects for providing tax-payer services in the country.

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E-Filing of Income tax returns, an e-governance initiative of the Income Tax Department, began in 2006 and had grown from 2.15 Cr in FY 2012-13 to 6.68 Cr in FY 2018-19. A new e-filing portal was launched in 2021 with improved features such as a taxpayer-friendly portal integrated with immediate processing of ITR return, pre-filled returns, free-of-cost ITR preparation software, a new call center for taxpayer assistance including chatbot/ live agent and mobile app function.² The total ITRs filed until 31st October 2022 for AY 22-23 were roughly 6.68 crores³. The surge of filing ITRs peaked on 31st July 2022 (due date for salaried taxpayers and other non-tax audit cases) with over 72.42 lakh ITRs being filed on a single day i.e. on 31st July 2022, which is an all-time record in history of e-Filing. The e-filing portal also set other benchmarks on 31st July 2022 including – the highest per second rate of ITR filing: 570, the highest per minute rate of ITR filing: 9573, and the highest per hour rate of ITR filing: 5,17,030⁴. Besides e-Filing, CPC has been upgraded tremendously, leading to an incredible reduction in processing time and consequent issuance of refunds. The income-tax department aims to achieve real-time processing of ITRs in the very near future, which will set a new benchmark in taxpayer services at the International Level.

1.2. In continuation to the above-mentioned e-governance initiatives, the Income-tax department launched a “Faceless assessment scheme” in 2019 with an aim to:

- a. Eliminating the interface between the Assessing Authorities and the assessee⁵ to the extent technologically feasible
- b. Optimizing utilization of resources through economies of scale and functional specialization
- c. Introducing a team-based assessment with dynamic jurisdiction⁶

1.3. After the successful implementation of the Faceless assessment scheme, the Income-tax department has also launched a faceless penalty scheme and faceless Appeals system before CIT(Appeals)⁷. It is claimed that Faceless Assessments & Faceless Appeals have drastically reduced unwanted interaction of the department with the assesses, helped in speedier disposal & transparency, and instilled an environment of mutual trust between the department and the

² Economic Survey 2021-22

³ <https://www.incometax.gov.in/iec/foportal/> (last accessed on 07.11.2022)

⁴ Central Board of Direct Taxes (CBDT) Press Release dated 01.08.2022.

⁵ Section 2(7) of The Income Tax Act, 1961

⁶ Section 143 (3A) of the Income Tax Act, 1961

⁷ The relevant scheme notifications can be viewed at <https://www.incometaxindia.gov.in/Pages/faceless-scheme.aspx> (last accessed by author on 07.11.2022)

assesses. In the Finance Bill, 2021, it has been proposed to make the Income Tax Appellate Tribunal (ITAT) faceless by amending section 255 of the Income Tax Act, 1961⁸.

1.4. This paper seeks to enquire about the impact of the e-initiatives in proceedings related to assessment, e-penalty, and appeals on the natural justice principles with special emphasis on the faceless assessment initiative undertaken by the Income-tax department. For this purpose, recent rulings of Income Tax Appellate Tribunals and higher appellate forums have been analyzed, where the issue involved related to the violation of natural justice through orders passed by the department in the faceless regime.

II. NATURAL JUSTICE

Before embarking on the proposed quest, a brief discussion on the concept of Natural Justice is desirable. Natural Justice is the natural sense of what is right and wrong⁹. The concept of natural justice has undergone a great deal of change in recent years. However, traditionally natural justice is embodied in two fundamental principles, namely (1) No one shall be a judge in his own cause (**Nemo iudex in causa sua**), and (2) No decision shall be given against a party without affording him a reasonable hearing (**Audi alteram partem**).

2.2. Lord Justice Tucker in *Russell v. Duke of Norfolk* observed that *"The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth but whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."*¹⁰

2.3. The principle of Audi alteram partem in a legal sense essentially consists of -

- a. making available the allegations/adverse material being used against a person,
- b. giving her/him an opportunity to rebut the allegations and thereafter,
- c. to consider her/his arguments in the light of the circumstances, and
- d. pass a speaking order germane to the considerations.

2.4. In India, the principles of natural justice do not find any explicit mention, however, they have been traced in Articles 14 and 21 of the Constitution by the Constitutional Courts from time to time. With the introduction of the concept of substantive and procedural

⁸ As per section 255(5) of the Income Tax Act, 1961, ITAT is the Appellate Tribunal that has the power to regulate its own procedure and the procedure of benches thereof in all the matters arising out of the exercise of its powers or discharge of its functions including places at where benches shall hold their sittings.

⁹ Lord Esher M.R. in *Voinet vs. Barrett* (1885) 55 L.J. QB 39, 39

¹⁰ [1949] 1 All E.R.109,118

due process in Article 21, all that fairness that is included in the principles of natural justice can be read into Article 21. The violation of principles of natural justice results in arbitrariness; therefore, a violation of natural justice is a violation of the equality clause of Article 14.

III. NATURAL JUSTICE IN INCOME-TAX PROCEEDINGS IN GENERAL

The proceedings concerning the tax assessment are quasi-judicial as the assessee's rights and liabilities are determined on a consideration of certain facts and the law applicable to those facts. The principle of Audi alteram partem is most relevant in quasi-judicial proceedings. Broadly, in the case of assessment proceedings, the Assessing Officer scrutinizes the details filed by the assessee in his/her ITR. The process involves the issuance of notices by the department seeking documents relied on by the assessee in support of his returned income. The process mandatorily requires that the assessee be provided an effective opportunity to present his case, where the assessing officer proposes an enhancement to the returned income.

3.2. Authorities acting under the Income-tax Act must act judicially and one of the requirements of judicial action is to give a fair hearing to a person before deciding against him. So far as Income-tax Law is concerned the first rule of a natural justice that no one shall be a judge in his own cause is statutorily excluded, for the Income Tax Officer is required to act as judge in his own case¹¹. On the other hand, the doctrine of Audi alteram partem has been incorporated in several provisions of the Income-tax Act, as part of the procedural law. Such sections include —

- a. Section 127 relating to the transfer of cases from one Assessing Officer to another,
- b. Sections 142, 143, 144, and 144A relating to assessments.**
- c. Sections 154 and 155 relating to rectification,
- d. Sections 250 and 251 relating to appeals before the Commissioner (Appeals),
- e. Sections 263 and 264 relating to revision,
- f. Section 254 dealing with appeals before the ITAT, and
- g. Sections 273B and 274 relating to penalties.

3.3. As far as the faceless Assessment Scheme is concerned there are ample safeguards to prevent any violation of natural justice under section 144B of the Income-tax Act which deals with faceless assessment. This section specifies the procedure for proper issuance and delivery

¹¹ M. Chockalingam and M. Meyyappan v. CIT, Madras, (1963) 48 ITR 34 (SC)

of notices¹² in addition to provision for personal hearings in suitable cases¹³.

IV. FACELESS ASSESSMENT AND EMERGING ISSUES

The most common grounds on which violation of Audi alteram partem is argued in judicial forums by the assessee are:

- a. Non-receipt of proper notice
- b. Lack of sufficient opportunity or hearing.
- c. Non-application of mind on part of the Assessing Officer

An analysis of the recent orders passed by various Courts/tribunals related to faceless assessment has been made in subsequent paragraphs which point out the major issues emerging in the new faceless assessment regime:

4.1. IMPROPER NOTICE OR SERVICE OF NOTICE

Service of notice is a condition precedent for the making of an order of assessment by the authorities under the Income-tax Act, 1961. The assessee on his/her part is entitled to rebut the material placed before him. Principles of natural justice demand a service of a valid notice to the assessee before any adverse action is to be taken against the assessee by Income Tax Authorities.

In Daujee Abhushan Bhandar Pvt. Ltd. Vs Union of India¹⁴, Notice u/s 148¹⁵ of Income Tax was quashed by Hon'ble Allahabad High Court since the impugned notice under Section 148 of the Act, 1961 was issued to the petitioner on 06.04.2021 through email (i.e., After the expiry of statutory limitation of 31.03.2021), although the notice was digitally signed on 31.03.2021. Considering the provisions of Section 282 and 282 A of the Income Tax Act, 1961 and the provisions of Section 13 of the Information Technology Act, 2000 and the meaning of the word "issue" the Court held that firstly notice shall be signed by the assessing authority and then it has to be issued either in paper form or be communicated in electronic form by delivering or transmitting the copy thereof to the person therein named by modes provided in section 282 which includes transmitting in the form of an electronic record. Section 13(1) of the Information Technology Act, 2000 provides that unless otherwise agreed, the dispatch of an electronic record occurs when it enters computer resources outside the control of the originator. Thus, the point of time when a digitally signed notice in the form of electronic record is entered in

¹² Section 144B (6)

¹³ Section 144B (6)

¹⁴ Writ Tax No.78 of 2022, Allahabad High Court.

¹⁵ Reopening of Assessment

computer resources outside the control of the originator, i.e., the assessing authority, shall be the date and time of issuance of notice under section 148 read with Section 149 of the Act, 1961. The Hon'ble Allahabad High Court finally held that **mere digitally signing the notice is not the issuance of notice**. Since the impugned notice under Section 148 of the Act, 1961 was issued to the petitioner on 06.04.2021 through email, therefore, the notice was time-barred. Consequently, the impugned notice was quashed.

4.2. NON-ISSUANCE OF SHOW CAUSE NOTICE (SCN) BEFORE PASSING OF ASSESSMENT ORDER

The Assessing officer, being a quasi-judicial authority, is duty-bound to serve a proper show cause notice to assessee in the case where an enhancement is proposed to the returned income. The assessee has a right to rebut the documents or material on which the Assessing officer wishes to rely before passing the assessment order.

4.2.2. In **Rani Promoter Pvt. Ltd. vs. Additional Commissioner of Income Tax¹⁶** and **Toplight Corporate Management (P.) Ltd. vs. National Faceless Assessment Center Delhi¹⁷**, it has been unequivocally held that issuance of a Show Cause Notice, mentioning the proposed additions under Section 144B(xvi), is a mandatory requirement and any assessment order passed without the issuance of such Show Cause Notice is bad in law.

4.2.3. In the case of **Chander Arjandas Manwani¹⁸** order dated 21st September 2021, the Hon'ble Mumbai High Court set aside the assessment order because the process of issuing SCN (Show Cause Notice) and draft assessment order was not followed. The assessment was completed without passing the mandatory draft assessment order and serving it to the assessee along with the SCN. The assessee challenged the assessment order by filing the writ petition. The Court held that order not having been passed in conformity with the requirements of the Faceless Assessment Scheme, 2019 held to be non-est and shall be deemed to have never been passed. Order was thus quashed and set aside.

4.3. INSUFFICIENT TIME PROVIDED TO THE ASSESSEE

The principle of Audi alteram partem mandates a proper notice to the assessee in case of Income tax proceedings. In case the Income-tax authority fails to provide sufficient reasonable time to submit a response, the concept of a fair hearing is vitiated.

¹⁶ 2021 (7) TMI 919-Delhi High Court

¹⁷ [(2021) 128 taxmann.com 221 (Delhi)]

¹⁸ Writ Petition no. 3195 of 2021

4.3.2. In **Parag Kishorchandra Shah v/s. The National Faceless Assessment Centre and Ors.**¹⁹ the Hon'ble Bombay High Court set aside the assessment order considering that:

- (i) Submission of the assessee was not taken into consideration.
- (ii) Sufficient opportunity was not provided to the assessee as the time given to respond to show cause notice was just one working day and that too during the period of covid lockdown. The assessee's request for more time was not entertained citing the approaching time barring date. The Court held that undue haste in passing the order of assessment runs counter to the purpose behind the introduction of the Faceless Assessment Scheme resulting in over-burdening the Courts.

The Assessing Officer was also ordered to pay costs in the form of a contribution of Rs. 25000/- to the PM Cares fund.

4.3.3. In a similar case **Sureshkumar S. Lakhotia v. National e-Assessment Centre & Ors.**²⁰ final assessment order passed by National Faceless Assessment Centre was quashed by the Bombay High Court due to insufficient time (30 hours spread over the weekend, despite time barring date having been extended by CBDT further by two months)) being given to respond to the Draft Assessment Order.

4.4. INSUFFICIENT OPPORTUNITY OR NO HEARING

In **Bank of India vs ACIT**²¹ Order of Appeal issued through NFAC (National faceless Appeals Center) was challenged on the ground of non-granting of an opportunity to the appellant bank to present the case through the video conferencing as specified under the Faceless Appeals Scheme 2020, provided under section 250 (6B) of the Income Tax Act, 1961. The Mumbai bench of the Income-tax Appellate Tribunal remitted the matter to the first appellate authority after giving an opportunity for a personal hearing, in terms of new rule 12 of the Faceless Appeals Rules 2021²², for adjudication de novo in accordance with the law and by way of a speaking order. The tribunal discussed and affirmed the following principles:

a. The Tribunal reiterated the stand of Madras High Court in **Ramco Cements Ltd Vs National Faceless Assessment Center**²³, where it was held that when an opportunity of video conferencing is declined, without assigning reason, and the order is passed on the basis of

¹⁹ Writ Petition (L) No. 11052 of 2021.

²⁰ W.P. NO. 2848 OF 2021

²¹ ITA No. 112/Mum/2022

²² The grant of personal hearing through video conferencing is now virtually on-demand; earlier it was the discretionary power of the Authority concerned.

²³ (2022) 442 ITR 279 (Madras)

material on record, the resultant order is required to be set aside and the matter restored to the file of the NFAC for an adjudication de novo. Hon'ble Madras High Court has held that when Regional Faceless Penalty Center does not take a decision on the request for a personal hearing and proceeded to dispose of the matter, the matter is required to be sent back to the Regional Faceless Penalty Center for taking a decision on the request for a personal hearing.

b. The Tribunal reiterated the principle laid down by the Hon'ble Supreme court of India in *L. Hirday Narain v. ITO*²⁴, where, the Hon'ble Supreme Court has observed that *"If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for the exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private—of a citizen"*

4.4.2. In Sanjay Aggarwal vs. National Faceless Assessment Center²⁵ and **Umkal Healthcare (P.) Ltd. vs. NFAC**²⁶ it has been held that **it is incumbent upon the Department to accord a personal hearing to the assessee** where such a request was made under Section 144B (7) and failure to do so would amount to a violation of principles of natural justice as well as the mandatory procedure prescribed in the Faceless Assessment Scheme under Section 144B of the Act.

4.4.3. In **Balco Limited vs Union of India**²⁷, the Hon'ble Delhi High Court remanded the case back to AO for issuance of a fresh Show cause notice and to pass a reasoned order. The argument of the Revenue was that there is no vested right to a personal hearing if the assessee has been given sufficient opportunity to file written submissions and it was for the Department to decide whether the case is fit for personal hearing depending on facts of each case in accordance with factors mentioned in circular dated 23.11.2020. The Court was of the view that the classification made by the respondents/Revenue by way of the Circular dated 23.11.2020 is not legally sustainable. An assessee has a vested right to a personal hearing and the same has to be given if an assessee asks for it. Also, if the argument of the respondent/Revenue is accepted, the High Court while hearing an appeal under Section 260A (which only involves a substantial question of law) would not be obliged in law to grant a

²⁴ (1970)78 ITR 26(SC)

²⁵ 2021 (6) TMI 336 - Delhi High Court

²⁶ (2021) 131 taxmann.com 325 (Delhi)

²⁷ W.P.(C) 14528/2021 (decided on 14.01.2022)

personal hearing to the counsel for the Revenue. **The right to a personal hearing cannot depend upon the facts of each case.**

4.5. NON-APPLICATION OF MIND BY AUTHORITIES OR NON-CONSIDERATION OF SUBMISSIONS MADE BY THE ASSESSEE

It has been affirmed in various judicial pronouncements that the powers given to the Income-tax Authorities under the Indian Income-tax Act, 1961, however wide, do not entitle them to base the assessment on pure guess without reference to any evidence or material. An assessment under the Act cannot be made only on bare suspicion. An assessment so made without disclosing to the assessee the information supplied by the departmental representative and without giving any opportunity to the assessee to rebut the information so supplied and declining to take into consideration all materials which the assessee wanted to produce in support of his case constitutes a violation of the fundamental rules of justice.²⁸

4.5.2. Analysis of recent cases shows that even after the operationalization of a faceless assessment regime, Courts have been frequently coming across writ petitions in which impugned orders reflect non-observance of principles of natural justice and even cases where replies submitted by assesses are not being considered by Assessing Officers. This leads to unreasonable high-pitched assessments.

4.5.3. In Instruction issued by CBDT vide F.No.225/290/2015-ITA-II, dated 09.11.2015, it has been noted that there have been cases of high-pitched assessments in faceless regime in the following words “*it has been brought to the notice of Board that the tendency to frame high-pitched and unreasonable assessment orders is still persisting due to which grievances are being raised by the taxpayers. Such grievances not only reflect harassment of taxpayers but also lead to the generation of unproductive work for Department as well as Appellate Authorities.*” Under the aforesaid instructions dated 09.11.2015, Local Committees were constituted to resolve quickly the taxpayers' grievances on account of high-pitched and unreasonable additions made by the Assessing Authorities. Thus, it appears that the tendency to frame high-pitched and unreasonable assessment orders is still persisting, as also acknowledged by the CBDT, resulting in the issuance of instructions/ Circular dated 23.04.2022 under Section 119 of the Income Tax Act, 1961 so as to give it statutory backing.

4.6. ORDER PASSED BEFORE COMPLIANCE DATE MENTIONED IN SCN

In **Renew Power (P) Ltd. v. National E-Assessment Center Delhi**²⁹ where time was granted

²⁸ Dhakeswari Cotton Mills Ltd vs Commissioner of Income Tax [SC1955 AIR 65]

²⁹ (2021) 281 Taxman 240 (Delhi) (HC)

to respond to the draft assessment order and show cause notice by 23.59 hours on 22-4 -2021 and the assessment order was passed on 22-4 -2021 at 14.11 hours i.e., the assessment order was passed prior to the expiry of date given for filing a response to Show Cause Notice-cum-draft assessment order, the order was quashed as it was held that principle of natural justice have been violated. The Assessing officer was thus directed to pass a fresh assessment order.

4.7. TECHNICAL ISSUES WITH THE PORTAL

While the introduction of the latest technologies is made with an intent to improve ease of compliance for the taxpayers, the same may rather prove to be a hindrance in rare cases where there are genuine systemic errors. For example, in cases where the system is not working due to any technical error or where the taxpayer is unable to comply owing to unavailability of access credentials, despite the best efforts of the taxpayer. In such cases, Courts may take a view that the taxpayer has been denied a reasonable opportunity to present his case, depending on the facts and circumstances of a particular case.

4.7.2. In **Faqir Chand v. NEAC**³⁰, a notice-cum-draft assessment order was served upon the assessee proposing an addition of a substantial amount against returned income. The assessee failed to file its reply to said notice-cum-draft assessment order as the portal was not working between 1-6-2021 and 17-6-2021 i.e., the last date for filing a reply to said notice-cum-draft assessment order. The Assessing Officer passed a final assessment order making such proposed additions to the income of the assessee without giving any reason. On writ, the Court held that the assessment order passed by Assessing Officer was in violation of the principle of natural justice inasmuch as the assessee did not have a reasonable opportunity to file a reply to notice-cum-draft assessment order and, thus, the same was to be set aside.

4.7.3. In the case of **Neerja Rateria Vs National Faceless Assessment Centre**, Calcutta High Court quashed an assessment order (with liberty to pass a fresh order in accordance with the law), on account of violation of natural justice as the password for the Video conference link was not provided.

V. CONCLUSION

Government businesses and policies must evolve with the latest development and technologies in order to remain relevant. The COVID-19 situation was a stark reminder to this when Governments across the world, Corporates, and common citizens were forced to employ technology in their work to the extent feasible. If we see the development in the Indian Judicial

³⁰ (2021) 283 Taxman 51 (Delhi HC)

System per se, the Supreme Court of India, on April 6, 2020, issued guidelines for mandatory Video Conferencing in all courts, including District Courts, for ensuring 'complete justice' during the Covid-19 outbreak. As per a press briefing by the Law Ministry, since the Covid lockdown started, the District Courts heard 1,23,19,917 cases while the High Courts heard 61,02,859 cases (totaling 1.84 cr) till 28.02.2022 using Video-Conferencing (VC). Also, the Supreme Court held 2,18,891 hearings till 14.03.2022 since the beginning of the lockdown period making it the world leader in virtual hearings. However, given the ad-hoc nature of the online proceedings conducted so far, questions have already arisen as to whether the judiciary can continue to hear matters in a fair and unbiased manner, and whether the parties will be given a fair opportunity to be heard, among others. It is undisputed that these principles of natural justice must be upheld by the courts.

5.2. As far as the working of the Income-tax Department is concerned, through the faceless schemes for assessment and appeals the principle of natural justice has been codified to a great extent. The schemes also provide for personal hearing using Video Conferencing. Natural Justice principles had existed even earlier through various judicial pronouncements and were subject to the discretion of the concerned Income-tax authority. It is noteworthy that the Central Board of Direct Taxes (CBDT) has always been sensitive to adherence to natural justice by Income-tax Authorities. CBDT had issued Instruction no. 20/2015 dated 29th December 2015, wherein at Para 4 the Assessing Officers were directed to give due consideration to the submission of the assessee and pass assessment orders accordingly:

“The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to make additions or disallowances, the assessee would be given a fair opportunity to explain his position on the proposed additions/disallowances in accordance with the principle of natural justice. In this regard, the Assessing Officer shall issue an appropriate show-cause notice duly indicating the reasons for the proposed additions/disallowances along with necessary evidence/ reasons forming the basis of the same. Before passing the final order against the proposed additions/disallowances due consideration shall be given to the submissions made by the assessee in response to the show cause notice.”

5.3. The said Instruction continues to hold good in the case of the faceless assessment. Further, the recently introduced section 144B of the Income-tax Act, 1961, which deals with Faceless Assessment requires the assessment unit to draft a revised draft assessment order after considering the response furnished by the assessee. Thus, mandating the officers to pass a speaking order. Further, this section also incorporates provisions for personal hearing through video telephony and similar technologies.

5.4. However, as can be seen from various cases discussed above, due to heavy workload or sheer disregard, principles of natural justice are often compromised by the Revenue Authorities. The assesses who feel aggrieved due to non-adherence to natural justice are required to take the route of writ jurisdiction before High Courts or wait till the second appellate stage or the income-tax appellate tribunals for relief.

5.5. The Faceless Appeals Scheme and the proposed faceless ITAT scheme have been challenged before the Hon'ble Delhi High Court and Mumbai High Court and are pending disposal. The main ground for challenge is the apprehension that natural justice may be compromised if the schemes are operationalized. In this regard, it is submitted that the faceless assessment, faceless penalty, and faceless appeal schemes have been successfully operationalized by the Income-tax department. From the cases which have emerged so far, the faceless schemes as such, have ample safeguards for assesses and their natural justice rights. Rules of natural justice embody fairness in action. By all standards, they are great assurances of justice and fairness. But they should not be pushed to a breaking point. They should not be allowed to be exploited as a purely technical weapon to undo a decision that does not in reality cause substantial injustice and which, had the party been really aggrieved thereby, could have been set right by immediate action or by setting aside to the Assessing authority. The issues which have cropped up so far in the faceless regime are mostly of the nature which can be described as teething issues in the implementation of the schemes, which are innovative and have no comparable precedent across the world.

5.6. Thus, there is no strong basis for the non-operationalization of faceless schemes at the tribunal level also. The Judicial forums have always been at the forefront of securing the natural justice rights of aggrieved taxpayers since its inception and they will continue to do so in a faceless regime also. With proper sensitization of Income Tax authorities and tribunal members regarding adherence to natural justice principles in the electronic environment per se, all the schemes will be more effective in achieving the basic noble goals for which the schemes were launched.

VI. REFERENCES

1. <https://www.incometaxindia.gov.in/Pages/faceless-scheme.aspx>
2. Acelegal (2021) *Faceless assessment- courts uphold principle of natural justice*, *TaxGuru*. Available at: <https://taxguru.in/income-tax/faceless-assessment-courts-uphold-principle-natural-justice.html> (Accessed: December 2, 2022).
3. *Natural justice: In Focus Again* (2021) *Digest of case laws*. Available at: <https://itatonline.org/digest/articles/natural-justice-in-focus-again/> (Accessed: Dec 2, 2022).
4. *Bombay High Court directs CBDT to clarify government's stand on 'faceless appeal scheme'* (no date) *The Economic Times*. Available at: <https://economictimes.indiatimes.com/news/india/bombay-high-court-directs-cbdt-to-clarify-governments-stand-on-faceless-appeal-scheme/articleshow/88076185.cms> (Accessed: December 2, 2022).
5. Vijay, A. (2022) *Supreme Court "world leader" in virtual hearings, held over two lakh hearings online: Law ministry*, *Live Law*. Live Law. Available at: <https://www.livelaw.in/news-updates/supreme-court-virtual-hearing-lockdown-world-leader-law-ministry-195714> (Accessed: December 2, 2022).
6. Thakur, P. (no date) *SC is Global Leader in Virtual Hearings, says Law Ministry: India news - times of India*, *The Times of India*. TOI. Available at: <https://timesofindia.indiatimes.com/india/sc-is-global-leader-in-virtual-hearings/articleshow/81070044.cms> (Accessed: December 2, 2022).
7. *Virtual Courts at the cost of open courts?* (2021) *Vidhi Centre for Legal Policy*. Available at: <https://vidhilegalpolicy.in/blog/virtual-courts-at-the-cost-of-open-courts/> (Accessed: December 2, 2022).

CASES CITED

1. *Voinet vs. Barrett* (1885) 55 L.J. QB 39, 39
2. *Daujee Abhushan Bhandar Pvt. Ltd. Vs Union of India* (WRIT TAX No. - 78 of 2022, Allahabad High Court)
3. *Rani Promoter Pvt. Ltd. vs. Additional Commissioner of Income Tax* [2021 (7) TMI 919-Delhi High Court]
4. *Toplight Corporate Management (P.) Ltd. vs. National Faceless Assessment Center Delhi* [(2021) 128 taxmann.com 221 (Delhi)]

5. Chander Arjandas Manwani (Writ Petition no. 3195 of 2021)
6. Parag Kishorchandra Shah v/s. The National Faceless Assessment Centre and Ors. (Writ Petition (L) No. 11052 of 2021)
7. Bank of India vs ACIT (ITA No.: 112/Mum/2022)
8. Ramco Cements Ltd Vs National Faceless Assessment Center [(2022) 442 ITR 279 (Madras)]
9. L. Hirday Narain v. ITO [(1970)78 ITR 26(SC)]
10. Sanjay Aggarwal vs. National Faceless Assessment Center [2021 (6) TMI 336 - Delhi High Court]
11. Umkal Healthcare (P.) Ltd. vs. NFAC [(2021) 131 taxmann.com 325 (Delhi)]
12. Balco Limited vs Union of India (W.P.(C) 14528/2021) (decided on 14.01.2022)
13. Renew Power (P) Ltd. v. National E-Assessment Center Delhi (2021) 281 Taxman 240 (Delhi) (HC)
14. Faqir Chand v. NEAC (2021) 283 Taxman 51 (Delhi HC)
15. Neerja Rateria Vs National Faceless Assessment Centre (Calcutta HC, W.P. 969 of 2021)
16. Sureshkumar S. Lakhotia v. National e-Assessment Centre (Bom HC, W.P. 2848/2021)
