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Is Faceless Assessment taking a reverse gear?**RAJI NATHANI**

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What is Section 144B?**Faceless Assessment**

(3) The Board may, for the purposes of faceless assessment, set up the following Centre and units and specify their functions and jurisdiction, namely:—

(iii) such verification units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification and the term "verification unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board:

Provided that the function of verification unit under this section may also be performed by a verification unit located in any other faceless centre set up under the provisions of this Act or under any scheme notified under the provisions of this Act; and the request for verification may also be assigned through the National Faceless Assessment Centre to such verification unit;

(5) All communications, —

- (i) among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the National Faceless Assessment Centre;
- (ii) between the National Faceless Assessment Centre and the assessee, or his authorised representative, or any other person shall be exchanged exclusively by electronic mode; and
- (iii) between the National Faceless Assessment Centre and various units shall be exchanged exclusively by electronic mode:

Provided that the provisions of this sub-section shall not apply to the enquiry or verification conducted by the verification unit in the circumstances as may be specified by the Board in this behalf.

Income tax assessments are now faceless without any interface between the tax office and the assessee, not involving physical visits by either party. The recent order no F. No. 1871712024-ITA-I dated 1 August 2024 issued by the Board sets directions that are contrary to the instant section and against the intent of its provisions.

The impugned Order:

CBDT order no. F. No. 1871712024-ITA-I dated 01.08.2024 in its opening para 1 states the following:

"In pursuance of the proviso to sub-section (5) of Section 144B of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), the Central Board of Direct Taxes hereby specifies the following circumstances, for the purpose of enquiry or verification functions referred to in Section 144B(3)(ii) of the Act by the Verification Unit:

- I. Non-availability of digital footprint in respect of the assessee or any other person.*
- II. Electronic or Online verification is not possible on account of no response to notice issued to the assessee or any other person.*
- III. Physical verification of assets or premises or persons is required, regardless of the presence of digital footprint."*

Analysis:

The power to issue this order emanates from "proviso to sub-section (5) of Section 144B" which reads as under:

Provided that the provisions of this sub-section shall not apply to the **enquiry or verification** conducted by the verification unit in the circumstances referred to in sub-clause (g) of clause (xii) of sub-section (7);

Simplicitor reading of this proviso Dictionary meaning of the word "enquiry" is **"to ascertain the truth or correctness of, as by examination, research, or comparison"** and meaning of "verification" is **"the process of research, examination, etc., required to prove or establish authenticity or validity"** in Dictionary.com

Verification or enquiry is not search; these are two different proceedings and the subtlety of the differences must be appreciated from the law itself. Verification is a permitted method to access a taxpayer's premises, but only as an anti-evasion measure as laid down in the law in the form of 'pre-requisites' to invoke the exceptional powers allowed and certainly does not include physical verification of assets or premises or persons which will amount to search operation.

Thus while proviso to sub-section (5) of Section [144B](#) empowers the CBDT to apply specific procedure for enquiry or verification under specified circumstances surpassing the National Faceless Assessment Centre, it grants no authority to change the character of simple enquiry or verification to deemed search operations as mentioned in clause III of Para 1 of the impugned order that reads:

III. Physical verification of assets or premises or persons is required, regardless of the presence of digital footprint.

This clause gives teeth to the verification unit to enter and verify the premises and assets and even the persons in the name of verification.

There is a complete turnaround from what is transpired or understood during the introduction of faceless assessment technique.

The order passed over the Kerala Story

Bechu Kurian Thomos J of the Kerala High Court in *Bhima Jewels v. Pr. CIT* [\[2022\] 139 taxmann.com 398/443 ITR 403](#) held that the right of a man to have a fair opportunity is a fundamental right in any legal system. The rules of natural justice are flexible to adapt to situations and circumstances to advance the cause of justice. The rules of natural justice must depend on the circumstances of each case, the set of facts that surround each situation, the nature of the inquiry, the rules that govern the procedure and even the subject matter dealt with, apart from the prejudice that could be caused to either side.

On the subject of opportunity of hearing the High Court also pointed out that the burden of an assessment order issued without hearing the assessee will fall, not only upon the petitioner alone but even upon the system itself and may create further waste of resources.

Facts of the case

This case pertained to a jeweller who returned 20+ cr income but got an assessment order at ten times at 223+cr income plus penalty.

The irony was that all the notices had gone at the primary email address given by the assessee at the portal which actually belonged to an employee of the assessee who had left employment. The AO kept on adjourning e-proceedings time and again due to no response from assessee and finally issued a shocking order.

The Conflict between the High Court decision and the CBDT Order

The CBDT in their order dated August 1 provide for physical visits at the taxpayers premises in the event of no responses by the taxpayer to the notices issued at the email address during any e-proceedings. This order has been issued even when the High Court highlighted that National Faceless Assessment Centre (NaFAC) should have issued all notices even to the secondary email address which incidentally belonged to assessee's Chartered Accountant in this case.

The Court has been prompt to point out that since the assessment order is the platform from which the rights and obligations of not only of the assessee but also of the department arise, it is essential that such a platform is built upon strong foundations, especially when the amounts involved is large.

Non-availability of digital footprint in respect of the taxpayer or any other person is a strange assumption as it is next to impossible for anyone to delete digital footprint completely. Social media accounts of the taxpayer such as facebook, insta, linkedIn and several e-commerce websites etc., also may provide access to information about the taxpayer. Therefore, to assume non-availability of digital footprint is not an appropriate assumption.

crux

Other accessible opportunity could be Issue of summons to assessee or arranging to send dasti draft assessment order to the assessee. Perhaps the Kerala High Court insisted for effective opportunity using the platform in full sense and not by way of any physical visits at the taxpayer's premises or assets. The CBDT order thus would somewhat be defeating the basic purpose of the faceless assessment model of eliminating the interface between the AO and the Assessee. The order is ultra vires sec 144B exceeding the power permissible under proviso to sub-section (5) of Section 144B ex supra.

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