

ROLE & FUNCTIONS OF AOs IN REVIEW UNITS

FACELESS ASSESSMENT

FACELESS PENALTY

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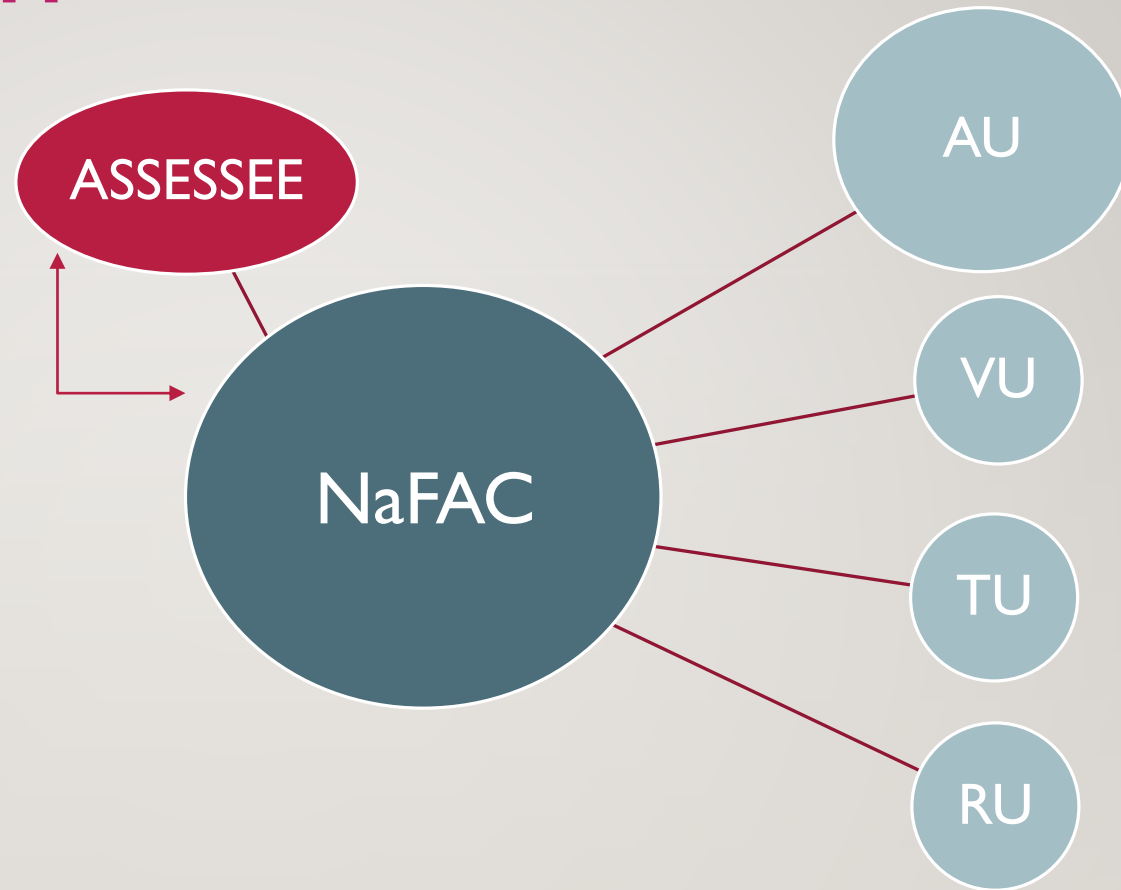
JOINT COMMISSIONER OF INCOME TAX,

RANGE-52, NEW DELHI



FACELESS ECOSYSTEM

- ❖ The assessee's direct interaction can only be with the AU and that too only through VC.
- ❖ Else, the NaFAC is the **ONLY** interface.



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- The interactions within the Units are allowed only through Inter Unit Communications for speeding up the matter
 - VU & TU complement the requirements of the AU via NaFAC
 - RU is the prerogative of the NaFAC

FACELESS ASSESSMENT & PENALTY

SECTION 144B & SECTION 274(2A)

The scheme of **FACELESS ASSESSMENT** derives its powers from **Section 144B**. The section was introduced by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 w.e.f. 01.04.2021 and has undergone further changes by the Finance Act of 2022 w.e.f. 01.04.2022. The main purpose was for the tax system to be:

Seamless-Painless-Faceless.

Every action is monitored.

Personal hearing, if sought by the assessee, is mandatory. Of course, through VC only.

FACELESS ASSESSMENT & PENALTY

SECTION 144B & SECTION 274(2A)

The **FACELESS PENALTY SCHEME** was notified on 12.01.2021 by the aegis of the newly inserted **section 274(2A)**. The Government was thus empowered to make a scheme to impart greater efficiency, transparency and accountability which seeks to :

- Eliminate interface between the assessee and the tax authorities to the extent possible
- Maximise use of available resources and inputs
- Ensure faster delivery of action

FUNCTION OF THE REVIEW UNIT (RU)

- The Review Unit is expected to review the ILDP (Income or Loss Determination Proposal) prepared by the AU. The RU also reviews Draft Penalty Orders (in existing circumstances) proposed by the AU, which are assigned to it by the NaFAC.
- The Review Unit (RU) acts as a pre-audit before finalization of assessment/penalty proceedings by the AU.

SCOPE OF REVIEW UNIT

Based on the evaluation made by the Risk Management Strategy(RMS), the ILDP of assessment u/s 143(3), 144, reassessment 147 and draft orders of penalties under various sections are sent to the Review Unit by the National Faceless Assessment Centre (NaFAC).

After examination/verification, the options available with RU are:

- CONCURRING with the ILDP / draft order
- Propose MODIFICATIONS in ILDP after giving reasons

OUTCOME OF REVIEW

CONCUR

ILD/Order will go for finalisation

MODIFICATION

- ILDP/Order will go to the same AU for finalisation.
- AU to specify in Note regarding action on the Modification sought and reasons for non acceptance

THUS....

- **By concurring** with the ILDP /draft order, no further changes are suggested and the AU proceeds with passing the order as proposed, once such Review Report is received by it.
- The RU may offer certain **suggestions** in order to improve the quality of the ILDP / orders. In case the AU does not agree with the suggestions of the RU, he has to note down the same in the work sheet and take action as deemed fit to pass the final order.

THUS.....

- The RU may suggest certain **modifications**, which are in the nature of having an impact on the ILDP/draft order. Again in case the AU does not agree with the modifications suggested by the RU, he has to note down the same in the work sheet and take action as deemed fit to pass the final order.
- Thus the interaction of the AU with the RU is purely academic and the RU is only an arm of the NaFAC to iron out any wrinkles unlike the VU or TU which are the vehicles of the AU.

ALSO....

- The relation between a case assigned to the RU ends with generating of the final review report. Upon sending of the final report the case disappears from the worklist of RU.
- After the assessment or penalty order has been finalised by the AU, the case returns to the JAO and that ends the relation of the FAO/FPO with the case.

WHAT TO WATCH FOR:

- Whether proper enquiry / verification has been done with respect to the issues on the basis of which the case has been selected for scrutiny.
- Whether the relevant and material evidence to support the modification of income proposed by AU has been brought on record.
- Whether the issues on which addition or disallowance ought to have been made have been duly verified.

CONTD...

- Whether the relevant points of fact and law have been incorporated in the ILDP / draft order.
- Whether the submissions and arguments of the assessee have been duly considered and rebutted.
- Whether the judicial decisions brought on record have been considered and applied in the ILDP / draft order.

CONTD..

- Whether the issue for which the penalty has been initiated has been properly dealt with.
- Whether arithmetical accuracy has been verified.
- Whether any frivolous or high pitched assessment is framed.
- Follow the time frame within which a Review report is required to be furnished.

HOW TO FRAME A REVIEW REPORT

- It must be precise, to the point and unambiguous.
- Vague and impractical suggestions should not be given.
- Check whether SOPs have been followed especially in allowing opportunity to the assessee in responsive and non responsive cases.
- The cases should be disposed on FIFO basis.

FRAMING OF A REVIEW REPORT

COMPREHENDABLE

Precise

Unambiguous

DEFINITE

Non vague

Practical
suggestions /
solutions

PROTOCOL

Service of
notices and
opportunities

SOPs followed
esp. non
responsive
cases

TIME FRAME FOR REPORT

- By SOP dated 19.11.2020, the RU was required to send its report within 15 days. As per the CAP for 2020-21, in Modification cases, the time frame was amended for the Report to be furnished within 15 days and in other cases within 5 days. This period was further curtailed to 2 days (Company cases) and 1 day (non company cases) by SOP dated 09.03.2022 for time barring cases of 31.03.2022.
- As per SOP dated 03.08.2022, the time limit for submission of Review Report to NaFAC has now been prescribed as 05 days of the receipt of the reference. The date of submission to NaFAC should be advances keeping in view the limitation date for completing the assessment
- As per SOP for Penalty Review Unit dated 06.09.2022, the time limit for submission to NFPC is within 05 days of the receipt of the reference. The date of submission to NFPC should be advances keeping in view the limitation date for deciding the penalty.
- Thus the period/limits keep changing as per exigencies of time and thus SOPs are to be constantly monitored.

WHILE REVIEWING PENALTY CASES :

- ❖ Faceless Assessing Officer and Faceless Penalty Officer are one and the same and hence the hierarchical structure is the same.
- ❖ Cases are auto assigned by the NaFAC to the RU
- ❖ The RU is required to :
 - A.1.2 Check the Penalty Imposition Proposal and Penalty Non-imposition Proposal, whether:
 - A.1.2.1 Relevant and material evidence has been brought on record;
 - A.1.2.2 Relevant points of fact and law have been duly incorporated;
 - A.1.2.3 Such other issues required to be incorporated, have been included.

CONTD.

- A.1.3 Prepare a Review Report as per prescribed format in the System.
- A.1.4 The Review Report may:
 - A.1.4.1 Accept the Penalty Imposition Proposal/Penalty Non-imposition Proposal, or
 - A.1.4.2 Propose any modifications in the Penalty Imposition Proposal/ Penalty Non-imposition Proposal, after giving reasons for the same.
- A.1.5 Forward the Review Report to NFPC.
- A.2 After forwarding of Review Report, where variation was proposed, a note along with the facts and circumstances and reasoning in prescribed format, shall be forwarded through PCIT of the RU, to NFPC for compilation of Guidance Notes for future references.
- **B. Timely submission of Review Report**
 - B.1 Review Report should be generally submitted to NFPC within 5 days of receipt of reference.
 - B.2 The date of submission to NFPC may be advanced, keeping in view the limitation date for deciding the penalty.

19 PROBLEMS FACED BY REVIEW UNITS

- ILDP and PIP are sent very late.
- Insight can be viewed only after one day of receipt of the ILDP/PIP. Valuable time is lost
- MIS report of penalty cases cannot be viewed on ITBA.
- Some issues have no clarity such as inclusion of surcharge while computing penalty u/s 271AAC, initiation of penalty u/s 271F in reopened cases u/s 147 before A.Y. 2018-19 etc.
- Tax computation is not visible with ILDP.

20 COMMON MISTAKES - ASSESSMENTS

- Non verifying reasons of scrutiny
- Overlooking Order u/s 143(1)
- Ignoring data in AIS
- Mismatch in the assessment order and final computation sheet
- Non charging of tax at Special Rate
- Wrong Charging of Interest
- Issues in Unsecured Loan/ Share Capital

21 COMMON MISTAKES - ASSESSMENTS

- Incorrect application of Rule 11UA
- Inter-Head computation of Income
- Non/Incorrect application of sec. 14A
- Wrong deduction u/s 80-IA/IB/IC
- Legacy Issues
- Incorrect carrying forward of losses

22 COMMON MISTAKES – ASSESSMENTS (IGNORNING REPORTING BY AUDITOR IN FORM 3CD)

- Depreciation on newly purchased assets
- Late Deposit of EPF/ESI
- Payment covered u/s 43B
- Figures of reporting in item no. 31(a) and 31(c)/(d) of the TAR

23 COMMON MISTAKES – ASSESSMENTS

(ISSUES IN CASE OF TRUST/ SOCIETIES CLAIMING EXEMPTION U/S 11/10(23C))

- Provision of expenses
- Accumulation of income u/s 11(2)
- Grant of exemption even on late filing of return of income or intimation
- Non compliance of sec 11(5)

COMMON MISTAKES - ASSESSMENTS

- Incorrect initiation of penalty. For example, section 270A or 272A(1)(d) for AYs 2016-17 and earlier years.
- Incorrect initiation of penalty. For example, section 271(1)(c) or 271(1)(b) for AYs 2017-18 and onwards.
- Non initiation of penalty u/s 271AAC for additions u/s 68, 69, 69A, 69B or 69C for AY 2017-18 and onwards.
- Non initiation of penalty u/s 271(1)(c) for additions u/s 68, 69, 69A, 69B or 69C for AY 2016-17 and earlier years.

COMMON MISTAKES - ASSESSMENTS

- Initiation of 271F for non filing of return in response to notice u/s 148.
- Taxation of gains on transfer of assets as LTCG without ascertaining the duration for which it was held by the assessee.
- Taxation of gains on undisclosed assets as LTCG or STCG instead of section 115BBE read with addition u/s 69 or 69B.

COMMON MISTAKES - ASSESSMENTS

- Non referring of non responsive cases to VU (SOP 12.03.2021).
- **Computation error such as:**

Computation of Total Income not present in the body of the order.

Computation of Total Income in body of Order not matching with Computation Sheet.

COMMON MISTAKES - ASSESSMENTS

- Additions are made under incorrect sections. The addition which is required to be made u/s 68, 69, 69A, 69B, or 69C is made under normal provisions resulting into levy of tax at lower rates.
- Section 68 is invoked even when books of accounts do not exist.
- Incorrect Rate of tax. For example, u/s 115BBE rate of tax was 30% upto AY 2016-17 which was raised to 60% from AY 2017-18 onwards. However, old rate of 30% is applied even for AY 2017-18.

COMMON MISTAKES - ASSESSMENTS

- Not referring to basic information / documents like 26AS, ITS, Form 3CD for clear defaults and reasons for selection not catered to.
- Not raising query in respect of the reason for which the case has been selected for scrutiny.
- Non service of notices.

COMMON MISTAKES – PENALTIES

- Imposing of penalty not consistent with the specified Asst Year.
For example, penalty u/s 271(1)(c) is imposed even for AY 2017-18.
- Including of Surcharge & Cess for penalty u/s 271AAC.

COMMON MISTAKES – PENALTIES

- Non referring of non responsive cases to VU (SOP 09.08.2021).
- Misconstruing of non filing of Return of Income as 'misreporting' and non initiation of penalty u/s 270A(7).

COMMON MISTAKES – PENALTIES

- Non service of notices.
- Imposition sought for penalties not initiated in the assessment order.
- Computation of penalty in the Draft Order not matching with Computation Sheet

SOME CASES REPORTED BY AOs OF RU

- In the ILDP, the AU had proposed an addition of Rs.16.15 cr. u/s 69C on basis of CBEC data on Imports. It was seen from the ITS data that certain amounts were repetitive and therefore the AU was suggested to review the data in hand where only a net addition of Rs.3.79 Cr. was justifiable. Also, it was noted that cash deposits amounting to Rs.4.22 cr. made in banks were not disclosed in the ITR. Neither written clarification was obtained nor any addition was made in the DAO. The AU was suggested to examine the same.

In the revised DAO the AU has made an addition of Rs.3.77 crs u/s 69C and an addition of Rs.4.22 crs u/s 69A as unexplained money.

SOME CASES REPORTED BY AOs OF RU (CONT..)

- In one case of a highway project, the AU proposed to disallow an amount of Rs. 31,68,27,291/- u/s 40(a)(ia) being 30% of the total expenditure of Rs. 105,60,90,969/- despite the assessee explaining that it had not claimed the expenses. The AU was suggested not to make such disallowance and instead intimate the concerned TDS AO to take necessary action.

In the final assessment, as suggested addition of 31.68 crs was not made.

SOME CASES REPORTED BY AOs OF RU (CONT..)

- In the original DAO, the AU had accepted the returned income. In the case inter-alia the assessee had claimed deduction u/s 80IE of Rs.4,90,46,409/- which was one of the major issues identified by the CASS for selecting the case for scrutiny.

After Review, the AU has denied the deduction for the reason that the ROI was filed late and provisions of section 80AC did not allow such deduction under these circumstances.

SOME CASES REPORTED BY AOs OF RU (CONT..)

- In one case, in the original DAO the AU had accepted the returned income. In Review it was pointed out that the assessee had not received recognition u/s 12A during the year. **Hence post Review, the AU has denied the exemption and determined a Total Income of Rs.30,25,000/-.**

SOME CASES REPORTED BY AOs OF RU (CONT..)

- In one case, in the original DAO the AU had proposed addition u/s 2(24)(x) rws 36(1)(va) of Rs.96,32,981/- and post Review, the addition was enhanced by Rs.91,78,801/-. During review it was also seen that the assessee had incurred CSR expenses of Rs.81,50,000/-. Out of this Rs.66,50,000/- was claimed in the ITR as deduction u/s 35AC. During the Review, a clarification was sought on this.

In the revised DAO, the AU has disallowed the expenditure incurred under CSR which was partly claimed in the garb of deduction u/s 35AC.

SOME CASES REPORTED BY AOs OF RU (CONT..)

- The assessee company had not disclosed a bank account held in Axis Bank wherein there were cash deposits of Rs.4,11,64,020/-. The details were seen in ITS Data. The AU was suggested to obtain explanation from the assessee and take necessary corrective action. **Following the same, the AU has brought on record the bank statement and considering it as undisclosed, has brought to tax @22.2% (as per GP Ratio) of the entire credits @ Rs.5,62,73,922/-.**

SOME CASES REPORTED BY AOs OF RU (CONT..)

- During Review of one case, it was seen that the AU had disallowed depreciation of Rs.8,35,50,185/- on the premise that it pertained to AY 2017-18. However, depreciation is allowable in such cases as per the 2nd proviso to section 32(I), being the balance left over depreciation of the earlier year. The AU was suggested to verify the facts. **Now in the final assessment, the AU has dropped the proposed disallowance.**

Further, as pointed out in the Review Report, the AU has also made addition u/s 2(24)(x) rws 36(I)(va) the amounts representing delays in deposit of PF dues of employees, to the tune of Rs.60,37,986/-.

SOME CASES REPORTED BY AOs OF RU (CONT..)

- In a non responsive case, the AU proceeded to complete the assessment on basis of details on record and made substantial additions totalling to Rs.31.20 crs. These additions mostly pertained to defaults noted in the Form 3CD on sections like and issues like 41(I) of Rs.8.06 crs, Duty Drawback of Rs.3.25 crs, 2(24)(x) of Rs.4.13 crs, 43B Rs.13.55 crs and non deposit of TDS of Rs.1.98 crs. It was seen that most of the additions / disallowances have already been considered by the assessee in its financials and ITR. The AU was suggested to re-verify the ITR and 143(I) which was likely to result in substantial reduction in the disallowances. **On the basis of the Review Report, duplication of huge additions was avoided.**

SOME CASES REPORTED BY AOs OF RU (CONT..)

- The case was selected under CASS under Complete category. The AU completed the DAO without making any additions. It was noticed from the submissions that in the Computation Of Income, the assessee had claimed expenses such as finance lease rentals of Rs.4,72,73,432/- and any other allowable deduction of Rs.7,51,22,885/-. However, the AO had not obtained any documentary evidence for these expenses. Clarification was sought on these issues and the AU was asked to re-verify the issues. The AU has submitted another DAO and made addition on account of finance lease rentals and reversal of customs duty payable.

The addition of Rs.12.23 Cr has been made due to the Review of the case.

SOME CASES REPORTED BY AOs OF RU (CONT..)

In this case as per the information available with the department, that the assessee had deposited cash amounting to Rs. 20,000/- and had made cash withdrawal of Rs. 1,38,23,377/-. Also, the assessee had received commission income of Rs. 77,064/-. Further, the assessee did not file his return of income for A.Y. 2018-19. In the ILDP, in absence of any explanation, AU proposed to make an addition of Rs. 1,39,00,441/- u/s 69C of the IT Act as unexplained expenditure.

RU suggested the following modifications:

- a. AU was suggested that the addition of Rs. 1,38,23,377/- should be made u/s 69A r.w.s. 115BBE of the IT Act as unexplained money representing amount deposited in the bank account out of which the withdrawal of Rs. 1,38,23,377/- was made.
- b. Further, it was seen from the ITR filed by the assessee in response of notice u/s 148 of the IT Act that the assessee had shown commission income of Rs. 61,500/- (more than 6% of commission receipts of Rs. 77,064/-) in his ITR and also claimed the TDS of Rs. 3,811/-. Therefore, the addition of Rs. 77,064/- was unjustified.
- c. AU was suggested to initiate the penalty u/s 270A(2)(b) of the IT Act for under reporting of income. AU accepted the variations proposed by the RU and total income assessed was Rs. 1,38,23,377/- instead of Rs. 1,40,46,877/- as proposed in ILDP.

SOME CASES REPORTED BY AOs OF RU (CONT..)

In this case, as per the information, the assessee had deposited cash amounting to Rs.75,61,700/- in the A.Y. 2015-16. However, the assessee did not file return of income for the relevant A.Y. In absence of any explanation, AU had proposed to make an addition of Rs. 75,61,700/- to the income of assessee U/S 69A r.w.s. 115 BBE of the IT Act as unexplained money in the ILDP. RU suggested the following modifications:

- a. It was seen from the insight portal that assessee had received contract receipts amounting to Rs.10,14,000/-. Therefore, AU was suggested to examine the Form 26AS and accordingly to add contract receipt of Rs. 10,14,000/- under the head PGBP.
- b. In para 4.1 AU had mentioned penalty u/s 271AAC of the IT Act. It was pointed out to the AU that provisions of section 271AAC of the IT Act are not applicable in this case i.e. for AY 2015-16. AU accepted variation proposed by the RU and total income assessed was Rs. 85,75,400/- instead of Rs. 75,61,700/- as proposed in ILDP.

SOME CASES REPORTED BY AOs OF RU (CONT..)

As per bank account statement of the assessee obtained by the Department, total credits amounted to Rs.1,14,82,431/-. However, AU proposed to add only Rs.57,89,600/- in the ILDP being cash deposits.

As the assessee had neither filed any return nor had given any explanation regarding the source of remaining credits in the bank account i.e. Rs.56,92,831/- (11482431-5789600), the same was suggested to be added u/s.69A. AU was also suggested to add commission received amounting to Rs.14,046/-. On receipt of RR, AU enhanced the assessment by Rs.53,06,877/-.



SOME CASES REPORTED BY AOs OF RU (CONT..)

This case was re-opened u/s.147 based on the information that (i) the assessee had deposited cash of Rs.3,25,410/- with SBI) and had withdrawn amount of Rs.18,57,000/- and Rs.2,36,94,618/- respectively in cash from these two accounts. No explanation was given regarding the source of credit in his bank accounts so as to withdraw Rs.2,55,51,618/- in cash. Though AU had proposed to add cash deposits in these two bank a/cs u/s.69A in the ILDP, yet with regards to the credit available for cash withdrawals, AU had added 20% of the withdrawals treating it as income from undisclosed sources without giving any justification. In absence of any explanation regarding the source of credit in the bank accounts for withdrawal of such huge amount of cash, in the interest of revenue, it was suggested that it would be better to add the entire credits of Rs.2,55,51,618/- including cash deposits u/s.69A. On receipt of RR, AU added Rs.2,52,26,208/- being unexplained credits in the Bank (other than cash deposits also) as suggested by Review Unit.

SOME CASES REPORTED BY AOs OF RU (CONT..)

During review, it was noticed that the assessee had claimed deduction of Rs.32,51,096 being Education Cess paid and AU proposed to allow the same and accepted returned income of Rs.24,19,07,020/- in the ILDP. In the RR it was pointed out that Explanation 3 of section-40(iia) inserted by Finance Act, 2022, w.e.f. 1-4-2005, such expenses are not allowable. In view of this provision, AU should have disallowed the claim of deduction of Education Cess of Rs.32,51,096/-.

AU accepted the modification suggested and disallowed the claim of expenditure under the head Education Cess.



SOME CASES REPORTED BY AOs OF RU (CONT..)

As per information with the Department in the case of the assessee, large payments were made under section 194J to persons who had not filed returns of income in comparison to total payments on TAN corresponding to PAN in Form 26Q for section 194J. In the ILDP, the AU had proposed to complete the assessment without making any variation/modification to the returned income of Rs. 8,73,88,680/-.

On perusal of the ILDP, wherein the AU has stated that during the relevant year the assessee had made payment of Rs. 12,36,973/- and deducted tax u/s 194 J only to M/s Tata Tele Services Maharashtra Ltd. (TTSML) and the same had been verified from the Insight Portal and the said company was well known company and hence the transaction was presumed to be genuine and hence, no variation was required on this point. However, on perusal of the case records/Insight Portal it is found that the AU had erred by treating Rs. 12,36,973/- as payment made from assessee company which actually was a receipt by the assessee company from M/s TTSML. On perusal of the INSIGHT PORTAL it was found that the assessee company had made payment of Rs.67,92,792/- and deducted TDS u/s 194JB of Rs.5,92,792/- and had not filed his return of income for the A.Y. 2021-22. Furthermore, on perusal of the reply submitted by the assessee it was found that assessee company had made payment of Rs. 67,92,792/- as Contractual charges for Caretaker Training, besides this amount assessee company had also made payment of Rs. 54,05,405/- after deducting TDS u/s 192J of Rs.4,05,405/-, but the same transaction was not reflected in the INSIGHT DATA. Thus, assessee company has paid total amount of Rs. 1,21,98,197/- (67,92,792/-+54,05,405/-) who had not filed his return of income for the A.Y. 2021-22.

During the assessment proceedings the AU had not verified the identity & genuineness of transactions made which was the main factor of the CASS reason.

Hence, the AU was suggested to verify the same and take appropriate action as per I.T. Act. After verification the AU has made addition of Rs. 1,21,98,197/- in the final order and also initiated penalty proceeding u/s 270A(9)(c) of the Act.

SOME CASES REPORTED BY AOs OF RU (CONT..)

Complete Scrutiny was suggested in this case on the following points:

- i) Claim of Large Value Refund
- ii) Low Turnover in comparison to outward foreign remittance by the assessee
- iii) Large “Any Other Amount Allowable as deduction” claimed in Schedule BP of return.
- iv) Deduction from Total Income Under Chapter VI-A
- v) Lower amount disallowed u/s 40A(7) in ITR (Part A-OI) in comparison to audit report.

Observation/Suggestion of Review

The AU had proposed to complete the assessment u/s 143(3) r.w.s 144B of the Act, without making any variation/modification to the returned income of Rs.9,16,08,640/-.

i) On perusal of the details of foreign remittance paid it was found that in various foreign remittances made on which TDS was required to be deducted but the same was not deducted by the assessee. Further, assessee had not submitted any document in support of TDS made as per Income Tax Act.

(ii) On perusal of case records available, it was found that the assessee had claimed Rs. 5,97,00,559/- as “any other amount allowable as deduction”, assessee has only provided the details, however no documentary evidence in support of his claim on the basis of which said deduction was allowed was submitted by the assessee.

(iii) Assessee had claimed deduction u/s 80JJAA of the Act, of Rs. 42,70,013/-. In support of his claim, assessee had submitted Form 10DA & bank statement. However, no details of the additional employees were provided so as to render the assessee eligible for deduction u/s 80JJAA.

Acting on the suggestion provided in the Review Report, the AU added amounts of Rs. 1,40,34,960/- u/s 40(a)(i) of the Act, an amount of Rs. 5,29,56,200/- was disallowed out of the deduction claimed as “any other amount allowable as deduction” & Rs. 6,73,951/- was disallowed from the deduction claimed u/s 80JJAA of the Act and added to the income of the assessee. Thus, the AU has enhanced the assessed income by Rs. 6,76,65,111/- and assessed at Rs. 15,92,73,351/-.

SOME CASES REPORTED BY AOs OF RU (CONT..)

During review it was noted that AU treated the entire credits of Rs.4,09,68,886/- in the bank accounts (current account as well as savings account) as turnover and applied 8% NP rate and arrived at an income of Rs.32,77,511/-. It was suggested that even if AU considered the credits in the current account as business receipts, the credits in saving bank account amounting to Rs.71,30,136/- (including cash deposits of Rs.40,24,800/-) need to be add u/s.69A as the assessee had failed to explain the source of cash deposits and credits in the saving bank account.

On receipt of the RR, AU has added Rs.71,30,136/- u/s.69A as suggested by RU.



SOME CASES REPORTED BY AOs OF RU (CONT..)

This case was re-opened for the reason that the assessee had made property transaction of Rs.2,90,45,000/- and had not filed return. AU proposed assessment u/s.144 adding the said amount of Rs.2,90,45,000/- u/s.69 being unexplained investment. During review it was noticed stamp duty and registration charges were not found to have been included. AU was suggested to add it u/s69 as the same also remained unexplained.

AU accepted suggestion given by RU and assessment order was modified by adding stamp duty and registration charges of Rs.12,44,662/- also.



SOME CASES REPORTED BY AOs OF RU (CONT..)

During review, it was observed that as per sale deed, Flat No.1201 was purchased jointly by the assessee and son and Flat No.1202 was purchased jointly by the (assessee) and husband but in the ILDP AU had proposed to add the entire investment in the hands of the assessee. It was suggested to AU to verify whether the entire investment of Rs.1,77,00,000/- was to be added in the hands of the assessee or only assessee's share of investment was to be added. On receipt of RR, AU re-verified the facts and revised the assessment order adding only 50% share in investment i.e. Rs.88,55,000/- in the hands of the assessee as against Rs.1,77,00,000/- proposed in the ILDP.

SOME CASES REPORTED BY AOs OF RU (CONT..)

In the ILDP, AU proposed to add only Rs.6,65,41,405/- being cash deposits whereas as per bank statement there were credit entries other than cash deposits to the tune of Rs.16,95,55,312/-.

As the assessee neither filed any return nor given any explanation regarding the source of balance credits in the bank account, it was suggested that besides cash deposit, other credits should also be added u/s.69A.

AU enhanced the assessment by Rs.16,95,55,312/- as a result of RR.



SOME CASES REPORTED BY AOs OF RU (CONT..)

In this case the assessee had filed its return of income for A.Y.2020-21 at Rs. 22,87,736/-/-

The case was selected for complete scrutiny on the following issues:

Taxable income shown in revised return was less than the taxable income shown in the Original return and large refund had been claimed (Non business ITR)

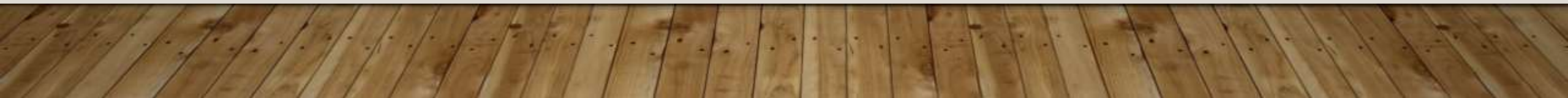
a. Salary income shown under TDS schedule of ITR was higher than the salary income shown under Part B-TI. Salary income shown in ITR was less than the salary income as per 26 AS.

Observation/Suggestion of Review

It was seen as per available reply that the assessee did not fulfil all the conditions of section 10(10AA) and section 10(10B) of the Act. Hence the AO, AU was suggested to restrict the allowances u/s 10(10AA) and 10(10B) as per provisions of the I.T.Act.

Action taken by the AU in consequent to Review Report

On receipt of review report, the AO, AU verified the conditions of Sec. 10(10AA) and Sec.10 (10B) and accordingly addition of Rs. 9,00,000/-was made by the AO, AU in final assessment order.



SOME CASES REPORTED BY AOs OF RU (CONT..)

In this case, the assessee, had filed its return of income for the Assessment Year 2018- 19 declaring total income at Rs. 4,90,37,030/-. As per information, the assessee had made bogus purchases from a Trader which was involved in the activity of bogus purchase, sale and fake invoices. The AO made addition of Rs.42,96,000/- on account of bogus purchases and added to the income of the assessee.

It was seen from the ledger of the assessee that the assessee had claimed bogus purchases from the said Trader amounting to Rs.55,00,032/- . The AO, AU was suggested to verify the ledger of the assessee and assess accordingly.

On receipt of review report, the AO, after enquiry, transaction of Rs. 55,00,032/- was treated as non-genuine, and therefore brought to tax u/s 69C rws 115BBE of the Act. The same was treated as bogus purchases by the AO, AU in final assessment order.



SOME CASES REPORTED BY AOs OF RU (CONT..)

In this case the assessee filed its return of income for A.Y.2020-21 at Rs. Rs. 6,14,740/-

The case was selected for complete scrutiny on the following issues:

1. High Creditors /Liabilities

2. Deduction u/s. 80P

a. It was seen as per available reply that the assessee had received interest on loans amounting to Rs. 29,53,396/- which was not allowable as deduction u/s 80P(2)(a)(i). Hence the AO was suggested to disallow the same and add back to the total income of the assessee.

b. Apart from this, the assessee also claimed deduction u/s 80P of Rs. 93,33,989/- which was not allowable, hence the same was also suggested to disallow and added back to the total income of the assessee.

c. The AO was also suggested to initiate appropriate penalty. Therefore, the AO was suggested to modify the ILDP and examine the above issues and make additions accordingly.

On receipt of review report, the AO, AU verified the deductions claimed by the assessee under Sec.80P(2)(d), computed business Loss after taxing interest income from investment of Rs.54,75,101/- and accordingly assessed at Rs. 99,95,559/- in final assessment order.



SOME CASES REPORTED BY AOs OF RU (CONT..)

The assessee had undertaken financial transactions i.e. cash withdrawal aggregating to Rs. 1,18,62,000/- and cash deposits aggregating to Rs. 18,14,500/- in its bank accounts and also not disclosed the sources of Rs. 41,14,600/- for the purchase of residential property but had failed to offer the income thereof for taxation by way of filing the return of income.

ILDp in this case was framed u/s 147 r.w.s. 144 r.w.s. 144B of the Act by the AU determining the total proposed income at Rs.1,18,62,000/-. In light of the facts mentioned in ILDP, following modifications were suggested:

As per information available on INSIGHT Portal, the assessee was maintaining following 6 bank Accounts.

The AO-AU was suggested to issue notice u/s 133(6) to all the banks to verify the information in respect of cash deposit/withdrawal and other credit/debit transaction.

The AO-AU was suggested to make addition in respect of purchase of residential property u/s 69 of the Act in absence of any documentary evidence.

The AU was suggested to charge late fees in computation of income u/s 234F for default in furnishing return of income u/s 139 of the Income Tax Act, 1961.

The AU accepted the proposal of the RU and enhanced the amount of addition by Rs.43,14,600/- to the total income of the assessee company. Assessment order in the instant case was passed at assessed income of Rs.1,61,76,600/-

SOME CASES REPORTED BY AOs OF RU (CONT..)

Assessee had not filed Return of Income in respect of Notice issued u/s.148. As per the information available at Insight Portal during the F.Y.2017-18, the assessee has made cash deposits to the extent of Rs.2,94,320/- with a banking company, cash withdrawals amounting Rs.2,84,42,500/- during the F.Y 2017-18 relevant to A.Y. 2018-19. ILDP in this case was framed u/s 147 r.w.s. 144 r.w.s. 144B of the Act by the AU determining the total proposed income at Rs.2,87,36,820/-. It was observed that only 26 AS statements were considered by the AO-AU. In light of the facts mentioned in ILDP, following modifications were suggested:

It was observed that statement of account had been received from 02 banks. However, as per ILDP, only 26 AS had been considered. The total cash deposits and other credits in the other banks, during the period under consideration, The total amounted to Rs. 3,90,78,354.37/-. The AOAU was suggested to add this amount u/s 69A of the Income Tax Act, 1961 as unexplained money and initiate penalty proceedings u/s 271AAC(1) of the Act.

The AO-AU was further suggested not to tax the withdrawals as they have been made from the same accounts where deposits have been made to avoid double taxation.

The AU accepted the proposal of the RU and has enhanced the amount of addition by Rs.1,03,41,534/- u/s 69A of the Act to the total income of the assessee company

SOME CASES REPORTED BY AOs OF RU (CONT..)

The case was reopened u/s 147 of the Act on account of cash deposit of Rs. 59,65,631/- in the bank account during FY 2014-15 (AY 2015-16). The assessee has not filed its ITR for the relevant year.

The A.O. proposed variation of Rs. 59,65,631/- as the assessee did not respond to the notices /summons.

The RU suggested modification as under:

The A.O. in the ILDP proposed variation of Rs. 59,65,631/- on account of cash deposits in the account of the assessee. However, as per the account statement, the value of total credits in the said account is Rs. 66,65,911/-. Moreover, the assessee had not filed ITR for the relevant year.

Hence, the A.O. was suggested to consider adding the entire credits to the income of the assessee. Suggestions of Review Unit was accepted and an addition of Rs. 66,83,932/- instead of Rs. 59,65,631/- was made to the income of the assessee.



SOME CASES REPORTED BY AO_s OF RU (CONT..)

The case was selected under CASS on the issue of Low income in comparison to very high investments appearing in Balance Sheet and Deduction from total income (Chapter VIA)

The AO had accepted the returned income of the assessee. The RU suggested that the AO should reexamine the matter in light of the provision of section 80P(4).

Suggestions of Review Unit was accepted and an addition of Rs. 27,44,950/-on a/c of disallowance of deduction u/s 80P(4) was made to the income of the assessee.



SOME CASES REPORTED BY AOs OF RU (CONT..)

The case of the assessee was reopened u/s 147 / 148 of the Income Tax Act, 1961 as the assessee had made cash deposit to tune of Rs. 56,54,470/- in his bank account during the F.Y2014-15 relevant to the A.Y.-2015-16 and had not filed his ITR for the relevant year.

Observation/Suggestion of Review:

The A.O. assessed income at Rs. 56,54,470/- in the ILDP after making addition of Rs. 56,54,470/- u/s 69A.

- a. The A.O. was suggested to check for other credits as received in the account and add them to the income of the assessee as no ITR / explanation has been given by the assessee.
- b. From the bank statement of the assessee, it was observed that the assessee had earned interest income. The A.O. suggested to determine the interest income from the bank statement and add the same to the income of the assessee.
- c. The A.O. suggested to initiate penalty u/s 271(1)(c) after each addition for concealment of income instead of penalty proceedings u/s 271AAC.

Suggestions of Review Unit were accepted and an addition of Rs. 68,03,621/- instead of Rs. 56,54,470/- was made to the income of the assessee.

SOME CASES REPORTED BY AOs OF RU (CONT..)

The case was selected for scrutiny under computer aided Scrutiny Selection on the issue of Business Purchases.

Observation/Suggestion of Review:

The assessee filed the return of income u/s 139(1) on 15.03.2022 showing total income of Rs. 38,12,460/-. The AU in the ILDP made addition of Rs. 3,01,41,463/-, as per Section 44AD of the Act taking the 8% profit on the total unverified purchase of Rs. 37,67,68,288/- which was computed at Rs. 3,01,41,463/-.

The RU suggested AU to complete the assessment by considering the whole unexplained purchases as unexplained expenditure u/s 69C of the Act, considering the judgement of Hon'ble Supreme Court in the case of N K Proteins Vs. DCIT (2017) 292 CTR 354 (SC).

Action taken by the AU in consequent to Review Report

The AU accepted the suggestion of the RU and made addition of Rs. 37,67,68,288/- to the total income of the assessee for the year under consideration.



SOME CASES REPORTED BY AOs OF RU (CONT..)

‘Large Payments made under Section 194C to the persons who have not filed the return of income.’

Observation/Suggestion of Review:

The assessee filed the return of income declaring total income of Rs. 88,63,540/-.

The AU had framed the ILDP at proposed assessed income of Rs. 2,52,90,255/- with total addition of Rs. 1,64,26,715/- .

On perusal of the Audit Report 3CD, it was noticed that the assessee had not made TDS in respect of various expenses claimed in the P&L account. The AU was suggested to ask the assessee to provide the details of the person to whom payment made for the expenditure and TDS deducted as per the provision, in case of insufficient details and discrepancy the same amount should be disallowed u/s 40(a)(ia) of the Act and to be added back to the total income of the assessee.

The AU accepted the suggestion of the RU and made addition of Rs. 84,76,997/- on account of disallowance u/s 40(a)(ia) of the Act.



SOME CASES REPORTED BY AOs OF RU (CONT..)

Issue-Large payments made under section 194C to persons who have not filed return of income.

In the instant case the Income and Loss Determination Proposal (ILDP) was framed by the AU proposed assessed income of Rs. 1,62,20,209/- against the returned income of Rs. 84,13,180/- after making addition of Rs. 78,07,029/-.

On perusal of the records available on the ITBA portal and ILDP, following modification was suggested to AU: -

The AU made an addition by disallowance of expenses to Rs. 78,07,029/- @ 8% of the total amount of contractual payments u/s 194C to the extent of 9,75,87,863/- on the estimated basis. However, as per physical report, the party to whom payments were claimed to have made, was not in operations at the given address. The assessee failed to substantiate its claim for the payment of Rs. 9,75,87,863/- u/s 194C. Considering the judgment of Hon'ble Supreme Court in the case of N.K. Proteins Vs. DCIT(2017) 292 CTR 354(SC), the AU was suggested to complete the assessment by considering the whole unexplained contractual payments of Rs. 9,75,87,863/- treating as unexplained expenditure u/s 69C.

The AU accepted the suggestion of the RU and made addition of Rs. 8,97,80,834/- in respect of issue of contractual payments u/s 194C.



SOME CASES REPORTED BY AOs OF RU (CONT..)

The Assessee is an individual and had not filed return of income for A Y 2018-19. As per information, the assessee had sold immovable property for an amount of Rs.1,69,60,000/-.

The ILDP was framed by the AU at proposed income of Rs. 67,84,000/- after making addition of Rs. 67,84,000/- on account of STCG.

Review report suggested modification as under:

- a. From the information it was observed that assessee had sold two immovable properties for Rs.1,69,60,000/-(47,00,000/-+1,22,60,000/-) The assessee was non complaint and had not filed any submission, hence it was suggested that total sale proceed of Rs.1,69,60,000/- was suggested to be added as income from STCG.
- b. Penalty proceedings u/s 272A (1)(d) was suggested to be initiated for non-compliance of notices. AO had made further addition of Rs. 1,01,76,000/- on account of sale of immovable property and initiated penalty u/s 272A(1)(d).

SOME CASES REPORTED BY AOs OF RU (CONT..)

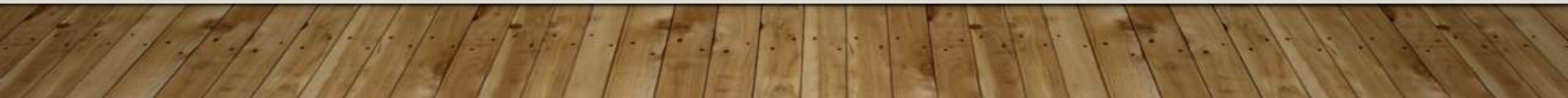
Assessee identified as non-filer for the A.Y2018-19. Assessee had made Cash deposits in bank account (other than a current Account and time deposit of Rs. 1,34,39,491/-)

Observation/Suggestion of Review:

- a. It was noticed from the bank statement that the assessee had total credits of Rs.10,96,61,780/-. As assessee had not filed its return of Income so these credits had not been offered for taxation. Therefore, AU was suggested to verify the same and take action as per the provisions of IT Act. Further, total cash deposit as per statements was Rs. 1,41,46,757/- whereas addition of Rs. 1,34,39,491/- had been made. Difference of Rs. 7,07,266/- was suggested to be added to total income.
- b. The AU was suggested to charge late fees u/s 234F of the Income Tax Act for default in furnishing return of income u/s 139 of the Act instead of initiating penalty proceedings u/s 271F.

Action taken by the AU in consequence of Review Report:

Difference of cash deposit of Rs. 7,07,266/- and 10% of credits in bank amounting to Rs. 81,88,388/- added to total assessed income and brought to tax.



SOP_s AND CIRCULARS

SOP DATED 03.08.2022

The main SOP governing the Faceless Assessment Scheme is dated 03.08.2022. The SOP has been issued in 4 different parts to the 4 limbs of FAS- AU, VU, TU and RU and have undergone periodic amendments.

The duty of the RU is also to check whether the AU has followed these SOPs.

The SOP deals with -

- How to handle the cases received for review (Concur, modification/suggestion etc.).
- What things needed to be examined for review.
- Instructions for preparing a review report.

67 SOP DATED 06.09.2022

The main SOP governing the Faceless Penalty Scheme is dated 06.09.2022. The SOP has been issued in 4 different parts to the 4 limbs of FAS- AU, VU, TU and RU and have undergone periodic amendments.

The duty of the RU is also to check whether the AU has followed these SOPs.

The SOP deals with -

- How to handle the cases received for review (Concur, modification/suggestion etc.).
- What things needed to be examined for review.
- Instructions for preparing a review report.

STANDARD OPERATING PROCEDURES

All SOPs, NeAC Orders, Instructions, etc. relevant for faceless assessment and penalty are provided by NaFAC and have been uploaded on the ITBA Home page under the module of ITBA Help Guide

The path is :

ITBA Home Page → ITBA Help Guide → Compendium of Faceless SOPs/NaFAC Communications etc.

69 SOP AND CIRCULARS CONTD.

- NaFAC has issued FAQs on SOP for AU/VU/TU/RU dated 28.07.2023.
- Question No. 37 states “What steps are required to be taken by AU and RU with regard to the computation of income ?”
- Answer- The AU must ensure that all additions proposed in the ILDP are duly reflected in the Computation of Income before submitting the same for RMS. The AU must invariably unfreeze the earlier computation done during Dry Run and recompute after making appropriate entries in the computation sheet in accordance with the ILDP. Computation must be done again even when no variation is proposed in the ILDP. RU must, in addition to the ILDP, check the prima facie correctness of the computation. Issue, if any, must be flagged in the Review Report. At the Draft/Final Order stage also, AU must check the correctness of the computation. Issue, if any, must be taken up with ITBA/CPC.

70 SECTION 144B AND 274(2A)

- Faceless Assessment emanates from section 144B and Faceless Penalty Scheme emanates from section 274(2A)

THANK YOU