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ADAPTING TO THE WORK IN ASSESSMENT UNITS

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ROLE OF ASSESSING OFFICER BEFORE E-ASST. SCHEME, 2019 (FACELESS ASST. SCHEME, 2020)

An Assessing Officer in the regular assessment scheme is a single individual who is not only an investigator but also the adjudicator. He does all the works (identification of issues, issue of notices, making enquiries, verifications, cross verifications, examination of books of account and documents, recording of statements of assessee/third parties, allowing cross-examination, study of applicable case laws, making references for Special Audit/Valuation Cell/TPO, arranging for forensic examination of doubtful documents, etc) which are required for completion of assessments by himself and passes the order after hearing the assessee on the materials collected by him and proposed to be used by him in the assessment.

FUNCTIONS OF ASSESSMENT UNITS

Assessment Units to perform the **function of making assessment**, which includes-

- (1) identification of points or issues material for the determination of any liability (including refund) under the Act,
- (2) seeking information or clarification on points or issues so identified,
- (3) analysis of the material furnished by the assessee or any other person and
- (4) such other functions as may be required for the purposes of making assessment

Note: Drafting of order, which is a vital function, could have been explicitly included.

FUNCTIONS OF VERIFICATION UNITS

Verification Units to perform the **function of verification**, which includes –

- (1) enquiry,
- (2) cross verification,
- (3) examination of books of accounts,
- (4) examination of witnesses and recording of statements and
- (5) such other functions as may be required for the purposes of verification

FUNCTIONS OF TECHNICAL UNITS

Technical units to perform the **function of providing technical assistance** which includes any assistance or advice on –

- (1) legal,
- (2) accounting,
- (3) forensic,
- (4) information technology,
- (5) valuation,
- (6) transfer pricing,
- (7) data analytics,
- (8) management or
- (9) any other technical matter which may be required in a particular case or a class of cases

FUNCTIONS OF REVIEW UNITS

Review Units to perform the function of **review of the draft assessment order** which includes checking whether-

- (1) the relevant and material evidence has been brought on record,
- (2) the relevant points of fact and law have been duly incorporated in the draft order,
- (3) the issues on which addition or disallowance should be made have been discussed in the draft order,
- (4) the applicable judicial decisions have been considered and dealt with in the draft order,
- (5) modifications proposed are arithmetically correct and
- (6) such other functions as may be required for the purposes of review

ASSESSING OFFICER IN A.U. IN F.A.S.

A.O. in A.U. has to perform the **function of making assessment**, which includes 3 specified functions and also such other functions as may be required for the purposes of making assessment.

“Such other functions” should also be of the same nature as the 3 specified functions. It cannot be a function which is specifically allotted to VU or TU*. Since functional specialisation is one of the objectives of the scheme, unless the allotted functions are performed by the respective Units, the specialisation cannot develop.

*RU is not mentioned because AU, while drafting the order, is expected to ensure those factors.

ADAPTATION TO THE REDUCED ROLE OF AO

The first adaptation the AO in AU requires is to mentally restrict himself to the reduced role of AO in completing an assessment. If the case requires functions of VU and TU, AO in AU should not continue in the same old mental makeup in which he was while working in erstwhile regular charges and completing the assessment all by himself. He should get them done through VU and TU and then complete.

WHEN TO REFER TO VU/TU?

Till date there is no SOP for making reference to VU/TU. Report of FMPP Committee has not yet been approved. However, in the absence of any other guidelines, the report, prepared by a committee headed by a CCIT and comprising of 4 PCsIT, one CIT, 2 Addl./Joint CsIT and 2 ACsIT, all from NeAC/ReACs, has persuasive value. So all A.O.s in ReACs may study the report to understand the scheme (as it existed prior to 13.8.2020.)

WHEN TO REFER TO VU?

In para 7.4 (page 49), FMPP committee report states that “from the duties assigned it seems that V.U. shall function like field units & execute field verification.”

In Para 7.8, it classifies following types of verification:

1. Non-field verification
2. Field verification
3. Examination of any person

In para 5 (pg.28-29) it states that:

- * Scheme allows both AU & VU to issue notice u/s 131 & 133(6).
- * If A.U. wants verification from VU, AU to prepare a note outlining facts of the case and specific verification sought.
- * **AU shall try to gather evidences from third parties as far as possible by itself.**
- * A.U. to seek from assessee email ID & contact details (including mobile no.) of third party from which it wants information
- * Under the scheme, enquiry, cross examination, examination of books of accounts, examination of witness on oath & similar actions shall be carried by VU through issue of notice u/s 131 & 133 (6) on any other person/assessee

WHAT TO REFER TO VU?

SOP has not been issued. Subject to SOP, the following may be considered as examples of matters that can be referred to VU:

1. Genuineness of claim of agricultural income (after collecting details of land owned/leased, crops grown, evidence for gross income/expenses, etc)
2. Genuineness of claim of unsecured loans (after collecting confirmation letters with supporting evidences like ITR copy, bank statement of loan creditor, evidence for sources and schedule to Balance Sheet if loan is appearing in it, to the extent possible)
3. Allowability of deduction/exemption (after collecting details of deduction and evidence for satisfaction of eligibility conditions) e.g. 80-IA, etc.
4. Determination of ALV (if fair market rent is not ascertainable from comparable properties in the same location from rental websites such as magicbricks. com, etc)
5. Genuineness of expenses claimed (after collecting details of expenses, payment details, invoice copy, details of payees, evidence for work/service done, etc)
6. Correctness of claim of depreciation (after collecting details of machinery purchased, purchase invoice, delivery note, date of installation, booking of expenses for installation, details of usage, etc)
7. Correctness of claim of cost of improvement/reinvestment, description of property sold/purchased, etc, in capital gains cases (after searching Google earth, etc)

THUMBRULE FOR REFERENCE TO VU

AO in AU should not assume that the A.O. in VU is a superman who can do what he himself cannot do and therefore refer all issues. Both AU and VU are working under the same I.T. Act/Rules. The only difference between the two A.O.s is that AO in VU is permitted to do something which an AO in AU is not permitted. e.g. If an assessee claims agricultural income but does not furnish even basic details (such as location of land), there is no use in referring it to VU (If 360/Insight/old records does not reveal the location of land). SCN may be issued proposing to reject the claim. If details are furnished but AO in AU is not satisfied with the claim, then, it can be referred to VU for field/further verification. (How VU will do is subject to SOP. As per FMPP committee, it has to be done by issue of commission u/s 131(1)(d) to any officer of the Dept. Whether this requires change due to expansion of VU w.e.f. 13-8-2020 is not yet known).

THUMBRULE FOR REFERENCE TO VU (contd.)

One line references should not be made. e.g. verification of agricultural income, verification of genuineness of loan creditors, etc. Whatever points noted by AO which made him suspect the claim/genuineness should be communicated to VU in the form of a note. Relevant documents should be attached (As of date, VU cannot VIEW case history which RU can view). A suggested checklist is in the next slide (subject to SOP).

CHECKLIST FOR MAKING REFERENCE FROM AU TO VU

Note: Serial Numbers 3, 6, 7, 8, 13 and 14 are compulsory fields

S.No	Description	Particulars
1	PAN	
2	ASST. YEAR	
3	Head of income	
4	Section (if specifiable)	
5	Reason Code/Description (if applicable)	
6	Type of scrutiny	LIMITED or COMPLETE
7	Factors for Verification (a) Genuineness of claim of agri. income (b) Genuineness of claim of unsecured loans (c) Allowability of deduction/exemption u/s _____ (d) Determination of ALV (e) Genuineness of expenses claimed –Sales promotion, commission, payment to contractors/professionals, others (specify) (f) Export-import data reconciliation (g) Depreciation (h) capital gains computation (g) Others (specify)	
8	Assessee's claim (in brief)	
9	Location of assessee's claim : (digital flagging is preferable) (a) Page/Schedule of ITR (b) Letter dated/uploaded on (c) Annexure No. (if any)	
10	Documents, if any, relied upon by assessee: (digital flagging is preferable) (a) Description of document (b) Date on which uploaded (c) Annexure No. (if any)	
11	A.O.'s perception, if any, of the claim	
12	Documents, if any, relied upon by AO: (digital flagging is preferable) (a) Description of document (b) Reference for accessing it	
13	Method/s of verification suggested by AO: (a) Field enquiry u/s 131(1)(d) (b) Collecting of info. u/s 133(6) (specify from whom – Banks, SRO, GST, etc) (c) Collection/Examination of documents u/s 131 (specify books/documents to be examined – cash book, ledger, vouchers) (also specify reason) (d) Recording of statement u/s 131 (furnish list of questions AU wants to be asked) (e) Others (Google earth, databases like Prowess Iq., etc)	
14	Due date by which report is expected	
15	AO's detailed note, if any, attached	YES (OR) NO

ANNEXURES TO CHECKLIST

In the checklist, in columns “location of assessee’s claim”, “documents relied upon by assessee’ and “documents relied upon by AO”, it is noted as “digital flagging is preferable”, i.e., while AO in AU is required to note the details in the respective columns, it is preferable to flag them digitally. This was prescribed because it was expected that VU will be enabled to view the case history notings similar to AU and RU. But since it has not be operationalised till date, AU has to attach the documents while making the reference without which VU cannot do its function. 5MB is the present limit of attachments.

WHEN & WHAT TO REFER TO TU?

SOP is yet to be issued. But, FMPP committee (pg.56-62) suggests the following issues for which cases may be referred when AU requires assistance or advice from TU –

1. Legal – when adverse/contrary views of High Courts are available: when departmental view is required, etc. **(as far as possible AU should do itself and only in rare cases reference to be made)**
2. Accounting- For analysis of books of account requisitioned in a machine readable format
3. Forensic- For forensic analysis of documents, data, device, etc.
4. Information technology- For finding passwords, deciphering digital files, applications, etc
5. Valuation – For valuation of tangible and intangible assets (u/s 50C/56/43(1)/142A/115TD/etc)
6. Transfer pricing- ALP of international or specified domestic transactions
7. Other technical matter- for any other technical matter.

WHEN & WHAT TO REFER TO TU? (CONTD.)

FMPP committee suggested reference to TU for assistance in translation, transcription, etc (NeAC subsequently appointed a Committee to go into the translation issue).

FMPP committee suggested that TU to develop expertise or engage valuation experts to determine FMV u/s 9, 17, 28(via), 40A(2), 45, 49, 50CA, etc.

Author's view: Appointment of Special Auditor u/s 142(2A) could be one more issue.

HOW TO START?

Cases have been assigned. There are limited and complete scrutiny cases. Reopened, set-aside, etc, cases will follow.

First step is to distinguish limited and complete scrutiny cases. The scheme is faceless, not paperless. Folders are necessary.

Tip – Use distinct color folders for limited (preferably red) and complete (green) cases. Red will remind not to cross the boundaries of limited scrutiny. Green will indicate green channel for complete scrutiny. If such color folders are not available use at least two different colors, uniformly within an A.U. (to remind the Unit-Head also uniformly).

Dept. may instruct supply of two different color folders for uniform use throughout the country.

DON'T LOSE TIME & FOCUS TO SAVE PAPER

Entire return should be printed in one go (continuous pages), not a few relevant pages as it may seem sufficient while seeing the reason code. Absence of other pages was felt very dearly during the course of proceedings and resulted in serious loss of time and focus.

RECORDING DATE OF UPLOADING OF REPLY

In regular assessments, Tapal seal will show the date of receipt of reply from assessees. In ReACs, assessees-

- (a) simply send their replies by typing in the box meant for “notings/remarks”
- (b) Attach undated reply with a brief note “reply attached” in the said box.

So it is difficult to find the date when we have to quote it in further notices or order. Some assessees record an early date in the letter but upload it much later. Therefore while downloading the reply, the date of uploading by assessee, which is displayed in the case history, should be noted and recorded in order sheet.

When an assessee sends only a note/remarks without any annexures, then the ITBA screen containing the box displaying his notings/remarks should be printed and placed to refer the exact words in the subsequent notices/order. From the print out, it is not possible to decipher the date when it is required to be quoted. Therefore while going through the reply in ITBA screen itself, the date of uploading of his notings, which is visible in the screen, should be noted and recorded on top of the print out.

DOWNLOAD DATA OF RELEVANT F.Y.

In complete scrutiny cases all the documents/data available in 360 degree/Insight portal relevant to the asst. year should be printed and placed. Care should be taken to search and print only the data relevant for the Asst. Year since these **portals, by default, gives 3 years data together** (cash credits, time deposits, export import data, SRO data, etc). Therefore only the **relevant asst. year should be entered to search for the data** and printed. Insight portal gives comparative tables of P&L and balance sheet figures of 4 or 5 years which makes comparison very easy in non-company cases. This may be printed and placed on record.

MATERIALS TO BE SEEN TO DRAFT A QUESTIONNAIRE IN A COMPLETE SCRUTINY CASE

- Reason code, reason description, issue, underling information elements and rationale for selection for scrutiny
- **Return which is selected for scrutiny**
- Revised/original returns, if any, filed for the relevant assessment year
- Response, if any, of the assessee to notice u/s 143(2)
- Form 3CD and revised Form 3CD, if any, along with its attachments
- Form 3CEB, 10CCB, etc, if any, filed.
- Returns for the previous and succeeding Asst. Years
- Form 3CDs, along with attachments, of the previous & succeeding Asst. Years
- Information in 360 degree
- Information in Insight portal (including thro' approval of higher authorities)
- Simple google search

DO NOT EXCEED SCOPE OF SCRUTINY

While drafting questionnaire take utmost care not to exceed the scope of limited scrutiny. The objections of assessee, in ReACs, would come in writing and not orally by the CA during a hearing as may happen in the normal scrutiny proceedings.

ADAPTING TO THE NEW LANGUAGE

Do not use “produce”, “submit”, “enclose”, “file”.
Instead use “furnish”, “attach” or “upload”. e.g.

1. Please furnish the following details/documents.
2. Attach evidences with your reply.

DO NOT EXHIBIT IGNORANCE

During regular scrutiny hearings, AO may ask some oral question ignorantly without knowing assessee's business practice. CA will explain. It will not be recorded. It is not possible in F.A.S. AO has to communicate all his queries in writing and they will be open to all. Even if AO's identity is not revealed, Department's reputation is at stake. So AOs have to be extremely careful while raising queries. Do Google search intensively whenever any unknown issue comes up and raise meaningful queries. Discuss with colleagues and superiors. Refer Investigation manuals which discuss different industries.

FACELESS.... NOT HEARTLESS

AOs have to avoid high pitched additions. e.g.

1. Double additions without allowing telescoping. As per “Techniques of investigation for assessment” – vol. I (page 211-para 11.2) AO should not ask assessee to prove to claim telescoping. e.g. If receipt of on-money is before payment of on-money, telescoping can be considered, if Dept. has no proof of utilisation of such on-money received for some other purpose. Vice versa cannot be considered.
2. Peak credits, not total credits, (wherever peak credit is the correct way) should be assessed.

However, additions should not also be mindless to cause prejudice to the revenue. e.g. Making G.P. addition when peak credit is to be assessed.

A.U. IS NOT THE FINAL AUTHORITY

In regular jurisdiction, while AOs write detailed order while making additions, they normally do not write in order sheet why they are not making additions. But in ReAC, AO in AU should explain, in his workflow notings, as to why he is not making any addition on the reason codes for which the case was selected. Otherwise, RU may raise objection which will delay the completion of assessment. Even though all cases do not go to RU, we do not know which will go and which will not go. So it is required to record the satisfaction in all cases.

SEPARATE T.B.DATE FOR D.A.O.

Legally, next T.B. date is 31-3-2021. But AOs in AU cannot treat it as T.B. date because in ReAC, AO cannot straightaway pass Assessment Order. First they have to pass only Draft Assessment Order (DAO).

Even if AO accepts income returned in the DAO, it may go to RU. If RU differs, it will go to new AU. If new AU differs from RU, it will go to PCIT of new AU (as per CBDT's PPT. Further details awaited).

If AO modifies the income/loss/refund in the DAO, NeAC may send DAO either to-

- (a) assessee as a SCN or
- (b) to RU. If RU concurs with the DAO, send it to assessee as a SCN. If RU differs, NeAC will send it to new AU as noted above.

After considering assessee's reply & conducting hearing thro' VC (if asked for & permitted by CCIT), the original or new AU will pass revised DAO. NeAC will send it as a final order only if it is not prejudicial to assessee from the DAO already sent. If it is prejudicial, NeAC will send second SCN to the assessee. The cycle may repeat.

In page 70 of its report, FMPP committee suggested T.B. date for DAO as 30 days prior to the legal TB date (when there was no provision to send to new AU). Due to this new provision w.e.f. 13-8-2020, one more month may be required. Thus TB date for DAO needs to be considered as 31st January, 2021.

WHICH HIGH COURT DECISION TO FOLLOW?

One crucial adaptation required is in applying the decision of High Court. AOs cannot apply the decision of jurisdiction H.C. of his station. He has to apply the decision of jurisdiction HC of the assessee. He has to adapt to the fact that he has to apply contrary decisions of different High Courts to two different assessees on the same issue before him.

CONFIDENTIALITY

A vital feature of the scheme is the “faceless” AO to the assessee. While the AO can identify the assessee, the assessee should not identify the AO. Unlike the regular jurisdiction where which AO will be assessing which assessee is made known to the world, this scheme is designed not to let anyone know it. Any deviation will be against the very foundation of the scheme. So strict confidentiality should be maintained about the identity of the assessee assigned to each AO. Much care in this regard should be taken while A.O.s shift from one room to another without shifting their systems.

ROSES AND THORNS

Working in FAS, especially in the initial years, is a mixture of roses and thorns. AOs can focus only on limited areas in assessment and thus develop functional specialisation. They need not, as hitherto, attend to multivarious functions simultaneously making them good at nothing but average in all. But, in the initial years, they will face many teething issues which have to be brought to the notice of higher authorities for resolution.

TOGETHER LET US FACE
THE FACELESS ASSESSMENTS CONFIDENTLY
AND MAKE QUALITY ASSESSMENTS