

Business Laws

VIEW POINT

Faceless ITAT – a premature experiment

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Virtual assessment, which seeks to eliminate human interface, is welcome, provided the principles of fairness and equity are not eroded

Virtual assessments and initiatives which seek to harness technology, eliminate human interface are welcome, provided such exercises do not become arbitrary or one sided and principles of fairness and equity are not eroded.

Portals, E-Tax administration

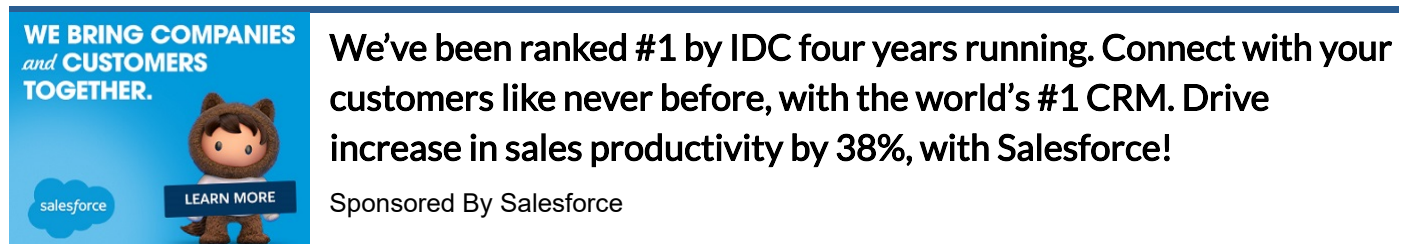
On the Customs front, there is this new initiative to enter into an all-in-one portal for all customs matters. No lessons have been learnt from the massive technical glitches (hassles in downloading, getting data) that were seen in GSTIN and MCA. One still has to knock the doors of the High Court for relief on account of these glitches.

The Finance Act, 2019, introduced the concept of faceless assessments and Finance Act, 2020 extended the same to first appeals.

(In faceless assessment, the entire assessment process is done remotely by a team of officers without any physical interface with the assessee. To illustrate, a notice could be issued to a Delhi resident from the Bengaluru office and the reply could be seen by another officer in Mumbai. All notices have to be responded to electronically without visiting the tax office.)

The Finance Bill, 2021 seeks to transfigure the Income Tax Appellate Tribunal (ITAT) in the same manner, thus making the final fact-finding authority also faceless, by transferring the appeal process online. One gets the feeling that the government is rushing into 'faceless era' without giving time to the faceless assessments and faceless first appeals to settle down.

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Three experiments in the journey of a tax dispute at the same point of time signals impending disaster. The provisions and procedure pertaining to faceless assessments and appeals are already subject to significant criticism.

Faceless assessment

While faceless assessments can be beneficial for simple matters, it is quite a different story for complex disputes. The challenges include lack of adequate infrastructure for uploading data; limitations on file size, number of documents; difficulties in explaining complex facts, business structures and intricate legal aspects, etc.

Personal hearing, which is important in any administration of justice, has become an illusion since the grant of personal hearing is not a matter of right and approval has to be obtained from the Chief Commissioner or DGIT for grant of a personal hearing. While virtual hearings and faceless assessments are clear reforms, it does not mean that the entire exercise should be one-sided.

Income Tax Appellate Tribunal

The Section 255 empowers the Central government to frame a scheme for disposal of appeals by the Appellate Tribunal. The provisions contemplate eliminating interface between the Tribunal and the parties in the course of appellate proceedings to the extent technologically feasible; optimum utilization of resources; and introducing an appellate system with dynamic jurisdiction.

Interestingly, the same fancy language was used in Section 143(3A) for facilitating faceless assessments and the principles of natural justice seems to be a casualty. If the technical limitations in terms of documents and submissions is a challenge in assessment, it is likely to take gigantic proportions in the case of Tribunals.

Dynamic jurisdiction

In tax disputes, precedents play an important role. If a Chennai Bench of the ITAT is hearing a dispute and the same issue has been decided one way or other by a Co-ordinate Bench, then the said decision is binding. In case the Bench does not agree with the views expressed, the matter will have to go to a larger Bench.

Where different views are expressed by different Benches, Special Benches are constituted. A Bench normally follows a decision of the jurisdictional High Court. All these well settled concepts will be at peril when the concept of 'dynamic jurisdiction' is attempted.

Appointment of members

The Central government has been moving at a snail-pace in appointment of members to the Tribunal. The provisions pertaining to the GST Appellate Tribunal were found to be unconstitutional as it provided for a majority of technical members as against judicial members.

The Supreme Court, in the case of Madras Bar Association, has directed that the Union of India should constitute a National Tribunal Commission which shall act as an independent body to supervise the appointments and functioning of the Tribunals apart from other aspects.

The government could have used the opportunity to implement the directions of the Supreme Court in the context of Tribunal or corrected the anomalies pointed out in the context of GST Appellate Tribunal instead of proceeding with the faceless initiative.

In the interest of justice and fair play, it would be prudent to drop the idea of faceless ITAT; rectify the anomalies in faceless assessment and appeals schemes; improve the technological capacity; allow the first two experiments some more years before embarking upon the faceless ITAT. However, if faceless ITAT is the only additional option of virtual hearing without disturbing the existing framework, then it is welcome.

(The author is an advocate and a tax consultant)

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