

Faceless Appeal Scheme, 2020 - Major Highlights

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RELEVANT CHANGES IN ACT

- v **Finance Act, 2020** inserted Sub section (6B), (6C) and (6D) to Section 250.
- v Sub Section 6B empowered Central Government to notify the scheme to dispose of appeal by CIT(A) **so as to impart greater efficiency, transparency and accountability by**
 - (a) eliminating the interface between the Commissioner (Appeals) and the appellant to the extent possible through technology
 - (b) optimising utilisation of the resources through economies of scale and functional specialisation
 - (c) Introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).
- v Sub Section 6C, empowers Central Government to provide for notification in Official gazette direct that provisions relating to disposal of appeal provided in Act shall not apply or shall apply with modification or exception mentioned in such notification.

PREFACE

- v Hon'ble PM on 13th August, 2020 while launching the Faceless Assessment and Taxpayers' Charter as part of "Transparent Taxation - Honouring the Honest" platform, had also announced launching of Faceless Appeals from 25th September, 2020 on the birth anniversary of Shri Pt. Deen Dayal Upadhyay
- v On this vision, Faceless appeal scheme launched on 25th September, 2020.
- v As per data with CBDT, as on date there is a **pendency of almost 4.6 lakh appeals at the level of the Commissioner (Appeals)** in the Department.
- v **88 % of the total appeals** will be handled under the **Faceless Appeal mechanism**
- v Almost 85% of the present strength of Commissioners (Appeals) shall be utilised for disposing off the cases under the Faceless Appeal mechanism.

(A) Scope of the scheme-

The appeal under the Scheme shall be disposed of

- Ø Such Territorial area
- Ø Person or class of persons
- Ø Income or class of income
- Ø Class of cases

As may be decided by board.

Important Points:

Ø Appeals Not covered by Scheme

- (a) appeals relating to serious frauds

- (b) major tax evasion,
- (c) sensitive & search matters
- (d) International tax
- (e) Black Money Act.

∅ Various appeals of search cases were reallocated prior to introduction of such scheme to CIT(A) not having regular jurisdiction of such appeals, such appeals need to be re-transferred to CIT(A) having jurisdiction over search appeals.

∅ There are cases where **central circle AO is passing the Assessment Order** (like **cases** which are **not decentralized subsequent to completion of search assessments**) and appeal against such order lies with **CIT(A) central circle whether he will be empowered to carry out appeal in physical manner** or in faceless manner, need to be clarified.

∅ PCCIT/PDG in charge of NFAC has power to transfer to appeal with prior approval of board to any CIT(A) as specified in order.

(B) The new terminology “Appeal Unit”-[Para 4(3)]

- ∅ The existing post of CIT(A) is diverted to CIT(Appeal Unit)
- ∅ Appeal Unit shall have one or more CIT(A)

Important Issues:

∅ As per **CBDT order No 182 of 2020 dated 25th September, 2020** , new post of existing CIT(A) (other than exception stated herein above) are allotted and as per such order one person is having specific charge over specific appeal unit. **As of now there is no appeal unit having more than one CIT(A) having charge over such unit.**

(C) Roles & Responsibilities of Various Faceless Appeal Centres(Para 4)

National Faceless Appeal Centre (NFAC)	Regional Appeal Centre (RFAC)	Appeal Units
To facilitate the conduct of e-appeal proceedings in a centralised manner	To facilitate the conduct of e-appeal proceedings having jurisdiction to dispose appeal Four RFAC are established at Delhi, Mumbai ,Chennai and Kolkata	To facilitate the conduct of e-appeal proceedings To perform the function of disposing appeal which includes:- -admission of additional ground and additional evidences , -admission of delayed appeal -admission of appeal as referred in Section 249(4) -making such further inquiry as thinks fit - Directing the NeAC or the AO , as the case may be, for making further inquiry , seeking information or clarification on admitted grounds of appeal, providing opportunity of being heard to the appellant, analysis of the material furnished by the appellant, review of draft order, or such other functions as may be required

CRITICAL ISSUES RELATING TO WORD “NeAC/AO” USED AT VARIOUS PLACES:

Ø In entire faceless appeal scheme, **word NeAC/AO**, are used at various instances. This may be for the reasons that **if existing orders for which appeals are already filed are passed by AO and not by NeAC**, appeal unit may refer matter to AO as NeAC may not be having assessment records. (This needs further clarification)

Ø **SOP or clarification is further required as to how NeAC will process further, once it receives reference from Appeal Unit.** Though NeAC has various units including technical units or verification units, whether **Assessment Unit at NeAC, will take help of such units or not is not clarified in scheme** . (Naturally concerned Assessment Unit at NeAC may take help of such various units of NeAC, if required as such Units are set up for helping assessment unit at various stages)

Ø If ‘AO’ referred in the scheme, is jurisdictional AO, then effectiveness of proceeding in Faceless Appeal may reduce to some extent.

(D) Basic Procedural Aspects-

Ø **Exchange of communication** exclusively **by electronic mode**

- all communications between the NFAC and the appellant, or his authorized representative or other person shall be exchanged exclusively by electronic mode.

Ø **All internal communication** among NFAC, RFAC, NeAC, AO and appeal unit, as the case may be, shall be exchanged exclusively **by electronic mode**.

Ø **NFAC shall assign the appeal to specified appeal unit** in any one regional faceless centre through

automated allocation system. Even at subsequent stage allocation would be **at random basis**.

Ø **Admission of belated appeal** (Section 249(2) or 249(4))

o Appeal unit, **may admit appeal** if it is **satisfied** that appellant has **sufficient cause for not filing appeal** within time limit or payment of advance taxes as envisaged in section 249(4) when Return of Income is not filed **or**

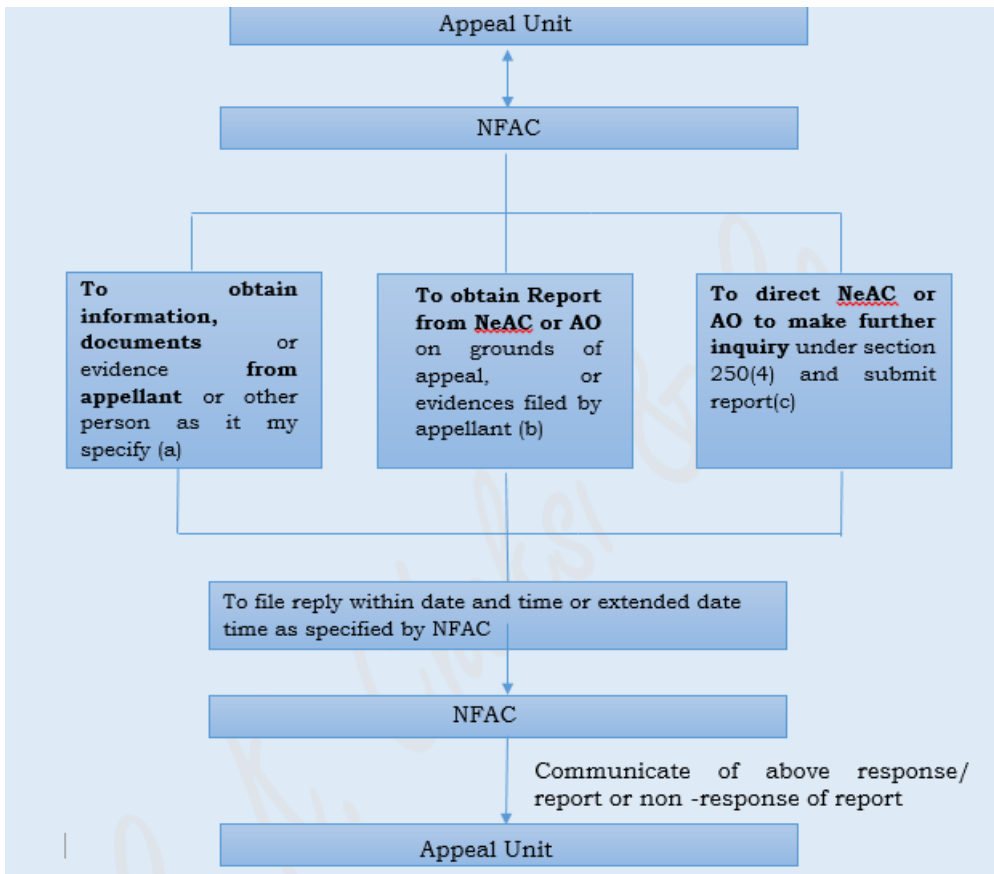
o may reject the appeal

o NFAC shall intimate admission or rejection of appeal to the appellant

Important issues:-

o It is advisable to file application containing **sufficient cause for delayed appeal** or payment of taxes, relying upon judicial decisions and **affidavit explaining such facts** while filling the appeal **electronically in Form 35**.

(E) Procedure after admission of appeal- [Para 5(v)]

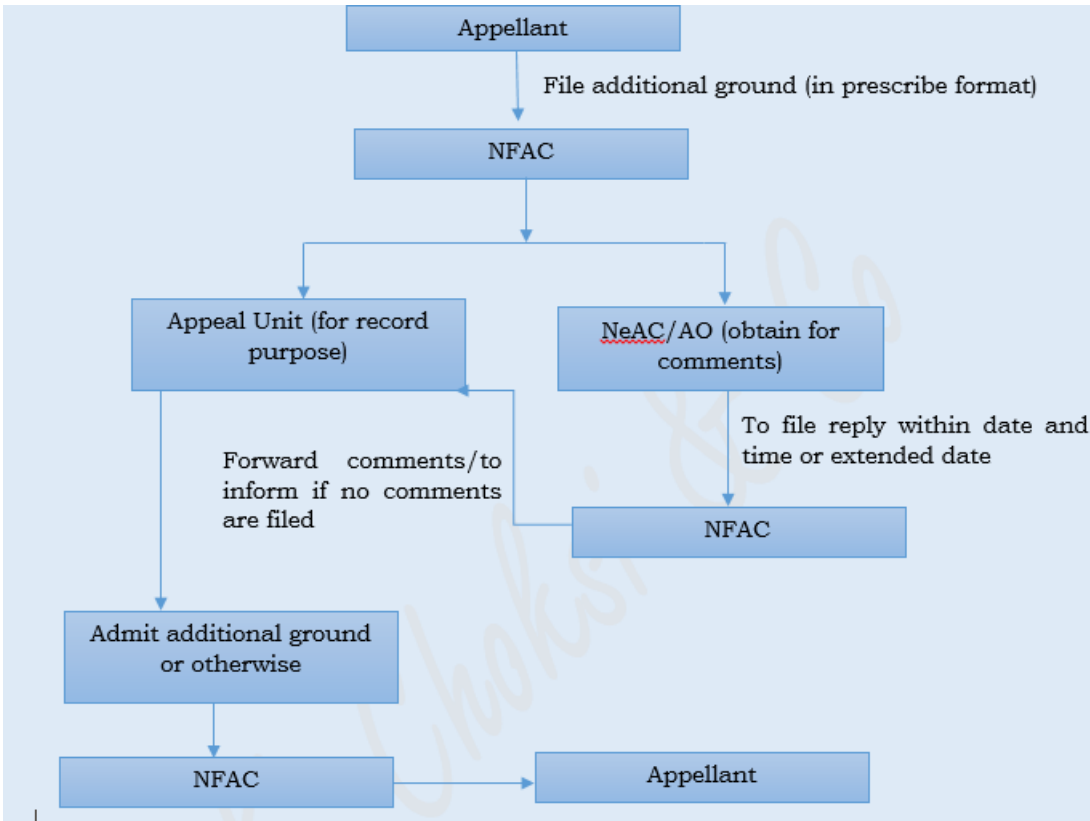


Important Issues:

Ø No specific procedure is provided as to how appellant would get opportunity to file his response against observations of NeAC/AO in report or inquiry conducted or obtained by appeal unit through NFAC **(except in the case of enhancement of assessment or penalty or reduce amount of refund)**

Ø However, **it is inherent that appellant will get such opportunity through NFAC** as per settled appellate proceeding like filling rejoinder to AO's report(May be covered by Section 5(3)(a))

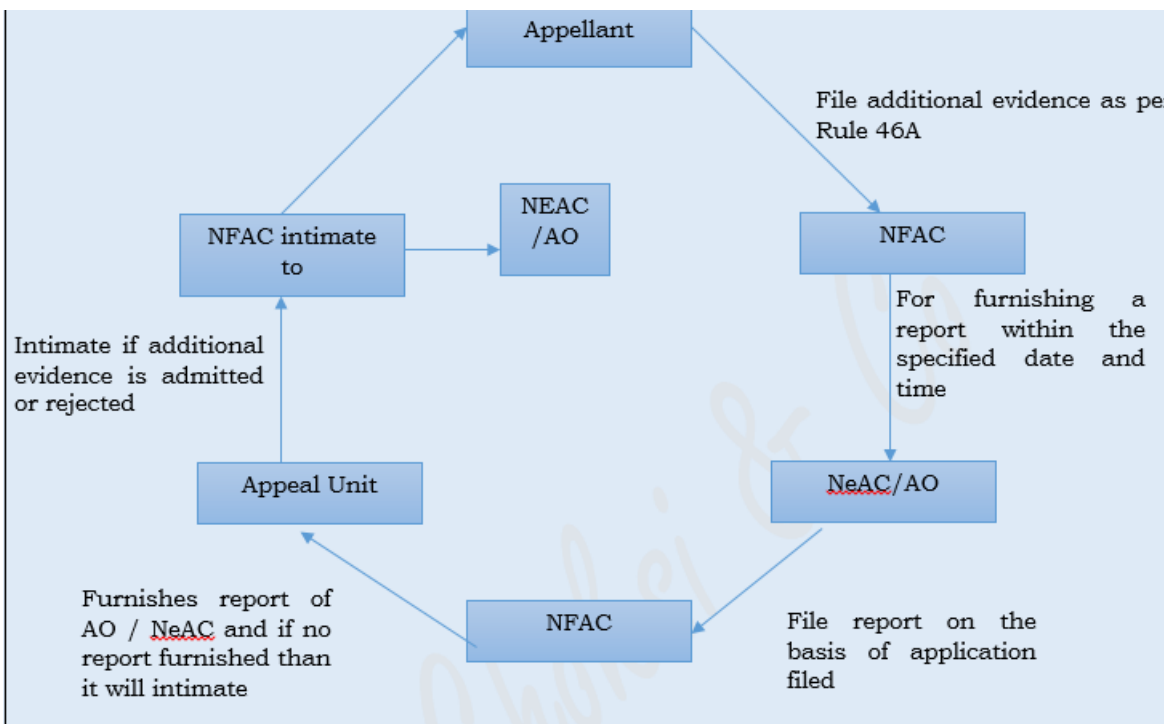
(F) Procedure for additional ground of appeal- [Para 5(x)]



Important Issues:

- Ø No specific procedure is provided as to how appellant would get opportunity to file his response against observations of AO in report or inquiry conducted or obtained by appeal unit through NFAC
- Ø This would be separately communicated to appellant (seems to be before passing appellate order)

(G) Procedure for filing additional evidence under Rule 46A- Para 5(xii) & 5(xiii)]



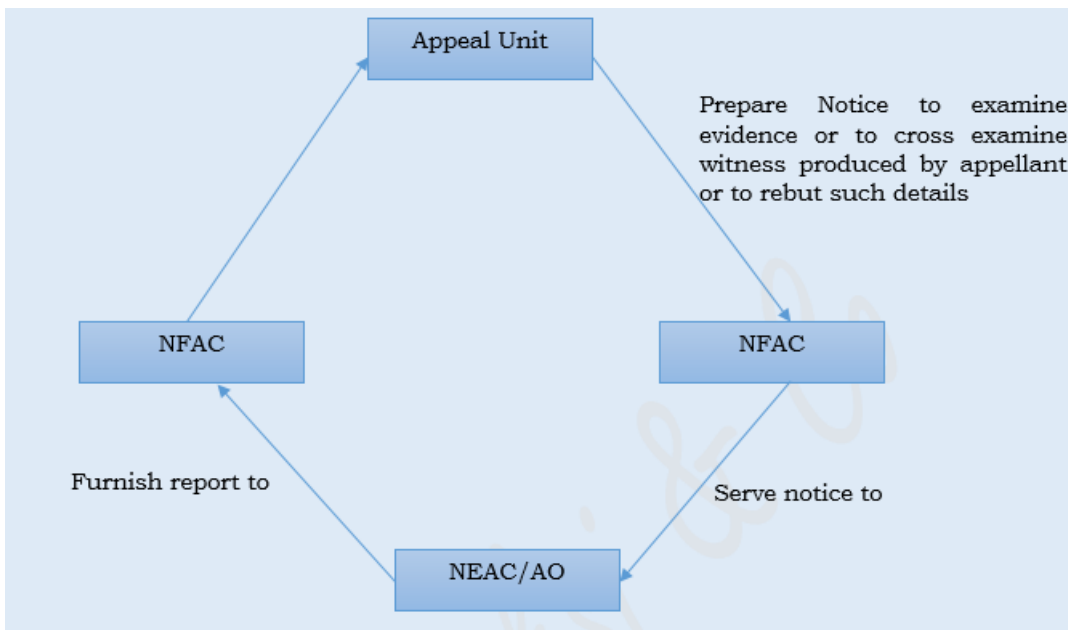
Important Issues:

- Ø In above para, there is no provision for intimating the appellant for any adverse report given

by **NeAC/AO** before adjudication of matter by appeal unit (however, this issue may be addressed by **para 5(v)(a)** discussed herein above).

- Ø Ultimate authority for admitting additional evidence under Rule 46A would always be with appeal unit.
- Ø Whenever **application under Rule 46A is filed, it must contain reasons for not submitting such details before AO** at the time of assessment proceedings, **how case of appellant is covered by above rule** along with relevant judicial pronouncements.
- Ø **At this stage AO/NeAC**, is required **to give report** only as to whether **additional evidences filed by appellant are admissible under Rule 46A or not, on merits** separate procedure is described.

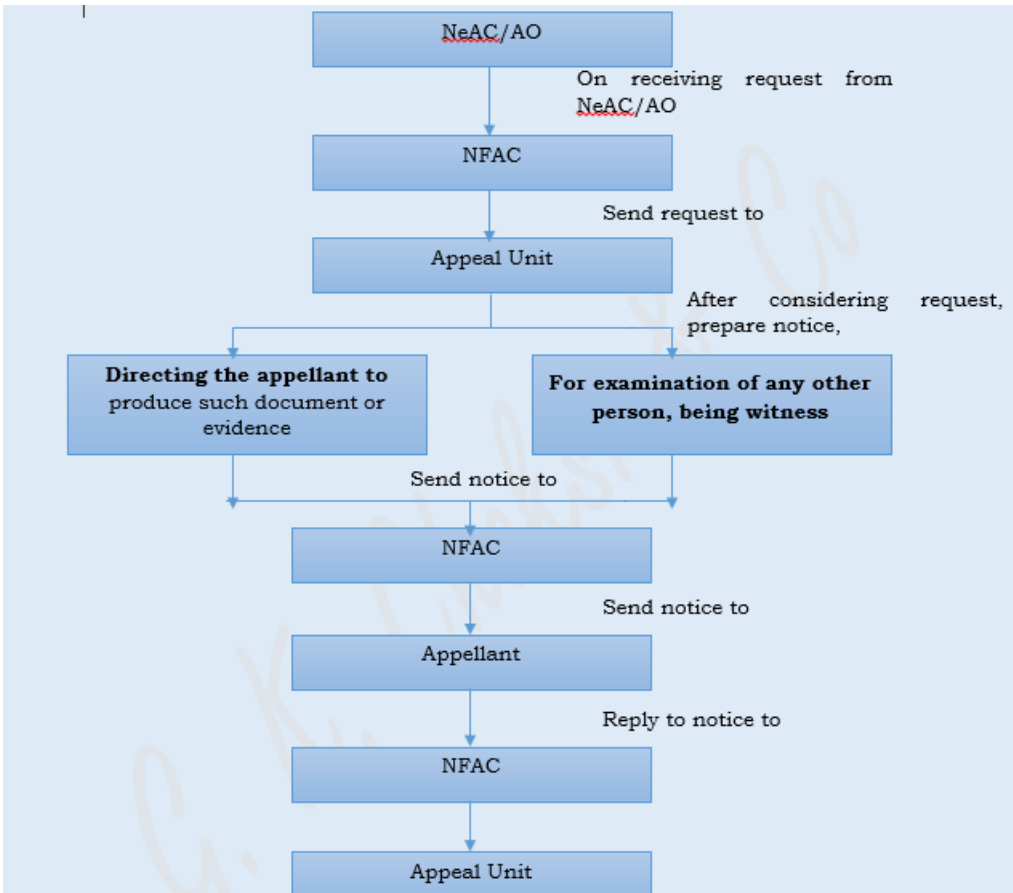
(H) Procedure when additional evidence under Rule 46A are admitted



Important Issues:

- Ø In above para, **there is no provision for intimating the appellant for any adverse report given by NeAC/AO** before adjudication of matter by appeal unit (**however, this issue may be addressed by para 5(v)(a)** discussed herein above).
- Ø **How NeAC/AO would conduct further inquiries**, is not defined therefore, **separate SOP** is expected to be issued **as per Para 13** of the scheme.
- Ø **As per para 12 of the scheme** as discussed subsequent paras, **examination or recording of statement of appellant or any other person shall be conducted** by Appeal Unit but **this does not include video conferencing at the stage of AO/NeAC, in remand proceedings.**
- Ø **When any witness is produced by appellant**, or when AO is also empowered to produce **other witness for making rebuttal**, **necessary clarification for allowing video conferencing at the stage of AO is desirable.**
- Ø However, **as per para 13(v), SOP** can be issued for **access, verification and authentication of information** and response including documents submitted during appellate proceedings.

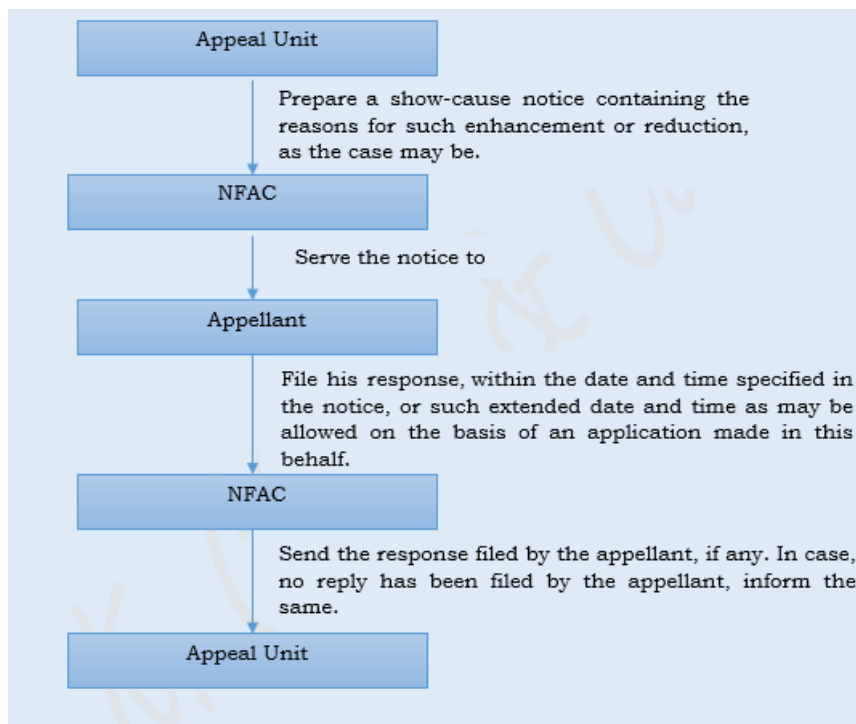
(I) Request by NeAC/AO for production of any document or evidence or examination of any witness-



Important Issues:

- Ø Details received from appellant would be required to be given to NeAC/AO as mentioned in **para 5(v)(b)**
- Ø On receipt of report of AO, opportunity needs to be given to appellant **as per para 5 (v)(a)**
- Ø This implicitly suggest that if NeAC/AO requires any further documents or evidences which they cannot directly asked from appellant but it need to be routed through NFAC and appeal unit

(J) Procedure for enhancing an assessment or penalty or reduce the amount of refund - Para 5(1)(xvii)]



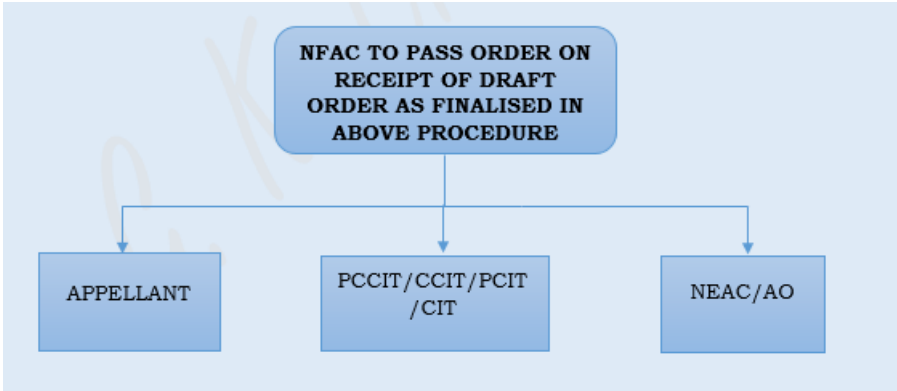
(K) Stages of passing appellate order

Stage	Authority	Particulars
1.	Appeal Unit	After taking into account all the relevant material available on the record, prepare a draft order and send such order to NFAC along with the details of the penalty proceedings, if any, to be initiated.
2.	NFAC	<p>After receipt of draft order from Appeal Unit:</p> <p>(a) Where the aggregate amount of tax, penalty, interest, etc. payable is more than a specified amount (to be specified), NFAC shall send the draft order to an appeal unit, other than the appeal unit which prepared such order for review.[Threshold limit yet to be notified]</p> <p>(b) In any other case, examine the draft order in accordance with the risk management strategy specified by the Board:</p> <p>i. finalise the appeal as per the draft order; or</p> <p>ii. send the draft order to an appeal unit, other than the unit which prepared such order, for <u>review</u>.</p>
3.	Appeal unit Reviewing DO (other than mentioned in Stage 1)	<p>Shall review the draft order whereupon it may decide to:</p> <p>(a) concur with the draft order and intimate the NFAC or,</p> <p>(b) suggest such variation to the NFAC.</p>
4.	NFAC	<p>(a) upon receiving concurrence of the appeal unit, finalise the appeal as per the draft order</p> <p>(b) upon receiving suggestion for variation, assign the appeal to an appeal unit other than the appeal unit which prepared the draft order.</p>
5.	Appeal unit (other than mentioned in Stage 1 & 3)	<p>(a) where suggestion intend to enhance an assessment or reduce the refund, prepare the revised draft order as per the procedure laid down in para 5(xviii)</p> <p>(b) in any other case, prepare a revised draft order as per procedure laid down in clause (xviii) and send such order to NFAC</p>

Important Issues/Aspects:

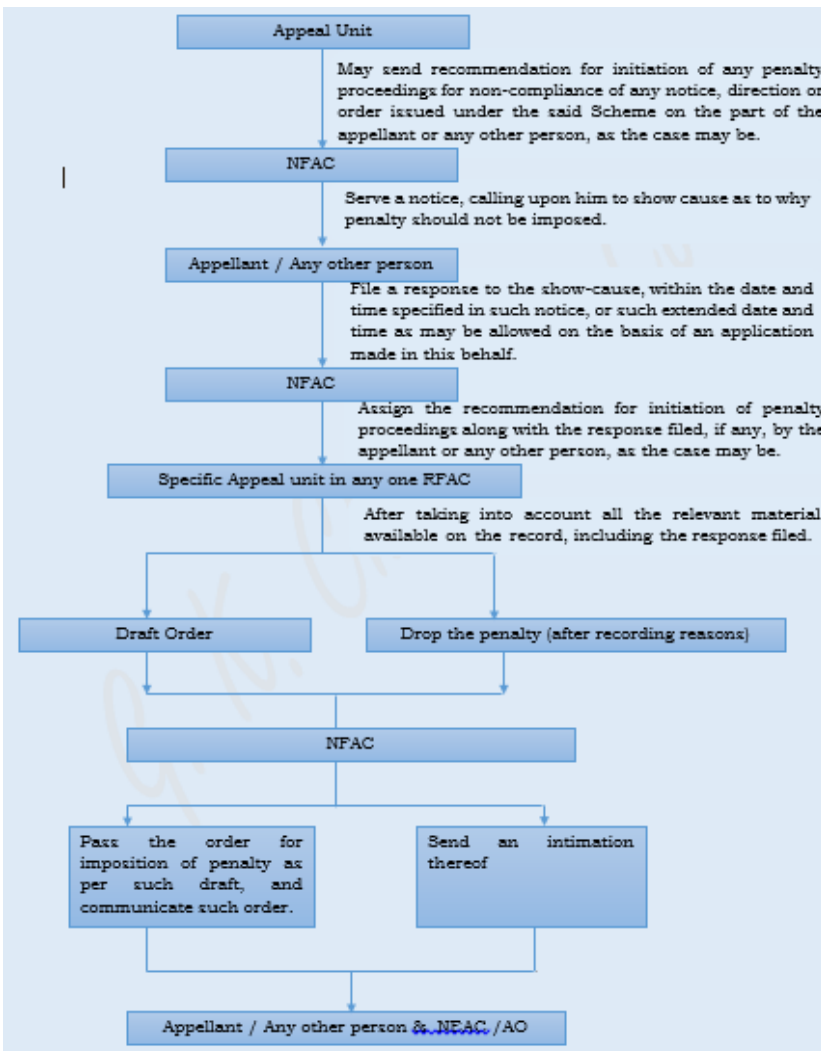
- ∅ There is **no such system of providing draft order** to Appellant like faceless assessment proceedings.
- ∅ Once the appeal unit draft the order there is **no involvement of appellant at any further stage except in the case of enhancement.**
- ∅ Variation suggested by appeal unit **who is reviewing the order or unit whom appeal is assigned after such review**, includes change in decision or content in decision
- ∅ **Once additional evidences are rejected or admitted under Rule 46A and already intimated to Appellant, whether this decision would be subject to review by appeal unit or not?** Further clarification requires on this issue.

(L) COMMUNICATION OF APPEAL ORDER [Para 5(xxiv)]

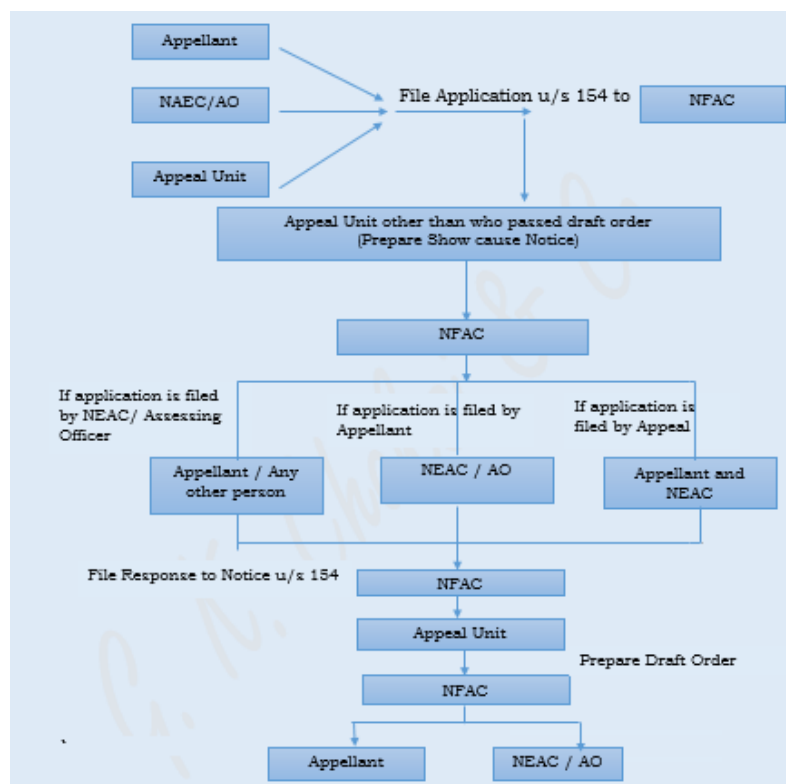


Note : If there is initiation of penalty in the order, NFAC will serve notice to appellant to show cause as to why penalty should not be imposed.

(M) Procedure for imposing penalty as per the provisions of Chapter XXI of the Act- Para 6]



(N) Procedure for rectification of appellate order passed by NFAC- [Para 7]



Appeal unit means unit who has passed the draft order or reviewed the order or revising the draft order

Important Issues:

Ø Preferably right to file rectification should not be given to person who has passed draft order or reviewed the order as it may result in conflict of interest

(O) APPELLATE PROCEEDINGS [Para 8]

✓ Appellate order passed by NFAC shall lie before ITAT having jurisdiction over Jurisdictional AO.

✓ Any order passed by NFAC/CIT(A) is set aside and remanded back to NFAC/CIT(A) by ITAT or Higher court, NFAC shall pass the order.

Important Points

Ø Once ITAT or Higher court set aside appeal to NFAC, procedure for intimating to NFAC is yet not provided.

Ø The procedure for reinstating appeal need to be defined or how NFAC will suo moto take care of listing of such appeal need to be clarified.

Ø There are many instances where matter was already set aside by ITAT to concerned CIT(A) before this scheme and still such appeal are not reflected as pending appeal before erstwhile CIT(A) and how such appeals will be reinstated need to be clarified.

(P) NO PERSONAL APPERANCE IN THE CENTRES OR UNITS

✓ No personal (physical) hearing before any authority or centre or unit.

✓ The appellant or authorised representative **may request** for **personal hearing** so as to make **oral submission** or present before appeal unit

✓ Only on approval of request of personal hearing as approved by CCIT Or DG in charge of RFAC, hearing **shall be conducted through video conferencing or video telephony** (Only in circumstances referred in Para 13(xi)- **Separate circumstances will be defined**

✓ **Any examination or recording of statement of appellant or any other person** shall be conducted by any appeal unit under this scheme, exclusively through video conferencing.

v Appearance through video conferencing is subject to permission as per para 12 and such option may not be allowed in all cases. Accordingly, Appellant can be said to be deprived from representing his case effectively to first appellate authority. In view of this is advisable to liberalise the circumstance in which option of video conferencing under the scheme is allowed,

(R) VARIOUS ISSUES NEED TO BE ADDRESSED

v As per existing provisions, appeals are filed before CIT(A) having jurisdiction over the case. However, once appeal hearing have become faceless, still appeals are required to be filed electronically before concerned CIT(A).?

v After introduction of faceless assessment and change of jurisdiction of AO in recent period, there need to be reallocation of jurisdiction of CIT(A) over concerned jurisdictional AO if appeals are required to be filed electronically before him.

v There are certain classes of persons/ wealth tax appeals who are not required to file appeal electronically, when such appeals are required to be filed by appellant?

v In VSV Scheme, upon receipt of Form 3, assessee is required to withdraw appeal filed by it, and what would be procedure to withdraw such appeal and where such withdrawal need to be filed?

v It may happen that appellant would have filed different appeals for different assessment years on same issue, still matter would be adjudicated by different appellate unit(For example TDS matter for each quarter is separately filed)

v In many cases, appellant would have already filed written submission, remand report would have already been issued, enhancement notice might have been issued but such data are not electronic and in all such cases how NFAC will further issue notices or proceed?

v There should be some common email id at NEFC for resolving any issues arising to assessee.

This article has been co-authored by Tanupriya Patel, Rujuta Munshi, Dipti Parikh & Arpita Prajapati.