



राष्ट्रीय पहचान विहीन निर्धारण केंद्र, दिल्ली
National Faceless Assessment Centre, Delhi

दूसरा तल, ई-रैम्प / 2nd Floor, E-Ramp
जवाहर लाल नेहरू स्टेडियम, दिल्ली -110003
Jawaharlal Nehru Stadium, Delhi-110003
फोन नंबर / Phone No: 011-24360103



फा.सं. आ.आ.(एन.ए.एफ.ए.सी.)-1/58/2021-22/ 333

दिनांक:26.07.2021

To,

All Principal Chief Commissioners of Income-tax

Sub:- Standard Operating Procedure (SOP) for handling writ petitions where assessment is made under the Faceless Assessment Scheme 2019 (FAS' 19)/section 144B of the I T Act, 1961(the Act) and or penalty is passed under Faceless Penalty Scheme(FPS), 2021, where NaFAC/CBDT is one of the respondents-Reg.

Madam/Sir,

The Central Board of Direct Taxes (CBDT)has issued detailed guidelines for the implementation of FAS 2019 dated 14.08.2020 vide F. No. 173/165/2020-ITA-I which *inter-alia* mandate that the field formations of jurisdictional charges outside the National Faceless Assessment Centre (NaFAC)/ Regional Faceless Assessment Centers (ReFACs) hierarchy shall perform the judicial functions including defending writ petitions.

2. The FAS 2019 has been incorporated into the Act vide the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 as section 144B of the Act with effect from 01.04.2021. In pursuance to the said amendment, the CBDT had passed order u/s 119 of the Act dated 31.03.2021 enabling all orders, circulars, instructions, guidelines and communications issued in order to implement the Scheme henceforth *mutatis mutandis* be applicable to the Faceless Assessment u/s 144B of the Act. Hence, in pursuance of the above two administrative directions, all judicial functions including defending writ petitions shall be performed by the jurisdictional Income tax Authorities, considering the original jurisdiction lies with the Jurisdictional Assessing Officer (JAO) with concurrent jurisdiction being vested in the NaFAC under sub-section (5) of section 120 of the Act for the limited purpose of assessment.

3. It is being observed that NaFAC is one of the respondents in most of the writs, because all orders under FAS 2019 or u/s 144B of the Act are issued from NaFAC. As such NaFAC has no primary role in defending the writ except in case where the scheme itself is challenged or a wider policy issue is involved. **Hence, for this purpose, in each such case, the NaFAC shall authorize the Pr. CIT (Jurisdictional) as the authority to defend the case before the Hon'ble High Courts.**

4. Further, the CBDT lays down the following SOP on the above subject for clarity and step-by-step guide on the matter:-

(A) SOP for PCIT Jurisdictional Charge being Nodal Coordinating Authority for defending writ petitions arising from the assessment/penalty proceedings pending before NaFAC:

PCIT (Jurisdictional) has to handle the writ petition matters with assistance from office of the Pr. CCIT, CIT (Judicial) of the Region and PCIT (ReFAC) (AU) concerned. In such situation, inputs and parawise comments shall be provided by PCIT (ReFAC) (AU) as the case records during the pendency of proceedings before NaFAC will not be visible to the PCIT (Jurisdictional). In such cases:-

1. Information about filing of a WP before the Jurisdictional High Court shall be forwarded by CIT (Judicial) or PCIT (Jurisdictional) to CIT (NaFAC)-3, New Delhi as soon as possible and without any delay and on identification, the writ petition will be referred to the PCIT (ReFAC)(AU) concerned.
2. On receipt of the information from concerned Pr. CCIT (Jurisdictional)/High Court Cell/Website of the High Court/ any other source, the CIT (NaFAC)-3, New Delhi would request ITBA for identification of the PCIT (ReFAC) (AU) involved immediately without any delay and on identification, the writ petition will be referred to PCIT(ReFAC)(AU) concerned.
3. The PCIT (ReFAC) (AU) shall examine the Writ Petition in the context of facts of the case and applicable law. The PCIT (ReFAC) (AU) can view all the case records including case history noting through the status monitor.
4. The PCIT (ReFAC) (AU) shall examine the petition of the petitioner and record parawise comments with reference to the issues involved in the writ petition and cross verify it with the information available on record for the case on ITBA. On any technical issue/process, if required, the PCIT (ReFAC) (AU) may seek clarification/information from CIT ITBA.
5. Parawise comments so received from PCIT (ReFAC) (AU) shall be forwarded to the PCIT (Jurisdictional) and office of Pr. CCIT with the request to take necessary measures to defend the case before the Hon'ble High Court.
6. The PCIT (ReFAC) (AU) would make a reference for seeking specific comments to the NaFAC in the following circumstances:

- i. Any provision related to FAS 2019 or section 144B of the Act is challenged in the writ or during the course of arguments.
- ii. Specific inputs are required on any policy issue.

Such reference to NaFAC for comments shall be in the prescribed format as per Annexure-A and should include parawise comments of the PCIT (Jurisdictional) /PCIT (ReFAC) (AU) on the writ petition supported with necessary documents such as writ petition, assessment order, case history noting etc.

7. Reference to NaFAC on specific policy issues and on specific provisions of FAS, 2019/section 144B of the Act challenged, shall be made in exceptional circumstances requiring specific advice on policy matters and not on the issues related to facts of the case. This should ideally be done within 5 days of receipt of the Writ petition in the O/o PCIT (Jurisdictional) or immediately if the writ is coming up earlier.

The practice of seeking general comments/directions from NaFAC must be avoided.

8. The PCIT (Jurisdictional) shall be authorized by NaFAC to defend the case, give directions regarding the arguments and decide on the stand to be taken before the Hon'ble higher courts. The parawise comments/inputs/instructions to counsel (if required) shall be provided by PCIT (ReFAC) (AU) to PCIT (Jurisdictional) in such cases.
9. Till the utility for communication between PCIT (Jurisdictional) and PCIT (ReFAC) (AU) is made functional, the coordination between both the officers shall be done through office of CIT (NaFAC)-3, New Delhi. E-mail ids of the officers of CIT (3), NaFAC are given at the end of this SOP.

(B) SOP for PCIT (Jurisdictional) Charge being Nodal Coordinating Authority for defending writ petitions arising from the assessment /penalty orders completed by NaFAC:

1. On receipt of the Writ Petition, the PCIT (Jurisdictional) shall examine the Writ Petition in the context of facts of the case and applicable law. The JAO can view all the case records including 'case history notings' through the status monitor and furnish its comments considering all the facts and legal issues involved.
2. The PCIT (Jurisdictional) shall examine the petition of the taxpayer and record parawise comments with reference to the issue involved in the writ petition and cross verify it with the information for the case available on

record in ITBA. On any technical issue/process, if required, the PCIT (Jurisdictional) may seek clarification/information from CIT ITBA.

3. If the facts so warrant, the PCIT (Jurisdictional) may seek the comments of the PCIT (ReFAC) (AU) under whose jurisdiction the assessment order had been passed. The PCIT (Jurisdictional) shall record reasons in writing and make reference for unmasking of the AU concerned to the NaFAC (on email <delhi.cit3neac@incometax.gov.in> with a copy marked to Addl.CIT-3(1) NaFAC<delhi.addlcit3.1.neac@incometax.gov.in>) & DCIT 3(2)(2) NaFAC<delhi.dcit3.2.2.neac@incometax.gov.in>). After unmasking, the PCIT (Jurisdictional) and PCIT (ReFAC) (AU) may coordinate amongst themselves through email/faceless communication facility in ITBA as and when available.
4. The PCIT (Jurisdictional) will make reference for seeking specific comments to the NaFAC in the following circumstance:
 - i. Any provision related to FAS 2019 or section 144B of the Act or FPS, 2021 is challenged in the writ or during the course of arguments.
 - ii. Specific inputs are required on any policy issue.

Such references to NaFAC are to be handled in the same manner as mentioned in para (A)(6). These references to NaFAC on specific policy issues and on specific provisions of FAS, 2019 or section 144B of the Act or FPS 2021, challenged shall be in exceptional circumstances requiring specific advice on policy matters and not on the issues related to facts of the case. This action should ideally be done within 5 days of receipt of the writ in the O/o PCIT (Jurisdictional) or immediately if the writ is coming up earlier.

Again, the practice of seeking general comments/directions from NaFAC is to be avoided.

5. A number of writs have been filed because of apparent violation of principles of natural justice. In many such cases, the High Courts have set aside the cases back to the file of the Assessing Officer for giving a fresh opportunity and for taking into consideration the submissions of the assessee. When such an order is received in any case, the PCIT (Jurisdictional) will direct the JAO to immediately create a set aside proceedings in ITBA. After creating of the proceedings, the ITBA may be requested to reallocate the case to FAO.
6. In case of unfavorable order of Hon'ble High Court, the decision on filing of appeal or stay application before division bench if the order is of single bench or filing of SLP or otherwise shall be taken by the Pr. CIT (Jurisdictional) in accordance with existing guidelines issued by Pr. DGIT (L&R) and CBDT

from time to

7. time. If unfavorable order of Hon'ble High Court received in a case where proceedings are pending before NaFAC, inputs and comments of Pr. CIT (ReFAC)(AU) shall be obtained by PCIT (Jurisdictional) for taking a decision on acceptability or otherwise of the order.

(C) SOP for Standing Counsels and CIT (Judicial) of the relevant jurisdiction:

1. The standing counsels or the O/o CIT (Judicial) shall seek comments/directions from the concerned PCIT (Jurisdictional) only. They shall not refer the writ petition directly to NaFAC.
2. During the course of defending a writ petition, if certain directions/comments are required from the NaFAC, the request for the same shall be made by the concerned PCIT (Jurisdictional) as per SOP Para B.4 and not directly by the standing counsel. The standing counsel shall make a request to the concerned PCIT (Jurisdictional) for the same.

(D) SOP for PCIT (ReFAC) (AU) concerned:

1. On receipt of request for giving comments on the writ, the PCIT (ReFAC) (AU) shall ensure that the AU concerned examines the petition of the taxpayer with reference to the issue involved in the writ. The AU shall cross verify and record parawise comments with the information available with the office concerned, within a time limit specified for this purpose.
2. The Pr. CIT (ReFAC)(AU) will supervise and monitor the process of framing parawise comments in accordance with FAC, 2019 / section 144B of the Act or FPS, 2021 and the orders, circulars and notifications issued thereunder. The parawise comments will be approved by Pr. CIT (ReFAC)(AU) and CCIT (ReFAC) and before they are sent to PCIT (Jurisdictional).
3. PCIT (ReFAC) (AU) concerned may coordinate with PCIT (Jurisdictional) themselves email/faceless communication facility in ITBA as and when available. This action should ideally be completed within 5 days of receipt of the writ in the O/o PCIT (ReFAC) (AU).

(E) SOP for NaFAC:

1. On receipt of a writ petition directly from the petitioner or the Standing Counsel or the High Court or the CIT (Judicial) concerned, a copy shall be forwarded to the PCIT (Jurisdictional), in case, proceedings are completed

and to PCIT (ReFAC) (AU) where proceedings are pending [with copy to PCIT (Jurisdictional)], within 5 days of receipt for necessary action as per Para A.

In view of CBDT's communication vide F. No. 173/165/2020-ITA-I dated 14.08.2020 the NaFAC shall authorize the PCIT (Jurisdictional) as the authority to defend the case before the Hon'ble High Courts.

2. On receipt of request from the PCIT (Jurisdictional) for unmasking of AU, the NaFAC shall forward the request to the Directorate of Systems for unmasking of the AU concerned and provide such details of the PCIT (ReFAC) (AU) concerned to the PCIT (Jurisdictional).
3. On receipt of request from the PCIT (Jurisdictional) for specific inputs on policy matters or provisions related to FAS 2019/section 144B of the Act or FPS, 2021 being challenged, the NaFAC shall:-

- Examine whether the request is accompanied by terms of reference for seeking comments of NaFAC as per prescribed template. Prescribed template is enclosed as **Annexure – A**.

- Analyse the writ petition and respond on broad policy issues. If required, NaFAC may refer the petition to the CBDT and Directorate of Legal and Research and obtain comments from the relevant division before sending a response to the PCIT (Jurisdictional).

(F) SOP for CIT (ITBA), Directorate of Systems:

1. On receipt of request for unmasking of the AU from NaFAC, the ITBA team shall give the details of PCIT (ReFAC) (AU) concerned.

If the modification to returned income is done by the new AU after modification suggestions reported by the Review Unit, details of both the AUs (original and new) shall be provided.

2. A number of writs have been filed because of apparent violation of principles of natural justice. In many such cases, the High Courts have set aside the cases back to the file of the Assessing Officer for giving a fresh opportunity and taking into consideration the submissions of the assessee. On receipt of such set aside request as per para B.5 from the PCIT (Jurisdictional), the ITBA shall ensure that:

The work item shall be transferred automatically to the same ReFAC in which the case was originally assessed for the completion of the same.

If the modification to returned income is done by the new AU after modification suggestions reported by the Review Unit, the work item shall be transferred automatically to the *original* ReFAC AU in which the case was originally allocated at the first instance for the completion of the same. The work item is to be completed by the ReFAC AU concerned.

5. This SOP may be brought to the notice of all Pr. CsIT and other field offices for necessary action.

This issues with the approval of Central Board of Direct Taxes (CBDT).

Encl.: Template and E mail ids as discussed in the order.



(Jaishree Sharma)
Addl. Commissioner of Income-tax (NaFAC)-1 (1),
New Delhi

Copy forwarded to:-

- i. Chairman, CBDT and all Members, CBDT.
- ii. Pr. DGIT(Systems), New Delhi.
- iii. ADG (Systems)-4, New Delhi, for placing on the website: Incometaxindia.gov.in.
- iv. Addl. CIT, Data base Cell for uploading on irsofficersonlinewebsite.



Addl. Commissioner of Income-tax (NaFAC)-1 (1),
New Delhi

**Format for proposal of reference of Writ Petition to NaFAC for
Specific inputs on policy matters/provision related to FAS 2019 being
challenged**

Name of Assessee	
PAN	
AY	
<u>Brief description of provision related to FAS 2019 being challenged in the petition/Specific inputs are required on any policy issue</u>	
<u>Parawise comments on the Writ petition</u>	
<u>Remarks of Jurisdiction AO/Faceless Assessment Unit highlighting issue on which specific comments of NaFAC are required.</u>	
<u>Comments of PCIT(AU) ReFAC/PCIT (Jurisdiction)</u>	
<u>Any other Remarks.</u>	

Emails of CIT handling writ in NaFAC:-

CIT(NaFAC)-3, Delhi: <delhi.cit3.neac@incometax.gov.in>

Addl. CIT-3(1) NaFAC <delhi.addlcit3.1.neac@incometax.gov.in>

DCIT 3(2)(2) NaFAC <delhi.dcit3.2.2.neac@incometax.gov.in>
