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दिनांक: 09.08.2021

To,

All Chief Commissioners of Income-tax,
Regional Faceless Assessment Centres

Sub: - SOP for Penalties under Faceless Penalty Scheme-2021

I am directed to convey that the following Standard Operating Procedure (SOP) is prescribed with the approval of CBDT for completing the penalties under the FPS-2021:-

Introduction: -

Faceless Penalty Scheme, 2021 has been notified vide CBDT notification No. 2/2021 (S.O. 117(E)) dated 12th January, 2021 on the strength of Section 274(2A) of the Income-tax Act. The Scheme mandates setting up of National Faceless Penalty Centre/Regional Faceless Penalty Centres (NFPC/RFPC) to conduct Faceless Penalty Proceedings and impose penalty in cases falling into its scope in a centralised manner similar to those of Faceless Assessment. National Faceless Assessment Centre (NaFAC)/Regional Faceless Assessment Centre (ReFAC) are to act as NFPC/RFPC respectively as per para 4(4) of the Scheme read with CBDT's order dated 20.01.2021. Therefore, hereinafter, National Faceless Penalty Centre (NFPC) may be read as National Faceless Assessment Centre (NaFAC); Faceless Penalty Unit or Penalty Unit may be read as Assessment Unit (AU) and Faceless Penalty Officer (FPO) may be read as Faceless Assessing Officer (FAO), wherever referred in this document.

Further Notification No.3/2021(S.O.118(E)) dated 12th January,2021) notified on the strength of section 274(2B) of the Income-tax Act, 1961 issues directions for the purposes of giving effect to the Faceless Penalty Scheme, 2021.

CBDT's order under para 3 of the Faceless Penalty Scheme, 2021 issued in F. No. 187/4/2021-1TA-I dated 20.01.2021 and dated 26.02.2021 defines the scope of FPS. Penalties leviable by officers above the rank of Addl. CIT or by designated Authorities are not within the scope of FPS. Further Penalties pertaining to Central Charge/International Taxation/TDS are also outside the scope of FAS.

Standard Operating Procedure

The SOP for completing penalties covered under the scope of FPS-2021 is laid down as under:-

A. Reference to NFPC:-

1. All penalties initiated by the NaFAC shall be captured by ITBA for reference to NFPC. Upload of Notice initiating penalty proceedings has been deemed to be requisite reference required under the NPFS-2021. Penalties recommended by NaFAC, (Non-compliance penalties leviable by Addl. /Jt. CIT) shall be submitted by Range Head in prescribed form available on ITBA for making reference to NFPC .
2. Upload of Notice initiating Penalties by IT Authorities (JAO) on ITBA is also deemed to be a reference to NFPC. However, penalties recommended by Income Tax Authorities shall be captured through a Form available to them on ITBA. Updated recommended penalties in prescribed Form as received from JAO shall be taken as reference to NFPC and added to worklist of pending penalties.
3. As the quantum appeal matter is handled by JAO, all action relating to section 275(1A) which may result in impositions/enhancement/reduction of penalty shall be taken by JAO. Facility for implementation of provisions of section 275(1A) by JAO is already in place in ITBA .

B. CLEANING OF STACK.

(Identification of Penalties Kept in abeyance/Already completed/Outside the scope of Faceless)

1. FPU may go through the penalty work item to ascertain whether the penalties referred are within the scope of FPS as per CBDT's orders referred to above. Penalties which are outside the scope of FPS but found allocated, the details thereof may be forwarded immediately to designated e-mail of NaFAC for their transfer to appropriate jurisdiction.
2. FPU at initial stage may try to identify the cases which are 'kept in abeyance'. The available tools for identification could be:-
 - i. Access to data relating to appeals pending before CIT (Appeal Unit) including Form 35.
 - ii. NJRS.(for cases pending before ITAT/HC and kept in abeyance earlier)
 - iii. To verify the response of the assessee to SCN claiming pendency of appellate proceedings through Judicial Portals.
 - iv. Requesting the JAO to provide the information.
 - v. Any other process as deemed fit within the provisions of the Scheme.

If the case is identified as to be kept in abeyance, the data thereof should be entered on ITBA. The same may be mentioned in case noting history with relevant document attached for reference.

3. FPU shall also take into account the decision of appellate authorities in quantum appeal. If any pending appeal is decided in favour of the assessee, it is most likely that the assessee shall bring the fact on record in penalty proceedings. FPU may also look into the available resources to see the fate of quantum appeal before finalising the penalty.
4. FPU may also identify the cases which are not found kept in abeyance but limitation for imposition of penalties has expired. Among these cases, it is a distinct possibility that penalties are either dropped or levied off-line without marking them on ITBA. The suggested course of action is: -
 - i. To write to the JAO to check the Penalty register/ADCR and revert.
 - ii. If reply is received or not received in reasonable time then a suitable remark may be made in case noting history with the approval of

Range Head leaving the work item pending. When ITBA provides the functionality to close the proceedings, the same may be utilised.

5. FPU may look into VsVS data available on e-filing to ascertain whether penalty proceedings are required to be closed in view of the VsVS declaration. A suitable noting in case history may be made and requisite documents be attached. If ITBA provides the functionality to close the proceedings by marking the case as VsVS, the same may be utilised.

C. Immunity and Waiver of Penalties

1. Section 270AA allows immunity to the assessee from levy of penalties if application in form 68 is submitted within time and the prescribed conditions are fulfilled. These actions are outside the purview of Faceless Penalty Scheme-2021. At present the functionality to handle the applications u/s270AA are already in place in ITBA for Jurisdictional Assessing Officer. Once immunity u/s 270AA is granted, the JAO may inform the FPU handling the penalty work item through document upload facility.

Waiver of Penalties u/s273A

2. Waiver of Penalty levied/leviable is to be considered by Pr. CIT (Jurisdictional) as the same is outside the scope of Faceless Penalty Scheme-2021. Hence suitable action for dropping of penalty proceedings in case where leviable penalty has been waived may be taken after receipt of the order of the Pr. CIT (Jurisdictional). The Pr. CIT (Jurisdictional) may ensure that the order is communicated to the FPU through upload document functionality available with JAO.

D. Penalties without base documents:

1. FPU shall have access to the case records/documents initiated by NaFAC and Income Tax Authorities (JAO) if base orders are passed on ITBA. Notice initiating penalty and response of the assessee thereto, if any, are available to the FPU. However, in cases where the base orders in respect

of penalties initiated by JAO are not available, the FPU should write to the JAO immediately to provide the base orders. NaFAC/ITBA at their end would also monitor cases to ensure that base orders and other requisite information in response to the request of the FPO is provided by the JAO.

2. At present ITBA has provided access to base orders in a large number of cases (approximately 77% of pendency) through 360 degree facility.

E. Access to records and data available on e-filing/Insight

Facilities and Access level similar to those of Units of NaFAC shall be made available to FPUs also. Status monitor to the hierarchy has been made available on similar lines.

F. Show Cause Notice(SCN)

1. First SCN issued by FPU is automated and format based, where reference is made to penalty section and earlier notice initiating penalty issued to the assessee. The assessee is given opportunity to file written reply and if required seek personal hearing after filing of written reply through VC. Looking to the timelines, 5 to 7 days' time (flexible) should be given to the assessee to respond from the date of issue of notice. **The FPO should preview the date of notice at the time of final generation and amend the date of compliance if required to ensure providing adequate time.**
2. Para 5(xx) (a) of the FPS-2021 envisages issue of another show cause notice by new FPU in case where the modifications suggested by the penalty review unit are prejudicial to the interest of assessee or any other person. The FPU can use the same SCN format with comments in free text area provided in its Annexure.

3. Communication with assessee and third person: -

FPU may use 'issue letter' functionality to communicate with the assessee or third person, if any further information/clarification is required. Notice u/s

133 (6) or Summons u/s 131 may also be used, if required, for the purposes of penalty proceedings. The communications shall go to assessee under digital signature of NaFAC to maintain facelessness.

G. Reference to Verification Unit (VU):

1. Reference to VU can be made as per the Scheme, wherever the FPU considers reference is necessary for the purpose of the proceedings. VU may submit its report as soon as possible and ideally within 7 days of receipt of reference.
2. Unlike in Faceless Assessment Proceedings, use of Designated Verification Unit (DVU) in handling non-response cases is being revisited. Non-responsive case is proposed to be handled through service of notices through speed post by bulk letter generation facility. Pending creation of the facility, non-responsive case may be allocated to VU/DVU for service of notice, who would take print out and send the notice(s) through speed post. Image of letter issued along with speed post sticker containing number may be uploaded as VU report.
3. Only in exceptional/ high value cases, physical service of notice should be considered through DVU under existing facility in INSIGHT.
4. In responsive cases, where it is considered necessary to conduct physical verification the same should be resorted to. As in Faceless Assessment, FPU shall have to take the approval of PCIT/CCIT for referring to DVU for physical enquiry following the same procedure.

H. Reference to Technical Unit (TU):

FPU can refer to TU as per the provisions of the Scheme. The existing formats for making reference in Faceless Assessment may be utilised for the said purpose. TU may ideally send its report within 5 working days of receipt of the reference, unless the matter needs to be referred to agencies/authorities outside TU.

I. Draft Penalty Order:

1. Draft penalty order may be well reasoned and speaking. The replies of the assessee should be duly considered and rebutted. Quality Penalty order is intended outcome of the entire penalty proceedings, hence should be given utmost importance.
2. Where the FPU opts not to impose penalty, the order should be well reasoned and speaking so that if the same is selected for review, the Review Unit (RU) should be able to clearly ascertain the reasons for non-imposition of the penalty through an "office note" or through the body of the order.

J. Review Unit (RU):

Cases selected for review by Risk Management Strategy (RMS) shall be reviewed by the allocated RU. RU may consider all the aspects of the case and submit its review report within 5 working days of receipt of the case. RU may concur or make suggestions for corrections in draft while concurring with the decision of the FPU. RU may also suggest modification if decision of FPU is not concurred with or any major issue in draft order is noticed. In case of modification suggested by the RU, the case would go to new FPU for further processing.

K. Handling of non-responsive cases:

1. In non-responsive cases, the FPU may have a look at the base order as to whether that was passed ex-parte or not. If the base order is an ex-parte order, the FPU may issue another show cause notice through 'issue letter functionality' providing the assessee opportunity as to why penalty may not be decided ex-parte. FPU should check if e-mail is delivered or not. A copy of the letter should also be sent through Speed Post through bulk mailing facility through DVU as referred to in para 2 under section G. The FPU may check delivery of speed post through Speed Post number on the India Post Website. If it is delivered, FPU should wait for a reasonable time for the reply of the assessee. If it is not delivered, then FPU may go ahead with passing ex-parte order.

2. Till such time, bulk mail facility is functional, non-responsive cases may be allocated to VU/DVU for taking printouts of notice and issuing them through speed post. Only in exceptional cases, DVU may be used for physical service of notice only after approval of PCIT.
3. In non-responsive cases, where base order was not passed ex-parte, FPU should use all the addresses of the assessee and its authorised representative to communicate and elicit response. If response is still not received, SCN for ex-parte penalty may be sent through e-mail and speed post as per the above process. After waiting for a maximum of 5 working days after communication date, the FPU may go ahead with passing of the order on the basis of material available on record.


(Ashish Abrol)

Commissioner of Income-tax (NaFAC)-1,
Delhi

Copy to:-

1. CCsIT (ReFACs).
2. Pr. CsIT (ReFACs) at all stations.
3. All. CsIT (NaFAC).
4. Addl./Joint CsIT (ReFACs) at all stations.
5. All AOs (ReFACs).


Commissioner of Income-tax (NaFAC)-1,
Delhi