



**STAGES AND STRATEGIES TO DEAL WITH FACELESS SCRUTINY
AND REASSESSMENT NOTICES**

TABLE OF CONTENTS

01 | WHAT IS ASSESSMENT ?

02 | SCRUTINY ASSESSMENT U/S 143 & 144

03 | INCOME ESCAPING ASSESSMENT U/S 148

04 | FACELESS ASSESSMENT

05 | SPECIAL SCENARIOS

1

WHAT IS "ASSESSMENT" ?

WHAT IS “ASSESSMENT” UNDER THE INCOME TAX ACT?

- ❑ Every taxpayer has to furnish the details of his income to the Income-tax Department.
- ❑ These details are to be furnished by filing his return of income.
- ❑ Once the return of income is filed by the taxpayer, the next step is the processing of the return of income by the Income-tax Department. The Income-tax Department examines the return of income for confirming its correctness. **The process of examining the return of income by the Income-tax Department is called “Assessment”**. Assessment also includes re-assessment or best judgment assessment under section 144.

2

SCRUTINY ASSESSMENT UNDER SECTION – 143

INTER PLAY OF SECTIONS 143(2) → 142(1) → 143(3)

NOTICE UNDER SECTION 143(2)

When can an Assessing Officer issue a notice to an assessee?

If the Assessing Officer believes the assessee has understated income, computed excessive loss, or underpaid tax, they can issue a notice requiring the assessee to attend their office or provide evidence supporting their return.

Is there a time limit for issuing this notice?

Yes, the notice must be served within three months from the end of the financial year in which the return was furnished.



TYPES OF NOTICES UNDER SECTION 143(2)

CRITERIA	LIMITED SCRUTINY	COMPLETE SCRUTINY	MANUAL SCRUTINY
OBJECTIVE	To verify specific flagged issues (e.g., AIR/CIB/26AS mismatch)	To examine the entire return comprehensively	To examine based on manual selection criteria issued by CBDT
BASIS OF SELECTION	Computer-Assisted Scrutiny Selection (CASS) based on risk parameters	CASS based on broader risk indicators	Manually selected as per CBDT guidelines (e.g., search/survey cases)
SCOPE OF EXAMINATION	Restricted to specific points mentioned in notice	Entire return including all heads of income, deductions, etc.	Entire return (like complete scrutiny), based on identified risk
TAXPAYER RIGHTS	AO cannot expand beyond identified issues without prior approval	AO can examine any issue	AO can examine any issue
APPROVAL NEEDED TO EXPAND	Yes, approval of PCIT/CIT needed to convert into Complete Scrutiny	Not applicable	Not applicable
CBDT INSTRUCTIONS APPLICABLE	Instruction No. 20/2015, 5/2016, 7/2014	Instruction No. 20/2015 and later circulars	Instruction No. 20/2015 and Manual Scrutiny Guidelines
TIME LIMIT TO ISSUE NOTICE	Within 3 or 6 months from end of FY in which return is filed	Same as limited scrutiny	Same as limited scrutiny
EXAMPLES	High-value transactions, mismatch in TDS, AIR reports	Complex returns, high refunds, multiple business activities	Cases flagged for cash transactions, search/survey related
LEVEL OF DOCUMENTATION	Less intensive (specific details only)	Detailed documentation and financial analysis	Detailed documentation required

Sec 143(2) Notice

Its an intimation that the case is selected for scrutiny.

Assessee is asked to reply without any specific points called. Advisable to furnish ITR, SOTI, Audit Report, Financials etc.

PROCEDURE IN SCRUTINY ASSESSEMENT

Sec 142(1) : Calling Details

Specific
Details are
called from
assessee

Assessee to
make
submission
partly/wholly

Assessee
can take
adjournment
also

NOTICE UNDER SECTION 142(1)

For the purpose of making an assessment under this Act, the Assessing Officer may serve on any person who has made a return under section 115WD or section 139 or in whose case the time allowed under sub-section (1) of section 139 for furnishing the return has expired a notice requiring him, on a date to be therein specified,—

- i. There such person has not made a return within the time allowed under section 139(1) or before the end of the relevant assessment year, to furnish a return of his income or the income of any other person in respect of which he is assessable under this Act, or
- ii. To produce, or cause to be produced, such accounts or documents as the Assessing Officer may require, or
- iii. To furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee, whether included in the accounts or not) as the Assessing Officer may require :

Provided that—

- a) The previous approval of the Joint Commissioner shall be obtained before requiring the assessee to furnish a statement of all assets and liabilities not included in the accounts;
- b) The Assessing Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

PROCEDURE IN SCRUTINY ASSESSEMENT

Sec 133(6)

- Details from third party

Sec 142A

- Reference to Valuation Officer

Sec 142(2A)

- Special Tax Audit

ORDER UNDER SECTION 143(3)

1	Notice Issued The assessee receives a notice under 143(2).
2	Assessee Produces Evidence The assessee presents evidence to support their income.
3	Assessing Officer Requires Evidence The Assessing Officer requests additional evidence. Under 142(1)
4	Gathering Relevant Material The Assessing Officer collects all necessary information.
5	Assessment Order Issued The Assessing Officer issues a written assessment order.

SECTION 144 : Best Judgement Assessment/Exparte Assessment

(1) If any person –

- a) fails to make the return required under section 139(1/4/5/8A), or
- b) fails to comply with all the terms of a notice issued under section 142(1) or fails to comply with a direction issued under section 142(2A), or
- c) having made a return, fails to comply with all the terms of a notice issued under section 143(2),

the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment :

Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment :

Provided further that it shall not be necessary to give such opportunity in a case where a notice under section 142(1) has been issued prior to the making of an assessment under this section.

3

INCOME ESCAPING ASSESSMENT UNDER SECTION – 147, 148 & 148A

HISTORICAL EVOLUTION OF INCOME ESCAPING ASSESSMENT

UP TO
BUDGET
2021

BETWEEN
2021 to 2024

W.E.F.
BUDGET
2024

SECTION 147 INCOME ESCAPING ASSESSMENT

If the AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year

he may, assess or reassess such income and also any other income chargeable to tax which has escaped assessment

and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned

Following shall be deemed to be cases where income chargeable to tax has escaped assessment:

- (a) No Return Furnished & Income Exceeded Basic Exemption Limit
- (b) Return has been Furnished but it is *noticed by the AO* that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;
- (ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;
- (c) where an assessment has been made, but—
 - i. income chargeable to tax has been underassessed; or
 - ii. such income has been assessed at too low a rate; or

- iii. such income has been made the subject of excessive relief under this Act; or
- iv. excessive loss or depreciation allowance or any other allowance under this Act has been computed;

- (ca) Where **No Return is filed and** it is noticed by the AO that the income of the assessee exceeds the Basic Exemption Limit, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;
- (d) where a person is found to have any asset (including financial interest in any entity) located outside India.

SECTION 148 UP TO BUDGET 2021

Before making the assessment, reassessment or recomputation under section 147,

The Assessing Officer shall serve on the assessee a notice

requiring him to furnish within such period, as may be specified in the notice, a return of his income

The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

BETWEEN 2021 to 2024

SECTION 147: INCOME ESCAPING ASSESSMENT

If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year,

the Assessing Officer may assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year

Explanation.—For the purpose of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.]

BETWEEN 2021 to 2024

Section 148A: The Assessing Officer shall, before issuing any notice under section 148,—

- a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;
- b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);
- c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);
- d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

BETWEEN 2021 to 2024

Section 148A: Provided that the provisions of this section shall not apply in a case where,—

- a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or
- b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151.]

BETWEEN 2021 to 2024

Section 148: Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

- i. any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;
- ii. any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

BETWEEN 2021 to 2024

Section 148: Explanation 2.—For the purposes of this section, where,—

- i. a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or
- ii. a survey is conducted under section 133A, other than under sub-section (2A) or sub-section (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or
- iii. the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- iv. the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee,

the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in section 151.]

W.E.F. BUDGET 2024

Section 148: (1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall, subject to the provisions of section 148A, issue a notice to the assessee, along with a copy of the order passed under sub-section (3) of section 148A, requiring him to furnish, within such period as may be specified in the notice, not exceeding three months from the end of the month in which such notice is issued, a return of his income or income of any other person in respect of whom he is assessable under this Act during the previous year corresponding to the relevant assessment year:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year:

Provided further that where the Assessing Officer has received information under the scheme notified under section 135A, no notice under this section shall be issued without prior approval of the specified authority.

(2) The return of income required under sub-section (1) shall be furnished in such form and verified in such manner and setting forth such other particulars, as may be prescribed, and the provisions of this Act shall, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that any return of income required under sub-section (1), furnished after the expiry of the period specified in the notice under the said sub-section, shall not be deemed to be a return under section 139.

W.E.F. BUDGET 2024

Section 148:

(3) For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

- i. any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time; or
- ii. any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or
- iii. any information received under an agreement referred to in section 90 or section 90A of the Act; or
- iv. any information made available to the Assessing Officer under the scheme notified under section 135A; or
- v. any information which requires action in consequence of the order of a Tribunal or a Court; or
- vi. any information in the case of the assessee emanating from survey conducted under section 133A, other than under sub-section (2A) of the said section, on or after the 1st day of September, 2024.

W.E.F. BUDGET 2024

Section 148A: (1) Where the Assessing Officer has information which suggests that income chargeable to tax has escaped assessment in the case of an assessee for the relevant assessment year, he shall, before issuing any notice under section 148 provide an opportunity of being heard to such assessee by serving upon him a notice to show cause as to why a notice under section 148 should not be issued in his case and such notice to show cause shall be accompanied by the information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year.

(2) On receipt of the notice under sub-section (1), the assessee may furnish his reply within such period, as may be specified in the notice.

(3) The Assessing Officer shall, on the basis of material available on record and taking into account the reply of the assessee furnished under sub-section (2), if any, pass an order with the prior approval of the specified authority determining whether or not it is a fit case to issue notice under section 148.

(4) The provisions of this section shall not apply to income chargeable to tax escaping assessment for any assessment year in the case of an assessee where the Assessing Officer has received information under the scheme notified under section 135A.

Explanation.—For the purposes of this section and section 148, "specified authority" means the specified authority referred to in section 151.]

SPECIFIED AUTHORITY [SECTION 151]

Prior to 01/04/2021

Specified authority for the purposes of sections 148 shall be -

Where 4 years or less than 4 years have elapsed from the end of the relevant assessment year -

- ✓ **Joint Commissioner** or higher rank

For more than 4 years have elapsed from the end of the relevant assessment year -

- ✓ **Principal Chief Commissioner** or
- ✓ **Chief Commissioner** or
- ✓ **Principal Commissioner** or
- ✓ **Commissioner**

Between 01/04/2021 to 01/09/2024

Specified authority for the purposes of sections 148 and 148A shall be -

Where 3 years or less than 3 years have elapsed from the end of the relevant assessment year -

- ✓ **Principal Commissioner** or
- ✓ **Principal Director** or
- ✓ **Commissioner** or
- ✓ **Director,**

For more than 3 years have elapsed from the end of the relevant assessment year -

- ✓ **Principal Chief Commissioner** or
- ✓ **Principal Director General** or
- ✓ **Chief Commissioner** or
- ✓ **Director General**

01/09/2024 ONWARDS

Specified authority for the purposes of sections 148 and 148A shall be -

- ✓ **The Additional Commissioner** or
- ✓ **The Additional Director** or
- ✓ **The Joint Commissioner** or
- ✓ **The Joint Director**

SUBMISSION MADE ON BEHALF OF ASSESSEE

- It is submitted before your honours that **no specific reasons for reopening have been recorded and supplied against your appellant. It is purely based on suspicion that the ld.AO has reopened your appellant's case without appreciation of the factual circumstances.** In this connection your appellant would like to reproduce the relevant extract of notice issued u/s 148 (**Exhibit-B**) as under:
“.....**Whereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year 2016-17 has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961.**

I, therefore, propose to assess/ re-assess the income/ loss for the said Assessment Year and I hereby require you to deliver to me within 30 days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the JCIT Range 1, Jamnagar.”

From the perusal of the above notice issued u/s 148 against your appellant your honour will appreciate that there has been **NO specific finding or application of mind on the part of Ld AO as to how the income for the said assessment year has escaped assessment within the meaning of section 147 of the Act.** Also your honour may appreciate that there is no mention of any finding in the impugned reassessment order as well wherein it shows that the Ld A.O has not recorded any reasons for reopening the assessment specifically for the impugned assessment year. Therefore, in absence of any specific finding/recording of rationale behind reopening of assessment, the said notice itself deserves to be quashed and also the consequential assessment carried out in case of your appellant deserves to be quashed/cancelled.

- It is submitted that no re-assessment is possible to make an enquiry or verification. It is submitted that the reasons recorded for re-opening the assessment must be objective and relevant and not vague, far-fetched or fanciful as had been repeatedly pointed out by the Courts. In this connection your appellant places its reliance on the following judicial pronouncement's as under:
 - **Hon'ble Supreme Court in case of PCIT v. Sheetal Dushyant Chaturvedi [2022] 134 taxmann.com 328 (SC) held as under:**
Section 148, read with section 147, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Reassessment) - Assessment year 2006-07 - High Court by impugned order held that where reasons supplied by Assessing Officer for reopening of assessment of assessee only referred to a need to verify documents and reasons supplied by Assessing Officer did not show that income of assessee had escaped assessment, impugned initiation of reassessment proceedings was unjustified - Whether SLP was to be dismissed against impugned order passed by High Court - Held, yes [Para 2][In favour of assessee]

- **Hon'ble Bombay HC in case of Gandhibag Sahakari Bank Ltd v. DCIT/ACIT [W.P No 3177 of 2022 dated 25-09-2023] [2023] 156 taxmann.com 221 (Bom):**

Where information on Insight Portal with regard to high value cash deposits had prompted Assessing Officer to have a 'reason to believe' that amount in hands of assessee had escaped assessment, however, it had not been indicated in reasons as to how there was formation of belief by Assessing Officer that income had escaped assessment, reopening was merely an outcome of change of opinion of Assessing Officer, hence, notice issued under section 148 was to be quashed and set aside.

- **Hon'ble Gujarat HC in case of Surani Steel Ltd v. Income-tax Officer [2022] 136 taxmann.com 139(Gujarat) held as under:**

Section 68, read with sections 147 and 148, of the Income-tax Act, 1961 - Cash credit (Reassessment) - Assessment years 2014-15 and 2015-16 - In relevant assessment years, petitioner-company made several purchases, sales and availed certain loans which were reflected in its annual accounts - During scrutiny, Assessing Officer called upon petitioner to furnish various documents related to transactions undertaken in relevant assessment years and after considering all material submitted by petitioner passed assessment order under section 143(3) - Later, on basis of information received from Investigation Wing, Assessing Officer issued notices for reopening assessment on ground that petitioner entered into high value financial transactions and availed accommodation entries by way of bogus sale/purchases/fictitious loans - It was noted that there were no specific details recorded by Assessing Officer in reassessment notices related to particulars of nature of transaction and regard to name of person with whom such transactions were entered into - Whether since, Assessing Officer had mechanically relied on information provided by Investigation Wing and issued impugned notices without proper application of mind, same were to be quashed - Held, yes [Paras 10, 11 and 12] [In favour of assessee]

- **Hon'ble Bombay H.C in case of Everest kanto Cylinder Ltd v. Union of India [2024] 159 taxmann.com 51(Bombay) held as under:**

Where AO issued a reopening notice on ground that assessee had debited certain expenditures which were not allowable as per different provisions under Income Tax Act, since there was not even allegation in reasons recorded for reopening that there was any failure on part of assessee to fully and truly disclose all material facts necessary for assessment, impugned reopening notice issued after four years was to be quashed.

- **Hon'ble ITAT Raipur in case of Dy. CIT v. SECL bearing ITA NO 380 &381/RPR/2014, 399/400/RPR/2014 dated 29-07-2021 held as under:**

“...7.1 On a bare perusal, we find conspicuous absence of any allegation that any income chargeable to tax as escaped assessment ‘by the reason of the failure on the part of the assessee to disclose fully and truly all material facts’ necessary for assessment. In the absence of such allegations, the jurisdiction assumed under s.148 of Act in addition to shackles placed under main provisions thereof.”

- **Hon'ble Delhi ITAT in case of Sunil Agarwal v. ITO bearing ITA No 988/Del/2018 held as under:**

“...6.1 After perusing the aforesaid reasons recorded, we find that there is no allegation in the reasons recorded that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment u/s 147 of the Act, the notice issued u/s. 148 of the Act after a period of four years from end of assessment year in case where assessment has been framed u/s. 147/143(3) of the Act is illegal and invalid. The case law relied by the Ld.DR are on distinguished facts. Our aforesaid view is fortified by the decision of the Hon'ble Delhi High Court in the case of CIT vs. Viniyas Finance and Investment (P) Ltd. wherein the Hon'ble has held as under:-

"7. On going through the purported reasons we find that there is no mention of the respondent-assessee not having made a full and true disclosure of the material facts necessary for assessment. On the contrary the purported reasons indicate that the amounts mentioned therein had been shown in the books of accounts as receipts from the companies mentioned therein. We also note that at serial No.5 of the list of companies from which amounts have been allegedly received, the name of the assessee has been shown. This means that the assessee received the received money from itself, which can hardly be an allegation in this case.

8. For the foregoing reasons we feel that the Tribunal has approached the matter in the correct perspective and has held the issuance of the notice under Section 148 dated 30.7.2007 to be bad in law and so, too, all the proceedings pursuant thereto. There is no reason for us to interfere with the impugned order inasmuch as no substantial question of law arises for our consideration."

6.2 It is also noted that the reasons recorded are vague and non-speaking and reflect complete non-application of mind much less independent “application of mind”. The action of the AO has been taken mechanically on the basis of information of DCIT, Central Circle, Dehradun and, not on independent application of mind and therefore, on this count also the proceedings are without jurisdiction. Our this view is supported by the following decisions:-

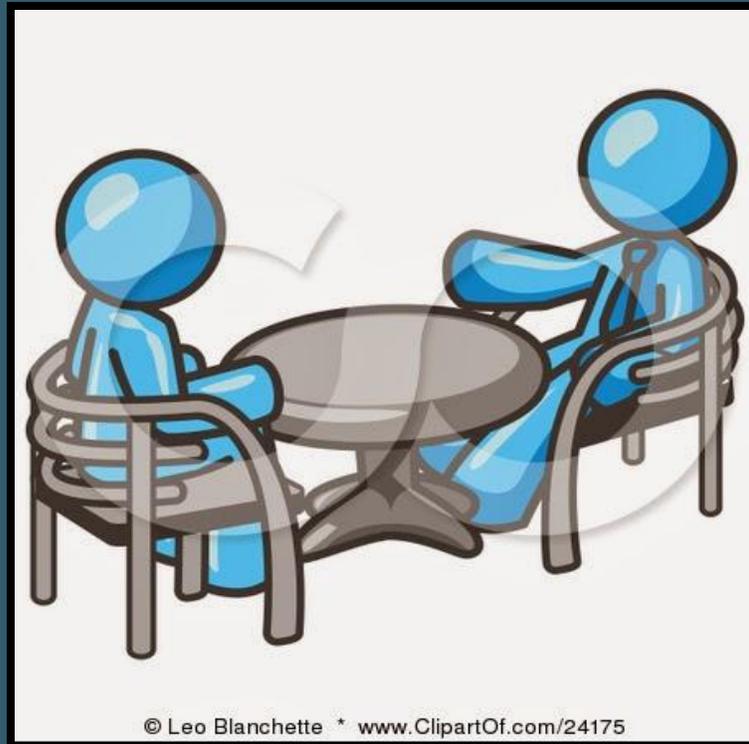
- Pr CIT v. RMG Plyvinyl (I) Ltd. (2017) 83 taxmann.com 348 (Hon'ble Delhi High Court)
- 395 ITR 677 (Del) Pr. CIT v. Meenakshi Overseas (P) Ltd. v. ITO

4

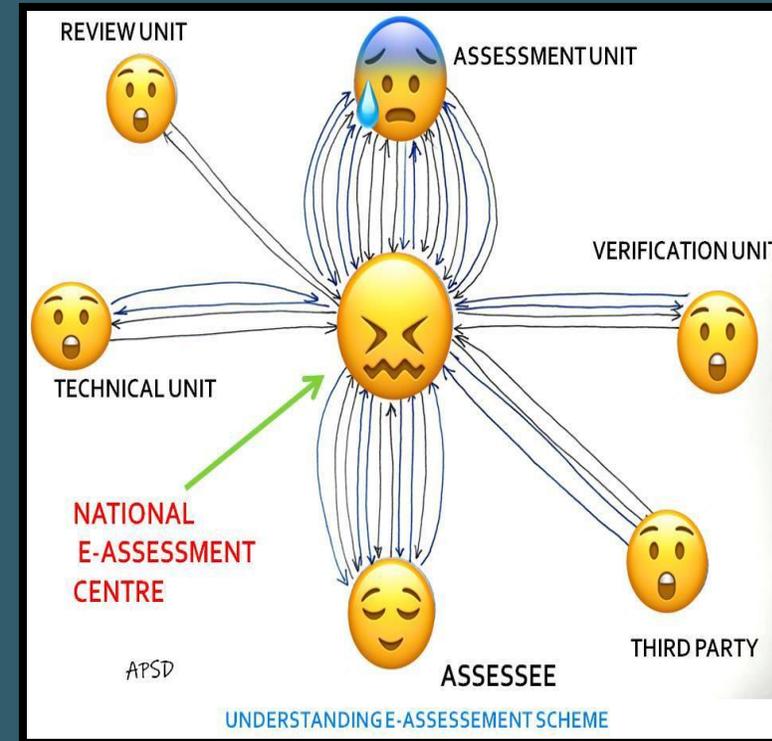
FACELESS ASSESSMENT

ASSESSMENT – OLD & NEW

OLD

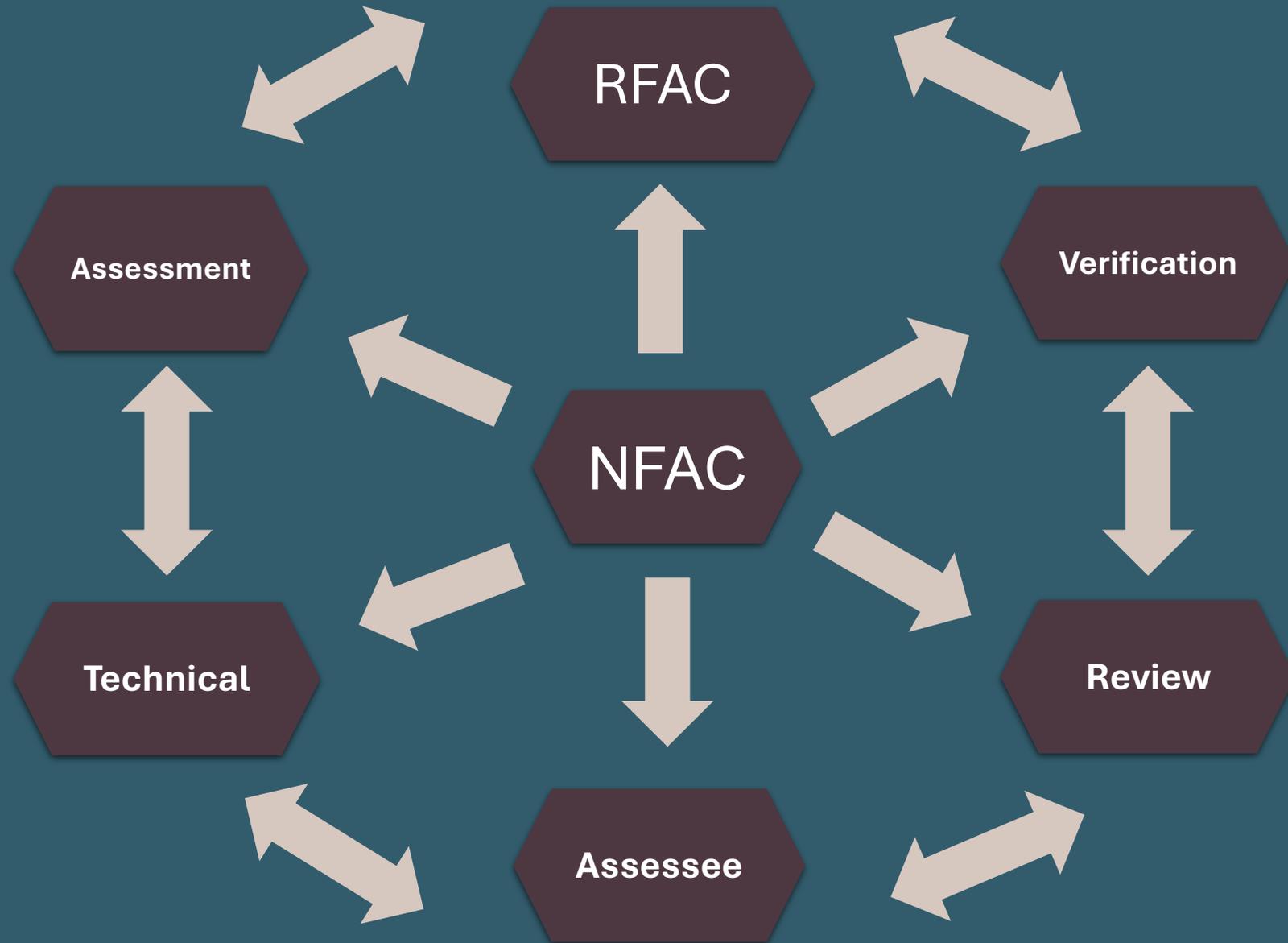


NEW



BACKGROUND & HISTORY

- NOTICE OF SCRUTINY U/S. 143(2) WITH MANUAL SELECTION & ASSESSMENT DONE MANUALLY BY AN AO.
- NOTICE OF SCRUTINY U/S. 143(2) WITH SYSTEM SELECTION & ASSESSMENT DONE MANUALLY BY AN AO.
- FINANCE ACT 2018 INSERTING SEC 143(3A)(3B)(3C) FOR E ASSESSMENT.
- CBDT CIRCULARS ON 12TH FEBRUARY 2018 & 22ND FEBRUARY 2018 GIVING IDEA OF E ASSESSMENT.
- PARTIAL E ASSESSMENT STARTED & UPLOADING OF DATA MADE COMPULSORY ON E PORTAL
- ANNOUNCEMENT BY FM IN BUDGET SPEECH ON 5TH JULY 2019 ABOUT FACELESS E ASSESSMENT
- CREATION OF DEDICATED E ASSESSMENT HIERARCHY FOR E ASSESSMENT SCHEME 2019 ON 11TH SEPT 2019
- NOTIFICATION OF E ASSESSMENT SCHEME 2019 ON 12TH SEPT 2019.



NATIONAL FACELESS ASSESSMENT CENTRE

- Facilitate the conduct of E-Assessment Proceeding in Centralised Manner.
 - One Point Contact between Assessee and all the other Units.
 - Allot the Case to Regional E Assessment Unit (Automated Allocation System)
 - Issue Notice and Send Draft order to the Assessee for finalisation
- Consist of :
 - 1 Prin CCIT Delhi
 - 1 CIT Delhi
 - 2 Add/JCIT Delhi
 - 4 DC/ACIT Delhi
 - 2 ITO
 - Total 10

REGIONAL FACELESS ASSESSMENT CENTRE

- Facilitate the Conduct of E Assessment at Regional Level
- It will allot the case to the Assessment unit on the basis of Automated System.
- Consists of Prin CCIT or Prin CIT from Various Metro as well as Mega Cities
- There would be ITO to Support the Prin CCIT or Prin CIT.

ASSESSMENT UNIT

- Identification of Points
 - Make Inquiry & Examine Evidence with the help of Verification unit
 - Take Technical Assistance from Technical Unit
 - Facilitate the framing of Draft Assessment order
 - Determine Tax or Refund
 - Provide Penalty Details to initiate Penalty if any
- CONSISTS OF ADD CIT/ JCIT
 - SUPPORTED BY DCIT/ACIT
 - FURTHER SUPPORTED BY ITO

VERIFICATION UNIT

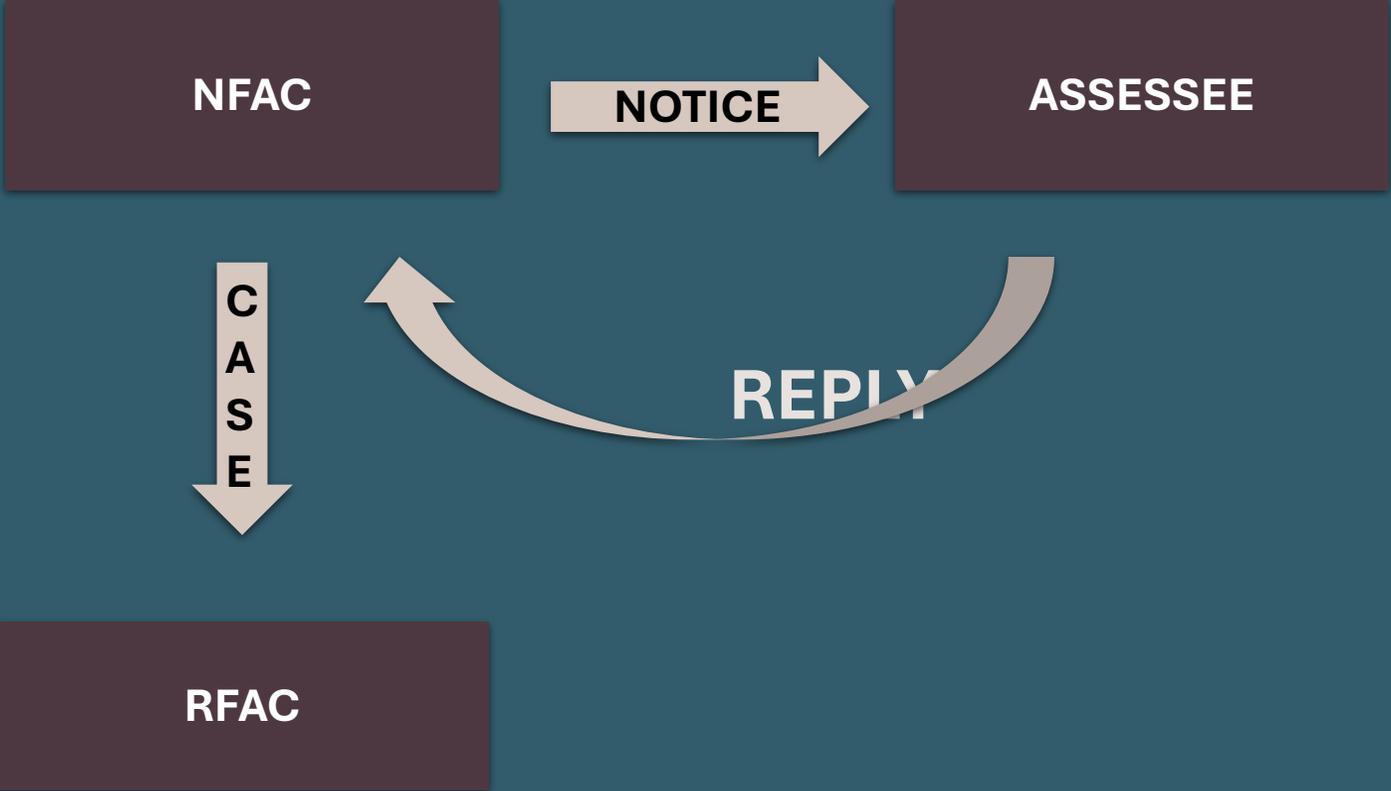
- Facilitate the conduct of inquiry or verification
- Cross Verification from the Witness
- Examination of Books of Accounts
- Statement to be recorded
- CONSISTS OF ADD CIT/ JCIT
- SUPPORTED BY DCIT/ACIT
- FURTHER SUPPORTED BY ITO

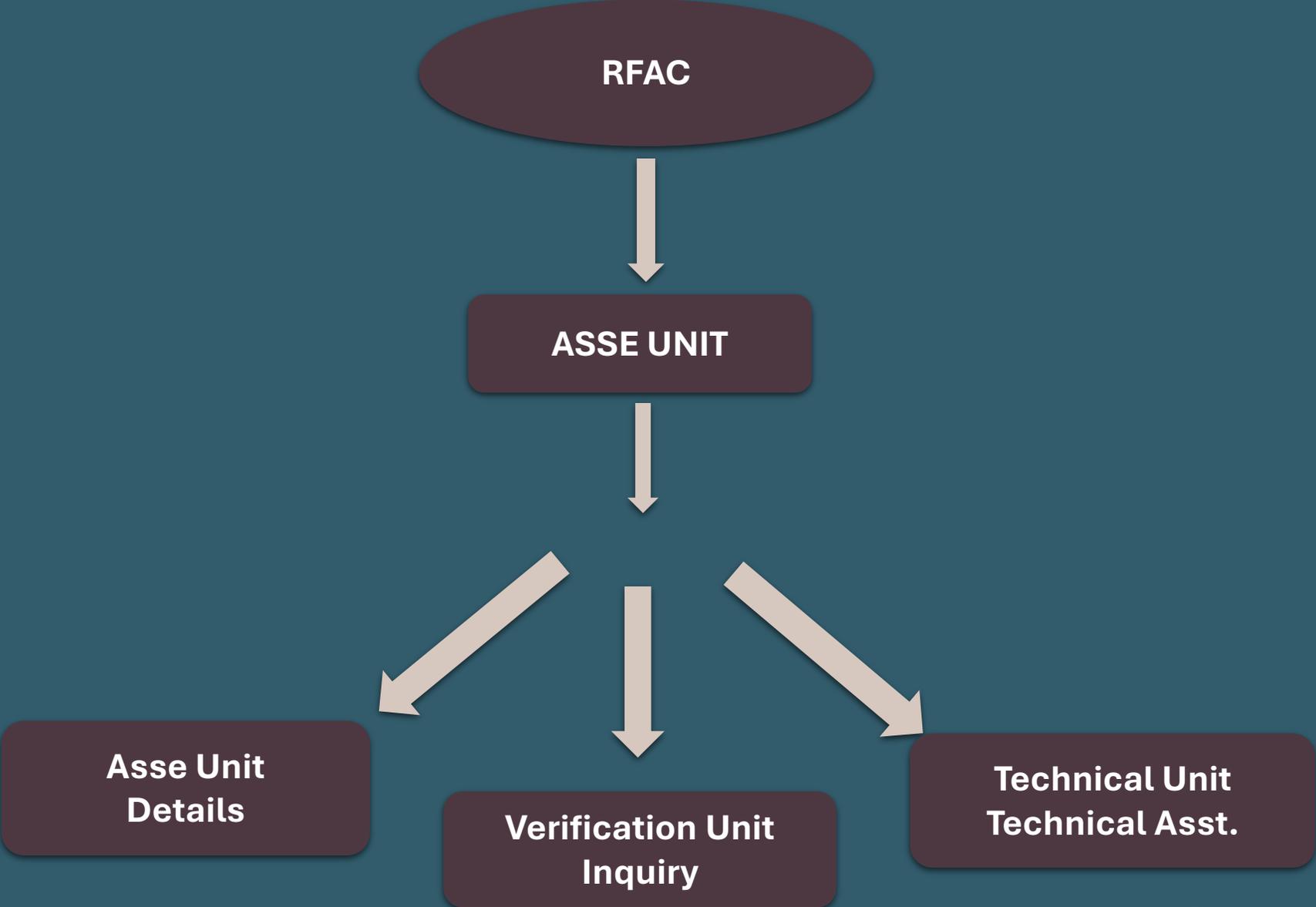
TECHNICAL UNIT

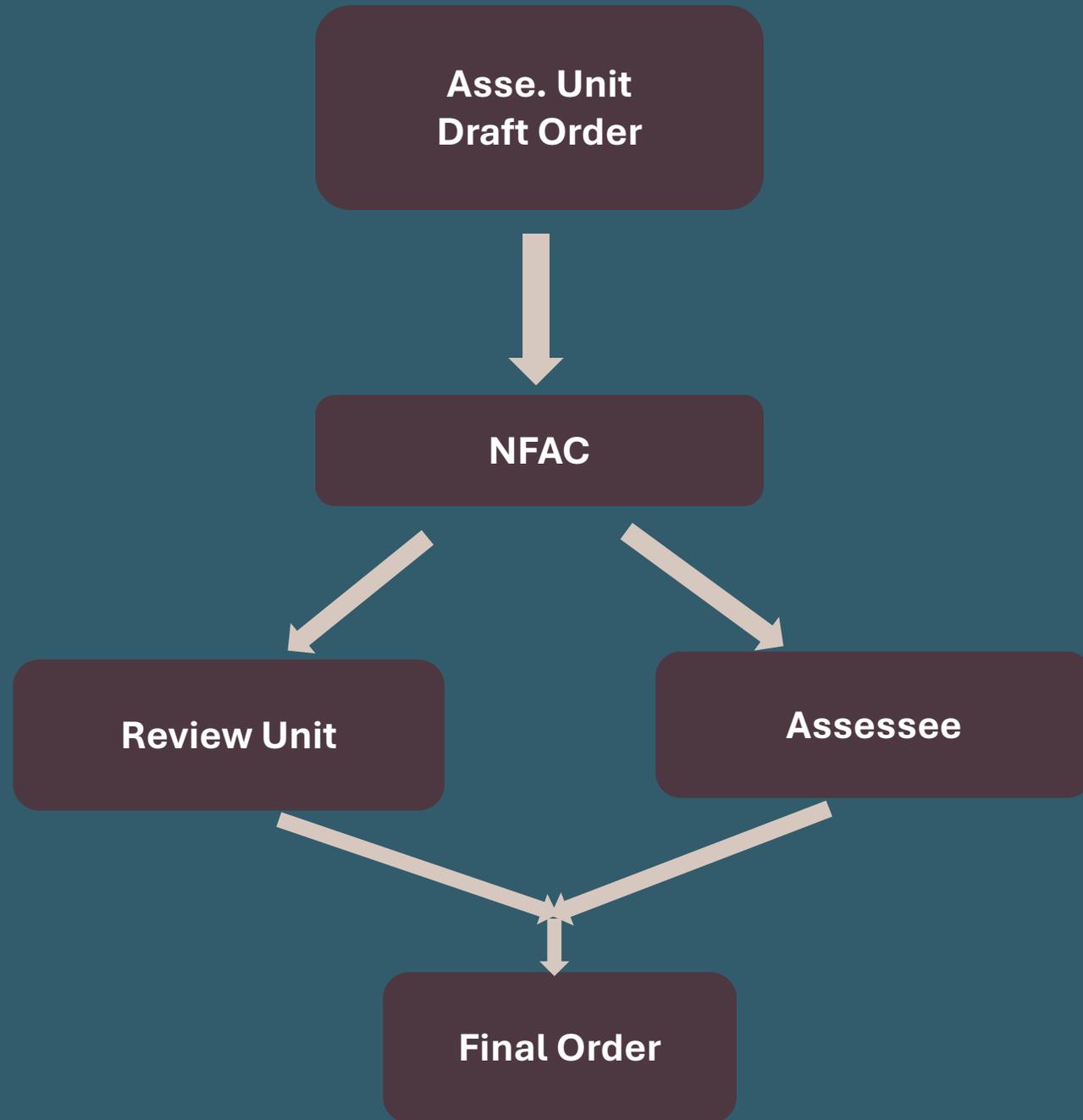
- **Facilitate the Technical Assistance to the Assessment Unit**
- **Advice on Legal, Accounting, Forensic, Valuation Aspect**
- **Assist in Transfer Pricing and Data Analysis**
- **CONSISTS OF ADD CIT/ JCIT**
- **SUPPORTED BY DCIT/ACIT**
- **Mainly from Metro Cities**

REVIEW UNIT

- Facilitate the review of the Draft Order
- Checking whether material evidences are taken on Record or not
- Incorporation of relevant points in draft order
- Judicial Decisions, Circulars etc Considered and applied or not.
- CONSISTS OF ADD CIT/ JCIT
- SUPPORTED BY DCIT/ACIT
- Mainly from Metro Cities







SOME SECTIONS AND E ASSESSMENT

SECTION	UNIT
143(2)	NFAC
142(1)	VU
142A	TU
142(2A)	VU
133(6)	VU
Statement	VU
Applicability of Case etc	TU
143(3) or 144	AU/RU/NFAC

TOOLS TO BE USED

1. VIDEO CONFERENCE
2. ARTIFICIAL INTELLIGENCE
3. AUTOMATED ALLOCATION
4. MOBLE APP
5. REAL TIME ALERT
6. RISK MANAGEMENT THEORY
7. AUTOMATED EXAMINATION TOOL



Practical issues in Communication in Faceless Assessments and Appeals



E- mail ID



Time and place of dispatch of electronic records



Personal hearing through video conferencing

E- MAIL ID

Registered email address can be as per:

On e-filing account;	Last ITR	Email in PAN and Aadhaar database	MCA web-site	Email address made available to the Department
----------------------	----------	-----------------------------------	--------------	--



In practical scenario it is difficult to ascertain which of the above email id is to be considered as registered one.



TIME AND PLACE OF DISPATCH OF ELECTRONIC RECORDS

The time and place of dispatch and receipt of electronic record shall be determined in accordance with the Information Technology Act, 2000



The notice/ order may be considered as served on the assessee when the same is uploaded on income- tax portal of the assessee – even though no email is received by the assessee and irrespective of whether the same is accessed by the assessee.



Many times, due to the technical glitches of IT portal the notice/order cannot be downloaded or is not visible.

PERSONAL HEARING THROUGH VC

Assessee can request for personal hearing through VC to make oral submission/present his case, before tax authorities when variance is proposed in draft assessment order & SCN is issued.

CCIT/DGIT of RFAC approves the request

Any examination during assessment, recording statement to take place through VC.

CBDT provides the facility & rules and regulations for the same.

Time : 30 mins (can be further extended)

Can seek VC adjournment.

In practical scenario assesseees are unable to upload submissions/presentations for reference during online VC.

IMPORTANT RECENT JUDGEMENTS

1. Opportunity of personal hearing not given as demanded after submission – Invalid

1. AGRAWAL JMC JOINT VENTURE **Vs** CIT [2022] 444 ITR 470 (Guj)
2. SARAVANA SELVARATHNAM RETAILS (P.) LTD. V.S COMMISSIONER OF INCOME-TAX APPEALS [2023]

2. Extension Request not denied & Order passed - Invalid

1. EASTERN MATTRESSES (P.) LTD. **Vs** ASSISTANT COMMISSIONER OF INCOME-TAX, INCOME-TAX OFFICER, NATIONAL E-ASSESSMENT CENTRE AND OTHERS [2022] 443 ITR 278 (Ker).
2. PARUL BHARAT SHAH **Vs** NATIONAL FACELESS ASSESSMENT CENTRE AND OTHERS [2023] 451 ITR 360 (Bom)

3. Personal Hearing (VC) not granted even if called - Invoid

1. C. CHELLAMUTHU V.S PRINCIPAL COMMISSIONER, NATIONAL FACELESS ASSESSMENT CENTRE, NEW DELHIDAR HOUSING LIMITED VS NATIONAL E-ASSESSMENT CENTRE AND ANOTHER [2022] 441 ITR 685 (DEL)
2. SAPNA FLOUR MILLS LTD 451 ITR 521 (All) (2023)

4. Draft order not passed before passing final order - Invalid

1. LOKESH CONSTRUCTIONS P. LTD **Vs** ASSISTANT COMMISSIONER OF INCOME-TAX [2021] 437 ITR 123 (Del)
2. MULTIPLIER BRAND SOLUTIONS PVT. LTD. **Vs** ASSISTANT COMMISSIONER OF INCOME-TAX/INCOME-TAX OFFICER AND OTHERS [2022] 442 ITR 202 (Bom).

5. Reply given in e-proceedings and acknowledgment received. Still assessment order passed stating assessee did not response to notice.

1. ZEUS HOUSING COMPANY Vs UNION OF INDIA AND OTHERS [2022]
441 ITR 666 (Bom)

6. Assessment Order passed before the expiry of time granted for reply- Invaid

1. *BL GUPTA CONSTUCTION (P.) LTD. VS NATIONAL E ASSESSMENT CENTRE [2021]*

7.No Sufficient time to reply show cause – Invalid

1. *SHINI SATHEESHKUMAR VS INCOME TAX OFFICER [2022]*

8.Final Order has more addition than the draft order- Invalid

1. *SARDAR CO-OPERATIVE CREDIT SOCIETY LTD.*
[2022] 444 ITR 23 (Guj)

JAO v/s FAO

**Section inserted in the statute book w e f
01/11/2022**

**Its enforcement deferred till the date to be notified
later by Central Govt in the Official Gazette.**

**E-Assessment of Income Escaping Assessment
Scheme, 2022 was notified on 29/03/2022 vide
notification No. 18/2022/F. No. 370142/16/2022-TPL.**

JAO v/s FAO

Scheme enabled CBDT/NFAC to conduct faceless assessment process u/s 144B in the cases of 'income escaping assessment' wef 29/03/2022



All notices u/s 143(2), 142(1) and assessment orders for the income escaping cases u/s 148 issued before 29/03/2022 by NAFAC are without jurisdiction



MD Mahimud SK v/s ITO dated 04/03/2025

**Nabiul Industrial Metal Pvt. Ltd ITO, IT
Department, NFAC, Delhi dated 15/10/2024**

HIGH COURT OF Calcutta

Triton Overseas Private Limited

Sanghi Steel Udyog (P) Ltd vs. Union of India & Ors

Held that notice issued under 148 by the JAO and not by the NFAC is not invalid.

HIGH COURT OF TELANGANA

Kankanala Ravindra Reddy v. The Income-Tax Officer

Citation: Telangana HC, WPs filed Sept. 2023; reported at [2023] 156 Taxmann 178 (Tel. HC)

Holding: Notices under Sections 148A/148 issued by the JAO were declared illegal and quashed, reiterating that only a Faceless Assessing Officer may issue reassessment notices post-s. 151A.

HIGH COURT OF BOMBAY

Hexaware Technologies Ltd. v. Assistant Commissioner of Income-Tax & Ors.

Citation: [2024] 162 Taxmann 225 / 464 ITR 430 (Bom. HC), 14 June 2024

Holding: A Section 148 notice issued by the JAO (rather than through the Faceless Assessing Officer) was held invalid for non-compliance with the Faceless Assessment Scheme under s. 151A.

Surendra Kantilal Vora

Devyani Hasmukh Shah vs. Income Tax Officer & Ors

Bombay HC on 17th June 2025

Following Hexaware Technologies Ltd.(Supra)

5

SPECIAL SCENARIOS

- ✓ **Claim under incorrect Section in course of assessment proceedings / re-computation of exemption under Section 10A whether fresh claim**

➤ **CIT v. Natraj Stationary Products (P.) Ltd. (2009) 312 ITR 22 (Delhi)**

- ✓ **Claim for deduction made in the return of income but the section number is wrongly mentioned; deduction held to be allowable as there is no fresh claim made in course of assessment proceedings**

- **Mitesh Impex 270 CTR 66 (Guj)**
- **E-Funds International Pvt. Ltd. (Delhi HC) (ITA No. 607 – 608 of 2015)**

- ✓ **Assessee has made loss in eligible unit u/s. 10A. AO made the Addition & Loss converted into Income**
- ✓ **Deduction was allowable as there was no fresh claim – but mere re-computation of claim made in the return of income.**

PROFIT LINKED INCENTIVES

❑ Section 80A(5) – Restriction on allowability of deduction

- ✓ No deduction allowable u/s 10A, 10AA, 10B and Chapter VI-A on failure to claim deduction in return

❑ Filing of audit report in Form 10CCB / other reports in course of assessment proceedings

- ✓ Requirement of filing certificate in Form 10 CCB is directory in nature
- ✓ Even if audit report is filed before completion of assessment proceedings deduction allowable

➤ GM Knitting Industries Pvt. Ltd. / Aks Alloys P. Ltd 376 ITR 456 (SC)

➤ CIT v. Gujarat Oil and Allied Industries 201 ITR 325 (Guj HC)

➤ CIT v. Shivanand Electronics 209 ITR 63 (Bombay HC)

CONSEQUENTIAL CLAIMS

- ❑ **Claims consequent upon order of appellate authorities in earlier years**
 - ✓ Such claims may or may not have been made in return of income
 - ✓ Examples are:
 - Depreciation on repairs capitalized in earlier years
 - Increased WDV due to lower rate of depreciation allowed in earlier year
 - Increased brought forward loss due to appeal effect in earlier year

ALTERNATIVE CLAIMS

□ Making of an alternate claim

✓ Examples are:

- Deduction of donation u/s 80G; alternate claim for deduction u/s 37 commercial expediency
- Deduction of expenditure u/s 37 as revenue expenditure; alternate claim for depreciation

➤ CIT v. C.V.M. Exports (2007) 288 ITR (AT) 190 (Rajkot)

- AO duty bound to consider all alternate claims of the assessee
 - Such alternate contentions must be raised in the hierarchy of decreasing importance.
- ✓ In case alternate claim not considered, such claim can be considered in order u/s 154 where application is made in this regard

RES JUDICATA – APPLICABILITY TO SCRUTINY PROCEEDINGS

□ Res Judicata

- Since AO not a court, doctrine of res judicata does not apply to its decisions
- Each assessment year a separate year
- Finding in one year may be departed in subsequent year
 - New Jehagir Vakil Mills v. CIT (1963) 49 ITR 137 (SC)
- Assessment is final between parties only in relation to that particular year
- Revenue not to depart from a view, if departure prejudicial to assessee and results in injustice

– Baijnath Brijmohan & Sons v. CIT (1986) 161 ITR 234 (Bom)

- ✓ Absence of a change justifying revenue taking a different view in respect of fundamental issue not justified

- Radhasoami Satsang v. CIT (1992) 60 taxmann 248 (SC)
- CIT v. S. Murugappa Chettiar (1991) 59 Taxman 252 (Ker)

- ✓ Whether assessee debarred from making a claim if claim not made in earlier years – No

- PLMTT Firm (1973) 87 ITR 260 (Mad)
- CIT v. Motilal Hirabhai Spg. V. Wvg. Co. Ltd. (1978) 113 ITR 173 (Guj)

CERTAIN IMPORTANT CONCEPTS

- Reference to wrong section in the assessment order does not vitiate the assessment : It is now settled law that a wrong reference to the power under which an order is made does not per se vitiate the order, if there is some other power under which the order could be lawfully made.

➤ [Hukumchand Mills Ltd v State of MP (1964) 52 ITR 583 (SC)].

- Assessment order should be a speaking order: It is necessary to emphasise that judicial and quasi-judicial authorities should always give the reasons in support of their conclusions. Thus, a non-speaking order without giving reasons is invalid and is liable to be quashed.

[Baidya Nath Sarma v CWT(1983) 140 ITR 801 (Gau)].

**PRECAUTIONS TO BE TAKEN
VIS-À-VIS
RIGHTS OF AN ASSESSEE**

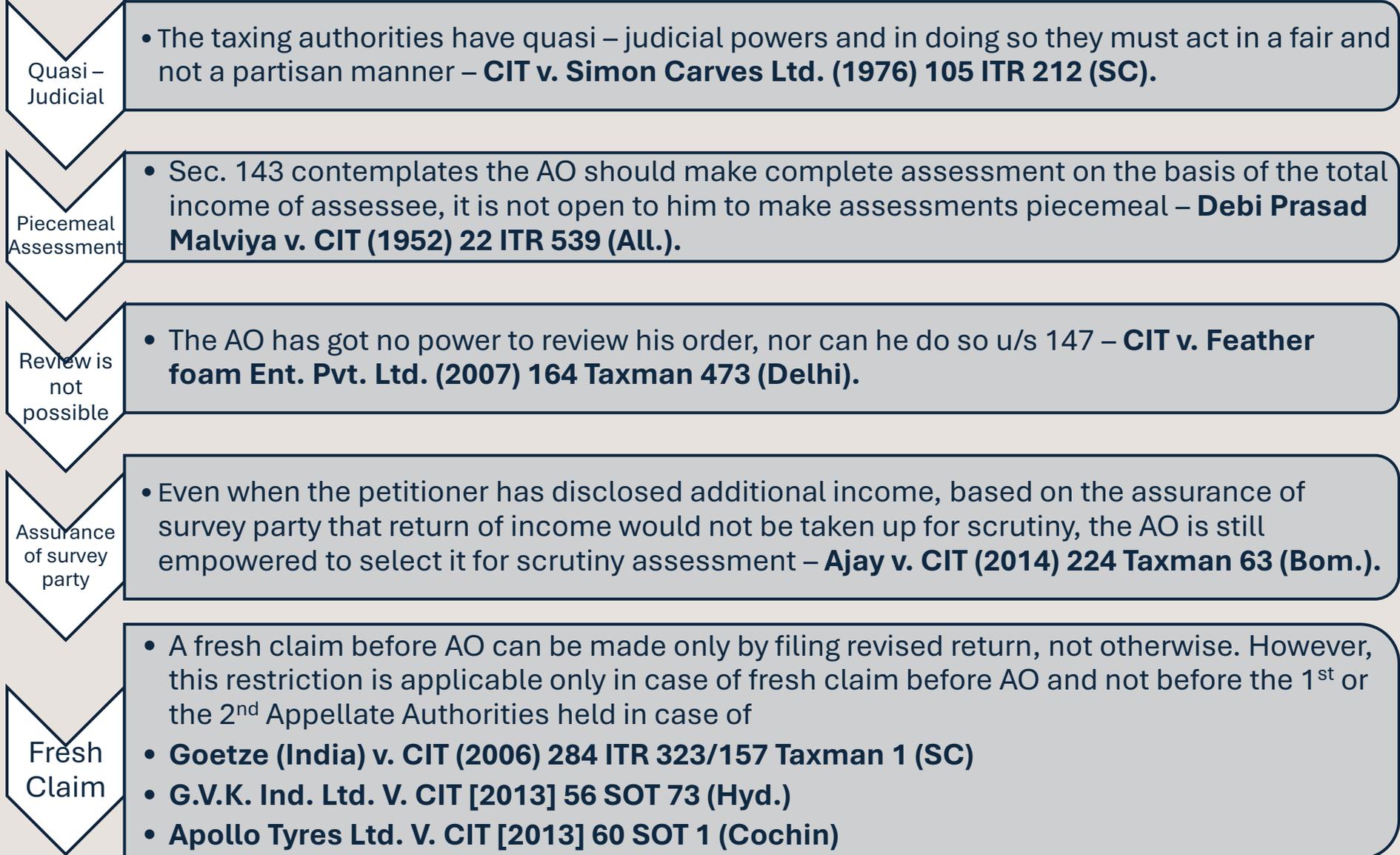
OPPORTUNITY TO EXAMINE THE MATERIAL USED FOR MAKING ADDITION

- ✓ A.O. is duty bound to provide opportunity to the assessee to examine any material used by him for making addition.
- ✓ A copy of the material is to be provided to the assessee and opportunity of cross-examination is to be provided.
- ✓ Any addition/ disallowance made on the basis of the material without providing an opportunity to the assessee shall be considered as invalid.
- ✓ Any other witness can also be summoned at the instance of Assessee

ALL RELEVANT EVIDENCES MUST BE PLACED BEFORE A.O.

- ✓ All the relevant documentary evidences and materials should be placed before the A.O. during the assessment proceedings.
- ✓ It may even help at the time of appellate and the question of furnishing “Additional Evidences” does not arise.
- ✓ Before placing any evidence before the A.O., the same should be cross-verified from all the angles so that later on the same may not be used against the assessee

JUDICIAL RULINGS





PAVAGADHI SHAH & ASSOCIATES

CHARTERED ACCOUNTANTS

PSA AHMEDBAD

CA Palak Pavagadhi

Address:

704, 323 Corporate Park, Near Samudra Complex, Girish Cold Drink Cross-road, Uma Shankar Joshi Marg, Navrangpura, Ahmedabad - 380009

 palak@pavagadhishah.com

 +91 98251 79479

PSA MUMBAI

CA Vidhi Pandya Trivedi

Address:

B 103, Ramrupa Apartment, Rokadia Lane, Near Gokul Hotel, IndusInd Bank Building, Borivali West, Mumbai, Maharashtra - 400092

 vidhi@pavagadhishah.com

 +91 98252 03703



CA Palak Pavagadhi



CA Palak Pavagadhi



CA Palak Pavagadhi

