

Faceless tax appeals may lead to rise in litigation: Officials

Consultants say they won't get fair chance to explain case

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A week after Prime Minister Narendra Modi announced faceless appeals mechanism as part of a transparent taxation measure, tax officers and consultants are apprehensive about the effectiveness of the yet-to-be-launched scheme. They are also worried that litigation at the tribunal level may go up.

Tax officers argue transition from the existing appeals mechanism to a faceless system will be a "logistical nightmare" and are unsure over whether they should put all existing cases on hold or continue to pass orders.

Tax consultants, on the other hand, are worried that faceless appeals will result in additional demands as they will not get a fair opportunity to explain their case well, with most cases landing up in income tax tribunals.

While the faceless assessment mechanism came into effect from August 13, faceless appeals will be rolled out from September 25, which will eliminate physical interface between taxpayers and tax authorities. It will and do away with territorial jurisdiction.

The Central Board of Direct Taxes (CBDT) did not respond to queries sent by *Business Standard*. However, the spokesperson said faceless appeals norms would be issued shortly.

Tax experts argue that assessee's prefer to present arguments by being physically present to explain their case better in case of appeals.

Amit Maheshwari, partner, AKM Global, said discussion in person becomes really important during the appeals stage, which is generally missing in faceless appeals.

"In the case of faceless appeal proceedings, most of the discussions generally happen electronically without any personal interaction, which makes the issue more complex. The commissioner has the power to confirm, reduce, enhance or annul the existing order and if taxpayers fail to convince the commissioner, they may not get relief. The risk of enhancement or confirmation of tax demand is substantial," he said.

Email communication may not be the best mode of communication when the amount involved is high, and issues require deeper understanding, especially industry-specific issues, added Maheshwari.

Most tax experts are worried that with assessments being faceless, there could be ad hoc or high-pitched assessments by officers in absence of proper explanation, which will be exacerbated at the appeals level, which is also faceless. This may result in higher litigation at the tribunal level and above, according to many experts. "In case faceless assessments result in high-pitched assessments or ad hoc adjustments by tax authorities, in absence of proper



KEY CONCERNS

- Will be difficult to explain complex cases electronically without meetings in person
- May lead to additions in existing demands
- Cases may pile up at tribunal level
- Taxpayers may not get desired relief at the appellate level
- Officials unsure whether they should pass orders till Sep 25, or put them on hold
- Officials argue that many appeals are badly drafted and require explanation, which will be difficult in faceless system

submissions or explanations, or if there are gaps in understanding the facts, more efforts would be required at the first-appeal level to set out the correct facts," said Shailesh Kumar, partner, Nangia and Co LLP.

On top of it, if such faceless assessment orders are challenged and decided in faceless appeals, chances are higher that the taxpayer may not get the desired relief even in the first appeal proceedings. So, the matter may have to be necessarily carried to the second appellate authority, i.e. Income Tax Appellate Tribunal for getting the desired relief," added Kumar.

Tax officers, on the other hand, argue that the commissioner (appeals) position requires proper understanding of the case, and carrying out appeals in a faceless manner may be challenging. "Most cases may land up in tribunals, with taxpayers not getting a fair chance to explain their case. Many a times, appeals are badly drafted or the language is not clear, which requires explanation by the assessee. That will be difficult now," said a tax officer.

A commissioner of income tax (appeals) said he is unsure whether he should dispose of existing cases or not in the absence of clear guidelines. "I am not sure whether I should decide on the existing cases or not till September 25. I don't want to be in trouble for deciding on the cases after the faceless appeals announcement, even as it will be rolled out only next month," he said.