

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 12th January, 2021

INCOME-TAX

S.O. 118(E).—In exercise of the powers conferred by sub-section (2B) of section 274 of the Income-tax Act, 1961 (43 of 1961), for the purposes of giving effect to the Faceless Penalty Scheme, 2021 made under sub-section (2A) of section 274 of the said Act, the Central Government hereby makes the following directions, namely:—

1. The provisions of section 2, section 120, section 127, section 129, section 131, section 133, section 133C, section 136 and Chapter XXI of the said Act shall apply to the procedure for imposing penalty in accordance with the said Scheme subject to the following exceptions, modifications and adaptations, namely:—

“(A). (1) The penalty shall be levied under the said Scheme as per the following procedure, namely:—

(i) where any income-tax authority or the National Faceless Assessment Centre has, in a case,—

(a) initiated penalty proceedings and issued a show-cause notice for imposition of penalty; or

(b) recommended initiation of penalty proceedings,

it shall refer such case, in the form specified in clause (viii) of sub-paragraph (B) of paragraph 4, to the National Faceless Penalty Centre;

- (ii) the National Faceless Penalty Centre shall in a case, where reference has been received as per clause (i), assign such case to a specific penalty unit in any one of the Regional Faceless Penalty Centres through an automated allocation system;
- (iii) where in a case assigned to a penalty unit, initiation of penalty proceedings has been recommended, such unit, after examination of the material available on record, may decide to,—
 - (a) agree with the recommendation and prepare a draft notice calling upon the assessee or any other person, as the case may be, to show cause as to why penalty should not be levied under the relevant provisions of the Act; or
 - (b) disagree with the recommendation, for reasons to be recorded in writing,and send such draft notice or the reasons, as the case may be, to the National Faceless Penalty Centre;
- (iv) the National Faceless Penalty Centre shall upon receipt of the draft notice or reasons referred to in clause (iii) from the penalty unit,—
 - (a) serve the show-cause notice, as per the draft referred to in sub-clause (a) of clause (iii), upon the assessee or any other person, as the case may be, specifying the date and time for filing a response; or
 - (b) not initiate penalty in cases referred to in sub-clause (b) of clause (iii);
- (v) where in the case assigned to a penalty unit, penalty proceedings are already initiated, such unit shall prepare a draft notice calling upon the assessee or any other person, as the case may be, to show cause as to why penalty should not be levied under the relevant provisions of the Act and send such notice to the National Faceless Penalty Centre;
- (vi) the National Faceless Penalty Centre shall serve the show-cause notice, as per draft referred to in clause (v), upon the assessee or any other person, as the case may be, specifying the date and time for filing a response;
- (vii) the assessee or any other person, as the case may be, shall file a response to the show-cause notice, referred to in sub-clause (a) of clause (iv) or in clause (vi), within the date and time specified therein, or such extended date and time as may be allowed on the basis of an application made in this behalf, with the National Faceless Penalty Centre;
- (viii) where response is filed by the assessee or any other person, as the case may be, the National Faceless Penalty Centre shall send such response to the penalty unit, and where no such response is filed, inform the penalty unit;
- (ix) the penalty unit may make a request to the National Faceless Penalty Centre for –
 - (a) obtaining further information, documents or evidence from any income-tax authority or the National Faceless Assessment Centre; or
 - (b) obtaining further information, documents or evidence from the assessee or any other person; or
 - (c) seeking technical assistance or conducting verification;
- (x) the National Faceless Penalty Centre shall, upon receipt of request, referred to in sub-clauses (a) or (b) of clause (ix), issue appropriate notice or requisition to the income-tax authority or the National Faceless Assessment Centre or the assessee or any other person, as the case may be, to submit such information, documents or evidence, as may be specified by the penalty unit, specifying the date and time for furnishing a response;
- (xi) the income-tax authority or the National Faceless Assessment Centre or the assessee or any other person, as the case may be, shall furnish a response to the notice or requisition, as referred to in clause (x), within the date and time specified therein, or such extended date and time as may be allowed on the basis of an application made in this behalf, to the National Faceless Penalty Centre;

- (xii) where a request for conducting of certain enquiry or verification or seeking technical assistance has been made by the penalty unit, the National Faceless Penalty Unit shall send such request to the National Faceless Assessment Centre specifying a date and time for submitting a report;
- (xiii) where response to notice referred to in clause (x) is filed by the income-tax authority or the National Faceless Assessment Centre or the assessee or any other person, as the case may be, the National Faceless Penalty Centre shall send such response to the penalty unit, and where no such response is filed, inform the penalty unit;
- (xiv) where a report in response to request referred to in clause (xii) is received by the National Faceless Penalty Centre, it shall send such report to the penalty unit, and where no such report is received, inform the penalty unit;
- (xv) the penalty unit shall, after considering the material on record including response furnished, if any, as referred to in clauses (viii) and (xiii) or report, if any, as referred to in clause (xiv), propose for,—
- (a) imposition of the penalty and prepare a draft order for imposition of penalty; or
- (b) non-imposition of the penalty;
- for reasons to be recorded in writing and send the proposal along with such draft order or reasons, as the case may be, to the National Faceless Penalty Centre;
- (xvi) the National Faceless Penalty Centre shall examine the proposal, as referred to in clause (xv), in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide, —
- (a) in a case where imposition of penalty has been proposed, to pass the penalty order as per draft order referred to in sub-clause (a) of clause (xv), and serve a copy thereof upon the assessee or any other person, as the case may be; or
- (b) in a case where non-imposition of penalty has been proposed, not to impose penalty under intimation to the assessee or any other person, as the case may be; or
- (c) assign the case to a penalty review unit in any one of the Regional Faceless Penalty Centres through an automated allocation system, for conducting review of such proposal;
- (xvii) the penalty review unit shall review the proposal of penalty unit, as referred to in clause (xv), whereupon it may concur with, or suggest modification to, such proposal, for reasons to be recorded in writing, and intimate the National Faceless Penalty Centre;
- (xviii) where the penalty review unit concurs with the proposal of penalty unit, the National Faceless Penalty Centre shall follow the procedure laid down in sub-clause (a) or sub-clause (b) of clause (xvi);
- (xix) where the penalty review unit suggests modification to the proposal in sub-clause (a) or sub-clause (b) of clause (xv), the National Faceless Penalty Centre shall assign the case to a specific penalty unit, other than the penalty unit referred to in clause (xv), in any one of the Regional Faceless Penalty Centres through an automated allocation system;
- (xx) where the case is assigned to a penalty unit, as referred to in clause (xix), such penalty unit after considering the material on record including suggestions for modification and reasons recorded by the penalty review unit, —
- (a) in a case where the modifications suggested by the penalty review unit are prejudicial to the interest of assessee or any other person, as the case may be, as compared to the proposal of the penalty unit under clause (xv), shall follow the procedure laid down in clauses (v) to (xiv) and prepare a revised draft order for imposition of penalty; or
- (b) in a case where the modification are not prejudicial to the interest of assessee or any other person, as the case may be, shall prepare a revised draft order for imposition of penalty; or
- (c) may propose non-imposition of penalty, for reasons to be recorded in writing, and send such order or reasons to the National Faceless Penalty Centre;

- (xxi) upon receipt of revised draft order from the penalty unit, as referred to in clause (xx), the National Faceless Penalty Centre shall pass the penalty order as per such draft and serve a copy thereof upon the assessee or any other person or not impose penalty under intimation to the assessee or any other person, as the case may be;
- (xxii) where in a case, as referred to in sub-clause (a) or (b) of clause (i), the National Faceless Penalty Centre has passed a penalty order, or not initiated or imposed penalty, as the case may be, it shall send a copy of such order or reasons for not initiating or imposing penalty to the income-tax authority, referred to in clause (i) or the National Faceless Assessment Centre, as the case may be, for such action as may be required under the Act.

(2) Notwithstanding anything contained in sub-paragraph (1), the Principal Chief Commissioner or the Principal Director General, in charge of National Faceless Penalty Centre, may at any stage of the penalty proceedings, if considered necessary, transfer such proceedings to the income-tax authority or National Faceless Assessment Centre having jurisdiction over the assessee or any other person, in whose case the penalty proceedings are initiated, with the prior approval of the Board.

(B). (1) A person shall not be required to appear either personally or through authorised representative in connection with any proceedings under the said Scheme before the income-tax authority at the National Faceless Penalty Centre or Regional Faceless Penalty Centre or penalty unit or penalty review unit set up under the said Scheme.

(2) The assessee or any other person, as the case may be, or his authorised representative, may request for personal hearing so as to make his oral submissions or present his case before the penalty unit under the said Scheme.

(3) The Chief Commissioner or the Director General, in charge of the Regional Faceless Penalty Centre, under which the concerned penalty unit is set up, may approve the request for personal hearing, as referred to in sub-paragraph (2), if he is of the opinion that the request is covered by the circumstances laid down under clause (ix) of sub-paragraph B of paragraph 4.

(4) Where the request for personal hearing has been approved by the Chief Commissioner or the Director General, in charge of the Regional Faceless Penalty Centre, such hearing shall be conducted exclusively through video conferencing, including use of any telecommunication application software which supports video telephony, in accordance with the procedure laid down by the Board;

(5) The Board shall establish suitable facilities for video conferencing including telecommunication application software which supports video telephony at such locations as may be necessary, so as to ensure that the assessee, or his authorised representative, or any other person is not denied the benefit of the said Scheme merely on the ground that such assessee or his authorised representative, or any other person does not have access to video conferencing at his end.

(C). The provision of section 246A of the said Act shall apply to appealable orders arising out of penalty imposed in accordance with the said Scheme subject to the following exceptions, modifications and adaptations, namely:-

“ An appeal against a penalty order made by the National Faceless Penalty Centre under the said Scheme shall lie before the Commissioner (Appeals) having jurisdiction over the jurisdictional income-tax authority or before the National Faceless Appeal Centre, as the case may be; and any reference to the Commissioner (Appeals) in any communication from the National Faceless Penalty Centre shall mean such jurisdictional Commissioner (Appeals) or the National Faceless Appeal Centre, as the case may be.

2. The provisions of section 140 and section 282A of the said Act shall apply to the penalty proceedings in accordance with the said Scheme subject to the following exceptions, modifications and adaptations, namely:—

“an electronic record shall be authenticated by the,—

(i) National Faceless Penalty Centre by affixing its digital signature;

(ii) the assessee or any other person, by affixing his digital signature if he is required under the Rules to furnish his return of income under digital signature, and in any other case by affixing his digital signature or under electronic verification code.

Explanation. — For the purposes of this paragraph, “electronic verification code” shall have the same meaning as referred to in rule 12 of the Rules.”.

3. The provisions of section 154 and section 155 of the said Act shall apply to the order passed in accordance with the said Scheme subject to the following exceptions, modifications and adaptations, namely:—

“(1) With a view to rectifying any mistake apparent on the record, the National Faceless Penalty Centre may, by an order to be passed in writing, amend any order passed by it under the said Scheme.

(2) Subject to the other provisions of the said scheme, an application for rectification of mistake, as referred to in sub-paragraph (1), may be filed with the National Faceless Penalty Centre by the, —

- (a) assessee or any other person, as the case may be; or
- (b) penalty unit, which prepared the order; or
- (c) penalty review unit, which reviewed the order; or
- (d) income-tax authority; or
- (e) National Faceless Assessment Centre.

(3) Where an application, as referred to in sub-paragraph (2), is received by the National Faceless Penalty Centre, it shall assign such application to a specific penalty unit in any one of the Regional Faceless Penalty Centres through an automated allocation system.

(4) The penalty unit shall examine the application and prepare a notice for granting an opportunity—

- (a) to the assessee or any other person, as the case may be, where the application has been filed by the authorities referred to in clause (b) or (c) or (d) or (e) of sub-paragraph (2); or
- (b) to the authorities referred to in clause (b) or (c) or (d) or (e) of sub-paragraph (2), where the application has been filed by the assessee or any other person, as the case may be, and

send the notice to the National Faceless Penalty Centre.

(5) The National Faceless Penalty Centre shall serve the notice, as per draft referred to in sub-paragraph (4), upon the assessee or any other person, as the case may be, or authorities referred to in clause (b) or (c) or (d) or (e) of sub-paragraph (2) to show cause as to why rectification of mistake should not be carried out under the relevant provisions of the Act, specifying the date and time for filing a response.

(6) The response to the show-cause notice referred to in paragraph (5) shall be furnished within the specified date and time or such extended time as may be allowed on the basis of application made in this behalf, to the National Faceless Penalty Centre.

(7) Where a response, as referred to in sub-paragraph (6), is filed, the National Faceless Penalty Centre shall send such response to the penalty unit, or where no such response is filed, inform the penalty unit.

(8) The penalty unit shall, after taking into consideration the response, if any, referred to in sub-paragraph (7), prepare a draft order,—

- (a) for rectification of the mistake; or
- (b) for rejection of application for rectification, citing reasons thereof,

and send the order to the National Faceless Penalty Centre.

(9) The National Faceless Penalty Centre shall upon receipt of draft order, as referred to in sub-paragraph (8), pass an order as per such draft and communicate such order to, —

- (a) the assessee or any other person, as the case may be; and
- (b) the National Faceless Assessment Centre or the income-tax authority having jurisdiction over the case for such action as may be required under the Act;”.

4. The provisions of section 282, section 283 and section 284 of the said Act shall apply to the said Scheme subject to the following exceptions, modifications and adaptations, namely:—

“(A). (1) Every notice or order or any other electronic communication under the said Scheme shall be delivered to the addressee, being the assessee or any other person, by way of,—

- (a) placing an authenticated copy thereof in the assessee’s or any other person’s registered account, as the case may be; or
- (b) sending an authenticated copy thereof to the registered email address of the assessee or any other person, as the case may be, or his authorised representative; or
- (c) uploading an authenticated copy on the assessee’s or any other person’s Mobile App, as the case may be, and

followed by a real time alert.

(2) Every notice or order or any other electronic communication under the said Scheme shall be delivered to the addressee, being any other person, by sending an authenticated copy thereof to the registered email address of such person, followed by a real time alert.

(3) The assessee or any other person, as the case may be, shall file his response to any notice or order or any other electronic communication, under the said Scheme, through his registered account, and once an acknowledgement is sent by the National Faceless Penalty Centre containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated.

(4) The time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000 (21 of 2000).

(B). The Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Penalty Centre shall, with the approval of Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Penalty Centre, the Regional Faceless Penalty Centre, the penalty unit and the penalty review unit set-up under the said Scheme, in an automated and mechanised environment, including format, mode, procedure and processes in respect of the following, namely:—

- (i) service of the notice, order or any other communication;
- (ii) receipt of any information or documents from the person in response to the notice, order or any other communication;
- (iii) issue of acknowledgment of the response furnished by the person;
- (iv) provision of “e-proceedings” facility including login account facility, tracking status of penalty proceedings, display of relevant details, and facility of download;
- (v) accessing, verification and authentication of information and response including documents submitted during the penalty proceedings;
- (vi) receipt, storage and retrieval of information or documents in a centralised manner;
- (vii) general administration and grievance redressal mechanism in the respective Centres and units;
- (viii) form for referring a case, in which penalty has been initiated or initiation of penalty has been recommended, as referred to in clause (i) of sub-paragraph (1) of paragraph 5 of the said Scheme, and
- (ix) circumstances in which personal hearing may be approved as per sub-paragraph (3) of paragraph 11 of the said Scheme.”

5. This notification shall come into force on the date of its publication in the Official Gazette.

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SHEFALI SINGH, Under Secy., Tax Policy and Legislation