

E-ASSESSMENT SCHEME-2019 UNDER THE INCOME TAX ACT

CA (MS) ARTI SHAH

CA DALPAT H SHAH

- 1.** With a view to expand the e-assessment procedure under the Income tax Act, Sections 143(3A), (3B) and (3C) were inserted in the Income tax Act by the Finance Act, 2018, w.e.f. 01.04.2018.
 - 1.1** The new section 143(3A) authorizes the Central Government to notify the E-Assessment Scheme to impart greater efficiency, transparency and accountability. It is stated that this will be achieved by –
 - i) Eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent of feasibility of technology.
 - ii) Optimizing utilization of the resources through economics of scale and functional specialization.
 - iii) Introducing a team based assessment with dynamic jurisdiction.
 - 1.2** Section 143(3B) authorises the Central Government to issue a Notification directing that certain provisions of the Income tax Act relating to the assessment proceedings shall not apply or shall apply with exceptions, modifications and adaptations as may be specified in the Notification.
 - 1.3** Section 143(3C) states that every notification issued under sub-section (3A) and sub-section (3B) shall as soon the notification is issued, be laid before each house of Parliament.
- 2.** To give effect to the above provisions the Central Government has issued the following Notifications on 12.09.2019.
 - i) Notification No.61/2019 notifying the “E-Assessment Scheme, 2019” u/s143(3A). This scheme has come into force on 12-09-2019 and applies to Scrutiny Assessments to be made during the F.Y. 2019-20.

- ii) Notification No.62/2019 containing General Directions for giving effect to the above Scheme.
3. In this Note the provisions of the new E-Assessment Scheme (Scheme) and the Notification containing Directions for the implementation of this Scheme (Directions) are discussed.
4. **Para 4 of the Scheme authorizes CBDT to set up -**
- i) A National E-Assessment Centre (National Centre):
to facilitate the conduct of e-assessment proceedings in a Centralized manner.
 - ii) Regional E- Assessment Centres (Regional Centre) :
to facilitate the conduct of e-assessment proceedings in the Region of a Principal Chief Commissioner which shall have jurisdiction to make e-assessments under the Scheme.
 - iii) Assessment Units:
to facilitate the conduct of e-assessments, including identification of points and issues material for making the assessment and seeking information or clarifications on specified issues and carry out such other functions as may be required for making assessment.
 - iv) Verification Units:
to enquire, Cross Verify, examine the books of accounts, examine witnesses, recording statements and carry out such other functions as may be required for such verification to facilitate the e-assessment proceedings.
 - v) Technical Units:
to provide technical assistance on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, and other technical matters to facilitate the e-assessment proceedings.

- vi) Review Units:
to perform the function of Review of draft assessment orders which will include checking of relevant material evidence, relevant facts and applicable law, judicial decisions, arithmetical correctness and such other functions as may be necessary for the purpose the review. This unit can also propose modifications to be made in the draft assessment orders.
5. Notification No.62/2019 dated 12.09.2019 states that the provisions of sections 2(7A), 92CA, 120, 124, 127, 129, 131,133, 133A, 133C, 134, 142, 142A, 143, 144A, 144BA, 144C and Chapter XXI (penalties) shall apply to the scheme subject to the exceptions, modifications and adaptations as specified in the Notification. These exceptions, modifications and adaptations relate to the procedure for e-assessment laid down in the Scheme.
6. **CBDT has issued a circular No. 27/2019 on 26.09.2019 clarifying that, in the following cases, the Scheme for e-assessment shall not be mandatory:-**
- i) Reassessment under section 147
 - ii) Assessments in search cases under section 153A and 153C.
 - III) Best judgement assessment u/sec 144
 - iv) Set-aside Assessments.
 - v) Assessments to be made in Non-PAN Cases.
 - vi) Where Income tax Return is filed in Paper Mode and assessee does not have 'E-filing' account.
 - vii) All cases at stations connected through the VSAT or with limited bandwidth as may be specified by the Principal CIT
 - viii) In cases where the Principal CIT / CIT, in extraordinary Circumstances, such as complexities of the case or administrative difficulties in the conduct of e-assessment, specifies.

7. Communication:

All communications amongst the above referred units or with the assessee shall be through the National Centre only and that also in electronic mode only.

8. Authorities:

Assessment Units, Verification Units, Technical Units or Review Units shall have the following authorities namely:

- i) Addl. Commissioner / Director or Joint Commissioner or Director
- ii) Deputy Commissioner / Director or Assistant Commissioner or Director/ I.T.O.
- iii) Any other authorities as notified by C.B.D.T

9. Procedure for E-Assessment

The procedure under the e-assessment scheme is as under:

- 9.1 The National Centre shall serve a notice to the assessee u/s. 143(2) specifying the issues for selection of the case.
- 9.2 The assessee may, within 15 days of receipt of the said notice, file his response to the National Centre.
- 9.3 The National Centre shall assign the case to a specific Assessment Unit in any one Regional Centre through an automated allocation system.
- 9.4 The Assessment Unit may request to the National Centre for :-
 - i) Obtaining documents, information or evidence from the assessee or any other person.
 - ii) Conducting enquiry or verification by Verification Unit, or
 - iii) Seeking technical assistance from the Technical Unit

- 9.5 Where such a request is received, the National Centre shall, issue notice or requisition to:
- i) the assessee or other person for obtaining the information, documents or evidence required by Assessment Unit.
 - ii) The Verification Unit for enquiry or verification through an automated allocation system.
 - iii) The Technical Unit in any Regional Centre for technical assistance through an automated allocation system.
- 9.6 Thereafter, the Assessment Unit shall, after considering the material on record, make a draft assessment order along with details of penalty proceedings to be initiated and send the same to the National Centre .
- 9.7 The National Centre shall examine the draft assessment order in accordance with the specified risk management strategy specified by CBDT and using automated examination tool and decide to--
- a) finalise the assessment order as per the draft assessment order and send a copy of such order and notice for initiating penalty proceedings, if any, to the assessee along with the demand notice or
 - b) provide an opportunity to the assessee, in case a modification is proposed, by serving a show cause notice as to why the assessment as per the draft order should not be completed, or
 - c) assign the draft assessment order to a Review Unit in any one Regional Centre through an automated allocation system for conducting review of such order.
- 9.8 The Review Unit shall review the draft order referred by the National Centre and may decide to agree with the same or may suggest such modification as it may deem fit. The Review Unit shall then forward its suggestions to the National Centre.

- 9.9 The National Centre shall, upon receiving concurrence of the Review Unit, either finalise the assessment or provide opportunity to the assessee for any proposed modification as mentioned in Para 10.7(a) or (b) above.
- 9.10 If the Review Unit has suggested any modifications, the National Centre shall communicate the suggestions of the Review Unit to the Assessment Unit.
- 9.11 Thereafter, the Assessment Unit, after considering these suggestions, shall send the final draft of the assessment order to the National Centre.
- 9.12 The National Centre shall, on receiving the final draft of assessment order, either finalise the assessment or provide opportunity to the assessee for any proposed modification as mentioned in Para 10.7(a) or (b) above.
- 9.13 The assessee can respond to the show-cause notice for proposed modification. The National Centre shall send the response of the assessee to the Assessment Unit. If no response is received from the assessee, the National Centre shall finalise the assessment as stated in 10.7(a) above.
- 9.14 If any response is received from the assessee, the Assessment Unit, after considering the same, shall revise the draft assessment order and send it to the National Centre.
- 9.15 On receiving the revised draft assessment order, the National Centre shall
- a) finalise the assessment order as per the procedure mentioned in Para 10.7(a) in case the modified order is not prejudicial to the assessee
 - b) In case the modified order is prejudicial to the interest of assessee, the National Centre shall again follow the procedure mentioned in Para 10.7(b) and the response received from the assessee shall be dealt with as per the procedure mentioned in Para 10.12 or 10.13

9.16 After completion of the assessment, the National Centre shall transfer all the electronic records to the jurisdictional AO for:

- a) Imposition of penalty;
- b) Collection and recovery of demand;
- c) Rectification of mistake
- d) Giving effect to appellate orders
- e) Submission of Remand Report or any other report / representation before the appellate authorities (i.e. CIT (A) or ITA Tribunal).
- f) Proposal seeking sanction for launch of any prosecution or complaint before the court.

However, the National Centre may, at any stage of assessment, transfer the case to the jurisdictional AO, if it is considered necessary.

10. Penalty Proceedings for non-compliance:

10.1 Any unit may, in the course of assessment proceedings, for non-compliance by the assessee or any other person of any notice, direction or order issued under the scheme, send recommendation to the National Centre for initiation of any penalty proceedings under the applicable sections of Chapter XXI

10.2 The National Centre shall, on receipt of such recommendation, serve a show cause notice to the assessee or the other person. The response received to the show-cause notice shall be sent by the National Centre to the concerned Unit.

10.3 The concerned Unit shall, after considering the response given by the assessee or the other person, may make a draft penalty order and send to the National Centre. If the said unit, on consideration of the above response, may decide to drop the penalty, after recording reasons for the same, and give intimation for the same to the National Centre.

10.4 The National Centre shall levy the penalty as per the draft penalty order and serve a copy of the same to the assessee or the other person.

11. Appeal:

An appeal against an assessment order made by the National Centre can be filed before the Commissioner (Appeals) having jurisdiction over the Assessing Officer.

12. Personal Appearance:

12.1 Personal appearance for any proceedings under this Scheme shall not be required.

12.2 However, when a modification is proposed in the draft order, in response to a show-cause, the assessee or his authorized representative shall be entitled to seek personal hearing to make his oral submissions and such hearing shall be conducted exclusively through Video Conferencing or telecommunication application software in accordance with the procedure prescribed by the CBDT.

12.3 It may be noted that the above facility for representing the assessee's case before the National Centre through Video Conferencing etc. is not provided in the Scheme in the case where it is proposed to levy penalty in any case.

12.4 Any examination or recording of the statement of the assessee or any other person (other than statement recorded in the course of survey u/s 133A) shall be conducted exclusively through Video Conferencing in accordance with the procedure laid down by CBDT.

13. Conclusion:

13.1 Reading the E-assessment Scheme and the Directions, contained in the Notifications No.61/2019 and No.62/2019 dated 12.09.2019, it appears that the procedure for this assessment with multiple agencies will be time consuming. Since the assessments under Section 143 for A.Y. 2018-19 are to

be completed within 18 months from the end of the assessment year, the time limit for A.Y. 2018-19 will expire on 30.09.2020. In subsequent years, this time limit is further reduced to 12 months. Hence, the Income tax Department will have to work at high speed in decision making under this Scheme. Similarly, the assessee will have to give speedy response to the issues raised by the Various Units operating under the Scheme.

- 13.2 Section 274 of the Income tax Act provides that no order imposing Penalty shall be made unless the assessee has been heard or has been given reasonable opportunity of being heard. As stated above, there is no provision of giving personal hearing to the assessee before passing the Penalty Order by the National Centre under the Scheme. This is against the principles of natural justice.
- 13.3 Another issue which will arise relates to the documents to be produced electronically if they are in different languages say in Gujarati, Marathi, Hindi, Bengali or any South Indian Language. In such cases a question will arise whether the assessee can upload the documents in that language or he has to get the same translated in English before sending the same to the concerned Unit.
- 13.4 Under the Scheme the National Centre has to issue notice u/s 143(2) specifying the issues for selection of the case. This means the cases selected for scrutiny will be on specific issues. It appears that this procedure will limit the scrutiny to specific issues listed in the notice and the Assessment Unit cannot ask for documents, information or evidence on other issues. In other words, the principles relating to limited scrutiny will apply.
- 13.5 In order to make this “e-Assessment” effective and taxpayers friendly, it is essential and crucial that suitable measures and steps be taken to overcome the initial bottlenecks and hurdles by way of ensuring and supporting IT infrastructure to enable seamless and smooth data transfer, incorporating standardization in the conduct of assessments by assessing authorities by implementing Standard Operating Procedures (SOPs) to do away with the

subjective-ness and arbitrariness in making additions and disallowances in 'e-Assessments'. This process needs to be implemented in a very careful and thoughtful manner considering the reality of complicated and dynamic business transactions.

- 13.6 This system of team based E-assessment eliminating the interface between the assessee and the A.O. is a new experiment in India. It is not known how far the Income tax Department and the assesseees are ready to respond to the various issues that may arise in the implementation of the Scheme. The Government should have considered implementation of the Scheme on experimental basis by selecting one or two Regions in the beginning and expanding the same in a phased manner to other Regions. Only the time will tell how far this new Scheme will achieve the purpose for which it is introduced.

All the stakeholders involved i.e. the taxpayers, the tax professionals, the assessing authorities, the regulatory body CBDT, the Finance Ministry and the Government should take up this 'e-Assessments' in a positive spirit and work collectively to make it a grand success. It is only then that the tax authorities can get the benefits that it is supposed to provide.