

**WESTERN INDIAN REGIONAL COUNCIL
INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA**

**VIRTUAL MEETING ON
INCOME TAX APPELLATE LAW AND
PROCEDURE**

CA Krupa Gandhi | May 12, 2021

APPELLATE HIERARCHY

1st Appeal – Commissioner of Income Tax
(Appeals)
(s. 246A to 251)



2nd Appeal – Income Tax Appellate Tribunal
(s. 252 to 255)



3rd Appeal- High Court
(s. 260A – 260B)



4th Appeal - Supreme Court
(s. 261 – 262)



APPEALS TO THE COMMISSIONER OF INCOME TAX APPEALS- [“CIT(A)”] (Section 246A-251)

ORDERS APPEALABLE BEFORE CIT(A) (S. 246A)

- Order passed against the taxpayer where the taxpayer denies the liability to be assessed under the Act;
- Intimation u/s 143(1)/(1B) where adjustments are made to the returned income;
- Intimation u/s 200A(1)/206CB where the deductor/collector objects to the adjustments made in the statement filed u/s 200/206C, respectively;
- Orders passed u/s 143(3) except an order passed pursuant to the directions of the Dispute Resolution Panel (“DRP”);
- Assessment Order passed u/s 144;
- Order passed after reopening the assessment u/s 147 except an order passed pursuant to the directions of the DRP;
- An order referred to in section 150 (OGE);
- An order of assessment or reassessment passed u/s 153A/ 158BC in case of search/seizure;
- Order passed u/s 92CD(3);

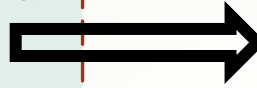
ORDERS APPEALABLE BEFORE THE CIT(A) (S. 246A)

- Rectification order passed u/ss 154/155;
- Order u/s 163 treating the taxpayer as agent of a non-resident;
- Order u/s 170(2)/(3) assessing the successor of the business in respect of income of the predecessor;
- Order u/s 171 recording the finding about partition of a HUF;
- Order imposing penalty under Chapter XXI

- Order u/s 201(1)/206C(6A) deeming person responsible for deduction of tax at source as assessee-in-default due to failure to deduct tax at source or to collect tax at source or to pay the same to the credit of the Government.
- Order determining refund u/s 237;
- Order imposing penalty u/s(s) 221 / 271 / 271A / 271AAA /271F / 271FB / 272A / 272AA / 272B/ 272BB/ 275(1A)/ 158B FA(2) / 271B / 271BB / 271C / 271CA / 271D / 271E / 271AAB;

TIME LIMIT FOR FILING APPEAL (S. 249)

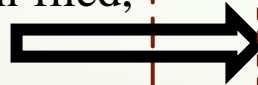
Appeal should be presented within 30 days of:



Where the appeal is u/s 248	The date of payment of tax
Where the appeal relates to any assessment or penalty	The date of service of notice of demand relating to the assessment or penalty
In any other case	The date on which intimation of the order sought to be appealed against is served

Other Important Aspects

- CIT(A) may admit belated appeal if the Assessee shows sufficient cause.
- Assessee to ensure at the time of filing of appeal that the tax on returned income has been paid or where no return has been filed, amount of advance tax has been paid.



Where the Assessee has not filed the return he can apply for exemption from CIT(A)

FORM OF APPEAL AND SIGNING OF FORM (S. 249 contd.)

Appeals to be mandatorily filed via e-filing mode for the assesseees required to file e-return of income. *[As per CBDT press release dated December 30, 2015].*

Website: <https://www.incometaxindiaefiling.gov.in/> for e-filing of appeal.

New Form 35 notified vide Income-tax (3rd Amendment) Rules, 2016 which is to be filled up and filed online through E-filing portal in the Assessee's Login. On above website

Grounds of appeal and the Statement of Facts to be incorporated in the Form 35 itself, however, the Assessee can also attach them as a separate annexure to the Form 35.

FORM OF APPEAL AND SIGNING OF FORM (S. 249 contd)

Form 35, the Grounds of Appeal and the form of verification are to be signed and verified by the person authorised to sign the return of income under S. 140 as applicable to the Assessee.

Attachments to the Form 35

- Order appeal against.
- Original Notice of Demand.
- Challan evidencing payment of requisite appeal fees.

Appeal Fees

Where assessed income is Rs. 1,00,000/- or less	Rs. 250/-
Where assessed income is more than Rs. 1,00,000/- but not more than Rs. 2,00,000/-	Rs. 500/-
Where assessed income is more than Rs. 2,00,000/-	Rs. 1,000/-
Other appeal not covered above	Rs. 250/-

Total income determined at negative figure - Minimum fees to be paid [*Gilbs Computer Ltd. Vs. ITAT - 317 ITR 159(Bom)*]

POWER OF THE CIT(A) (S. 251)

Co-terminus with power of the AO- He can do what the assessing officer can do and also direct the AO to do what he failed to do- CIT vs. Kanpur Coal Syndicate (53 ITR 225) (SC)

Power to **reduce, confirm, enhance or annul** the assessment

Power to **enhance** the assessed income, after giving an opportunity of hearing to the Assessee.

Power to **condone delay** in filing of appeal where assessee makes out a case of a reasonable cause

In disposing of an appeal, the CIT(A) may consider and decide **any matter arising out of the proceedings** in which the order appealed against was passed, notwithstanding that such matter was not raised before the CIT(A) by the appellant.

Power to admit **additional evidence** filed by the Appellant

Power to call for **remand report** from the Assessing Officer

Power to call for **additional details** (that do not amount to filing of additional evidence by the appellant).

POWERS OF CIT(A) (Contd....)

- ❑ While considering condonation of delay, routine explanation is not enough but it should be in the nature of indicating “sufficient cause” to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts- *University of Delhi vs. UOI (Civil Appeal No. 9488 of 2019) (SC)*.
- ❑ CIT(A) has power to condone the delay, where the appeal was preferred by the Assessee due to a subsequent decision of Supreme Court- *CIT vs. Sothia Mining & Mfg. Corpn. Ltd. (186 ITR 182 (Calcutta))*
- ❑ CIT(A) has the power to enhance the assessment but he cannot enhance by discovering new sources of income which were not past of the assessment -*Shapoorji Mistry vs. CIT (44 ITR 89) (SC)*.
- ❑ If during pendency of appeal, law is amended retrospectively, the amended law is to be applied by the appellate authority- *CIT vs Straw Products Ltd. (60 ITR 156) (SC)*
- ❑ CIT(A) has inherent power to grant stay against recovery of demand if an appeal is preferred before him- *Maheshwari Agro Industries vs. UOI (346 ITR 375) (Raj HC)*.

PAYMENT OF 20% OF DEMAND NOT MANDATORY

- ❑ As per the **CBDT circular dated Feb. 29, 2016**, a stay of demand [pending disposal of appeal by CIT(A)] can be obtained by the assessee by paying 20% of the demand raised by the department.
- ❑ This circular is directory in nature, as held by the following cases::
 - Commissioner is not bound by administrative circulars issued by the CBDT – can grant stay of demand on payment of an amount less than 20%- ***PCIT vs LG Electronics India Pvt Ltd (Civil Appeal No 6850 of 2018) (SC)***;
 - The AO is not justified in insisting on payment of 20% of the demand based on CBDT's instruction dated 29.02.2016 during pendency of appeal before the CIT(A). This approach may defeat & frustrate the right of the assessee to seek protection against collection and recovery pending appeal. Such can never be the mandate of law - ***Bhupendra Murji Shah vs. DCIT (423 ITR 300) (Bombay HC)***.
 - Where the assessment is unreasonably high pitched, consequent demands should be stayed- ***Flipkart India Pvt Ltd. v ACIT (396 ITR 551) (Karnataka HC)***.

FILING OF ADDITIONAL CLAIM BEFORE CIT(A)

- ❑ Additional claim can be admitted if it is not willful or unreasonable.
- ❑ Application to be filed before CIT(A).
- ❑ Notice to other party is necessary before admitting such Additional Ground of Appeal ground.
- ❑ Appellate authorities have power to consider fresh claim which was not made in the ROI. ***CIT vs. Pruthvi Brokers & Shareholders (P.) Ltd (349 ITR 336) (Bombay HC)***
- ❑ The Appellate authority is within its powers to admit an additional ground if such ground could not be made when the ROI was filed or when the assessment was made or that the ground became available on account of changed circumstances. - ***Jute Corpn. of India Ltd. v. CIT[1991] 187 ITR 688/[1990] (SC)***
- ❑ If an assessee inadvertently omits a claim of deduction in the return of income, additional ground can be raised at the appeal stage by the assessee – ***Ramco Cements Ltd. v. DCIT (373 ITR 146) (Madras HC)***.

FILING OF ADDITIONAL EVIDENCE BEFORE CIT(A)- RULE 46A

Additional evidence can be produced before CIT(A) when conditions specified in Rule 46A are satisfied and a finding is recorded **in writing**.

Cases where Additional Evidence may be filed- Rule 46A

- Where the **AO has refused to admit evidence**, which ought to have been admitted;
- Where the **appellant was prevented by sufficient cause from producing the evidence** which he was **called upon** to produce by the AO;
- Where the **appellant was prevented by sufficient cause from producing** before the AO any **evidence which is relevant** to any ground of appeal ;
- Where the AO has made the order appealed against **without giving sufficient opportunity to the appellant** to adduce evidence relevant to any ground of appeal.
- However, Rule 46A does not restrict power of the CIT(A) from admitting any Additional Evidence- *Smt. Prabhavati S. Shah vs. CIT (231 ITR 1) (Bombay HC)*.**

FACELESS APPEAL SCHEME 2020 (“THE SCHEME”)

As per the power conferred u/s 250 (6B) and 250 (6C) the Ministry of Finance (MoF), through CBDT launched Faceless Appeal Scheme, 2020 on September 25, 2020.

- ❑ Main Objective of the Scheme- to eliminate the interface between the CIT(A) and the Assessee.
- ❑ CBDT data as on September 25th, 2020, highlights pendency of almost 4.6 lakh appeals at the level of the Commissioner (Appeals).
- ❑ CBDT Press release states 88% of the total appeals will be handled under the Faceless scheme and almost 85% of the present strength of CIT(A)s shall be utilised for disposing off the cases under the Faceless Appeal mechanism.

SCOPE OF THE SCHEME

The Scheme only applies to the **Income Tax Act, 1961**, does not apply to- *Wealth-tax Act, Interest tax Act, Equalisation Levy, Securities Transaction Tax, Commodities Transaction Tax, Gift tax Act*

As per CBDT Press Release dated Sept 25, 2020, following appeals not covered under the Scheme-

- Appeals relating to serious fraud
- Major Tax Evasion
- Sensitive & Search matters
- International Tax
- Black Money Act

FUNCTIONS OF THE UNITS SET UP UNDER THE SCHEME

National Faceless Appeal Centre (NFAC) (headed by Pr. CCIT):

To facilitate the conduct of e-appeal proceedings in a **centralised manner**

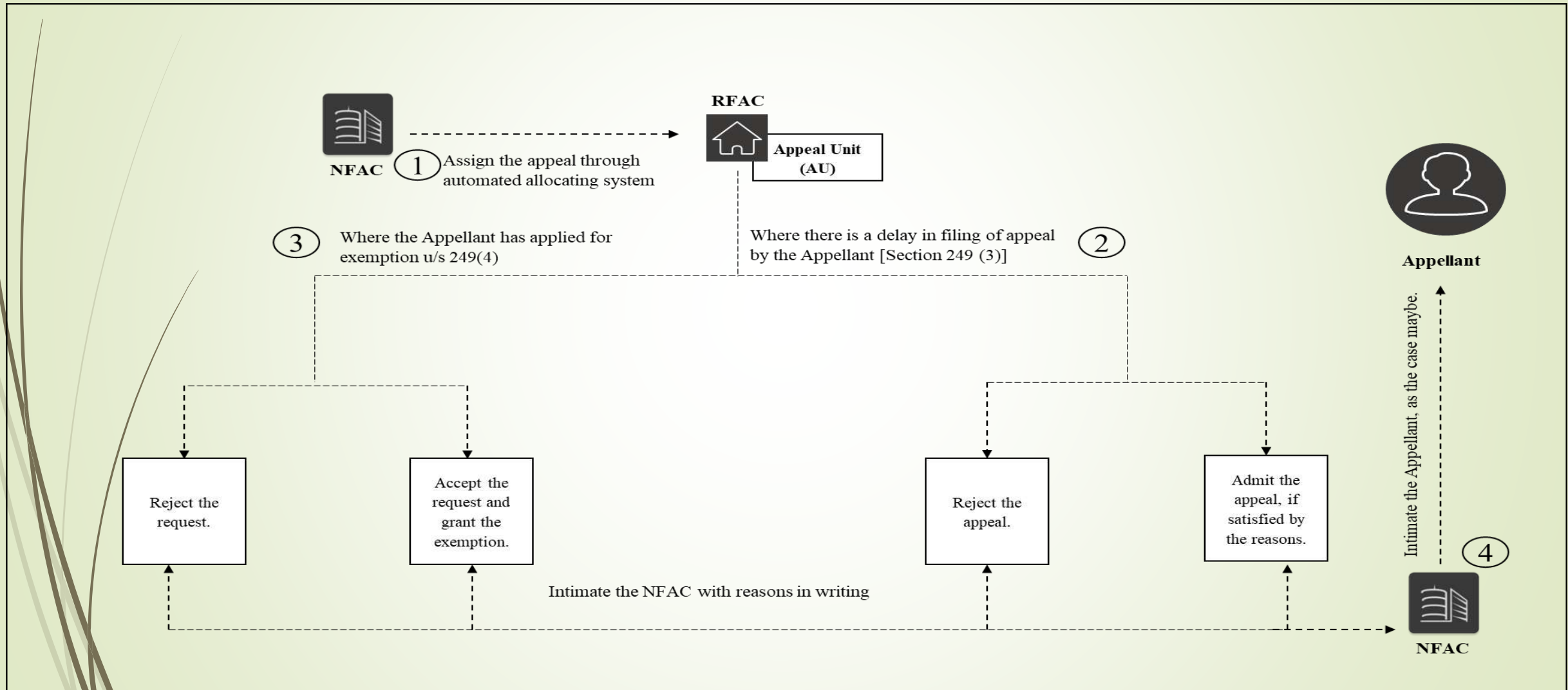
Regional Faceless Appeal Centre (RFAC) (headed by CCIT)

- To facilitate the conduct of e-appeal proceedings to **dispose the appeal**
- Four RFAC are established – one each at Delhi, Mumbai, Chennai and Kolkata

Appeal Units (AU) (one or more CIT(A)s and other income-tax authority, staff etc)

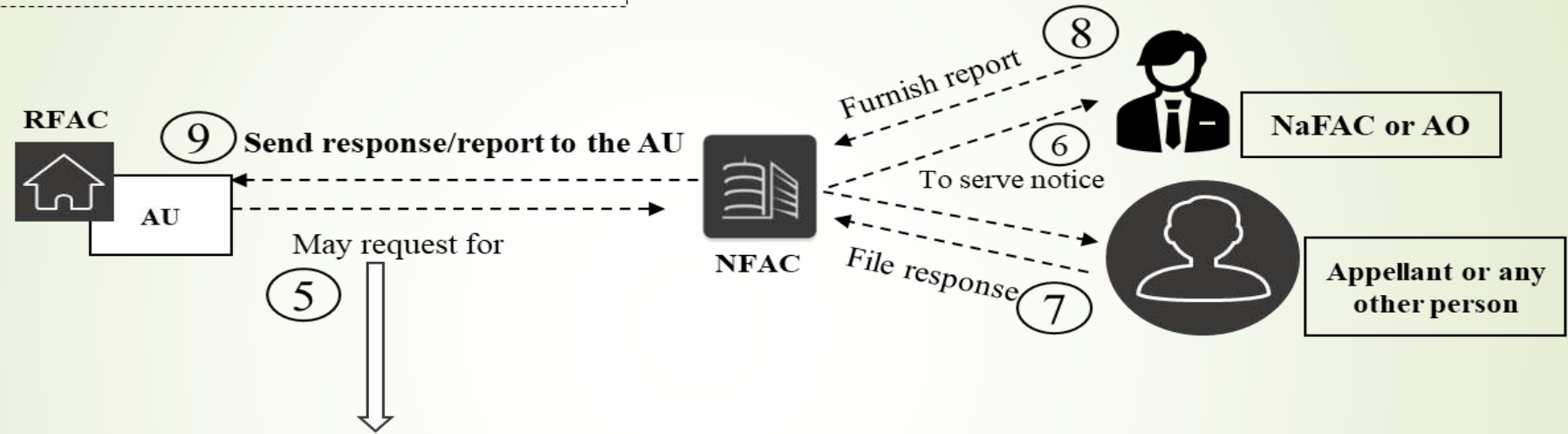
- To facilitate the **conduct of e-appeal proceedings**
- **Admission of additional grounds of appeal**
- Making **further inquiries**
- **Directing the NaFAC or the AO** for making further inquiry
- Seeking **information or clarification** on admitted grounds of appeal
- Providing **opportunity of being heard** to the taxpayer
- **Analysis of the material** furnished by the taxpayer
- **Review of draft order**

PROCEDURE UNDER THE SCHEME FOR DISPOSAL OF APPEAL



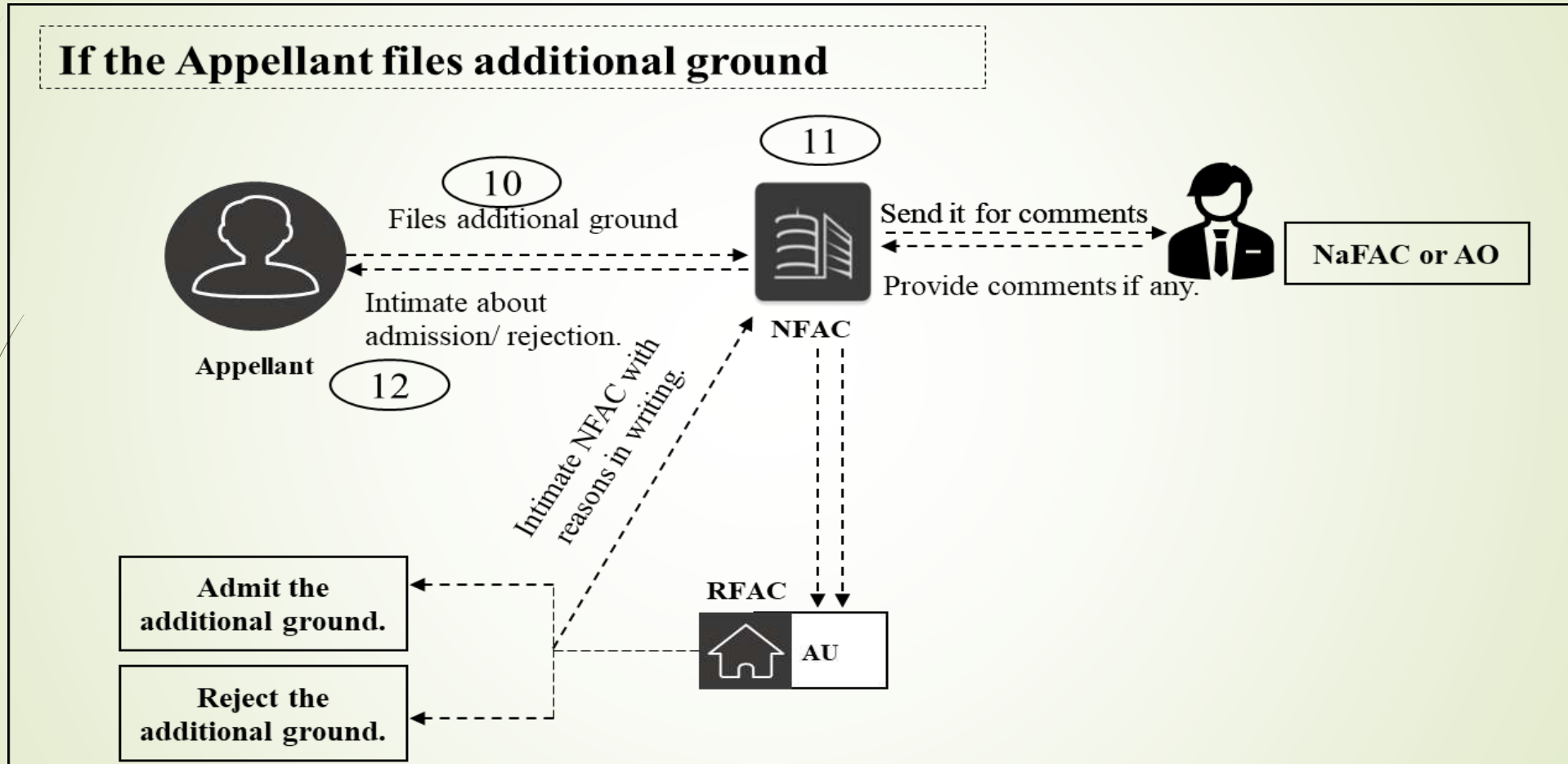
PROCEDURE UNDER THE SCHEME (CONTD...)

Once the appeal is admitted

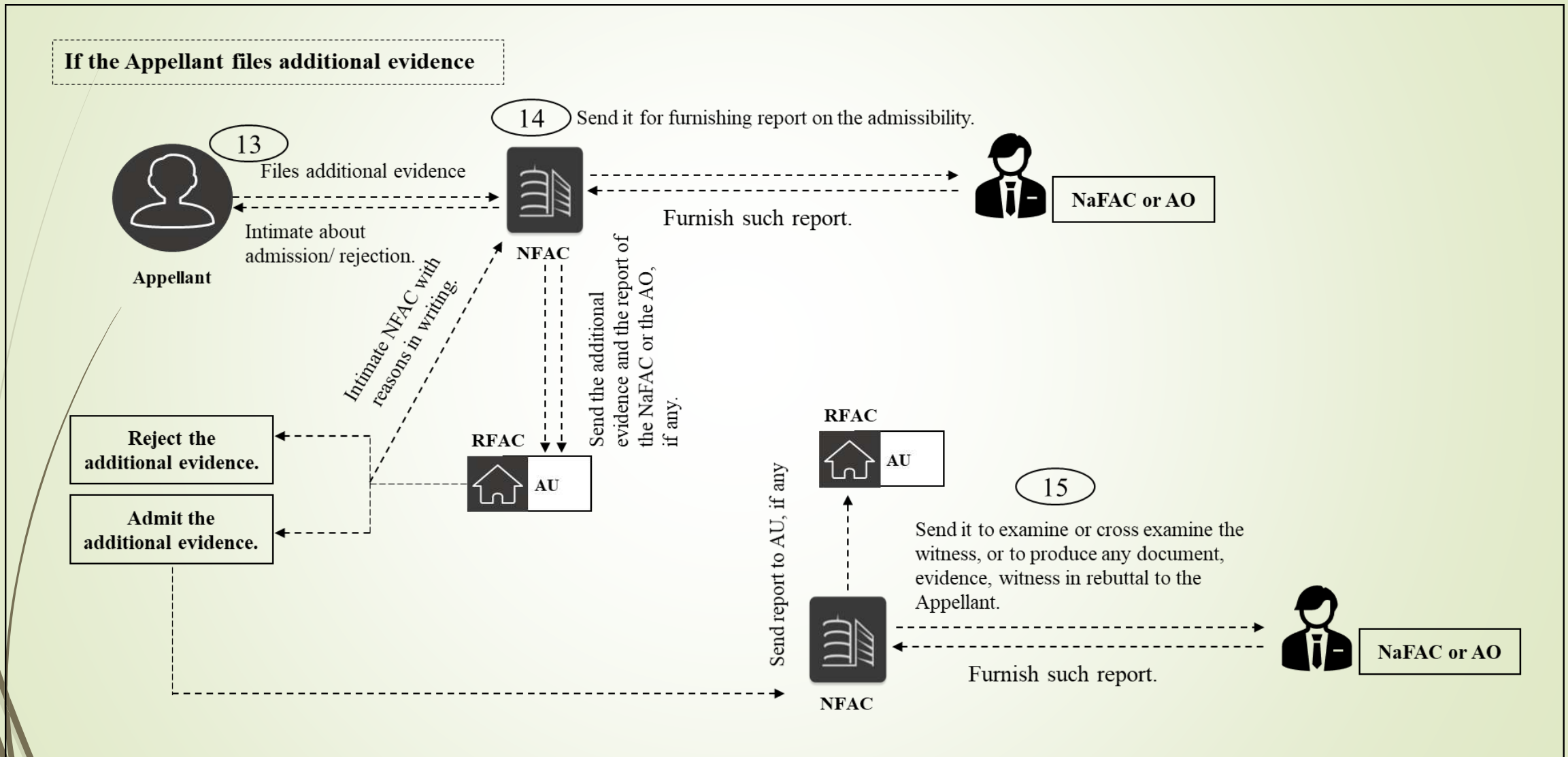


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|--|--|--|
| Obtaining further information, documents or evidences from the Appellant or any other person | Obtain a report from NaFAC or the AO on the grounds of appeal, information, documents or evidence filed by the Appellant | Directing the NaFAC or the AO to make further inquiry u/s 250(4) of the Act and submit a report thereof. |
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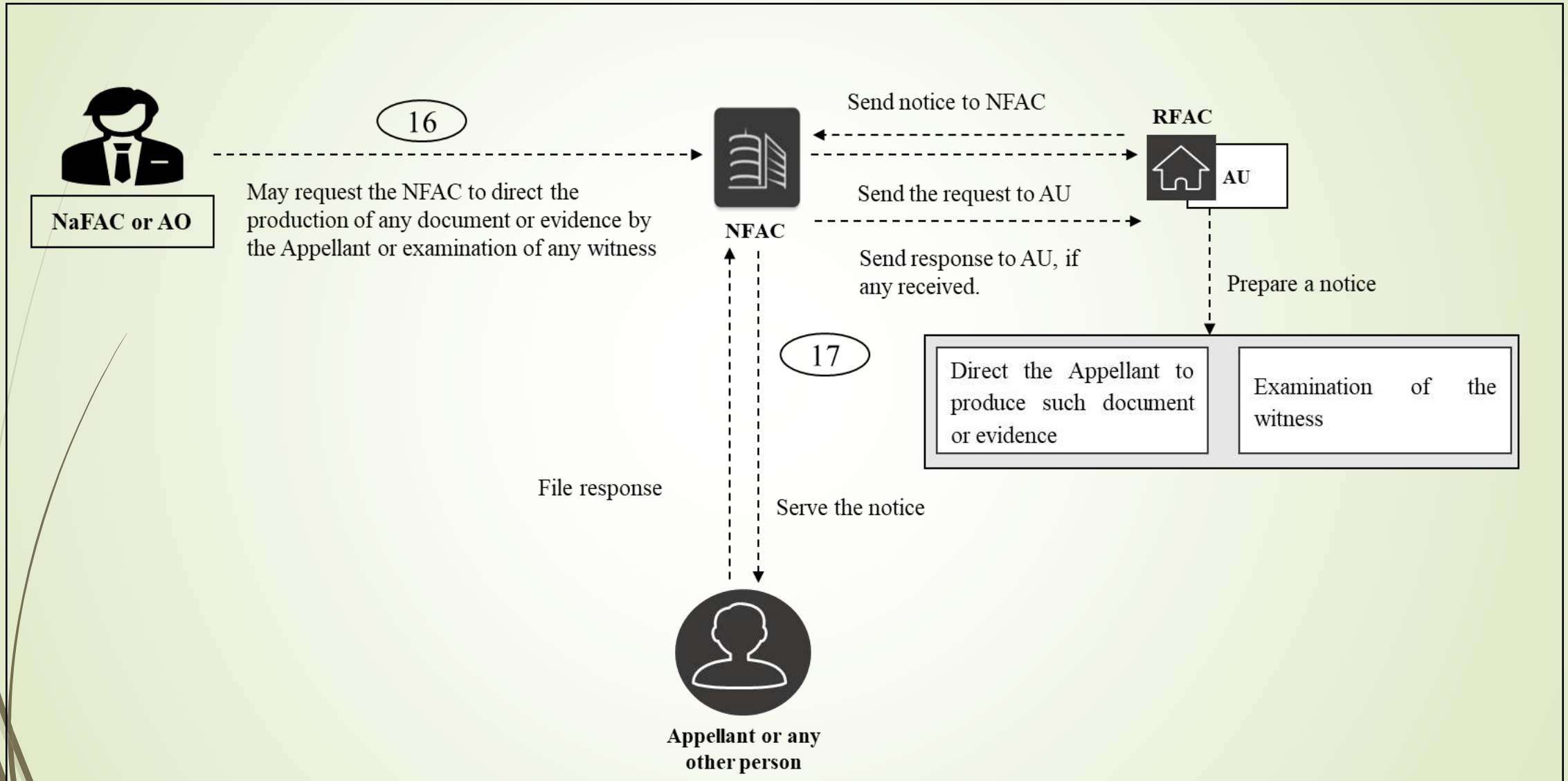
PROCEDURE UNDER THE SCHEME (CONTD...)



PROCEDURE UNDER THE SCHEME (CONTD...)



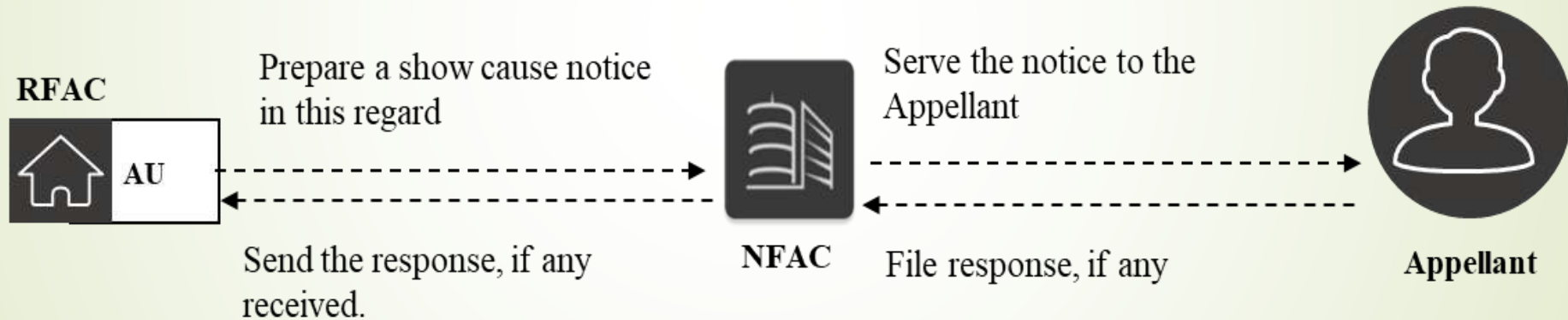
PROCEDURE UNDER THE SCHEME (CONTD...)



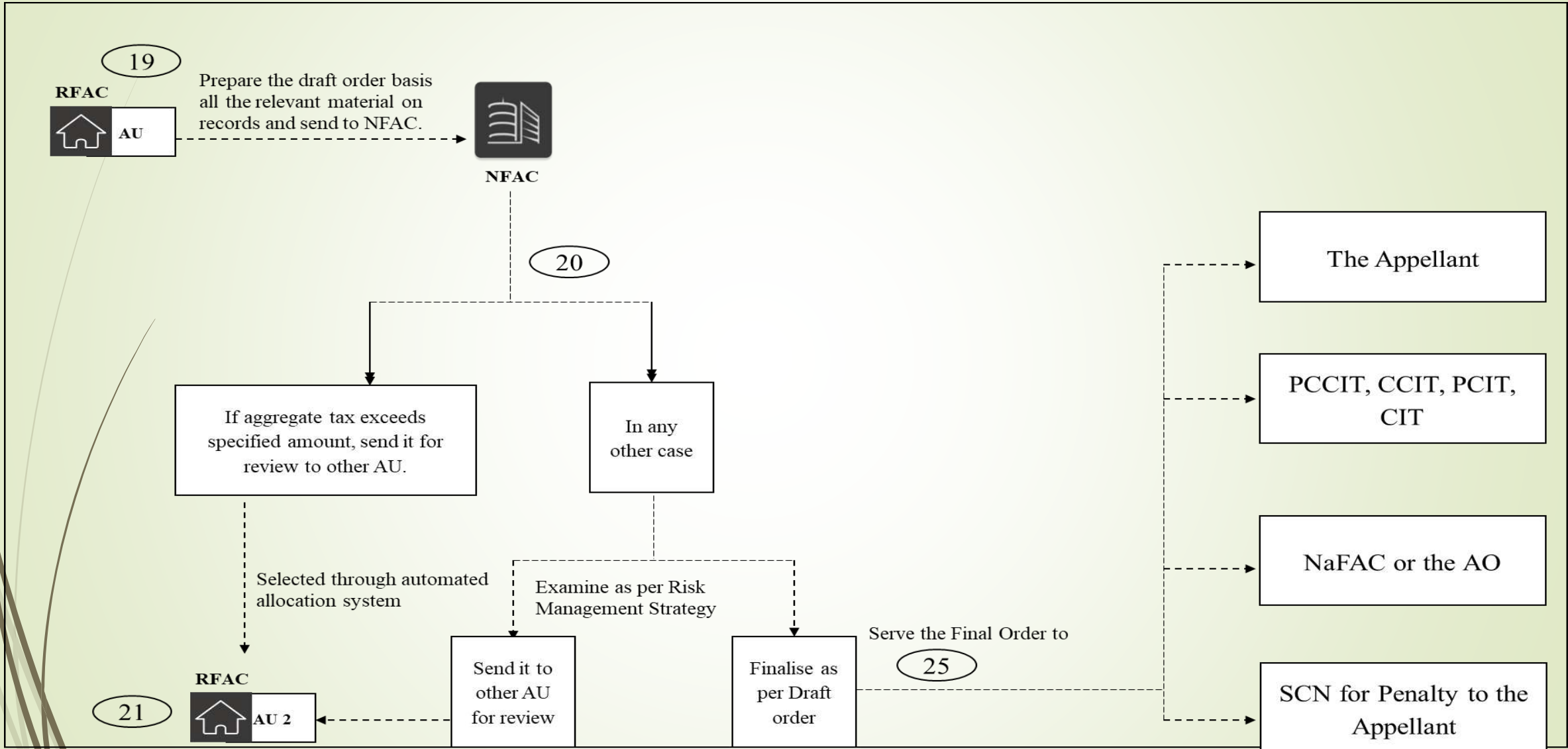
PROCEDURE UNDER THE SCHEME (CONTD...)

If the AU intends to enhance an assessment or penalty, or reduce the refund.

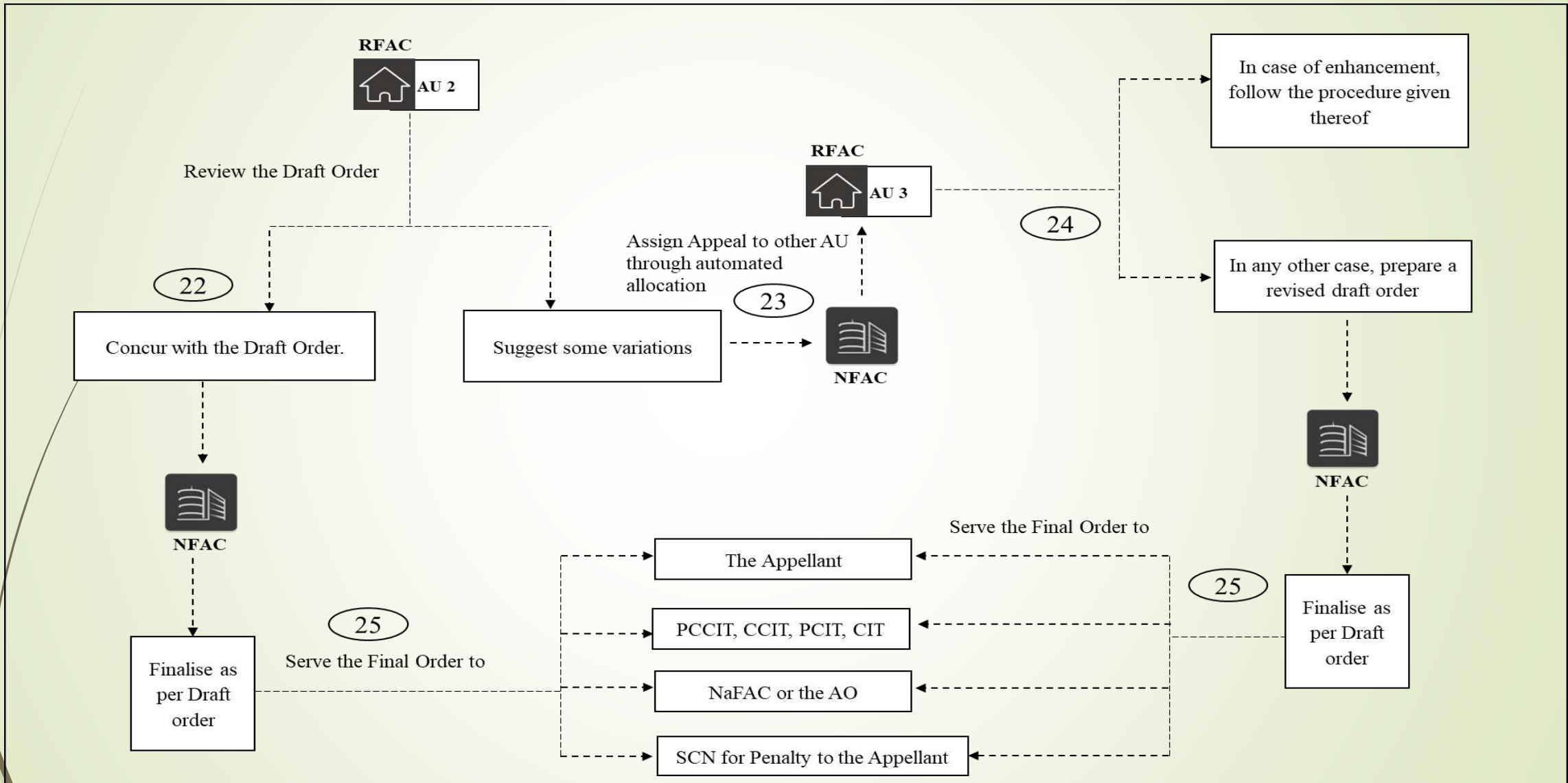
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PROCEDURE UNDER THE SCHEME (CONTD...)



PROCEDURE UNDER THE SCHEME (CONTD...)



PROCEDURE UNDER THE SCHEME (CONTD...)

❑ How to add Authorized Representative (AR)?

- Section 288 deals with the provisions of appointing AR.
- Under e-proceedings tab, against each type of proceedings, there is a tab to “Add/View Authorized Representative[AR]”:

2010-11	2011-12	First Appeal Proceedings	Open	-	Add/View Authorized Representative [AR]
2010-11	2011-12	Issue Letter	Open	-	Add/View Authorized Representative [AR]
2015-16	2016-17	Penalty Proceeding	Open	-	Add/View Authorized Representative [AR]

PROCEDURE UNDER THE SCHEME (CONTD...)

❑ How to add Authorized Representative (AR)? (Contd....)

- Following persons can be added as AR:

The screenshot shows a web-based form for adding an Authorized Representative (AR). The form has the following fields:

- Authorised Representative Type ***: A dropdown menu with a list of options: Select, Chartered Accountant, Related Person, Employee, Officer of a Scheduled Bank, Any Legal Practitioner, Person who has passed Recognized Accountancy Examination, Person with prescribed Education qualification, and Income-tax Practitioner or others qualified practitioner as per section 288.
- Membership Number ***: A text input field.
- PAN ***: A text input field.
- Name***: A text input field.
- Mobile***: A text input field.
- Email***: A text input field.

At the bottom of the form, there are two buttons: "Add Authorised Representative" and "Cancel".

PROCEDURE UNDER THE SCHEME (CONTD...)

□ Points to remember while adding AR:

- The Assessee can select the AR from the list. If the AR is a Chartered Accountant, membership number is to be entered and for others PAN is to be entered.
- Once a request is submitted by the Assessee, the AR will get an alert message on registered e-mail address and mobile number.
- The AR must either Accept/Reject the request under the 'Worklist' tab by login into his portal **within 7 days.**
- If the AR wishes to accept the request, the AR must click on Accept and attach a PDF copy of notarized power of attorney (POA). E-Verifying the acceptance through EVC or DSC is mandatory.
- The AR can reject the request by clicking on reject and providing comments for the same.

PROCEDURE UNDER THE SCHEME (CONTD...)

□ How to seek adjournment?

1. The department has issued FAQ's dated February 26, 2021, on how to seek an adjournment in the e-proceedings tab.
2. The Assessee can seek adjournment against the notice in which he is required to make submissions by a particular date.

Proceeding Name - First Appeal Proceedings										
Notice/Communication reference ID	Notice u/s	Description	Issued On	Document ID	Served On	Response Due date	Response	Response viewed by AO on	Seek/View Adjournment	Video Conferencing
100000403149927	250	[ITBA]Hearing Notice u/s 250of Income Tax Act 1961.	25/12/2020	ITBA/NFAC/F/APL_1/2020-21/1029254536(1)	-	11/01/2021	Submit View	-	Seek	-

[Back](#)

PROCEDURE UNDER THE SCHEME (CONTD...)

❑ How to seek adjournment?- Contd....

3. The Assessee has to state the reason by selecting an option in the dropdown for seeking adjournment, which are as under:

e-Proceedings Seek adjournment

Adjournment sought up to* (Adjournment cannot be sought for greater than 15 calendar days from notice response date /system date whichever is later.)	<input type="text"/>
Reason for seeking Adjournment*	<div style="border: 1px solid gray; padding: 5px;"><p>Select ▼</p><p>Select</p><p>Out of station</p><p>Gathering of material from multiple sources requires time</p><p>Medical grounds</p><p>Pre-occupied with return filing activity</p><p>Others</p></div>
Reason in detail*	<input type="text"/>

PROCEDURE UNDER THE SCHEME (CONTD...)

□ Points to remember while seeking adjournment-

- The Assessee can seek adjournment only upto 15 calendar days from the due date for making response specified in the notice in case adjournment is sought on or before the due date.
- In case adjournment is sought after the due date, the Assessee can seek adjournment up to 15 calendar days from the date of seeking adjournment, however, no adjournment request for a date falling within 7 days prior to the proceeding limitation date can be made.
- The request for seeking adjournment should be either approved or rejected by the department and informed to the Assessee by way of a SMS or an e-mail.
- If rejected, the Assessee can submit the response till the existing response due date or till such period as permitted by the authority.
- If approved, extended date of submissions shall be communicated to the Assessee, and he can make submissions till such extended date.

PROCEDURE UNDER THE SCHEME (CONTD...)

❑ How to file submissions?

- The Assessee must click on the “Proceeding Name” Hyperlink in which they want to furnish the reply:

2010-11	2011-12	First Appeal Proceedings	Open	-	Add/View Authorized Representative [AR]
2010-11	2011-12	Issue Letter	Open	-	Add/View Authorized Representative [AR]
2015-16	2016-17	Penalty Proceeding	Open	-	Add/View Authorized Representative [AR]

- All the notices issued under a captioned proceedings will be displayed. The Assessee must then “Submit” the response:

Proceeding Name - First Appeal Proceedings										
Notice/Communication reference ID	Notice u/s	Description	Issued On	Document ID	Served On	Response Due date	Response	Response viewed by AO on	Seek/View Adjournment	Video Conferencing
100000403149927	250	[ITBA]Hearing Notice u/s 250of Income Tax Act 1961.	25/12/2020	ITBA/NFAC/F/APL_1/2020-21/1029254536(1)	-	11/01/2021	Submit View	-	Seek	-
<input type="button" value="Back"/>										

PROCEDURE UNDER THE SCHEME (CONTD...)

❑ How to file submissions? (Contd...)

- The Assessee has an option of filing either partial or full response to the notice. The character limit is upto 4000 characters and maximum 10 attachments with each not exceeding 10MB can be filed in .pdf, .xlsx, .xls and .csv format.

The screenshot displays the 'e-Proceedings' portal interface. At the top, the PAN is redacted. The proceeding details are as follows:

PAN	[Redacted]
Proceeding Name	First Appeal Proceedings
Assessment Year	2011-12
Financial Year	2010-11
Document Reference ID	100000403149927
Notice Section	250

The 'Response Type' dropdown menu is open, showing options: 'Partial Response' (selected), 'Select', 'Partial Response', and 'Full Response'. Below this is a text area for 'Response/Remarks (Not exceeding 4000 characters)*'. At the bottom, there is an attachment table:

Sl. No.	Attachment Description	Attach scanned documents in .pdf, .xls, .xlsx and .csv format (Maximum 10 attachments with each not exceeding 10 MB)
1	<input type="checkbox"/> <input type="text" value="Select"/>	<input type="button" value="Choose File"/> No file chosen

If the Assessee wishes to file more than 10 attachments, same can be done by filing 2 or more partial responses against the same notice, each containing maximum 10 attachments.

PROCEDURE UNDER THE SCHEME (CONTD...)

□ How to file submissions? (Contd...)

- The submissions to be filed can be e-verified using Electronic Verification Code (EVC)/Aadhaar OTP/ Digital Signature Certificate (DSC).
- Once the response is filed, a success message will be displayed on the screen confirming the submission of the response
- The acknowledgements for various replies filed against any particular notice can be downloaded by the Assessee from the 'View' option available against the notice. In said 'view' tab, all the responses filed by the Assessee against that notice will be displayed.
- The Assessee will also be able to download the attachments filed in the course of assessment and the acknowledgment thereof from the 'view' tab.

ISSUES IN THE SCHEME

- ❑ Hearing via VC at the discretion of the CC/DG, in charge of the RFAC, under which the concerned AU is set up. This discretionary hearing is against the principles of natural justice. (Writ petition filed against this in Delhi HC- *Lakshya Budhiraja vs. UOI (W.P (C) 8044/2020)*)
- ❑ No timeline prescribed for passing appellate orders, whereas the Scheme envisages stringent timelines to be met by the Assessee. Although Section 250(6A) gives recommended time limit for passing the appellate orders.
- ❑ Rule 7 of the Scheme also covers rectification proceedings before the CIT(A). Rectification proceedings in respect of an appeal already disposed of, will also be allocated randomly to any AU, meaning thereby it may be heard by a CIT(A) other than the one who has passed the order disposing the appeal.
- ❑ The Scheme lays down provisions for levying penalty. However, it appears that the procedure for allocation of penalty case is not prescribed in respect of penalty initiated in the appellate order u/s 270A/ 271(1)(c). Further, so far, no procedures are prescribed to call for further information/ details in penalty proceedings.
- ❑ No specific procedure on intimating the appellant for any adverse report given by NAFAC/AO and file response against such observations of NAFAC/AO.

WRIT AGAINST THE SCHEME

- ❑ **Delhi HC – Lakshya Budhiraja – WP filed. Interim order passed on October 17, 2020. Petitioner’s case in WP as follows:**
- ❑ Approval of the CCIT/DGIT for right of being heard - is discretionary, therefore against the settled principles of law and in violation of the Article 14 of the Constitution of India.
- ❑ Such discretion is against the principles of “*audi alteram partem*”, i.e. no person should be judged without a fair hearing.
- ❑ The Faceless Appeal Scheme is also in contradiction with the provisions of section 250(1), 250 (2) and 250 (5) of the Act which specially says that 'hearing' of the appeal shall be granted to an assessee.
- ❑ Matter was last listed in February 2021. Now fixed on August 4, 2021.

APPEALS TO THE INCOME TAX
APPELLATE TRIBUNAL- [“ITAT”]
(Section 252-255)

ORDERS APPEALABLE BEFORE THE ITAT (S. 253)

- Order by CIT(A) u/s. 250/154/271/271A/272A;
- Order by CIT u/s. 12AA or 12AB on registration application by a charitable or religious trust;
- Order by CIT u/s. 263 revising Assessing Officer's order considered prejudicial to the interest of revenue;
- Order by CIT u/s 154 to rectify an order u/s. 263;

- Penalty order passed by CIT u/s 271 or S. 272A;
- Penalty order passed by CCIT u/s. 272A;
- Order passed by AO u/s 143(3)/147 in pursuance of directions of DRP.
- Order passed u/s 10(23C) by PCIT or CIT.
- Order passed by the AO u/s 144BA following the directions of PCIT or CIT.

MEMORANDUM OF CROSS OBJECTIONS

- Any Assessee or the AO can file a memorandum of cross objection (“CO”) on receipt of the notice that an appeal against the order of the CIT(A) has been preferred by the other party u/s 253(1) & (2), if the Assessee or AO has not filed any appeal against such order of CIT(A) or any part thereof [Sec 253(4)].
- A CO shall be registered and numbered as an appeal and all the rules, so far as may be, shall apply to such appeal.
- No appeal fees are to be paid for filing a CO.

TIME LIMIT FOR FILING APPEAL BEFORE ITAT

Appeal should be presented within 60 days of:

Date of communication of the order appealed against to the Assessee or CIT

Date on which the order sought to be appealed against is passed by the AO in pursuance of the directions of the DRP u/s. 144C(5).

Cross Objections should be presented within 30 days of:

Receipt of notice that appeal has been filed by the other party.

FORM OF APPEAL AND SIGNING OF FORM

Memorandum of appeal along with grounds of appeal to be filed in Form No. 36 in triplicate.

Memorandum of CO to be filed in Form No. 36A in triplicate.

Form of appeal to be signed and verified by person authorised to sign the ROI under Section 140 as applicable to the Assessee.

Online filing of Form-36 has been proposed but the same has not been implemented till date.

DOCUMENTS TO BE SUBMITTED AS A PART OF APPEAL

1. Form No. 36 with grounds of appeal.

2. No MD Certificate, in case applicable.

3. Certified True Copy of Order appealed against

4. Certified True Copy of Memorandum of appeal in Form 35 alongwith Grounds of Appeal and Statement of Facts

5. Certified True Copy of the AO's order

6. Challan evidencing payment of appeal fees.

7. Letter of Authority executed in favour of the AR as per section 288.

APPEAL FILING FEES FOR APPEAL BEFORE ITAT

Where assessed income is up to Rs. 1,00,000 or less	Rs. 500/-
Where assessed income is more than Rs. 1,00,000 but not more than Rs. 2,00,000	Rs. 1,500/-
Where assessed income is more than Rs. 2,00,000	1% of assessed income subject to a maximum of Rs. 10,000
Where subject-matter of appeal relates to any other matter	Rs. 500/-
Where application is for stay of demand	Rs. 500/-
Where the application is under section 254(4)	Rs. 50/-
Memorandum of Cross Objections	Nil

CONSTITUTION OF THE ITAT(Sec 255)

Special Bench

- ❑ The President may, for the disposal of any particular case, constitute a **Special Bench (“SB”)** consisting of 3 or more members, one of whom shall necessarily be a Judicial member and one Accountant member.
- ❑ Decisions of SB are binding on all the Benches of the ITAT across India unless reversed by any High Court. *CIT vs. M/s Janapriya Engineers Syndicate (ITA No. 352 of 2014) (AP HC)*.

Third Member

- ❑ If the members differ on any point, and the members are equally divided on that point, then such point shall be referred to the President of the Tribunal who shall then refer the case to be heard by another member and then decision shall be taken according to the opinion of the majority.

POWERS OF THE ITAT

Pass an order as it may think fit after providing parties an opportunity of being heard

Rectify its order passed u/s 254(1).

Grant stay of demand/operations.

Condone delay in filing an appeal or a CO

Admit and adjudicate additional ground.

Admit Additional evidence.

Adjudicate on the contentions/grounds raised under Rule 27.

POWERS OF THE ITAT (Contd...)

- ❑ The ITAT has the power to remand the case to the Assessing Officer for verifying the facts of the case- *Hukumchand Mills Ltd. vs. CIT (63 ITR 232) (SC)*.
- ❑ The ITAT cannot take back the benefit granted to the Assessee by the Assessing Officer- *MCorp Global (P.) Ltd. vs. CIT 309 ITR 434 (SC)*.
- ❑ The Assessee can raise a question for the first time before the ITAT as long as the facts are on record- *National Thermal Power Co. Ltd. vs. CIT (229 ITR 383) (SC)*.
- ❑ The Assessee could raise an additional ground before the Appellate Authority for the first time, if the ground raised is bonafide and could not be raised earlier- *Jute Corporation of India Ltd. vs. CIT and Another (189 ITR 688) (SC)*.

CONDONATION OF DELAY

- ❑ Where appeal is filed beyond the statutory time limit, the Assessee is required to file a **petition for condonation of delay** in filing of appeal.
- ❑ The petition should accompany a duly **sworn-in affidavit** of the person responsible for the said delay in filing as well of the person responsible to sign the appeal/return of income, stating therein, the facts causing such delay.
- ❑ The ITAT, on being satisfied that there was a **reasonable cause** for the Assessee for not filing the appeal in time, it may condone the delay.

Attributes of Affidavit

Mumbai ITAT in **Kunal Surana (144 ITD 195)**, has outlined the qualities of a proper /complete affidavit which can be considered by the Tribunal for the concerned purpose, say for delay in filing of appeal.

The same are as under:

- The affidavit is properly executed;
- The affidavit must contain verification of the deponent;
- The affidavit must be a duly sworn affidavit;
- The affidavit must be endorsed by Notary regarding oath of affirmation before him;
- The affidavit must contain witness as per rules
- The affidavit must be duly executed before the Notary
- Name, place, date of the deponent, witness and Notary should be clearly visible

FILING ADDITIONAL GROUNDS

- ❑ The Appellant, during the course of appellate hearing before the ITAT, may file additional grounds which are purely legal in nature and do not require appreciation of any new factual aspects that require further verification/examination/investigation
- ❑ However, the Appellant can take additional ground for the first time before the ITAT in a situation where such ground itself became available to the appellant to be raised for the first time irrespective of the fact that such grounds needs verification of additional/new facts not already on record. This kind of scenario may arise in case the Hon'ble Supreme Court ultimately settles the controversy.
- ❑ No bar on raising legal or jurisdictional grounds for the first time before the ITAT.

FILING ADDITIONAL EVIDENCES

- ❑ The Appellant may file evidences for the first time before the ITAT as an additional evidence, provided it was prevented from producing the same before the lower authorities by sufficient cause.
- ❑ Onus is on the Appellant to demonstrate before the ITAT that the additional evidences relied upon by it are the ones that are essential to corroborate the facts already on records and are the ones that go to the root cause of the matter are therefore necessary for admission as a valid piece of evidence in support of arguments.
- ❑ The Tribunal is required to pass a separate speaking order as regard admission of additional evidences sought to be submitted by the Appellant. It cannot proceed with the matter without indicating its detailed reasons for admission or denial of additional evidence. This principle is well settled by the Hon'ble Supreme Court in *Jyotsna Suri v. CIT (179 CTR 265)(SC)*.

FILING PAPER BOOKS

Factual Paper Book (“FPB”)

- FPB containing copies of documents, statements or other papers, case laws etc. on the file of, or referred to in, the assessment or appellate orders which is proposed to be referred to or relied upon at the time of hearing of the appeal, should be filed in duplicate to the ITAT.
- The other party (Departmental Representative) also to be served with the copy of the FPB.
- FPB should be duly indexed, serially numbered and certified by the authorised person.
- FPB to be filed at least a week prior to the date of hearing.

Legal Paper Book (“LPB”)

- The Appellant may prepare a separate compilation of all the relevant case laws to be relied upon in the course of hearing in LPB.
- Such LPB may be filed anytime during the course of hearing in duplicate to the ITAT. It should be served upon the other party too.
- The copies of case laws which are reported should be certified before filing.
- Supplementary Paper Books may be filed with the leave of the ITAT.

STAY APPLICATIONS [Provisos to Sec 254(2A)]

- ❑ Where appeal is pending before the ITAT, the Assessee can apply for stay of demand.
- ❑ ITAT may grant a stay of demand for a period not exceeding 180 days from the date of such order, **subject to deposit of 20% of demand by the Assessee.**
- ❑ If the Appeal is not disposed of within the period of stay and the delay is not attributable to the Assessee, the ITAT may further extend the stay for period not exceeding 180 days but aggregate stay cannot exceed 365 days **even if delay is not attributable to the Assessee.**

- In *CIT vs. Tata Teleservices (Maharashtra) Ltd. (286 CTR 336) (Bombay HC)* and recently in case of *DCIT vs. Pepsi Foods Ltd (126 taxmann.com 69) (SC)* it has been held that the third proviso to Section 254(2A) resulting in automatic vacation of stay upon expiry of 365 days even if the delay is not attributable to the Assessee, is both arbitrary and discriminatory and therefore liable to be struck down as it offends Article 14 of the Constitution of India. In *Pepsi Foods (supra)*, SC held that the stay shall be vacated if delay is attributable to the assessee.

STAY APPLICATIONS (Contd...)

- ❑ The condition of 20% of demand (supra) is introduced by the Finance Act, 2020.
- ❑ **Hon'ble Delhi ITAT** in case of *Maruti Suzuki (I) P. Ltd vs. DCIT (SA Nos. 235 & Ors/Del/2020)* has held that the aforesaid amendment would only apply to a case where the stay is sought and granted for the first time on or after April 1, 2020.
- ❑ On the other hand, **Hon'ble Bangalore ITAT** in case of *M/s Goldman Sachs Services Private Limited vs. DCIT (SP Nos. 168 to 183/Bang/2020)* has observed that where till the date of application for stay of demand, the Assessee has paid more than 20% of demand then the provisions of section 254 of the Act are complied with. In this case, the ITAT has extended the stay of demand subject to other non-monetary conditions for a period of 180 days without requiring the Assessee to make any additional payment.

STAY APPLICATIONS (Contd...)

Stay of Operations or Proceedings

- ❑ The ITAT may invoke inherent power of staying assessment proceedings in most exceptional cases, if such assessment proceeding frustrates entire purpose of appeal pending before ITAT.
- ❑ Onus lies on the Assessee to demonstrate that assessment proceedings, if continued, would frustrate the appeal pending before ITAT.
- ❑ Reliance is placed on following **judicial precedents for seeking such stay of operations/proceedings-**
 - **ITO Vs. M. K. Mohammed Kunhi (1969) 71 ITR 815 (SC);**
 - **ITO Vs. Khalid Mehdi Khan (1977) 110 ITR 79 (AP).**
- ❑ Amended provisions of S. 254 for granting extension of stay requiring payment of 20% of demand do not apply to proceedings for stay of operation of order/stay of proceedings.

WHEN THE ORDER IS PASSED EX-PARTE

❑ For the default of the Appellant [Rule 24 of ITAT Rules]-

- Where the Appellant does not appear in person or through an AR when the appeal is called out for hearing, the ITAT may dismiss the appeal in default.
- Provided that where an appeal is disposed of as provided above and the Appellant appears afterwards and satisfies the ITAT that there was sufficient cause for his non-appearance, when the appeal was called out for hearing, the ITAT shall make an order setting aside the ex-parte order and restore the appeal.

❑ For the default of the Respondent [Rule 25 of ITAT Rules]:

- Where the Respondent does not appear in person or through an AR when the appeal is called out for hearing, the ITAT may dispose of the appeal on merits after hearing the Appellant
- Provided that where an appeal has been disposed of as provided above and the Respondent appears afterwards and satisfies the ITAT that there was sufficient cause for his non-appearance when the appeal was called out for hearing, the ITAT shall make an order setting aside the ex-parte order and restore the appeal.

MISCELLANEOUS APPLICATIONS

- ❑ On application by the assessee or the AO, the ITAT may pass an order u/s. 254(2) rectifying any mistake apparent on record.
- ❑ Application for MA - To be filed within 6 months from the end of the month in which the order sought to be amended is passed.
- ❑ Where rectification is likely to result in increase in tax liability or reduction in tax refund, the assessee is entitled to an opportunity of being heard.
- ❑ MA order changing the entire complexion of the original order cannot be passed.
- ❑ There can be no MA on MA i.e. no second application for rectifying any mistake in the first MA order on same grounds. Only appeal to HC lies in such case. [*CIT v. Smt. Vasantben H. Sheth (372 ITR 536)(Guj HC)*]

IMPACT ON ITAT DUE TO COVID-19

- The Benches of ITAT considering the wide-spread of COVID-19 all over the world, have implemented the system of virtual hearings.
- These virtual hearings are conducted through CISCO-Webex software.
- The Assessee/Department may send any documents or details they want to rely upon in the course of hearing to the ITAT and other party through e-mail.
- E-mail communication is also acceptable for seeking adjournments.
- The AR are expected follow proper code of conduct while appearing before the ITAT for virtual hearings.

FACELESS ITAT

New provisions inserted in Section 255 by the Finance Act, 2021 granting powers to the Central Government to frame a Faceless Scheme for conducting ITAT proceedings.

The Scheme is proposed to impart greater efficiency, transparency and accountability by-

Eliminating the interface between the ITAT and parties to the appeal in the course of appellate proceedings to the extent technologically feasible.

Introducing an appellate system with dynamic jurisdiction.

Optimising the utilisation of the resources through economies of scale and functional specialization.

FACELESS ITAT (Contd....)

The scheme for implementation of Faceless ITAT is yet to be notified by the Central Government. No direction are to be issued after March 31, 2023.

Various representations have been made by Bar Associations before the Hon'ble Ministry of Finance, Prime Minister's Office, and Ministry of Law & Justice expressing their dissatisfaction against these amendments to implement a Faceless-ITAT. The key arguments against the Faceless ITAT are-

Oral arguments have an altogether different impact compared to the written submissions.

Under faceless regime, the term "Jurisdiction" will need to be re-evaluated considering the intention of 'dynamic jurisdiction'.

ITAT is a final-fact finding authority and majority of the cases argued before the ITAT require careful study, verification of bundles of documents, which will be an onerous task in the faceless regime.

APPEALS TO THE HIGH COURT (Section 260-260B)

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APPEALS TO THE HIGH COURT

Orders Appealable before the High Court

Any order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a **substantial question of law**.

Time Limit for filing the appeal

- 120 days from the date on which order of Tribunal is received by the assessee or the PCCIT/PCIT/CCIT/CIT.
- High Court may admit appeal after 120 days if it is satisfied that there was sufficient cause for delay.

Format of filing appeal

The appeal shall be in form of a memorandum of appeal, precisely stating the substantial question of law involved in the appeal.

APPEALS TO THE HIGH COURT

- ❑ Where the High Court is satisfied that a substantial question of law is involved, it shall formulate the question.
- ❑ The appeal to be heard only on the question to be formulated (however, the Court has the power to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question).

- ❑ **The High Court may determine any issue which—**
 - has not been determined by the Appellate Tribunal; or
 - has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in subsection (1).

APPEALS TO THE HIGH COURT

Substantial Question of Law

- ❖ A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and involves a debatable legal issue..... (*Nazir Mohamed v. J. Kamala And Ors.- Civil Appeal Nos 2843-2844 of 2010*).

APPEALS TO THE HIGH COURT

Other Important Aspects

- The appeal is to be heard by a Bench of not less than 2 judges of the High Court. Decision will be in accordance with opinion of majority of judges.
- Where judges are equally divided in their opinions, the case on the point on which they differ shall be heard by one or more other judges of the High Court.
- Where the High Court delivers a judgment, effect shall be given to order passed by AO on basis of certified copy of judgment.

APPEALS TO THE HIGH COURT

Writ

❖ **Writ before High Court (Article 226 and Article 227 of the Constitution of India):**

- A writ is a formal written order or direction that the Court issues which is to be obeyed by the authority or person to whom it is issued. A person appealing for issuance of a direction for grant of immediate relief is called Writ petitioner.
- Generally, the writ petition are filed when there is contravention of principles of natural justice and an allegation of infringement of fundamental rights of an individual get immediate remedy where no other alternative remedy is available.
- Certain instances where the aggrieved parties have preferred Writ-
 - For releasing refunds held up by the Tax Authorities- *Tata Communications Ltd vs. UOI (WP No. 732 of 2021)*
 - For questioning the legality of notices such as notice u/s 148 of the Act- *Teleperformance Global Services vs. UOI (WP No. 950 of 2020)*

This list is not exhaustive, and an aggrieved party can exercise its right to writ where there is a contravention of principles of natural justice.

APPEALS TO THE SUPREME COURT (Section 261-262)

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APPEALS TO THE SUPREME COURT

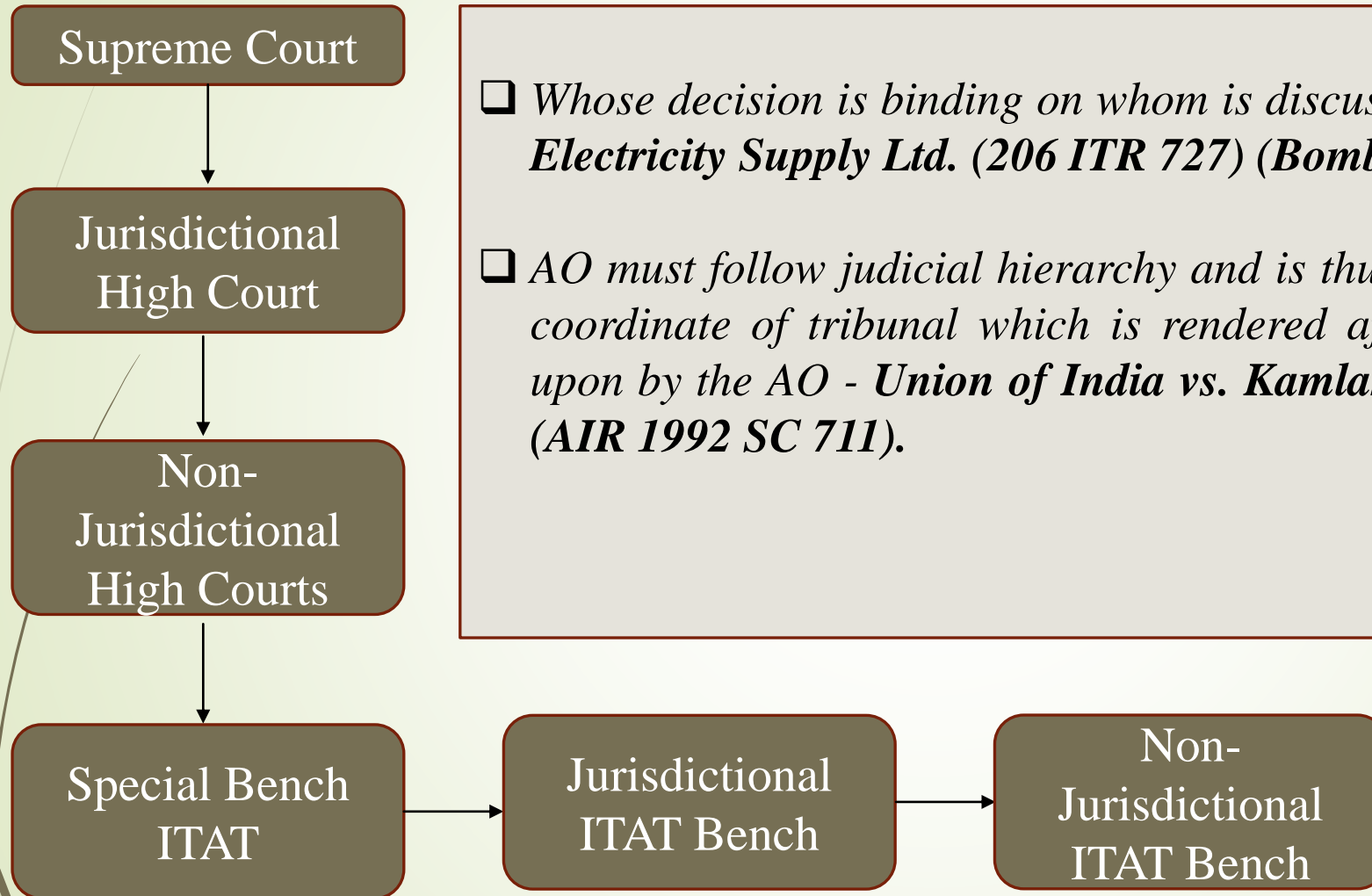
- ❑ An appeal shall lie before the Supreme Court in any case which the High Court certifies to be fit one for appeal to the Supreme Court.
- ❑ Apart from this, Article 136 of the Constitution of India, allows the Apex Court to grant special leave to appeal against any judgement or order or decree in any matter or cause, passed by any Court/ tribunal in India in case any substantial question of law is involved or gross injustice has been done. (“SLP”)

APPEALS TO THE SUPREME COURT

- ❖ Once SLP has been granted, appellate jurisdiction of Supreme Court will be invoked, the order passed in appeal would attract the doctrine of merger.
- ❖ Doctrine of merger-here an appeal is preferred and the appellate court disposes of the appeal after a contested hearing, the order or decree of the original court merges into the appellate order or decree. For all practical purposes, thereafter it is the appellate order or decree which exists and has to be seen as effective and binding between the parties including the purposes of execution, limitation and *res judicata*.
- ❖ An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

CASES ON JUDICIAL HIERARCHY

JUDICIAL HIERARCHY



- ❑ *Whose decision is binding on whom is discussed at length in **CIT vs. Thana Electricity Supply Ltd. (206 ITR 727) (Bombay HC)**.*
- ❑ *AO must follow judicial hierarchy and is thus bound by the later decision a coordinate of tribunal which is rendered after considering the one relied upon by the AO - **Union of India vs. Kamlakshi Finance Corporation Ltd. (AIR 1992 SC 711)**.*

JUDICIAL HIERARCHY (Contd....)

- ❑ Supreme Court's decision is law of law and binding on all the authorities.... ***Article 141 of the Constitution of India.***
- ❑ What is of the essence in a decision is its ratio and not every observation found therein.....***Narang Overseas (P.) Ltd. vs. ACIT(114 TTJ 433) (SB) (Mumbai).***
- ❑ Rule of consistency to be followed by the Tax Authorities.... ***Radhasoami Satsang vs. CIT (193 ITR 321) (SC)***
- ❑ Where two views are possible, view in favour of the Assessee should be adopted.... ***CIT vs. Vegetable Products Ltd. [1973] 88 ITR 192 (SC).***

MONETARY LIMITS FOR FILING OF APPEALS BY THE DEPARTMENT

- ❑ The monetary limits for filing of appeals by the Department is covered by the *CBDT Circular No. 17/2019 dated August 8, 2019*.
- ❑ Thus, where the tax effect on disputed issues in any assessment year exceeds the limits specified in table, the Department may prefer an appeal before the appellate authority as the case maybe.

AUTHORITY	MONETARY LIMIT
Appellate Tribunal	Rs. 50,00,000
High Court	Rs. 1,00,00,000/-
Supreme Court	Rs. 2,00,00,000/-

MONETARY LIMITS FOR FILING OF APPEALS BY THE DEPARTMENT (Contd....)

Exceptions

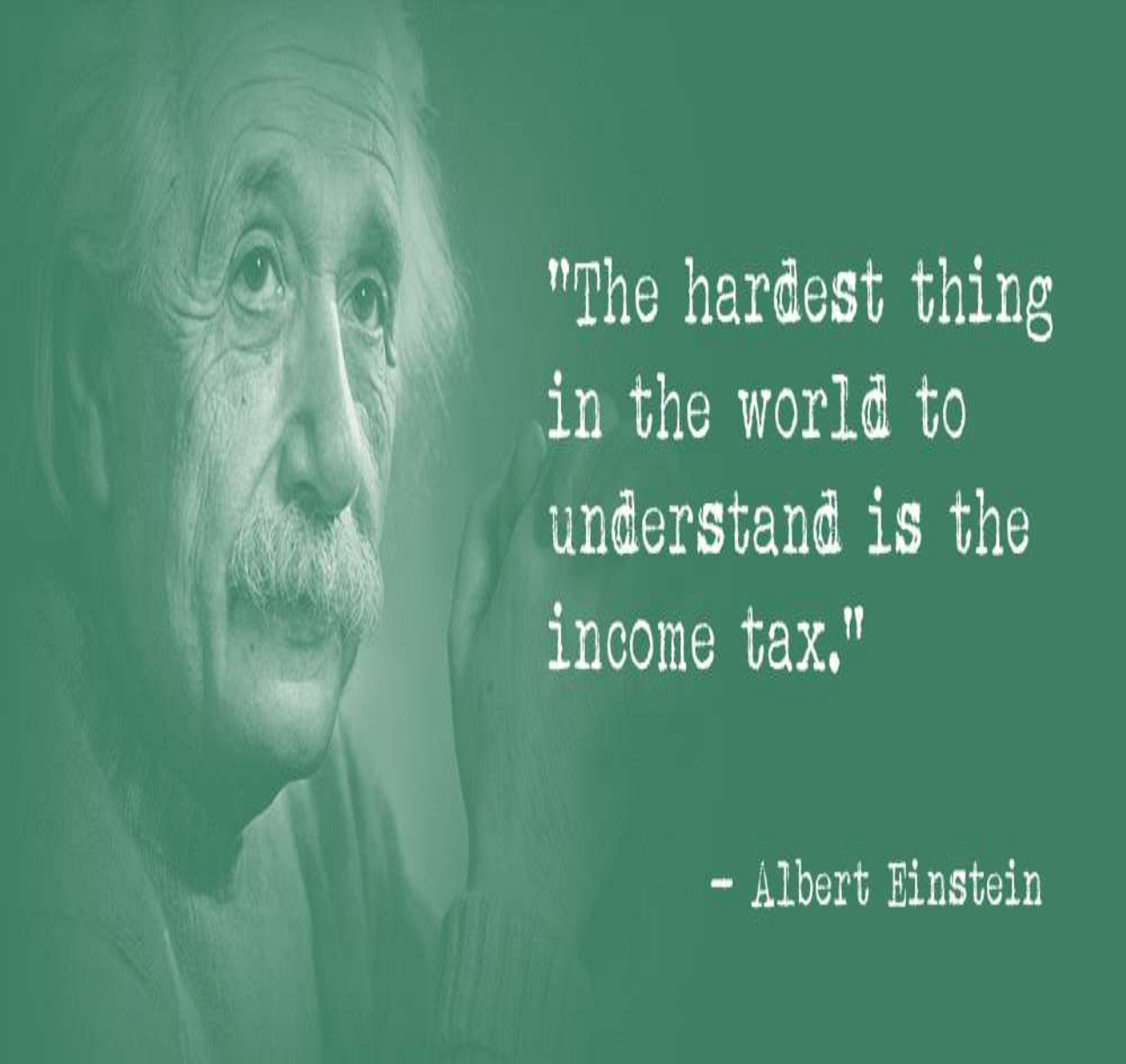
- ❖ **Cases where the Revenue can file appeal even if tax effect is less than the prescribed monetary limits:**
 - where the **constitutional validity** of the provisions of any legislation has been challenged;
 - where a **notification, instruction or circular** issued by the Central Board of Direct Taxes has been **challenged** as being illegal or ultra vires;
 - where a **revenue audit objection** in a case has been **accepted by the Department**; or
 - where the addition relates to **undisclosed foreign assets/ foreign bank accounts**.
 - where information is received from the **Investigation Unit**.
 - where **prosecution** is filed by the Revenue and is pending in the Court.

❑ ALTERNATE DISPUTE RESOLUTION MECHANISM-

- Dispute Resolution Panel (“DRP”)
- Dispute Resolution Committee for small and medium taxpayers (“DRC”)
- Mutual Agreement Procedure (“MAP”)

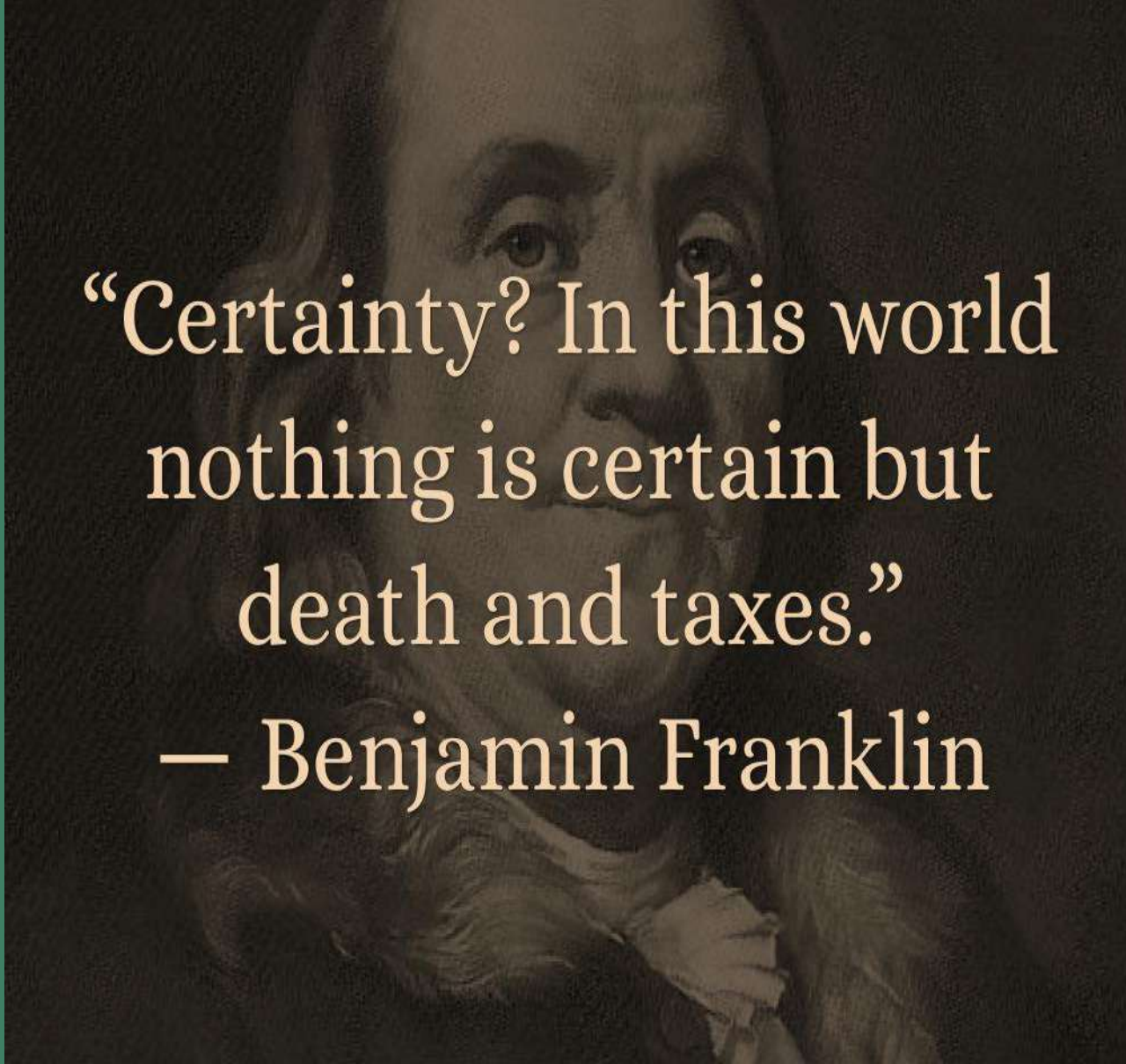
❑ DISPUTE AVOIDANCE MECHANISM-

- Special provisions for avoidance of repetitive appeals (Section 158A/158AA)
- Board for Advanced Rulings

A portrait of Albert Einstein, showing his characteristic wild hair and mustache, set against a green background.

"The hardest thing
in the world to
understand is the
income tax."

- Albert Einstein

A portrait of Benjamin Franklin, showing him with a white cravat and a dark coat, set against a dark background.

"Certainty? In this world
nothing is certain but
death and taxes."
— Benjamin Franklin

THANK YOU!

CA Krupa Gandhi May 12, 2021