

**ANALYSING NEMO DEBET ESSE JUDEX IN PROPRIA CAUSA”  
UNDER FACELESS ASSESSMENT**

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**INTRODUCTION**

The government of India implemented the faceless assessment scheme, 2019 (faceless assessments) in September, 2019 with the goal of making the tax system "seamless, faceless, and painless." The government of India implemented the faceless assessment process in order to decrease physical interaction between tax officers and taxpayers while also avoiding complexity and time restrictions. The government's goal is to establish a transparent and efficient tax system in the country, as well as to decrease the burden on taxpayers by streamlining compliance processes. This system calls for all assessment processes between tax authorities and taxpayers to be conducted online. The taxpayer is obliged to submit all documentation electronically. These documents and information are reviewed by tax officials, who then electronically transmit the assessment order. However, the faceless assessment scheme has several advantages and disadvantages. It has an effect on the economy, which is described more in this page. India is well-known for its e-governance initiatives, one of which is faceless assessment.

All of these steps were taken to improve efficiency, transparency, and accountability by (a) eliminating the human interface between taxpayers and tax officers; (b) optimising resource utilisation through economies of scale and functional specialisation; and (c) introducing a team-based assessment with dynamic jurisdiction. Currently, all income tax assessments are conducted in a faceless manner [with the exception of (a) assessment orders in cases assigned to central charges and (b) assessment orders in cases assigned to international tax charges]. The government established several entities to carry out faceless assessments, including the National Faceless Assessment Centre (NFAC), regional faceless assessment centres, assessment units, verification units, technical units, and review units.<sup>1</sup>

**ADVANTAGES OF FACELESS ASSESSMENT**

In India, faceless assessment is a recently developed approach for performing tax audits. This method has the following advantages:

- Because this way of performing audits electronically decreases the human interaction, the possibility of corruption is reduced.
- It aids in the expeditious disposition of cases because no long procedures or paper are involved in the physical format, therefore all hearings are conducted spontaneously via virtual mode.
- Cases are assessed more efficiently because they are randomly assigned to tax officials across the country, with no jurisdictional barriers.
- The tax assessment process is more transparent and certain.
- There are no prejudices or biases involved.

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<sup>1</sup> *Income-tax Act, 1961*, Section 143(3A)–(3C) (India); CBDT Notification No. 61/2019, S.O. 3264(E)

- It reduces the chances of fraud and human errors.
- It lowers the overall assessment costs.

### **DISADVANTAGES OF FACELESS ASSESSMENT**

Technology and internet approaches are more convenient and efficient, but they also have drawbacks. Faceless Assessment has the following drawbacks:

- Faceless assessments lack human connection, which frequently leads to ambiguity and misunderstandings, produces anxiety, and impacts the whole evaluation.
- They can be unreliable and insecure at times.
- No or limited scope of in-person presentation for clarification.

### **The Principles of Natural Justice are:-**

1. Nemo debet esse judex in propria causa.
2. Audi alteram Partem.
3. Speaking Order or Reasoned decisions.

*In this research paper we focus on the "Nemo debet esse judex in propria causa" under faceless regime which means: - No one can be a judge in his own case*

The natural justice concept "Nemo debet esse judex in propria causa" is also known as the Rule of Bias or the Doctrine of Bias. The first principle of impartiality approximately translates to "no one shall be a judge in his own or a cause in which he is interested." That is, the authority sitting in judgement should be fair and unbiased.

The judicial system enshrines the fundamental tenets of justice, equality, and morality. Justice implies justice by all means necessary. An unbiased approach to the legal system emphasises impartiality, lack of bias, fearlessness, and assertiveness. If a person sits as a judge in his own case and decides the case, the justice system will always be criticised. As a result, no one may serve as a judge in a case in which he or she is a direct or indirect participant.

### **JUDICIAL BIAS**

The rule against bias prohibits such circumstances from improperly influencing a judge to make a decision in a particular case that is contrary to justice, because, as previously said, the judge may have a monetary or personal interest. Personal interest may come from a friendly or hostile personal or professional relationship between the authority and the parties. It is human tendency to use a favourable decision made for our friends or family against our enemies. monetary bias can arise from any monetary interest. The remedy is simple: while the judges are executing their responsibilities, they should have no financial interest in the case since this violates the concept of natural justice because, as the maxim goes, "no one can be a judge in his own cause."

The maxim "Nemo debet esse judex in propria causa" is based on three well-known principles:

- No man can be judge and the prosecutor at the same time.

- It is not enough that justice is done; it is also necessary that it must be seen to be done.
- Judges, like Caesar's wife, should always be above suspicion.

To explain the same further, relevance can be based on the ruling of the Hon'ble High Court of Madras in the case of *K.S. Thirumalaivasan v. Chairman Income Tax Settlement Commission*<sup>2</sup> where it was stated that:

The Settlement commissioner was believed to be biased and disinclined towards the assessee as despite all the relevant details and application of settlement, the same was rejected as non-maintainable. The approach was believed by the Hon'ble court to be biased and disregarding the principles of natural justice.<sup>3</sup>

The assessee in this case previously failed to disclose all the particulars of his income in the return however later agreed to go for settlement and requested the commission to waive the penalty, interest and prosecution. It was a better option as per the assessee instead of going for litigation and wished to amicably settle the dispute however the same was rejected. According to sub-section (5), the commission must take into account all of the evidence submitted before making any decisions under sub-section (4), which implies that even materials submitted after the application but before decisions are made must be taken into account by the commission.

The commission has disregarded the steps outlined in the Act, including the requirement to provide notice and the requirement to review the information on its desk. The order may also be interfered with when there is no connection between the Tribunal's findings and its ruling. In addition to the grounds of violation of the natural justice principles, jurisdictional errors, against the provision, bias, fraud, and malice, these reasons also exist. It is also established law that the High Court may issue a writ of certiorari pursuant to article 226 of the Indian Constitution in order to overturn an order made by an administrative or quasi-judicial authority that considered irrelevant information while ignoring pertinent information in reaching its decision.

**The following exceptions are to the rule against bias:**

- **Necessity:** Where the judge is the ultimate court. The circumstance is unusual, though, because an alternate forum is generally formed or sought.
- **Statutory Authority:** Those cases which are specifically exempted by the statute.
- **Waiver:** As in the case of arbitration, where the parties have agreed on an arbitrator who may have an interest or bias in the dispute's subject matter.

Subject to the aforementioned exclusions, the rule against bias is applied by Common Law in England to arbitrations, enforcement of foreign judgements, and, to the greatest extent possible, domestic and administrative tribunal processes.

**Bias can be categorized into three categories namely personal, pecuniary, and official.**

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<sup>2</sup> [2022] 140 taxmann. Com 284 (Madras)

<sup>3</sup> "Where assessee filed an application for settlement and submitted all relevant details, however, Settlement Commission rejected application as non-maintainable without looking at contentions in application and annexures attached therewith, Settlement Commission seemed to be guided by biased approach to deny application, hence, order having been passed in violation of principles of natural justice was to be set aside"

- **Personal Bias:** Personal bias may arise out of friendship, relationship, professional grievance or even enmity. Here again likelihood of bias is to be given more credence than for the actual bias. It is difficult to prove the state of mind of a person. Therefore, we have to see whether there is a reasonable ground for believing that he was likely to have been biased.
- **Pecuniary Bias:** It is obvious that the decision of the adjudicator would be affected if he is having a pecuniary interest in the subject matter of the proceedings. There is a presumption that any direct financial interest, however small, in the matter in dispute, disqualifies the person from adjudicating. Membership of a company, an association or other organization in which he is financially interested may operate as a bar to adjudicate, whereas mere bare liability to costs where the decision itself will involve no pecuniary loss will not.
- **Official or Subject Matter Bias:** Another type of bias is as to the subject matter; such a situation arises when the judge possesses a general interest in the subject matter of dispute. It may, however, be noted that a mere general interest in the general object to be pursued would not disqualify a judge from deciding the matter. There must be a direct connection with litigation.

The implementation of the faceless assessment scheme has resulted in a more transparent and accessible process, thereby curbing any potential instances of corruption. The scheme ensures that assessments are conducted without any biases or favoritism as the identity of the assessment officer remains anonymous thereby giving due consideration to the principle of natural justice of **Nemo debet esse judex in propria causa**. This has put a stop to any instances of retaliation or personal vendettas that may have been carried out by individuals seeking to settle scores with their enemies through the assessment process. Under the scheme, assessments are conducted through a randomized computer algorithm that selects the officer who will conduct the assessment. This ensures that the officer is not influenced by any personal relationships or affiliations with the taxpayer.

Additionally, all communication between the taxpayer and the officer is conducted through an online portal, ensuring that there is no scope for any personal interaction that may lead to bias. The scheme includes the creation of a centralized monitoring unit that reviews the conduct of officers and ensures that they comply with all legal and ethical requirements. Any instances of non-compliance or misconduct are dealt with swiftly and severely, with appropriate disciplinary action taken against the officer. Overall, the faceless assessment scheme has ushered in a new era of transparency and fairness in the assessment process. By removing personal biases and favoritism from the equation, the scheme has ensured that taxpayers are treated fairly and that the assessment process is conducted in a manner that is impartial and unbiased.

## **CASE LAWS**

### **S R Cold Storage Vs. Union Of India And Others (Allahabad High Court)<sup>4</sup>**

Allahabad High Court quashed order under section 148A(d), Section 148 Notice and consequential Income Tax reassessment proceedings for violation of principle of natural justice and imposed a cost Rs. 50,00,000/- on erring Revenue Officers. High Court further directed CBDT to put the faceless assessment mechanism in place in such a manner that no harassment is faced by general public and assessee and accountability is fixed on erring Income Tax officers.

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<sup>4</sup> [2022] 141 taxmann.com 305 (Allahabad)/[2022] 289 Taxman 580 (Allahabad)/[2022] 448 ITR 37 (Allahabad)[11-08-2022]

HC held:

*the Income Tax Department have acted arbitrarily, illegally without jurisdiction, caused harassment to the petitioner and abused power conferred under the Act, 1961, which resulted in creation of illegal demand of income Tax of Rs.16,90,61,731/-, we find it a fit case to impose cost of Rs.50,00,000/- (Rupees Fifty Lakhs) upon the respondents which shall be deposited by the respondents in the Prime Minister National Relief Fund within three weeks from today.*

From perusal of this case law it can be very well noted that yet a problem of Bias lingers around the system. Although the new regime puts maximum efforts in reducing human interaction and consciously avoiding nascence of any sort of favouritism, but as and where human interaction comes into picture, and decision is to be made by assessing proper documents provided by an individual and the computation provided by the unit, then there still stands a scope for bias towards the unit as it is thought to be doing a proper and more appropriate assessment.

In AIR 1976 SC 2428<sup>5</sup> case, the summary of Supreme Court judgment is as follows:

- Any inquiry conducted by a biased Inquiring Authority is ab initio void.
- If there is an actual bias, it will be sufficient to quash the inquiry.
- Courts will look at whether there is a reasonable ground for believing that he was likely to have been biased.
- Some actions may themselves indicate malafide, like a disproportionate penalty. They will be by themselves constitute proof of bias.
- Even if one member of the committee is biased, the decision of the Committee will be rendered illegal
- Anybody who has a personal stake should keep himself aloof from the inquiry.
- If a person is aware of bias and does not raise that issue, he creates an estoppel against himself, and will not be allowed to raise it once the said body has taken a decision

In the case of [A.K. Kraipak V/s Union of India](#),<sup>6</sup> where the acting Chief conservator of forests was a member of the selection committee along with the members of the UPSC for the selection of the post of Chief Conservator. The court, in this case, held that there was definitely a conflict between his personal interest & the duty being cast on him so the decision so arrived was against the principles of natural justice.<sup>7</sup>

In **Manak Lai V Dr. Rrem Chand**<sup>8</sup>, case, a petition was submitted by A against B, an advocate for an alleged act of misconduct. A committee was appointed for an enquiry into the allegations made against B. It was also shown that the Chairman had earlier represented A in a case. According to the decision of the Supreme Court, the enquiry conducted in this case was vitiated. Even if it were assumed that the Chairman had no personal

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<sup>5</sup> AIR 1976 SC 2428

<sup>6</sup> A.K. Kraipak v. Union of India, (1969) 2 SCC 262

<sup>7</sup> "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely, (1) no one shall be a judge in his own case (*nemo debet esse judex propria causa*), and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and, that is, that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably."

<sup>8</sup> AIR 1957 SC 425

contact with his client and did not remember that he had appeared on his behalf at any time in the past, yet the fear of likelihood of bias existed in the matter.

In case of *Lion Dates Impex (P.) Ltd. v. Chairman Income Tax Settlement Commission*<sup>9</sup> there is a good mention of this principle of natural justice whereby, it is suggested that:

When all following actions to the search were taken against the appellant, DGIT served as vice chairman of the Settlement Commission, hence the likelihood of bias in this case could not be completely ruled out. It was also important to note that the agency did not produce any fresh materials that would have allowed the Settlement Commission to adopt a different perspective. Instead, the Department and Settlement Commission had started to change their initial assumption or conclusion, which could not be areas on to deny the application as unmaintainable - Consequently, was the Settlement Commission's order liable to be overturned and the matter sent back for further consideration since it had been made in flagrant breach of natural justice principles and Income Tax Act procedures? Yes.

## **SUGGESTIONS**

### **1. More Ethical Awareness**

It is essential for officers involved in adjudicating matters pertaining to an assessee to participate in awareness programs and have a comprehensive understanding of the principle of natural justice (PNJ). The principle of natural justice holds great significance in ensuring fair and just trials.<sup>10</sup>

Officers can expand their grasp of these concepts and their implementation in diverse contexts by engaging in natural justice awareness programmes. Such programmes can help them learn more about the procedural protections and ethical considerations needed to make fair and just decisions. As a result, the officers will be better positioned to guarantee that the assessee's rights are protected throughout the adjudication process.

### **2. Proper Adjudication of documents.**

To safeguard the integrity of the adjudication process, the department must painstakingly review and analyse the papers presented by persons with an unbiased and neutral viewpoint, while adopting a fair and objective stance. A thorough and unbiased examination of the presented materials is required to assist sound decision-making and permit a full and feasible appraisal of the situation.<sup>11</sup>

### **3. Giving more Personal Hearing for reducing Biasness.**

Individuals impacted by a decision must have the chance to present their case before the relevant authorities, according to the concept of natural justice. When a department conducts a personal hearing to an assessee in the context of taxation, it guarantees that the assessee is given a fair chance to express their point of view and present important information in a clear and straightforward way. Natural justice is founded on the fundamental concepts of fairness and impartiality. It demands that persons be heard before a decision affecting their rights, interests, or duties is made. The department complies with this objective by providing the assessee with a personal hearing, allowing the assessee to properly voice their views, concerns, and suggestions.

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<sup>9</sup> [2022] 141 taxmann.com 273 (Madras)

<sup>10</sup> A.K. Kraipak v. Union of India, (1969) 2 SCC 262

<sup>11</sup> State of Orissa v. Dr. Binapani Dei, AIR 1967 SC 1269

#### **4. Lower time expenditure.**

When it seems that the authority have made an unbiased opinion or judgment than the parties to the suit or the relevant party of the proceedings would be less inclined to take up the matters to an appellant authority thereby saving time for the department , the assessee and the legal professionals as well.<sup>12</sup>

#### **Conclusion**

The breach of natural justice principles is therefore a violation of the right to equality. If the court of law does not execute its role in a just and fair manner, the rule of law will lose its legitimacy, Thus, the faceless assessment system is a step towards ensuring India's tax assessment procedure is fair and transparent. The regime is founded on the concept of "Nemo in propria causa judex esse" and tries to protect taxpayers from the prejudices or personal preferences of tax authorities. Transparency, impartiality, prompt evaluation, and decreased corruption are all advantages of the regime. Overall, the faceless assessment regime is a great step towards making India's tax system more just and equal.

Through various case laws it can very safely be concluded that the principles of natural justices are necessary to abide by and the authorities even on slight suspicious of such rules being violated may take an action against the same. The natural justice of not being able to judge their own case is imperative to follow as it will ensure trust and harmony in the society. One person may always be bound to think positively of themselves and thereby bias arises, in order to negate such biases, these important principles are followed by the society.

The judicial system of almost every running democracy and free country follows these principles which are believed to have been bestowed over mankind. The tax provisions and the Faceless assement scenario seems to be an outcome of following such biases only. The main motive of going for a faceless regime is to ensure that there stands no chance or corruption and bias, no person may be allowed to know the adjudicating/assessing authority and thus wont be able to influence such an individual leading to lesser judicial, pecuniary and personal bias.

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<sup>12</sup> *Union of India v. Tulsiram Patel*, (1985) 3 SCC 398