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Tax Flash News

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P&H High Court holds retrospective amendment, authorising JAO to issue reassessment notices, unconstitutional

Executive summary

After the introduction of the faceless assessment regime, there were divergent High Court rulings on whether the Jurisdictional Assessing Officer ('JAO') retained the authority to issue reassessment notices under sections 148 and 148A of the Income-tax Act, 1961 ('the 1961 Act') or the Faceless Assessing Officer ('FAO') had exclusive authority to issue such notices.

The Finance Act, 2026 introduced section 147A with retrospective effect to 'clarify' that the term "assessing officer" for the purposes of sections 148 and 148A refers to an officer other than the National Faceless Assessment Centre ('NFAC') or faceless assessment unit.

In the case of *Jyoti Sareen*,[1] the Punjab and Haryana High Court examined two issues – (a) the constitutional validity of section 147A; and (b) the validity of reassessment notices issued by the JAO.

The High Court struck down section 147A as unconstitutional, holding that the legislature cannot override judicial decisions

[1] *Jyoti Sareen* v. *Union of India and others* (CWP No.15791-2024 (O&M)) – Batch of appeals

without addressing the statutory basis on which those decisions were founded. While the legislature may retrospectively enact a validating law, it cannot declare what the law laid down by the constitutional courts was intended to mean or directly annul a decision of such courts.

The Court observed that the specific statutory provisions of the 1961 Act[2] and the schemes notified thereunder, which formed the basis of earlier High Court rulings, holding the notices issued by JAOs to be invalid, continue to remain in force without amendment. Accordingly, section 147A neither addressed nor cured the defects identified in the earlier decisions.

Through the 'clarification', the legislature cannot substitute its view for that of the constitutional courts. Further, section 147A is inconsistent with section 151A and the scheme framed thereunder and could not be validated merely by inserting a non-obstante clause without amending section 151A and/or the scheme.

The Court also set aside the notices issued by the JAO under section 148, holding that such notices were required to be issued through randomised automated allocation and in a faceless manner under the relevant scheme.

[2] Sections 130 and 151A

Background

Statutory framework

Section 148A of the 1961 Act deals with pre-reassessment procedure i.e., issuing a show cause notice, consideration of taxpayer's responses and passing an order determining whether it is a fit case for the issuance of a notice under section 148 for initiating reassessment proceedings.

Section 130 of the 1961 Act (introduced w.e.f. 1 November 2020) enables the Central Government to make a scheme relating to faceless jurisdiction of income-tax authorities.

In exercise of the powers conferred under section 130, the Central Board of Direct Taxes ('CBDT') notified the *'Faceless Jurisdiction of Income-tax Authorities Scheme, 2022'* ('the Faceless Jurisdiction Scheme')[3] which provides that the exercise of powers and performance of functions by income-tax authorities, as well as the vesting of jurisdiction with an Assessing Officer ('AO'), will be exercised in a faceless manner, through automated allocation.

Section 144B of the 1961 Act (introduced w.e.f. 1 April 2021) prescribes the faceless assessment framework.

[3] Notification No.15/2022 dated 28 March 2022

Section 151A of the 1961 Act empowers the Government to notify schemes, inter alia, for the purposes of assessment, reassessment or re-computation under section 147; issuance of notice under section 148; conducting of enquiries or issuance of show-cause notice or passing of order under section 148A of the 1961 Act.

In exercise of the powers conferred under section 151A, the CBDT notified the *'e-Assessment of Income Escaping Assessment Scheme, 2022'* ('the e-Assessment Scheme')[4] which provides that reassessment proceeding and issuance of notice under section 148 shall be through automated allocation, in accordance with the risk management strategy formulated by the CBDT, and in a faceless manner, to the extent provided in section 144B with reference to making the assessment / reassessment.

Collectively, these provisions and schemes formed the statutory framework for allocating reassessment cases and conducting reassessment proceedings through the faceless mechanism.

Divergent judicial views

Since section 144B does not refer to issuance of notices under sections 148 and 148A, the JAO continued to issue these notices. The taxpayers challenged such notices on jurisdictional grounds, contending that once the e-Assessment Scheme became operational, and the National Faceless Assessment Centre ('NFAC') was established, the power to issue reassessment notices vested exclusively with the FAO, and the JAO ceased to have such authority. It was further argued that the faceless reassessment framework was mandatory and not merely optional.

The Revenue, on the other hand, argued that the JAO and NFAC exercised concurrent jurisdiction and that the JAO could undertake pre-assessment inquiries before the assessment could be taken up by NFAC.

Various High Courts expressed divergent views on the issue – while some courts held that the JAO and the FAO exercised concurrent jurisdiction, and that the e-Assessment Scheme did not entirely displace the role of the JAO,[5] other courts took a contrary view holding that the notices were not issued through the faceless mechanism, thereby vitiating the subsequent proceedings, including the final assessment orders.[6]

A large batch of Special Leave Petitions ('SLPs') were filed before the Supreme Court, challenging the decisions rendered by various High Courts.

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[4] Notification No.18/2022 dated 29 March 2022

[5] *Triton Overseas Private Limited* v. *Union of India and others* [2023] SCC OnLine Cal 6585; *T.K.S. Builders (P) Ltd.* v. *ITO* [2024] 469 ITR 657 (Delhi); *Snehdham Trust* v. *ACIT* [2026] 485 ITR 24 (Gujarat)

[6] *Various judgments including Kankanala Ravindra Reddy* v. *ITO* [2023] 156 taxmann.com 178 (Telangana); *Hexaware Technologies Ltd.* v. *ACIT* [2024] 464 ITR 430 (Bombay); *Jatinder Singh Bhangu and another* v. *Union of India and others* [2024] 466 ITR 474 (P&H); *Jasjit Singh* v. *Union of India* [2024] 467 ITR 52 (P&H)

Retrospective amendment by the Finance Act, 2026

During the pendency of the appeals before the Supreme Court, the Finance Act, 2026 ('FA 2026') introduced section 147A to clarify that, for the purposes of sections 148 and 148A, the term "assessing officer" ('AO') shall mean and shall always be deemed to have meant to be an AO other than the NFAC or any assessment unit referred to in section 144B(3).

Section 147A was inserted retrospectively w.e.f. from 1 April 2021,[7] and notwithstanding anything contained in any judgment, order or decree of any court, or in section 151A, or in any scheme framed thereunder.[8]

Supreme Court's directions

In April 2026, the Supreme Court disposed of the pending appeals. Considering the FA 2026 amendment, the Supreme Court did not decide the merits of the controversy or the validity and retrospectivity of the amended provisions.

However, the Court set aside High Court decisions that had quashed reassessment notices solely on jurisdictional grounds and remitted the matters to the respective High Courts for fresh consideration. Further, the taxpayers were granted liberty to challenge the constitutional validity of the amended provisions before the jurisdictional High Courts.[9]

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[7] i.e., the date on which the original provisions came into force

[8] Corresponding amendment made in section 279 of the Income-tax Act, 2025

[9] For more details, click here to access KPMG Flash News dated 30 April 2026

Facts of the case

For FY 2019-20, the lead taxpayer filed her tax return, which was processed under section 143(1) of the 1961 Act.

Subsequently, the taxpayer received a notice under section 148 of the 1961 Act issued by her JAO initiating reassessment proceedings for the year.

The taxpayer challenged the notice before the jurisdictional High Court by filing a writ petition. A Division Bench of the High Court allowed the petition primarily on the ground that the notice issued by the JAO violated section 151A read with the e-Assessment Scheme.

Aggrieved by the High Court's order, the Revenue filed an SLP before the Supreme Court.

Pursuant to the Supreme Court's directions, the taxpayer challenged the constitutional validity of section 147A introduced by the FA 2026, i.e., section 147A was *ultra vires* Articles 14, 19(1)(g) and 265 of the Constitution of India.

High Court's decision

The Punjab and Haryana High Court ruled in favour of the taxpayer and struck down section 147A as unconstitutional. The Court also set aside the reassessment notices issued under section 148 since such notices were not issued through the process of randomised allocation and in a faceless manner as mandated under section 151A read with the e-Assessment Scheme.

Key observations of the High Court included:

Section 147A held unconstitutional

Constitutional limits on validating legislation

The Constitution of India envisages a clear separation of powers between the legislature, executive, and judiciary. While the legislature may retrospectively enact a law, it cannot declare what the law laid down by the constitutional courts was intended to mean or directly annul a judgment of a constitutional court.

The legislature can, even retrospectively, enact a law validating a statute which has been held by a court to be illegal provided that such validating law removes the basis or foundation of the court's judgment by curing the defect(s) pointed out by the court in the statute. The amendment must alter the legal framework so that the same decision could not have been rendered had the amended law existed earlier.

Merely seeking to negate the effect of unfavourable judicial decisions without curing the defect identified by the courts would violate the rule of law and the doctrine of separation of powers recognised by the Indian Constitution and may amount to unconstitutional legislative overreach.

A non-obstante clause did not make section 147A a constitutionally enacted validation law. Rather, by the retrospective enactment of the section, in the manner in which it has been done, the legislature has trenched upon judicial power and made an impermissible attempt to circumvent adverse judicial decisions.

Although section 147A was introduced to reduce litigation, it instead triggered extensive disputes across multiple High Courts. The Court noted that an authoritative ruling from the Supreme Court would have been a more appropriate mechanism to resolve the controversy than retrospectively enacting section 147A. Further, the introduction of section 147A did not bring any clarity or certainty but instead only added to the confusion.

Section 147A did not address the basis of earlier decisions

The non-obstante clause in section 147A sought to override judicial decisions, section 151A, and the e-Assessment Scheme but did not extend to section 130 or the Faceless Jurisdiction Scheme. Since section 130 and the Faceless Jurisdiction Scheme were also relied upon by constitutional courts to hold that notices under section 148 were required to be issued through a faceless and automated allocation mechanism, an important part of the statutory basis of those decisions remained unamended.

Further, section 147A did not address the judicial finding that as per the e-Assessment Scheme, allocation of cases is required to be done randomly through automated allocation.

Accordingly, the aforesaid reasons which, *inter alia*, formed the basis of the constitutional courts quashing the section 148 notices issued by the JAO were neither referred to or nor cured by the retrospective enactment of section 147A

Continuing conflict with section 151A and the e-Assessment Scheme

Even after the retrospective enactment of section 147A, the provisions of section 151A and the e-Assessment Scheme continue to exist on the statute without any amendment. Therefore, the primary basis of the earlier judgments remained unchanged. Accordingly, even if the matter is listed before the courts today, there would be no change in the verdict.

Through such ‘clarification’, the legislature cannot substitute its view for that of the constitutional courts. Further, section 147A is inconsistent with section 151A and the e-Assessment scheme and could not be validated merely by inserting a non-obstante clause without amending section 151A and/or the scheme.

Section 151A permitted the Government to modify or exclude statutory provisions for implementing the e-Assessment Scheme only up to 31 March 2022. Since no such exclusion was made within the prescribed period, the legislature could not subsequently achieve the same result through the retrospective enactment of section 147A.

Notices issued by JAO set aside

Section 148 expressly covered by the e-Assessment Scheme

Clause 3(b) of the e-Assessment Scheme expressly applies to the issuance of notices under section 148 and, when read harmoniously with section 151A, clearly indicates that such notices must be issued through randomised automated allocation and in a faceless manner.

It is a settled principle that where a statute prescribes a specific manner for doing a particular act, it must be done in that manner alone and not in any other manner.[10]

[10] *Chandra Kishore Jha* v. *Mahavir Prasad and others* [1999] 8 SCC 266; *Cherukuri Mani* v. *Chief Secretary, Govt. of Andhra Pradesh and others* [2015] 13 SCC 722; *OPTO Circuit India Ltd.* v. *Axis Bank and others* [2021] 6 SCC 707

Revenue's narrow interpretation of the e-Assessment Scheme rejected

Referring to the phrase “to the extent provided in section 144B of the Act with reference to making assessment or reassessment of total income or loss of the assessee” in the clause 3 of the e-Assessment Scheme (which defines the scope of the scheme), the Revenue contended that notices under section 148 are excluded from the scheme since section 144B does not cover pre-assessment proceedings under sections 148 and 148A.

The Court rejected this contention, holding that the phrase applies only to clause 3(a) of the scheme which covers assessment and reassessment proceedings under section 147 whereas clause 3(b) applies the scheme to the issuance of notices under section 148. The Court held that accepting the Revenue’s interpretation would render the e-Assessment Scheme largely redundant, as faceless assessment under section 147 is already governed by section 144B.[11]

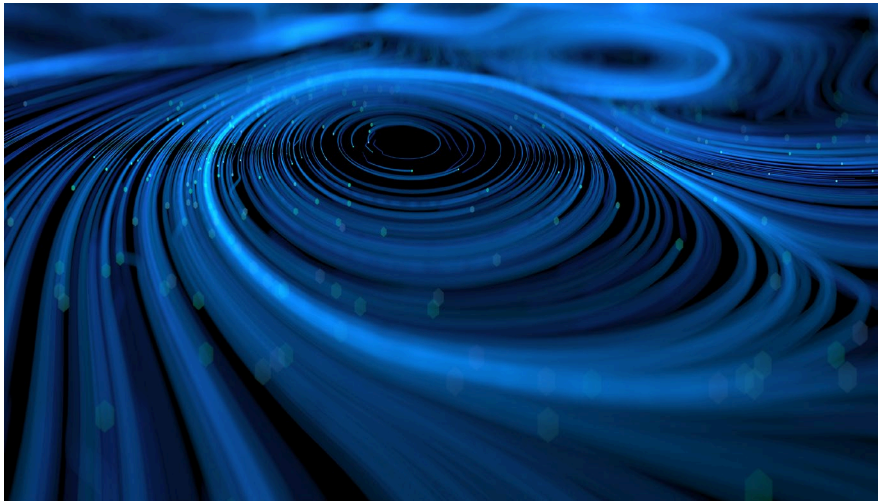
The Revenue also argued that the scheme would not apply to issuance of notices under section 148 because the said section is subject to section 148A and there is no reference to section 148A in the scheme. The Court rejected this contention holding that notices under section 148 must be issued through randomised automated allocation and in a faceless manner in line with the e-Assessment Scheme’s objective.

[11] *Hardeep Singh* v. *State of Punjab* [2014] 3 SCC 92*; State of W.B. v. Kesoram Industries Ltd. and others* [2004] 10 SCC 201

Rejected concurrent jurisdiction theory

Relying on notifications issued under section 120,[12] the Revenue contended that the JAOs continued to have concurrent jurisdiction to issue notices under section 148. The Court rejected this contention, holding that once the scheme required notices to be issued through randomised automated allocation and in a faceless manner, there was no question of conferment of concurrent jurisdiction on FAOs and JAO.

In the event of a conflict between notifications issued under section 120 and the statutory scheme framed under section 151A, the provisions of the Act and the scheme would prevail, particularly since the scheme had received parliamentary approval.



[12] Notification S.O. 1434(E) and 1436(E) dated 31 March 2021; Notification S.O. 2693(E) dated 10 June 2022 (amended from time to time)

Our comments

This ruling is significant as it holds section 147A as unconstitutional and reaffirms that retrospective legislation cannot override judicial decisions without addressing the legal basis on which those decisions were founded.

The decision also reinforces the view adopted by several High Courts that reassessment notices under section 148 were required to be issued under the faceless reassessment framework and not by JAOs.

Given that this is the first ruling examining the constitutional validity of section 147A after the Supreme Court remanded the matter relating to the JAO versus FAO jurisdictional issue to the High Courts, it remains to be seen whether other courts adopt a similar approach.

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