



Tax Flash News



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Andhra Pradesh High Court holds retrospective amendment authorising JAO to issue reassessment notices, unconstitutional

Executive summary



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

To address this controversy, the Finance Act, 2026 ('FA 2026') introduced section 147A with retrospective effect from 1 April 2021 to 'clarify' that for the purposes of sections 148 and 148A, an 'Assessing Officer' means an officer other than the National Faceless Assessment Centre ('NFAC') or an assessment unit.

Earlier, the Punjab & Haryana High Court in *Jyoti Sareen* struck down section 147A as unconstitutional and held that reassessment notices were required to be issued through the randomised automated allocation and in a faceless manner.¹

Recently, in the case of *Bala Sreenivas Rao*,² the Andhra Pradesh High Court has also struck down section 147A as unconstitutional.

¹ Please [click here](#) for KPMG Flash News on this decision

² *Bala Sreenivas Rao Somisetty v. ITO* (WP No.28520 of 2023) – Batch of appeals

The Court held that the legislature cannot override judicial decisions without addressing the statutory basis on which those decisions were founded. The Court observed that by enacting section 147A, and including the non-obstante clause therein, the legislature has sought to over-reach the judgments rendered by various High Courts.

The Court also rejected the Revenue's contention that proceedings could subsequently be transferred from JAO to FAO, observing that any such transfer would require compliance with the statutory provisions governing transfer of jurisdiction.

Additionally, the Court held that since the 1961 Act stood repealed at midnight on 31 March 2026 and the FA 2026, which introduced section 147A in the 1961 Act, came into effect on 1 April 2026, such an amendment is legally unsustainable and without sanctity.

The Court also set aside the reassessment proceedings initiated by JAO, holding that the JAO lacked jurisdiction and that such proceedings were required to be undertaken in a faceless manner.

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) provides the statutory framework for carrying out assessments in a faceless manner.

³ Notification No.15/2022 dated 28 March 2022

Section 151A of the 1961 Act empowers the Central 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

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); *Snehdam 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)

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

Retrospective amendment by the Finance Act, 2026

During the pendency of the appeals before the Supreme Court, 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

Facts of the case



The taxpayers received notices under section 148 of the 1961 Act issued by the JAO requiring them to furnish return of income for the relevant year on the ground that certain transactions chargeable to tax had escaped assessment.

Challenging the said notices, the taxpayers filed writ petitions contending that the reassessment process was required to be undertaken in accordance with the faceless mechanism and that the JAO lacked jurisdiction to initiate the proceedings.

A coordinate bench of the Andhra Pradesh High Court allowed the writ petitions and set aside the impugned notices/orders, holding that the same were violative of 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 taxpayers challenged the constitutional validity of section 147A on the ground that the retrospective amendment violated the

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, please [click here](#) to access KPMG Flash News dated 30 April 2026

Indian Constitution, the rule of law and the doctrine of separation of powers. They also contended that the reassessment proceedings initiated by JAOs were ultra vires Articles 14, 19(1)(g) and 265 of the Indian Constitution and section 151A of the 1961 Act.

High Court's decision



The Andhra Pradesh High Court ruled in favour of the taxpayer and struck down section 147A as unconstitutional. The Court also set aside the reassessment proceedings initiated by JAO under sections 148A and 148, holding that the JAO lacked jurisdiction and that such proceedings were required to be undertaken in a faceless manner.

Key observations of the High Court included:

Section 147A did not cure the defect identified in earlier judgments

The legislature may retrospectively enact a validating law, but the validity of such a law depends upon whether the legislature possesses the competence which it claims over the subject matter and whether in making the validation, it removes the defect which the courts had found in the existing law. The legislature cannot nullify the judgment rendered by any court by enacting law without removing the basis of such judgment.

In the earlier round of proceedings (before the amendment), the High Courts did not find any defect in either the 1961 Act or the e-Assessment Scheme. The courts only held that JAO lacked authority to exercise powers under section 148. Therefore, without amending the e-Assessment Scheme, the insertion of section 147A in the name of clarification or validation cannot be permitted.

By enacting section 147A, and including the non-obstante clause therein, the legislature has sought to over-reach the judgments rendered by various High Courts, in direct conflict with the doctrine of separation of powers, which is the basic structure of the Indian Constitution.

Section 151A permitted the Government to issue directions to modify the e-Assessment Scheme on or before 31 March 2022. Therefore, the amendment brought in through introduction of section 147A by FA 2026 (with retrospective effect), without excluding reference to section 148 from the scheme, is not sustainable under the law.

Section 147A could not be inserted into the repealed 1961 Act

The taxpayers contended that the Income-tax Act, 1961 stood repealed on 31 March 2026 and the 2025 Act came into force from 1 April 2026. Therefore, no amendment/insertion could be made to a repealed enactment and section 147A could not be given effect to from 1 April 2021. The Revenue argued that the FA 2026 introducing section 147A had received the Indian President's assent on 30 March 2026, before the repeal took effect.

The Court observed that as per section 5 of the General Clauses Act, if any legislation does not express the date on which it will come into operation, then it will come into force from the date on which it receives the President's assent.

Since the FA 2026 expressly provides that the relevant provisions would come into force on 1 April 2026,¹⁰ it cannot be said that the same has come into force on 30 March 2026 (the date of the Presidential assent).¹¹ The 1961 Act was repealed on the mid-night of 31 March 2026 and any amendment/insertion made to the repealed enactment is not sustainable under law and has no legal sanctity.

Section 148 expressly covered by the e-Assessment Scheme

Clause 3 of the e-Assessment Scheme spells out, in clear and unambiguous terms, that the issuance of notices under section 148 shall be through automated allocation. The use of the word "shall" in the said clause implies that the JAOs are ousted to exercise the powers under section 148, and the same has to be undertaken in a faceless manner.

Since the impugned cases were identified by the respective JAOs, the Court held that such action was contrary to the scheme.

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

The Revenue contended that the absence of a separate reference to section 148A in the e-Assessment Scheme conferred jurisdiction on JAOs. The Court did not accept this argument holding that reassessment proceedings cannot be initiated, unless the procedure contemplated under sections 148A and 148 are complied with. Thus, it cannot be said that merely because section 148A is not included in the scheme, thereby it gives powers to JAOs to exercise jurisdiction under this section.

¹⁰ Section 2(a) of the Finance Act, 2026 (No.4 of 2026)

¹¹ *Common Cause v. UOI* [2003] 8 SCC 250

The Revenue also argued that since sections 148A and 148 are not covered by section 144B, the requirement under the e-Assessment Scheme to conduct proceedings in a faceless manner applies only to assessment or reassessment proceedings.

The Court, on conjoint reading of section 151A and the e-Assessment Scheme, held that since the Government had consciously included section 148 in the scheme, it is incumbent for the tax authorities to issue section 148 notices in a faceless manner.

Transfer from JAO to FAO not in compliance with section 127

The Revenue, referring to the Memorandum to the Finance Bill, 2026, contended that the reassessment proceedings are undertaken by two tax officers i.e., by JAO up to the stage of issuance of reassessment notice under section 148 and thereafter by the FAO for conducting the proceedings under section 147.

Such a transfer of case from one officer to another (i.e. from JAO to FAO) would amount to a change of jurisdiction and could be effected only in accordance with the procedure prescribed under section 127. Since no statutory transfer mechanism had been followed, the transfer was effected by taking shelter under section 130 under which faceless jurisdiction of income-tax authorities was conferred.

Rejected the Revenue's contention that since there is no Notification issued conferring power on FAO, the question of FAO exercising the powers under sections 148A or 148 do not arise. The Court held that if the Revenue's contention is accepted, then transfer of jurisdiction orders under section 127 should have been passed for transfer of impugned case from JAO to FAO after issuance of section 148 notices, which did not happen.

Revenue's concurrent jurisdiction theory rejected

Relying on the Notification issued under section 120,¹² the Revenue contended that the JAO continued to have concurrent jurisdiction to issue notices under section 148.

The Court rejected this contention, holding that the said Notification runs contrary to sections 130 and 151A and the schemes made thereunder. When the statute and the schemes specifically state that the proceedings are to be initiated in a faceless manner, the same cannot be allowed to be exercised by the JAO through such Notification.

In the absence of an appropriate amendment in the e-Assessment Scheme, the JAO has absolutely no role to play under section 148 and therefore, the Revenue's argument that JAOs have concurrent jurisdiction under the aforesaid Notification is untenable.

¹² Notification No. 61 dated 10 June 2022

Our comments



The decision reinforces that retrospective legislation cannot override judicial decisions without addressing the legal basis on which those decisions were founded.

The ruling is significant as it not only follows the Punjab & Haryana High Court's approach in *Jyoti Sareen* but also deals with additional arguments regarding transfer of jurisdiction from JAO to FAO and the validity of the amendments to a repealed law.



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