JAO-FAO retrospective amendment held unconstitutional – Punjab & Haryana High Court

The litigation surrounding reassessment notices under Sec. 148/148A of the Income-tax Act,1961 (the Act) issued by Jurisdictional Assessing Officer (JAO) instead of Faceless Assessing Officer (FAO) has evolved through significant judicial developments. Most recently, the Supreme Court[1], vide order dt. April 10, 2026, set aside High Court judgments that had quashed JAO-issued notices for fresh consideration in the light of retrospective amendment introduced by Finance Act, 2026 validating such JAO-issued notices.

In a significant recent ruling rendered pursuant to the Supreme Court's aforesaid directions, the Punjab and Haryana High Court[2] has held the retrospective amendment under Sec. 147A of the Act as unconstitutional, reaffirming the settled principle that a retrospective amendment cannot nullify judicial decisions without removing the underlying basis of those decisions.

Background

The JAO-FAO controversy stems from the faceless reassessment framework introduced by the Finance Act, 2021 and the E-Assessment of Income Escaping Assessment Scheme, 2022, under which reassessment proceedings were intended to be conducted through the Faceless Assessing Officer (FAO)/NFAC. However, numerous reassessment notices under Sec. 148 and 148A were issued by Jurisdictional Assessing Officers (JAOs), leading to litigation on their validity.

While the Bombay High Court in *Hexaware Technologies*[3] *Ltd.* held that JAOs lacked jurisdiction and quashed such notices, several other High Courts, concurred[4] with Bombay High Court's view, whereas some others took a contrary position[5], resulting in conflicting judicial views. During the pendency of these appeals before the Supreme Court, the Finance Act, 2026 inserted Sec. 147A retrospectively deeming the "Assessing Officer" under Sec. 148 and 148A to mean the JAO, ostensibly validating past notices.

[1] ITO, Ward 2 (1), Chandigarh & Ors. v Tej Partap Singh [Civil Appeal No of 2026 arising out of SLP (C) No. of 2026 & Ors [Diary No(s).2196/2026]
[2] Jyoti Sareen v. Union of India & Ors., CWP-15791-2024 (O&M) and connected cases (P&H HC), judgment dt. 10.09.2026.
[3] Hexaware Technologies Ltd v ACIT [2024] 464 ITR 430 (Bom HC)
[4] Shree Cement Ltd. v. ACIT and others, [2025] SCC Online 7121 (Raj HC), TVS Credit Services Ltd. v. DCIT and another [2025] SCC Online Mad 18383 (Mad HC), Prameela Pasumarthi v. DCIT [2025] SCC Online AP 4052 (A.P. HC)
[5] T.K.S. Builders Pvt Ltd v ITO [W.P.(C) 1968/2023] (Del HC), Snehdham Trust v. ACIT [2025] SCC Online 5771 (Guj HC), Triton Overseas Private Limited v. Union of India and others [2023] SCC Online 6585 (Cal HC)

Text of Retrospective Amendment under Sec. 147A

"147A. Notwithstanding anything contained in any judgment, order or decree of any court or in section 151A or in any scheme framed thereunder, for the removal of doubts, it is hereby clarified that the Assessing Officer for the purposes of sections 148 and 148A shall mean and shall always be deemed to have meant to be an Assessing Officer other than the National Faceless Assessment Centre or any assessment unit referred to in sub-section (3) of section 144B."

As a consequence of the said amendment, the Supreme Court remitted the matter to the respective High Courts to examine the constitutional validity and effect of the retrospective amendment vide order dated April 10, 2026. Pursuant to this order, taxpayers were granted liberty to amend their writ petitions to challenge Sec. 147A and the High Courts were requested to decide on this matter, preferably by September 30, 2026. Until then, assessment/reassessment proceedings pursuant to the impugned notices were directed to be stayed.

This development was covered in our earlier update, "SC sets aside JAO v. FAO controversy back to the HCs" dt. May 06, 2026.

The present development – Punjab & Haryana (P&H) High Court Ruling

Upon SC's remand, while verdicts of several other High Courts are awaited, the P&H High Court along with a batch of connected petitions, has struck down the retrospective amendment under Sec. 147A as unconstitutional and quashed the impugned Sec. 148 notices issued by the JAOs. This update summarizes the Court's reasoning and its implications.

Key observations of the High Court -

- **Retrospective amendment conflicts with Faceless Scheme under Sec. 151A**

  Section 151A and the Faceless Scheme form the foundation of the earlier rulings that held only Faceless Assessing Officers (FAOs) could issue reassessment notices. Since this faceless reassessment framework continues unchanged without any corresponding amendment, Sec. 147A is in direct conflict with the faceless scheme. Consequently, the basis of the earlier judicial decisions remains intact, and a retrospective amendment seeking to override those decisions without removing their statutory foundation amounts to "legislative overreach" and "is therefore unconstitutional".

- **Non-obstante clause in Sec. 147A does not override Sec. 130 and Scheme framed thereunder**

  The non-obstante clause contained in Sec. 147A, seeks to wipe out the effect of any judgment, order or decree of any Court or whatever is contained in Sec. 151A or in the scheme framed thereunder but skips reference to "Faceless Jurisdiction of Income-tax Authorities Scheme, 2022" under Sec. 130.

- **<u>No revival of lapsed exclusion power through retrospective amendment</u>**

  Since no exclusion from the faceless reassessment regime was notified before the statutory deadline of March 31, 2022, the Government could not retrospectively revive or reintroduce a lapsed power through retrospective amendment under Sec. 147A to achieve indirectly what was no longer permitted.

- **<u>Retrospective amendment under Sec. 147A defeated its own stated objects</u>**

  Although Sec. 147A was introduced to bring certainty and reduce litigation, its coexistence with the unchanged section 151A created further ambiguity and fuelled disputes. If certainty was the objective, the Revenue ought to have invited an early Supreme Court opinion on the pending cross-appeals instead of resorting to a retrospective amendment.

- **<u>JAO issued notices "do not" survive without retrospective amendment under Sec. 147A</u>**

  The P&H High Court observed that a plain reading of the Faceless Scheme mandates allocation of AOs in a faceless, automated manner, which has also been a categorical finding of earlier High Court rulings. This is aligned with object of Sec. 151A i.e. efficiency, transparency and accountability by eliminating interface with taxpayer. Sec. 147A does not meet the key test of 'random automated allocation', as envisaged under Sec. 151A. Accordingly, independent of the retrospective amendment, JAO notices issued without 'random automated allocation' stand in violation of the faceless scheme.

Conclusion

- The P&H High Court had "no hesitation" in declaring Sec 147A unconstitutional. Having struck down Sec. 147A, the Court set aside the Sec. 148 notices issued to the petitioners.
- In the absence of Sec. 147A, the notices under Sec. 148 issued by JAOs cannot be sustained when the Faceless Scheme under Sec. 151A which mandates random, automated, faceless allocation continues on the statute book unamended.
- Following Bombay High Court's ruling in Hexaware (supra) and the concurring line of other High Court judgments, a reassessment notice under Sec. 148 / 148A could be issued **<u>"only"</u>** by a faceless Assessing Officer, through random, automated allocation.

Our Comments

This is a welcome decision wherein the P&H High Court has quashed the JAO-issued Sec.148 notices on two independent grounds: the unconstitutionality of retrospective Sec. 147A and non-compliance with the faceless reassessment framework under Sec. 151A. Essentially, the Court has reaffirmed the settled principle that a retrospective amendment cannot nullify judicial rulings without removing their substratum.

While the Revenue has filed SLP before Supreme Court challenging this judgment, critically now, the outcome does not hinge solely on the fate of validity of Sec. 147A, particularly with the continued operation of Sec. 151A in the statute, providing an independent basis to challenge JAO-issued notices.

With all eyes also on the outcome of the current proceedings pending before the Bombay, Karnataka and Delhi High Courts, this ruling remains binding relevant on the Revenue across all jurisdictions, unless a contrary view is taken by another High Court or until the Supreme Court settles the issue otherwise. In the interim, taxpayers contesting JAO-issued Sec. 148 notices under the Act may rely on this decision to strengthen their ongoing appellate proceedings.

A critical concern for the Revenue is that there appears to be no alternative remedy for revisiting and amending the provisions of the repealed Income-tax Act, 1961 relating to the JAO-FAO framework. Given the high stakes involved, the Revenue is likely to vigorously press its "high-stakes" plea before the judiciary, akin to the approach adopted in the *Ashish Agarwal*[6] and *Rajeev Bansal*[7] line of litigation.

Disclaimer:
This document is intended to provide certain general information and should not be construed as professional advice. It should neither be regarded as comprehensive nor sufficient for the purposes of decision making. The firm does not take any responsibility for accuracy of the document nor undertakes any legal liability for any of the contents in this document. Without prior permission of the firm, this document may not be quoted in whole or in part or otherwise.

[6] Union of India v. Ashish Agarwal [2022] 444 ITR 1 (SC)
[7] UOI v. Rajeev Bansal [2024] 469 ITR 46 (SC)