SC sets aside JAO v. FAO controversy back to the HCs

Background

The Genesis: Finance Act, 2021 & The Faceless Reassessment Regime

The controversy emanates from the restructuring of the income-tax reassessment regime introduced by the Finance Act, 2021, effective April 01, 2021, which replaced Sec 147 to 151 of the Income-tax Act, 1961 (ITA 1961) with a new two-stage pre-reassessment framework incorporating prior enquiry and a mandatory opportunity of hearing under Sec 148A. Concurrently, Sec 151A enabled the introduction of a faceless, technology-driven reassessment mechanism, pursuant to which the CBDT notified the E-Assessment of Income Escaping Assessment Scheme, 2022 (Faceless Scheme) on March 29, 2022, extending the faceless regime to reassessment proceedings, including issuance of notices through the National Faceless Assessment Centre (NFAC).

The Friction: JAO v. FAO — Who Has Authority to Issue Notices?

Despite the statutory mandate that notices be issued by Faceless Assessment Officers (FAOs) under the Faceless Scheme, in practice, a large number of reassessment notices under Sec 148A and 148 continued to be issued by the Jurisdictional Assessing Officer (JAOs) operating in their conventional physical jurisdictions, instead of FAOs. This created a fundamental jurisdictional dispute — *Whether such notices issued by JAOs are legally valid, or did they stand vitiated for non-compliance with the faceless mandate?* Taxpayers filed writ petitions before various High Courts (HCs) challenging these JAO-issued notices lacking jurisdiction and statutory authority under the Faceless Regime.

The High Court Rulings — A Divided Judiciary

In case of Hexaware Technologies Ltd[1], the Bombay High Court delivered a landmark ruling in favour of taxpayers and held categorically that post introduction of the Faceless Scheme, there is no question of concurrent jurisdiction between the JAO and the FAO for issuance of notice or for passing orders. Accordingly, notices issued by JAOs were held void and without jurisdiction, and the consequential orders stood quashed.

This ruling became a benchmark for taxpayers' writs, leading to quashing of JAO-issued reassessment notices, though the Delhi High Court took a contrary view in T.K.S. Builders Pvt. Ltd v ITO[2]. Thereafter, conflicting decisions across various HCs created a divergence of judicial opinion on this jurisdictional crisis, leaving thousands of tax cases in legal uncertainty.

[1] Hexaware Technologies Ltd v ACIT [2024] 162 taxmann.com 225 (Bom HC)
[2] T.K.S. Builders Pvt Ltd v ITO [W.P.(C) 1968/2023] (Del HC)

Given the conflicting HC rulings, the Revenue and taxpayers filed cross-challenging Special Leave Petitions (SLPs) before the Supreme Court (SC), resulting in the accumulation of several cases on the issue, by early 2025.

Sec 147A inserted by Finance Act, 2026 — The Retrospective Amendment

While the JAO-FAO controversy was pending before the SC and various HCs, a sweeping retrospective amendment by insertion of Sec 147A to the ITA 1961 was made vide Finance Act, 2026. The said new Sec 147A seeks to clarify that the AO referred to in Sec 148 and 148A shall always be deemed to have meant the 'JAO'.

Writs Filed Challenging Sec 147A — Post-Amendment Litigation

Following the enactment of Finance Act, 2026, the legal battle has fundamentally shifted to the constitutional validity of the amendment — its manner, scope and to what extent it resolves the controversy raising a critical question — Can Parliament retrospectively override its own earlier legislation, negate binding judicial pronouncements, and retroactively validate actions that Courts have held to be without authority, especially when doing so affects substantive rights of taxpayers?

Supreme Court's Decision dt. April 10, 2026 [3]

The SC has set aside those HC orders which have quashed reassessment notices solely on the ground of lack of jurisdiction of JAOs, noting that this basis stands altered by the retrospective amendment under Sec 147A, and has remitted the matters to respective HCs for fresh consideration. Taxpayers have been granted liberty to amend their writ petitions within 4 weeks to challenge Sec 147A or connected consequential provisions. The HCs are requested to decide on this matter, preferably by September 30, 2026, and until then assessment/reassessment proceedings pursuant to the impugned notices are directed to be stayed, subject to such terms and conditions as may be imposed by the HCs. Key directions of the SC are as under:

1. **Setting Aside Pro-Taxpayer HC Judgments — On Limited Ground**

   The SC has set aside all pro-taxpayer HC judgments, only because the legal foundation of those judgments (i.e., that the JAO lacked competence) has been altered by the Finance Act 2026 amendment. The Apex Court has not endorsed the Revenue's position; it has merely acknowledged that the statutory landscape has changed, requiring fresh HC consideration.

2. **Liberty for Taxpayers to Challenge Sec 147A before High Courts**

   The SC has expressly opened the door for taxpayers to now challenge the retrospective amendment itself; its constitutional validity, its retrospective operation, its conflict with Sec 151A, and any other connected provisions. All contentions that were before the SC, and any other grounds available, may be urged before the HCs.

[3] Income Tax Officer, 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]

3. Interim Stay of Proceedings

No assessment or reassessment proceedings pursuant to the impugned notices (the ones originally challenged) can proceed during pendency of the writ petitions before the HCs, unless the HCs impose specific conditions. Though this provides a breather for taxpayers, it may be noted that the interim stay covers only notices under Sec 148A(d) and Sec 148 issued by JAOs that were the subject of challenge before HCs and that Assessment orders pursuant to such notices cannot be passed during pendency subject to conditions imposed by such HCs. **The HCs are requested to decide the matters preferably by September 30, 2026.**

Our Comments

The SC has essentially sent the JAO v. FAO controversy back to the HCs with a clean slate. Its directions bear the following approach:

- Not commenting on the Finance Act, 2026 amendment
- Keeping it open for HCs to examine its validity and impact
- Taxpayer protection via interim stay to assessments/reassessments during pendency before HCs

Key Considerations for Taxpayers

Taxpayers should examine the HC order in their own case earlier, especially, where HC had quashed the reopening as invalid. Such Orders will have to be assessed in various possible scenarios with respect to their current/past status and manner of their disposal, if any, by the respective HCs. Key evaluations which may be considered are:

HC Orders forming part of batch of appeals before SC

Independently, in cases, where taxpayer's case forms part of the bunch of matters disposed by this SC judgement, and in terms of its directions, it is necessary for taxpayers to evaluate on a case-by-case basis as to whether they should amend their writ petitions previously filed before the HC, by including a challenge to the constitutional validity of the amendment and its consequential provisions, within 4 weeks' time.

HC Orders not forming part of batch of appeals before SC

Depending upon the manner of disposal of such writs, including cases where HC had disposed the writs with an observation that – *'the Revenue can merely move precipe for revival of writ upon reversal of Hexaware judgement by the SC'*, taxpayers will now have to assess as to whether they should amend their existing writs. Similarly, in our view, the writs admitted by the HC but specifically directed to be kept pending, awaiting disposal of Hexaware judgement by SC, also need to be amended now.

An equally important issue concerns the appropriate course of action for taxpayers in situations where the Revenue has not challenged a HC order before SC or SLP has already been dismissed and where even Miscellaneous Application, if filed, has been rejected for seeking revival of such dismissed SLPs. This assumes greater significance for consideration

particularly because such matters stand concluded parties *inter-se* i.e. the decision in the writ has attained finality **only** qua parties to the respective litigation.

To conclude, in our view, if there is no downside, then one should take the ground challenging constitutional validity and pursue all other grounds otherwise challenging the reopening.

While the ultimate outcome remains uncertain, it is predictable that one or more than one round of litigation is likely to follow. Even the pending appeals arising out of reassessment orders (wherein the notices were not challenged in writs) may also face prolonged mega-block in terms of their disposal, somewhat akin to the appeals involving Roca Bathroom controversy!

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