

The FAO vs. JAO Debate – SC Decision to Watch Out For

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In the past few years, reassessments have been one of most litigated issues under Indian income-tax law. Arguably, the change in reopening related law has been a big contributor for the resultant litigation in this sphere on issues related to limitation, validity of reopening notices, whether the prescribed procedure in law was followed etc.

One issue that has assumed significant importance in this regard is related to 'jurisdiction'. The controversy centres on whether reopening proceedings can be initiated by a faceless assessing officer (**FAO**) or whether the same must be conducted by the jurisdictional assessing officer (**JAO**) – FAO vs JAO debate. It is noteworthy that in the year 2020, India introduced the 'faceless regime' under which a taxpayer is assessed electronically in a faceless manner and is not required to interact with an assessing officer. The FAO vs JAO debate raises questions about procedural fairness, administrative efficiency, and the interpretation of statutory provisions governing the reassessment process under the Income-tax Act, 1961 (IT Act).

1. Background:

a. Post the amendment in recent years, the IT Act has bifurcated the reopening regime into two parts: (i) pre-notice enquiry stage (**148A Stage**), and (ii) post-notice reopening stage (**148 Stage**) [148A Stage and 148 Stage being hereinafter referred to as **Reopening Proceedings**]. Essentially, the 148A Stage requires the income-tax authorities to conduct enquiries, issue show-cause notices, consider the taxpayer's reply, pass an order as to whether the case is a fit case for reopening. If the case is a fit case for reopening, the 148 Stage requires the income-tax authorities to issue a reopening notice, followed by consequential proceedings. As can be seen, this whole process contains various checks and balances to ensure that only the appropriate cases get picked up for reassessment eventually.

b. Interestingly, per section 151 of the IT Act, the Reopening Proceedings are required to be conducted in a faceless manner. In this regard, Notification No. 18/2022 dated 29 March 2022 which introduced the e-Assessment of Income Escaping Assessment Scheme, 2022 states that the Reopening Proceedings are to be conducted in a faceless manner (**Faceless Reopening Notification**) – relevant extracts of the Faceless Reopening Notification are as under:

3. Scope of the Scheme.--For the purpose of this Scheme,--

(a) assessment, reassessment or recomputation under section 147 of the Act,

(b) issuance of notice under section 148 of the Act,

shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in section 148 of the Act for issuance of notice, and in a faceless manner, to the extent provided in section 144B of the Act with reference to making assessment or reassessment of total income or loss of assessee.

2. Practical instances and judicial position:

a. In many instances, what has been seen is that the Reopening Proceedings have been initiated / conducted by the JAO only, resulting in such taxpayers (across different states) challenging the validity of such proceedings on the ground of being invalid and thus, bad in law – as the aforesaid Faceless Reopening Notification states that the assessment or re-assessment proceedings under section 147 of IT Act and notice under section 148 of the IT Act shall be through automated allocation. This led to a huge tug of war between the taxpayers and the tax department as to the basic foundation of the Reopening Proceedings; moot question being, who is the correct officer to initiate / conduct Reopening Proceedings – FAO or JAO?

b. Notably, the judicial view has been divergent on this issue. While some High Courts (like Bombay^[1], Telangana^[2], Gauhati^[3] etc), took the view that FAO is the correct officer – key matter being the Hexaware judgment of Hon'ble Bombay High Court¹; some High Courts (like Delhi^[4] and Gujarat^[5]) took the other view that JAO would be the correct officer. Further, recently, the Hon'ble Rajasthan High Court^[6], after considering the conflicting views on the issue, also took a view that FAO would be the correct officer.

c. The issue is presently pending before the Hon'ble Supreme Court in the case of Union of India v Suryalakshmi Cotton Mills, SLP (Civil) No. 27736 /2023 together with several other appeals on the same issue.

3. Conclusion:

a. For taxpayers, this controversy brings uncertainty regarding the validity of reassessment notices and the proper procedure for challenging such notices. It also highlights the need for clear guidelines and legislative amendments to reconcile the faceless assessment system with existing legal provisions. The ongoing debate also underscores the dilemma between modernizing tax administration and ensuring compliance with established legal frameworks.

b. The impact of this controversy is significant as it can lead to the quashing of the entire reassessment at a preliminary stage itself if Reopening Proceedings are initiated / conducted by JAO. Hence, a taxpayer who is similarly placed should keep a close eye on the developments happening in this regard at the Hon'ble Supreme Court level.

[1] Hexaware Technologies Limited vs ACIT [[TS-5260-HC-2024\(Bombay\)-O](#)]

[2] Kankanala Ravindra Reddy vs ITO [[TS-5629-HC-2023\(Telangana\)-O](#)]

[3] Ram Narayan Sah vs Union of India [[TS-5994-HC-2024\(Gauhati\)-O](#)]

[4] T.K.S. Builders (P.) Ltd. vs. Income-tax Officer [[TS-6349-HC-2024\(Delhi\)-O](#)]

[5] Talati and Talati LLP vs. ACIT [[TS-6223-HC-2024\(Gujarat\)-O](#)]

[6] Sharda Devi Chajjer vs ITO [[TS-5099-HC-2025\(Rajasthan\)-O](#)]