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Punjab and Haryana High Court Strikes down JAO – FAO Retrospective Amendment as Unconstitutional

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Introduction

The Hon'ble Punjab and Haryana High Court (HC) in Jyoti Sareen vs. UOI & Others (CWP No. 15791-2024 (O&M)) (Order) held the retrospective amendments carried out vide the Finance Act, 2026, with respect to the powers of the Jurisdictional Assessing Officer (JAO) to issue a reopening notice under section 148 (Reopening Notice) of the Income-tax Act, 1961 (IT Act), as unconstitutional, being violative of the 'doctrine of separation of powers' and thus violative of Article 14 of the Constitution of India. The HC held that by way of the retrospective amendments, the legislature has not cured the basis of reasonings adopted by various High Courts while quashing Reopening Notices and merely sought to overturn the law laid down by the Courts and substitute its opinion over the Court's findings.

Background

Since 2019, various provisions under the IT Act were introduced with an intent to reduce physical interface between a taxpayer and the tax department. In line with the said provisions, various faceless schemes were notified by the Central Government (CG). These schemes provided that the exercise of powers and performance of functions conferred on the income-tax authorities shall be carried out in a faceless manner.

Series of amendments were also made to reassessment provisions vide Finance Act, 2021 wherein, prior to the issuance of Reopening Notice, the assessing officer was required to follow prescribed procedure under section 148A of the IT Act (such as conducting enquiries, providing show cause notices to taxpayers before reopening the assessment, considering the taxpayer's reply, etc.) (Pre-assessment Enquiry).

Additionally, the E-Assessment of Income Escaping Assessment Scheme, 2022 notified by the CG under section 151A of the IT Act, vide Notification No. 18/2022 dated 29 March 2022 (Scheme), provided for randomised allocation of reassessment cases to the assessing officers based on suitable technological tools. The Scheme further provided that the assessment of income, including the issuance of Reopening Notice, to be carried out in a faceless manner, to the extent provided in section 144B of the IT Act (provisions providing for faceless assessment procedure).

Even after the Scheme was notified, the Pre-assessment Enquiry was carried out by the JAO of the concerned taxpayer, who determined whether reopening was warranted and if so, the JAO also issued Reopening Notice to the taxpayer. Subsequently, reassessment proceedings were transferred to the Faceless Assessing Officer (FAO) for the purpose of carrying out reassessment and determining the amount of income escaping assessment.

Consequently, writ petitions were filed by several taxpayers before various High Courts challenging the validity of Pre-assessment Enquiry carried by, and Reopening Notice issued by, the JAO. Notably, Telangana High Court, Bombay High Court, Gauhati High Court, Punjab and Haryana High Court, Rajasthan High Court, Madras High Court, Karnataka High Court and Andhra Pradesh High Court, upheld the proposition that no concurrent jurisdictions existed between the JAO and FAO and the Reopening Notices ought to have been issued by FAO only. However, the Calcutta High Court, Delhi High Court and Gujarat High Court took a differing view and upheld the existence of concurrent jurisdiction of the JAO as well as FAO, to issue

Reopening Notice. The conflicting views of the different High Courts resulted in a batch of special leave petitions before the Supreme Court.

During the pendency of the aforesaid controversy before the Hon'ble Supreme Court, the Parliament, vide Finance Act, 2026, introduced section 147A to the IT Act, ***with retrospective effect from 01 April 2021*** (Retrospective Amendment), which sought to clarify, that jurisdiction for the purpose of Pre-assessment Enquiry as well as issuance of Reopening Notices lied with the JAO. Further, the said provision was declared to be overriding anything contained in any judgment, order or decree of any court or in section 151A or in any scheme framed thereunder. Pursuant to the said amendment, the Supreme Court remanded the matters back to the High Courts for fresh consideration, without rendering any opinion on the validity of the Retrospective Amendment (Supreme Court order dated 10 April 2026 in Civil Appeal No. 4716 of 2026). The taxpayers were given liberty to amend their writ petitions to challenge the validity of the Retrospective Amendment.

HC Order

The following issues were before the HC for determination:

a. The constitutional validity of the Retrospective Amendment, seeking to overrule the decisions of the several High Courts; and

b. Even otherwise, whether the Reopening Notices issued by the JAO were sustainable in law since the JAO was not chosen randomly through automated allocation as provided in the Scheme.

HC's observations on constitutional validity of the Retrospective Amendment

Pursuant to the detailed arguments, the HC held the Retrospective Amendment as unconstitutional. Key observations of the HC are as follows:

- **Doctrine of Separation of Powers and Article 14 of the Constitution of India**: HC reiterated that the Constitution of India provides for clear demarcation of powers between three organs of the State (viz. legislature – to make laws, executive – to implement those laws and judiciary – to interpret the laws) and that such demarcation is fundamental to the rule of law. Any breach by any organ of the State negates the principles of equality enshrined in Article 14 of the Constitution of India. Referring to various decisions of the Constitution Benches of the Supreme Court, the HC observed that although legislature has the right to amend the law but, it cannot annul a judgement of a constitutional court or through a declaration overrule a judicial decision.

- **Essential characteristics of validating law**: The HC postulated that by way of introducing a validating law, even retrospectively, the legislature must remove the basis of the judgement of the Court by curing the defect pointed out by such Court. The effect of the validating law should be such that if such validating law existed earlier, the Court would not have arrived at the same conclusion, as it has presently arrived at. Against this, a law which simply sets at naught the decision of a Court by a mere declaration without curing the defect, is opposed to the rule of law and also breaches the doctrine of separation of powers.

- **Retrospective Amendment does not cure the defect pointed out by the High Courts**: The HC observed that the High Courts, on earlier occasions, had ruled the Reopening Notice to be invalid on the grounds that as per section 151A of the IT Act, read with the Scheme:

  a. Reopening notice is required to be issued only by a randomly chosen FAO and not JAO.

  b. Proceedings for Pre-assessment Enquiry, issuance of Reopening Notices and carrying out assessment is mandatorily required to be conducted in a faceless manner by FAO and not JAO.

  The HC further observed that since no amendment has been made to section 151A of the IT Act and the Scheme, the said provisions still continue to exist in the statute book and thus, the primary basis of the judgements rendered by the High Courts as above, have not been cured through the Retrospective Amendment. The manner in which the Retrospective Amendment was introduced, by simply declaring section 147A of the IT Act to have an overriding effect on the judgements of Courts or section 151A of the IT Act or the Scheme, the legislature had encroached upon judicial power and upset the findings arrived at by various High Courts.

HC's observation on the validity of Reopening Notices under section 151A read with the Scheme

The HC held that, as per the plain reading of the Scheme, the Reopening Notices must be issued by a randomly selected FAO through automated allocation and in a faceless manner. The said interpretation, the HC remarked, is also in line with the declared intention of the Government of India behind introduction of the faceless regime. Any other interpretation, which defeats the very purpose of such intention, must be avoided. Accordingly, Reopening Notices were held to be invalid since the same were issued by a JAO and not by a FAO selected through randomised allocation.

Comments

This is the first judgment from a High Court on the constitutional validity of the Retrospective Amendment introduced in 2026. It will be interesting to see if other High Courts adopt the same view.

The observations of the HC on the action of the legislature to usurp or overrule the authority of judiciary by introducing retrospective amendments in the nature of a mere declaration, without removing or curing the defect pointed out by the judiciary, is an important and critical principle reiterated by the HC.

Notably, the Finance Act, 2026 introduced several retrospective amendments to overrule various judicial decisions (as for instance, the interplay of limitation period under section 144C and section 153 (transfer pricing amendment pursuant to ROCA Bathroom / Shelf Drilling case), validity of notices issued without a valid Document Identification Number etc.). It would be interesting to watch out the impact that the present Order may carry on these amendments.

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