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Date of pronouncement : 12.10.2026
Date of uploading : 12.10.2026

APHC010549832023

**IN THE HIGH COURT OF ANDHRA PRADESH**
**AT AMARAVATI**
**(Special Original Jurisdiction)**

**[3543]**

MONDAY, THE 12th DAY OF OCTOBER 2026

**PRESENT**

**THE HONOURABLE SRI JUSTICE NINALA JAYASURYA**

**THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR**

**WP No.28520 OF 2023**
**AND**
**WP Nos.8527, 9797, 9805, 10579, 14140, 15681, 21111, 21113, 21117, 21128, 21130, 21879, 21881, 21883, 22277, 22341, 23509, 28457 of 2024**
**AND**
**WP Nos.6096, 6161, 6162, 6317, 9069, 9131, 12560, 12731, 13479, 14655, 14675, 14685, 18278, 18732, 19157 19539, 20185, 22201, 23301, 24339, 24803, 25245, 27991 of 2025**
**AND**
**WP Nos.141, 216 234, 251, 317, 660, 737, 1023, 1074, 1082, 1089, 1092, 1151, 1196, 1205, 1218, 1424, 1440, 1464, 1482, 1535, 1538, 1574, 1586, 1593, 2013, 2024, 2070, 2083, 2571, 2690, 2691, 2692, 2693, 2694, 2695, 2696, 2697, 2698, 2700, 2901, 3020, 3120, 3122, 3171, 3249, 3260, 3409, 3455, 3485, 3617, 3682, 3713, 3722, 3758, 3761, 3768, 3769, 3777, 3784, 3786, 3787, 3852, 3880, 3922, 3943, 3949, 4000, 4205, 4218, 4221, 4233, 4234, 4253, 4261, 4290, 4422, 4467, 4526, 4539, 4574, 4620, 4622, 4623, 4645, 5200, 5319, 6021, 6048, 6049, 7421, 7472, 7508, 7522, 8174, 8227, 8273, 8949, 8951, 8957, 9001, 9101, 10425, 10794, 10892, 11273, 11343, 11434, 12297, 12638, 12678, 12928, 13008, 13407, 15852, 16947, 16950, 17982, 17984, 17989, 18528, 19505, 21020, 22602, 22788, 22798, 24212, 25622, 25635, 25636, 25763 and 25803 of 2026**

**WP No.28520 of 2023**

**Between:**

1. BALA SREENIVAS RAO SOMISETTY, S/o Venkata Swamy, aged 56 years, Occ. Business, H. No.. 7B-12-22, Karicharla Vari Lane, Eluru, West Godavari District - 534001, Andhra Pradesh

**...Petitioner**

**AND**

1. The Income Tax Officer, Ward 1, Eluru, Income Tax Office, 23-B-4-6/4, K.K.S. Towers, R R Pet, Eluru, Andhra Pradesh - 534 002
2. The Principal Chief Commissioner of Income Tax, Andhra Pradesh and Telangana, Hyderabad Room No.. 922, 9th Floor, 'B' Block, I.T.Towers, 10-2-3, AC Guards, Hyderabad - 500 004, Telangana.
3. Assessment Unit, Income Tax Department, National e-Assessment Center, New Delhi, Room No.. 401, 2nd Floor, E-Ramp, Jawaharlal Nehru Stadium, New Delhi - 110 003.

**...Respondents**

!Counsel for the Petitioners :

Sri A.V.A. Siva Kartikeya
Sri Kondala Rao Kotapati
Sri P.Pavan Kumar Rao
Sri Vivek Chandra Sekhar
Sri N.Rupeswar Reddy
Sri Dundu Manmohan
Sri V.Harish Kumar
Sri M.V.J.K.Kumar
Sri V Vinod k. Reddy
Sri M.Naga Deepak
Smt.Jyothi Ratna Anumolu
Sri C.Sanjeeva Rao
Sri Phani Viswanath Challa
Sri A. Sarveswar Rao
Sri L.Chandra Obul Reddy
Smt. Mallavolu Nikitha

Sri P. Rama Sharana Sharma
Sri L.Chandra Obul Reddy
Sri G.V.N.Hari
Sri Phani Viswanath Challa
Sri B.Abhay Siddhanth Mootha
Sri K.P.S.Sailesh Reddy
Sri K.Ravindra Nath Tagore
Sri.Kadimisetty Sai Sreenadh
Sri Anil Kumar Bezawada
Sri P.Sravan Kumar Reddy
Sri Vivekananda Virupaksha
Sri Sreemannarayana Mallela
Sri T.Venu Gopal
Sri Sricharan Telaprolu
Sri Nuvvula Ram Babu
Sri Badranaga Seshayya
Sri B.Siva Kesava Reddy
Sri A.V.Raghu Ram
Sri T.Chaitanya Kumar
Sri Ravi Kiran Ponnuru
Smt.T.V.P.Sai Vihari
Sri T.Pradyoth

Counsel for the respondents :

Sri N. Venkataraman, Additional Solicitor General of India
Sri T.Niranjan, Additional Solicitor General, High Court of Andhra Pradesh
Sri Y.N.Vivekananda, Senior Standing Counsel for Income Tax
Sri Anup Koushik Karavadi, Senior Standing Counsel for Income Tax

**The Court made the following:**

**HON'BLE SRI JUSTICE NINALA JAYASURYA**

**AND**

**HON'BLE SRI JUSTICE T.C.D. SEKHAR**

**WP No.28520 OF 2023**
**AND**
**WP Nos.8527, 9797, 9805, 10579, 14140, 15681, 21111, 21113, 21117, 21128, 21130, 21879, 21881, 21883, 22277, 22341, 23509, 28457 of 2024**
**AND**
**WP Nos.6096, 6161, 6162, 6317, 9069, 9131, 12560, 12731, 13479, 14655, 14675, 14685, 18278, 18732, 19157 19539, 20185, 22201, 23301, 24339, 24803, 25245, 27991 of 2025**
**AND**
**WP Nos.141, 216 234, 251, 317, 660, 737, 1023, 1074, 1082, 1089, 1092, 1151, 1196, 1205, 1218, 1424, 1440, 1464, 1482, 1535, 1538, 1574, 1586, 1593, 2013, 2024, 2070, 2083, 2571, 2690, 2691, 2692, 2693, 2694, 2695, 2696, 2697, 2698, 2700, 2901, 3020, 3120, 3122, 3171, 3249, 3260, 3409, 3455, 3485, 3617, 3682, 3713, 3722, 3758, 3761, 3768, 3769, 3777, 3784, 3786, 3787, 3852, 3880, 3922, 3943, 3949, 4000, 4205, 4218, 4221, 4233, 4234, 4253, 4261, 4290, 4422, 4467, 4526, 4539, 4574, 4620, 4622, 4623, 4645, 5200, 5319, 6021, 6048, 6049, 7421, 7472, 7508, 7522, 8174, 8227, 8273, 8949, 8951, 8957, 9001, 9101, 10425, 10794, 10892, 11273, 11343, 11434, 12297, 12638, 12678, 12928, 13008, 13407, 15852, 16947, 16950, 17982, 17984, 17989, 18528, 19505, 21020, 22602, 22788, 22798, 24212, 25622, 25635, 25636, 25763 and 25803 of 2026**

**COMMON ORDER:-** *(Per Hon'ble Sri Justice T.C.D.Sekhar)*

1. As the issues involved in these writ petitions are similar, they are being disposed of by this common order.

2. All these writ petitions were filed challenging the constitutional validity of Section 147A of the Income Tax Act, 1961, introduced vide Finance Act, 2026 (Act No.4 of 2026) giving retrospective effect from 01.04.2021 as ultra vires, apart from being violative of the basic structure of the Constitution of India, including the Rule of Law and separation of powers, *inter alia* the petitioners also challenged orders passed by Jurisdictional Assessing Officers (JAO) under Section 147 r/w. Section 144 r/w. Section 144B of the Income Tax Act, 1961 as illegal, arbitrary, void abinitio apart from violative of Articles 14, 19(1)(g) and Article 265 of the Constitution of India and contrary to Section 151A of the Income Tax Act,1961.

3. Before adverting to various grounds raised in these writ petitions, it is appropriate to discuss the factual matrix of the case for deciding the issues on hand.

4. Through Finance Act, 2018, a scheme namely e-Assessment Scheme, 2019 was formulated describing a detailed procedure to be followed for the purpose of making assessment, which was notified on 12.01.2019. Initially, the

said scheme was made applicable for passing assessment orders under Section 143(3) of the Act. Subsequently, proceedings under Section 144 were also included in the said scheme. Later, the said scheme was modified into "Faceless Assessment Scheme, 2019" by notifying in the Gazette.

5. The Finance Act, 2021 introduced Section 144B to the Income Tax Act, with effect from 01.04.2021 incorporating the Faceless Assessment Scheme directly into the Act with certain modifications. Later, the said provision was amended by Finance Act, 2022 by including the proceedings under Section 147 of the Act under Faceless Assessment Scheme. In other words, Faceless Assessment Scheme, 2019 made inapplicable with effect from 01.04.2021 after introduction of the said scheme as per Section 144-B of the Act.

6. Be that as it may, Section 151A was introduced to the Income Tax Act, 1961 by Act 38 of 2020 with effect from 01.11.2020 for Faceless Assessment of Income Escaping Assessment. Through which, the Central

Government may make a scheme, by notification in the Official Gazette for the purposes of Assessment, Reassessment or Re-computation under Section 147 or issuance of notice under Section 148 or conducting of enquiries or issuance of show cause notice or passing of order under Section 148-A or sanction for issue of such notice under Section 151, so as to impart greater efficiency, transparency and accountability. In furtherance thereto, Union of India issued Notification dt.29.03.2022 through the Central Board of Direct Taxes formulating the scheme for e-Assessment of Income Escaping Assessment Scheme, 2022, which is reproduced hereunder.

**"MINISTRY OF FINANCE**
**(Department of Revenue)**
**(CENTRAL BOARD OF DIRECT TAXES)**
**NOTIFICATION**
**New Delhi, the 29th March, 2022**

S.O.1466(E)-In exercise of the powers conferred by sub-section (1) and (2) of section 151 A of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby makes the following scheme.

1. Short title and commencement.-(1) This Scheme may be called the e-Assessment of Income Escaping Assessment Scheme, 2022.

(2) It shall come into force with effect from the date of its publication in the Official Gazette.

2. Definitions.-(1) In this Scheme, unless the context otherwise requires,-

(a) "Act" means the Income Tax Act, 1961 (43 of 1961);

(b) "automated allocation" means an algorithm for randomized allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimize the use of resources.

(2) Words and expressions used herein and not defined, but defined in the Act, shall have the meaning respectively assigned to them in the Act.

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

(a) assessment, reassessment or re-computation 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.

[Notification No.18/2022/F.No.370142/16/2022-TPL (Part1)]
SHEFALI SINGH, Under Secy".

7. By virtue of the introduction of the above scheme, the procedure to be followed had been laid under Section 144B of the Income Tax Act, 1961. For brevity the procedure is extracted as under:-

*"(i) the National Faceless Assessment Centre shall assign the case selected for the purposes of faceless assessment under this section to a specific assessment unit through an automated allocation system.*

*(ii) the National Faceless Assessment Centre shall intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down under this section.*

*(iii) a notice shall be served on the assessee, through the National Faceless Assessment Centre, under sub-section (2) of section 143 or under sub-section (1) of section 142 and the assessee may file his response to such notice within the date specified therein, to the National Faceless Assessment Centre which shall forward the same to the assessment unit;*

*(iv) where a case is assigned to the assessment unit, under clause (i) it may make a request through the National Faceless Assessment Centre for*

*(a) obtaining such further information, documents or evidence from the assessee or any other person, as it may specify;*

*(b) conducting of enquiry or verification by verification unit;*

*(c) seeking technical assistance in respect of determination of arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter by referring to the technical unit.*

*(v) where a request under sub-clause (a) of clause (iv) has been initiated by the assessment unit, the National Faceless Assessment Centre shall serve appropriate notice or requisition on the assessee or any other person for obtaining the information, documents or evidence requisitioned by the assessment unit and the assessee or any other person, as the case may be, shall file his response to such notice within the time specified therein or such time as may be extended on the basis of an application in this regard, to the National Faceless Assessment Centre which shall forward the reply to the assessment unit;"*

8. While things stood thus, the Jurisdictional Assessing Officer (JAO) issued notices under Sections 148A of the Income Tax Act, 1961 to the petitioners requiring them to furnish return of income for the relevant assessment year on the premise that

certain transactions chargeable to tax has escaped assessment. Questioning the said notices, the petitioners filed writ petitions on the ground that notices/orders have been issued by the Jurisdictional Assessing Officer deviating the procedure prescribed under e-Assessment of Income Escaping Assessment Scheme, 2022 which contemplates that any procedure to be initiated under Section 147 and 148 of the Act shall be through Faceless manner, which came into force from 29.03.2022, as the impugned notices/orders were issued by the Jurisdictional Assessing Officer, the same is without jurisdiction.

9. The Revenue filed counter affidavit contending that notification dt.29.03.2022 does not state whether the notice is to be issued by National Faceless Assessment Centre (NFAC) or the Jurisdictional Assessing Officer (JAO). It was further contended that the said notification deals with the procedure to be followed, while exercising the powers under Section 148 of the Act. Further, for the purpose of issuance of notice under Section 148 of the Act, the same is done in accordance with the risk management strategy and the assessment shall be in a faceless manner as prescribed under Section 144B of the Act.

10. A co-ordinate bench of this Court having considered the respective submissions made by the counsel for the petitioners and the Revenue, by order dt.28.10.2025, allowed the writ petitions by setting aside the impugned notices/orders issued under sections 148A(b), 148A(d) and 148 of Income Tax Act, 1961, holding that the same were violative of provisions of Section 151A of the Act r/w. Notification No.18/2022, dt.29.03.2022.

11. Aggrieved by the said order, the Revenue preferred Special Leave Petitions before the Hon'ble Supreme Court of India. While pending the SLPs, the Parliament through Act No.4 of 2026 namely the Finance Act, 2026, which came into force from 01.04.2026 introduced new provisions into the Income Tax Act, 1961 with a view to ensure greater procedural clarity and certainty. Through the said Act, Section 147A was introduced into the Income Tax Act, 1961 whereunder the term "Assessing Officer" has been expressly clarified to mean officer other than the National Faceless Assessment Centre (NFAC) or any assessment unit and the same is deemed to have come into effect retrospectively from 01.04.2021. The said provision reads as follows:-

> "9. After section 147 of the Income Tax Act, the *following section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2021, namely:-*
>
> *147A. Notwithstanding anything contained in any judgment, order or decree of any Court on 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."*

12. In view of the insertion of Section 147A into the Income Tax Act, 1961, the Hon'ble Apex Court disposed of the SLPs vide order dated 10.04.2026, the relevant portion of which reads as follows:

> "*20. In all fairness, we may add that several other contentions have also been raised by both sides, which we do not consider it necessary to advert to at this stage in light of the order we propose to pass. In the facts of the present batch, we are of the considered view that it is not necessary for this Court to examine the merits of the rival submissions concerning the correctness of the impugned judgments or the scope of the competing precedents at this juncture.*
>
> *"21. It appears to us that the assesses would be entitled to challenge the amending provisions as elaborated upon heretofore, for which it would only be appropriate to relegate them to the jurisdictional High Courts. All contentions raised before us, as well as any other grounds available to them to question the impugned notices, may be urged before the High Courts instead.*
>
> *22. Since the High Courts have primarily quashed the reassessment notices on the ground that the JAOs lacked competence to initiate such proceedings, and the very foundation of that view now stands altered by the amending legislation, the impugned judgments in favor*

*of the assesses are set aside on this limited ground. The matters are accordingly remitted to the respective High Courts for fresh consideration. Ordered accordingly.*

*23. The assesses are granted liberty to amend their writ petitions, if so advised, within a period of four (04) weeks from the date of uploading of this order, so as to enable them to lay challenge to Section 147A of the IT Act, as introduced by Act No.4 of 2026, or to any other connected or consequential provision.*

*24. Similarly, the Appellant-Revenue shall be at liberty to file their written submissions and affidavits before the jurisdictional High Courts within a period of three (03) weeks thereafter.*

*25. No additional time shall be granted to the parties beyond what has been granted above.*

*26. We make it clear that we have not expressed any opinion on the merits of the controversy, including the validity, scope, effect, retrospectively or applicability of the amended provisions and all such questions are left open to be decided by the High Courts.*

*27. Finally, during the pendency of the writ petitions before the High Courts, there shall be an interim stay of further assessment/reassessment proceedings pursuant to the impugned notices, subject to such terms and conditions as may be imposed by the High Courts.*

*28. The High Courts are requested to decide the matters preferably by 30.09.2026. Learned counsel for the parties undertake to extend full cooperation to the High Courts in this regard. No adjournments may be granted by the High Courts' on mere asking of the parties.*

*29. The Registry shall forthwith transmit a copy of this order to the Registrars General of the concerned High Courts.*

30. The appeals are, accordingly, disposed of."

13. After the remand by the Hon'ble Apex Court, the petitioners filed applications seeking to amend the prayer in the writ petition, which is as under:-

*"It is therefore prayed that, this Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or Direction, declaring*

*(a) Section 147A of the Income Tax Act, 1961 introduced vide Finance Act, 2026 (Act No.4 of 2026) with retrospective effect from 01.04.2021, as ultravires the Constitution of India and the Income Tax Act, 1961, apart from being violative of the basic structures of the Constitution of India, including the rule of law and separation of powers;*

*(b) Order passed by the 1st respondent under Section 147 r/w. Section 144 r/w. Section 144B of the Income Tax Act, 1961, dt.21.03.2024, bearing DIN and Notice No.ITBA/AST/S/147/2023-24/1063112119(1), for the Assessment Year 2016-17, as arbitrary, illegal, bad in law, void-abinitio, violative of the principles of natural justice, apart from being violative of Articles 14, 19 (1)(g) and 265 of the Constitution of India and Section 151A of the Income Tax Act, 1961 and consequently set aside the same in the interest of justice and pass such other orders.*

*It is further prayed that, this Hon'ble Court may be pleased to stay all further proceedings, including any recovery, pursuant to the order passed by the 1st respondent under Section 147 r/w. Section 144 r/w. Section 144B of the Income Tax Act, 1961, dt.21.03.2024, bearing DIN and Notice No.ITBA/AST/S/147/2023-24/1063112119(1), for the Assessment year 2016-17, pending disposal of the above writ petition and pass."*

**14. <u>CONTENTIONS OF THE COUNSEL FOR THE PETITIONERS:-</u>**

(i) It is contended by the counsel for petitioners that the Jurisdictional Assessing Officer (JAO) has no power to issue notice under Section 148 of the Income Tax Act especially after introduction of

Section 151A of the Act and the Notification dt.29.03.2022 [Notification No.18 of 2022 in F.No:370142/16/2022-TPL(Part-I)] issued by the Central Board of Direct Taxes, New Delhi, introducing a scheme called the "e-Assessment of Income Escaping Assessment Scheme, 2022". It was further contended that the said scheme came into force with effect from 29.03.2022 i.e., the date on which it was published in the Official Gazette. It was further contended that as per the said scheme, the assessment, reassessment or re-computation under Section 147 of the Act and the issuance of notice under Section 148 of the Act shall be done:

> *"(a) 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 such notice, and*
>
> *(b) 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.*
>
> *Section 151A of the Act empowers the Central Government to make such a scheme, on or before 31.03.2022."*

(ii) It was further contented that after introduction of the said scheme, it is mandatory for the Revenue

to conduct/initiate proceedings pertaining to reassessment under Sections 147 and 148 of the Act in a faceless manner and shall follow the procedure prescribed thereunder.

(iii) It was further case of the petitioners that, initially the writ petitions were filed questioning the jurisdiction of JAO in issuing notices under Section 148 of the Act or conducting the proceedings under Section 148A(d) of the Act and after hearing, a co-ordinate bench of this Court by order dt.28.10.2025, allowed the writ petitions holding that the JAO has no jurisdiction in view of Section 151A of the Act r/w. Notification dt.29.03.2022, and in order to nullify the said judgment, the amendment was brought into the Act, which is not permissible under law.

(iv) It was further contended that, under the scheme the cases are required to be assigned through an “automated allocation” system defined under clause 2(1)(b) as an algorithm-based,

randomized allocation using technological tools including Artificial Intelligence and machine learning, with a view to optimize the use of resources. Further, it was contended that as per clause 3 of the said scheme, for the purpose of issuance of notice under Section 148 of the Act, the same shall be done in accordance with risk management strategy formulated by the Board 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, whereas in the cases on hand the same was not adhered to and the proceedings were initiated under Section 148 and 148A by the Jurisdictional Assessing Officer ignoring the scheme.

(v) It was contended that the Legislative intent was explicitly mentioned under Section 151A i.e., to impart efficiency, transparency, accountability, eliminate personal interface by introducing dynamic jurisdiction through technology-driven allocation, whereas the notices issued under Section 148 of the

Act by the JAO are in contravention of the statutory mandate which speaks that the same shall be issued by Faceless Assessing Officers (FAO), therefore all the proceedings initiated are without jurisdiction.

(vi) By introducing Section 147A into the Income Tax Act, 1961 with retrospective effect, the Legislative intent behind the same is to nullify the decisions rendered by this Court and various other High Courts, which cannot be permitted inasmuch as the Legislature has no competence to nullify the judgment rendered by Constitutional Courts through the present amendment.

(vii) It was further contended that whenever a new section is introduced to the Act with retrospective effect, the same shall be exercised with greatest circumspection within the limitations, but cannot directly nullify or override a judicial decision by way of an amendment under the guise of clarificatory in nature for the removal of doubts.

(viii) By introducing Section 147A into the Act, the Legislature/Revenue is trying to encroach upon the judicial power which is not permissible under law and the same is unconstitutional as it is hit by doctrine of separation of powers.

(ix) It was further contended that when there is no jurisdiction conferred on the JAO to initiate the reassessment proceedings under faceless scheme, the same cannot be conferred upon JAO retrospectively by introducing Section 147A.

(x) It was further contended that by introducing new provision, the legislature sits in appeal as against the Judgment rendered by this Court and various other High Courts, which cannot be permitted inasmuch as any judgment of the Court is to be set aside by an Appellate Forum, but not through an amendment to the Act itself.

(xi) It was further contended that, a reading of Section 147A of the Act, it is clear that the same is not clarificatory in nature, but the same is introduced

so as to defeat the Legislative intent mandated under Section 151A of the Act and the scheme formulated thereunder.

(xii) It was further contended that when there was no ambiguity either under the Act or under the scheme, question of introducing Section 147A for removal of doubts on the premise it is claificatory in nature does not arise.

(xiii) It was further contended that the vested and enforceable right of the petitioners to assess them under faceless manner was taken away by the Legislature by giving retrospective effect and the same is impermissible under the law and also hit by doctrine of promissory estoppel and legitimate expectation.

(xiv) By introducing Section 147A, the Revenue is intending to exclude or limit the applicability of the provisions of the Act and the scheme, especially Section 151A and the scheme remained un-amended.

(xv) It was further contended that as on the date of introducing Section 147A to the Income Tax Act, 1961, the said Act was repealed and the Income Tax Act, 2025 came into force from 01.04.2026 and in such circumstances, the question of amending the repealed Act would not arise especially Section 536 of the Income Tax Act, 2025 does not confer any express or implied power to the Parliament to introduce a provision to Income Tax Act, 1961, which was already repealed by then.

(xvi) The introduction of Section 147A of the Act is nothing but an afterthought so as to nullify the judgments rendered by this Court and various other High Courts.

15. The Revenue filed counter affidavit *inter alia* contending that challenge to the constitutional validity of Section 147A of the Income Tax Act, 1961, as inserted by the Finance Act, 2026 is wholly misconceived, devoid of merits and not maintainable either in law or on facts and writ petitions are liable to be dismissed.

16. It was further contended that a statutory provision enacted by Parliament carries a strong presumption of constitutionality and the burden lies heavily upon the persons assailing its validity to establish a clear manifest violation of constitutional limitation. It was further averred in the counter affidavit that the said presumption operates with greater force in matters relating to taxation and fiscal policy, whereunder the legislature is entitled to a wider degree of latitude in classification, prescription of procedures and formulation of measures for assessment and collection of revenue. Therefore, the petitioners cannot seek invalidation of a fiscal enactment merely on the basis of hardship, inconvenience, perceived inequality or prefer alternative legislative scheme, especially in the absence of any demonstrable legislative in-competence.

17. It was stated in the counter affidavit that the TOLA, 2020 [The Taxation and Other Laws (relaxation and amendment of certain provisions) Act, 2020] inserted Section 144B and 151A into the Income Tax Act, 1961 with effect from 01.04.2021, providing the statutory frame work for carrying out assessments in a faceless manner. Section 151A empowers the Central Government to make a scheme, by notification in the official

gazette for the purposes of assessment, reassessment or re-computation under the Act. It was further stated that under the said scheme there are two distinct stages of reassessment which contained in chapter-XIV of the Act. Section 147 empowers the Assessing Officer to reassess, re-compute income chargeable to tax, which escaped assessment for any assessment year. Section 148 provides for issuance of notice by the Assessing Officer requiring the assessee to furnish a return of income where income chargeable to tax has escaped assessment. Further that Section 148A inserted vide Finance Act, 2021 with effect from 01.04.2021, prescribes a mandatory pre-assessment procedure before issuance of a notice under Section 148. Under Section 148A, the Assessing Officer is required to conduct such inquiry, if necessary, with prior approval of the specified authority, provide an opportunity of being heard by issuing a show cause notice along with the information suggesting escapement of income, consider the reply furnished by the assessee and thereafter pass an order under Section 148A (d). Further, such order is required to be passed before issuance of notice under Section 148 and both the order under Section 148A (d) and notice under Section 148 are issued with the prior approval of the specified authority.

18. It was further stated that the re-assessment proceedings under the Act comprise two distinct stages. The first stage is the pre-assessment stage governed by Sections 148A and 148, whereunder the Assessing Officer examines whether the income chargeable to tax has escaped assessment and whether a notice under Section 148 is required to be issued. The second stage commences after issuance of notice under Section 148 and relates to conduct of reassessment proceedings under Section 147.

19. The counter affidavit further reads that subsequent to the introduction of faceless assessment provisions and the scheme notified under Section 151A, divergent views emerged regarding the authority competent to undertake proceedings under Section 148A and 148. While certain judicial pronouncements took the view that such proceedings were required to be undertaken through the faceless mechanism, whereas the other decisions held that the Jurisdictional Assessing Officer continued to be the competent authority for the purposes of Section 148A and Section 148. Divergence of opinions, led to uncertainty regarding the legislative intent underlying the reassessment frame work.

20. It is the consistent stand of the Revenue throughout the proceedings that the Jurisdictional Assessing Officer is empowered to issue notice under Section 148 and 148A. It was further averred in the counter affidavit that in view of conflicting decisions of various High Courts in this regard multiple writ petitions are being filed before the Hon'ble High Courts which opened the flood gates for huge pendency. It was further stated that at the assessment level, this issue has single handedly contributed to increasing the work load of the officers which caused hindrance to the Assessing Officers from carrying out reassessments for the last four (04) years. In order to reinforce the legislative intent and to put an end to this issue, the Parliament in its wisdom, has chosen to enact a retrospective amendment to the Income Tax Act, 1961 with effect from 01.04.2021 vide Section 9 of Finance Act, 2026 and introduced Section 147A, which reads as follows:-

> *"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."*

21. By introducing Section 147A, the Parliament has legislatively clarified that who is the proper statutory authority having the jurisdiction to initiate action under Section 148A and 148. It was further stated that the expression “Assessing Officer” shall be considered in the context of Section 148 and 148A as the Jurisdictional Assessing Officer. Thus, by introducing Section 147A the legislative intent was to clarify that initiation of pre-assessment proceedings in issuance of notice under Section 148 falls outside the faceless assessment procedure contemplated under Section 144B of the Act and it was clarified in the memorandum explaining the provisions in the Financial Bill, 2026, which is as follows:

> *“Clarification regarding Jurisdiction to issue notice u/s 148 where income has escaped assessment and for carrying out pre-assessment procedure under Section 148A.”*

22. It was further stated that the clarificatory amendment rooted in statutory provisions and the foundation was from statutory scheme itself inasmuch as the e-assessment of Income Escaping Assessment (re-assessment) Scheme, 2022 divides the re-assessment process into two stages namely, the pre-assessment enquiry stage and the assessment/reassessment stage. The first stage requires the JAO to follow the procedure

prescribed under Section 148A and determine whether a case is fit for reassessment and upon such satisfaction, issue notice under Section 148. The second stage relates to the conduct of assessment/reassessment proceedings through National Faceless Assessment Centre. Consequently, once JAO reaches the satisfaction contemplated under Section 148A, the issuance of notice under Section 148 necessarily follows from such satisfaction and forms part of the same statutory process.

23. It was further averred in the counter affidavit that the notification No.18 of 2022, dt.29.03.2022 does not provide that notice under Section 148 is required to be issued in a faceless manner and the same was never brought within the ambit of faceless procedure. It was the specific case of the Revenue that under the reassessment frame work, cases are identified through risk management system and are flagged electronically for consideration and in the said process the Jurisdictional Assessing Officer has no role in selection of cases for reassessment and the Jurisdictional Assessing Officer only performs the statutory functions assigned under Sections 148A and 148. Introduction of Section 147A into the Income Tax Act, 1961, with retrospective effect is to remove the basis on which the various Hon’ble High

Courts have quashed the respective notices issued by Jurisdictional Assessing Officers.

24. It was further stated that through the amendment, the Revenue has validated the Act by removing the defect in the statute retrospectively. The twin test for Validating Acts is 1) Remove the cause of invalidity by curing the defect or lack of authority pointed out by a Court and 2) such removal of defect must be done through a subsequent enactment passed with retrospective effect. The insertion of Section 147A vide Section 9 of the Finance Act, 2026 satisfies the above twin test, therefore the same cannot be declared as ultra vires.

25. It was further contended as a first, through a non-obstante clause, Section 147A has expressly overridden Section 151A and the e-assessment of Income Escaping Assessments Scheme, 2022 framed under the Section and the substance of the judgments rendered by various High Courts been gotten over. It was further stated that the second part of Section 148A makes clear that the Assessing Officer for the purposes of Section 148 and 148A shall mean and shall always been deemed to have meant to be an Assessing Officer other than the National

Faceless Assessment Center or any other assessment unit referred to under Sub-Section 3 of Section 144B. The amendment was brought in after satisfying the twin test for validation by getting over the requirements of Section 151A and reaffirming the jurisdiction to the Jurisdictional Assessing Officer (JAO).

26. It was further contended that it is settled law that a retrospective validation by Parliament on the legislation is also part of the sovereign discharge of power and within the legitimate constitutional frame work.

27. It was further contended that the issues raised in these writ petitions do not involve the levy of any tax retrospectively as it involved only providing clarification regarding the intention of the legislature on the proper assessment process, the principle involved that if the legislature has competence to do something it has the natural authority to apply the principle retrospectively provided it does not act arbitrarily.

28. It is further averred in the counter affidavit that Finance Act, 2026 (Act No.4 of 2026) has been gazetted on 30.03.2026 and Section 147A shall be inserted and shall be

deemed to have been inserted with effect from 01.04.2021. Therefore, the contention of the petitioners that the amendment was made to repealed Act is without any merit or substance.

29. It was further contended that Section 1 of Finance Act, 2026 i.e., “short title and commencement”, provides that the provisions of Finance Act, 2026 come into force on 01.04.2026, except specified otherwise. The said words would entitle that unless specified by this Act, the provisions of Section would be applicable from 01.04.2026 and where a provision is otherwise provided for, such provision would come into force from the date specifically prescribed therein.

30. It was further stated that Section 536 of Income Tax Act, 2026 also provides that the provision of earlier Act, would continue to apply and nothing shall effect the previous operation of the repealed Act and the repealed Act would continue to be applicable in respect of pending assessments initiated before or after the repeal of the Act.

31. Heard learned counsel for the petitioners and Sri N.Venkataraman, learned Additional Solicitor General of India.

32. Perused the material available on record.

**CONSIDERATION:-**

33. The legislature vide Act 38 of 2020 enacted Sections 130, 135A, 144B and 151A to the Income Tax Act with effect from 01.11.2020 by permitting the Central Government to frame schemes so as to carry out certain functions under the above referred to provisions in faceless manner. For proper appreication of the case on hand, the above provisons are extracted hereunder:

**Section 130:**

> *"130. (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of —*
> *(a) exercise of all or any of the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities by or under this Act as referred to in section 120; or*
> *(b) vesting the jurisdiction with the Assessing Officer as referred to in section 124; or*
> *(c) exercise of power to transfer cases under section 127; or*
> *(d) exercise of jurisdiction in case of change of incumbency as referred to in section 129,*
> *so as to impart greater efficiency, transparency and accountability by—*
> *(i) eliminating the interface between the income-tax authority and the assessee or any other person, to the extent technologically feasible;*
> *(ii) optimising utilisation of the resources through economies of scale and functional specialisation;*
> *(iii) introducing a team-based exercise of powers and performance of functions by two or more income-tax authorities, concurrently, in respect of any area or persons or classes of persons or incomes or classes of*

*income or cases or classes of cases, with dynamic jurisdiction.*

*(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:*

*Provided that no direction shall be issued after the 31st day of March, 2022.*

*(3) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament."*

**Section 135A:-**

***"135A.** (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of calling for information under section 133, collecting certain information under section 133B, or calling for information by prescribed income-tax authority under section 133C, or exercise of power to inspect register of companies under section 134, or exercise of power of Assessing Officer under section 135 so as to impart greater efficiency, transparency and accountability by—*

*(a) Eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;*
*(b) optimising utilisation of the resources through economies of scale and functional specialization*
*(c) introducing a team-based exercise of powers, including to call for, or collect, or process, or utilise, the information, with dynamic jurisdiction*

*(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:*

***Provided** that no direction shall be issued after the 31st day of March, 2022:*

[84]*[**Provided further** that the Central Government may amend any direction, issued under this sub-section on or*

*before the 31st day of March, 2022, by notification in the Official Gazette.]*
*(3) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament."*

**Section 144B**

*"144B. (1) Notwithstanding anything to the contrary contained in any other provision of this Act, the assessment, reassessment or recomputation under sub-section (3) of section 143 or under section 144 or under section 147, as the case may be, with respect to the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure, namely:—*

*(i) the National Faceless Assessment Centre shall assign the case selected for the purposes of faceless assessment under this section to a specific assessment unit through an automated allocation system.*

*(ii) the National Faceless Assessment Centre shall intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down under this section*

*(iii) a notice shall be served on the assessee, through the National Faceless Assessment Centre, under sub-section (2) of section 143 or under sub-section (1) of section 142 and the assessee may file his response to such notice within the date specified therein, to the National Faceless Assessment Centre which shall forward the same to the assessment unit.*

*(iv) where a case is assigned to the assessment unit, under clause (i), it may make a request through the National Faceless Assessment Centre for—*

*(a) obtaining such further information, documents or evidence from the assessee or any other person, as it may specify;*
*(b) conducting of enquiry or verification by verification unit;*
*(c) seeking technical assistance in respect of determination of arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter by referring to the technical unit;*

*(v) where a request under sub-clause (a) of clause (iv) has been initiated by the assessment unit, the National*

*Faceless Assessment Centre shall serve appropriate notice or requisition on the assessee or any other person for obtaining the information, documents or evidence requisitioned by the assessment unit and the assessee or any other person, as the case may be, shall file his response to such notice within the time specified therein or such time as may be extended on the basis of an application in this regard, to the National Faceless Assessment Centre which shall forward the reply to the assessment unit;*

*(vi) where a request, -*

*(a) for conducting of enquiry or verification by the verification unit has been made by the assessment unit under sub-clause (b) of clause (iv), the request shall be assigned by the National Faceless Assessment Centre to a verification unit through an automated allocation system; or*

*(b) for reference to the technical unit has been made by the assessment unit under sub-clause (c) of clause (iv), the request shall be assigned by the National Faceless Assessment Centre to a technical unit through an automated allocation system;*

*(vii) the National Faceless Assessment Centre shall send the report received from the verification unit or the technical unit, as the case may be, based on the request referred to in clause (vi) to the concerned assessment unit;*

*(viii) where the assessee fails to comply with the notice served under clause (v) or notice issued under sub-section (1) of section 142 or the terms of notice issued under sub-section (2) of section 143, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;*

*(ix) the assessment unit shall serve upon such assessee, as referred to in clause (viii), a notice, through the National Faceless Assessment Centre, under section 144, giving him an opportunity to show-cause on a date and time as specified in such notice as to why the assessment in his case should not be completed to the best of its judgment;*

*(x) the assessee shall, within the time specified in the notice referred to in clause (ix) or such time as may be extended on the basis of an application in this regard, file his response to the National Faceless Assessment*

*Centre which shall forward the same to the assessment unit;*

*(xi) where the assessee fails to file response to the notice served under clause (ix) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;*

*(xii) the assessment unit shall, after taking into account all the relevant material available on the record, prepare, in writing,—*

*(a) an income or loss determination proposal, where no variation prejudicial to assessee is proposed and send a copy of such income or loss determination proposal to the National Faceless Assessment Centre; or*

*(b) in any other case, a show cause notice stating the variations prejudicial to the interest of assessee proposed to be made to the income of the assessee and calling upon him to submit as to why the proposed variation should not be made and serve such show cause notice, on the assessee, through the National Faceless Assessment Centre;*

*(xiii) the assessee shall file his reply to the show cause notice served under sub-clause (b) of clause (xii) on a date and time as specified therein or such time as may be extended on the basis of an application made in this regard, to the National Faceless Assessment Centre, which shall forward the reply to the assessment unit;*

*(xiv) where the assessee fails to file response to the notice served under sub-clause (b) of clause (xii) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;*

*(xv) the assessment unit shall, after considering the response received under clause (xiii) or after receipt of intimation under clause (xiv), as the case may be, and taking into account all relevant material available on record, prepare an income or loss determination proposal and send the same to the National Faceless Assessment Centre;*

*(xvi) upon receipt of the income or loss determination proposal, as referred to in sub-clause (a) of clause (xii) or clause (xv), as the case may be, the National Faceless*

*Assessment Centre may, on the basis of guidelines issued by the Board,—*

*(a) convey to the assessment unit to prepare draft order in accordance with the income or loss determination proposal, which shall thereafter prepare a draft order; or*
*(b) assign the income or loss determination proposal to a review unit through an automated allocation system, for conducting review of such proposal;*

*(xvii) the review unit shall conduct review of the income or loss determination proposal assigned to it by the National Faceless Assessment Centre, under sub-clause (b) of clause (xvi), whereupon it shall prepare a review report and send the same to the National Faceless Assessment Centre;*

*(xviii) the National Faceless Assessment Centre shall, upon receiving the review report under clause (xvii), forward the same to the assessment unit which had proposed the income or loss determination proposal;*

*(xix) the assessment unit shall, after considering such review report, accept or reject some or all of the modifications proposed therein and after recording reasons in case of rejection of such modifications, prepare a draft order;*

*(xx) the assessment unit shall send such draft order prepared under sub-clause (a) of clause (xvi) or under clause (xix) to the National Faceless Assessment Centre;*

*(xxi) in case of an eligible assessee, where there is a proposal to make any variation which is prejudicial to the interest of such assessee, as mentioned in sub-section (1) under section 144C, the National Faceless Assessment Centre shall serve the draft order referred to in clause (xx) on the assessee;*

*(xxii) in any case other than that referred to in clause (xxi), the National Faceless Assessment Centre shall convey to the assessment unit to pass the final assessment order in accordance with such draft order, which shall thereafter pass the final assessment order and initiate penalty proceedings, if any, and send it to the National Faceless Assessment Centre;*

*(xxiii) upon receiving the final assessment order as per clause (xxii), the National Faceless Assessment Centre shall serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, along with*

*the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;*

*(xxiv) where a draft order is served on the assessee as referred to in clause (xxi), such assessee shall,—*

*(a) file his acceptance of the variations proposed in such draft order to the National Faceless Assessment Centre; or*

*(b) file his objections, if any, to such various with,-*

*(I) the Dispute Resolution Panel, and*

*(II) the National Faceless Assessment Centre,*

*within the period specified in sub-section (2) of section 144C;*

*(xxv) the National Faceless Assessment Centre shall,--*

*(a) upon receipt of acceptance from the eligible assessee; or*

*(b) if no objections are received from the eligible assessee, within the period specified in sub-section (2) of section 144C*

*intimate the assessment unit to complete the assessment on the basis of the draft order;*

*(xxvi) the assessment unit shall, upon receipt of intimation under clause (xxv), pass the assessment order, in accordance with the relevant draft order, within the time allowed under sub-section (4) of section 144C and initiate penalty proceedings, if any, and send the order to the National Faceless Assessment Centre;*

*(xxvii) where the eligible assessee files objections with the Dispute Resolution Panel, under sub-clause (b) of clause (xxiv), the National Faceless Assessment Centre shall send such intimation along with a copy of objections filed to the assessment unit;*

*(xxviii) the National Faceless Assessment Centre shall, in a case referred to in clause (xxvii), upon receipt of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, forward such directions to the assessment unit;*

*(xxix) the assessment unit shall, in conformity with the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, complete the assessment within the time allowed in sub-section (13) of section 144C and initiate penalty proceedings, if any,*

*and send a copy of the assessment order to the National Faceless Assessment Centre;*

*(xxx) the National Faceless Assessment Centre shall, upon receipt of the assessment order referred to in clause (xxvi) or clause (xxix), as the case may be, serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, along with the demand notice, specifying the sum payable by, or the amount of refund due to, the assessee on the basis of such assessment;*

*(xxxi) the National Faceless Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the provisions of this Act;*

*(xxxii) if at any stage of the proceedings before it, the assessment unit having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary to do so, it may, upon recording its reasons in writing, refer the case to the National Faceless Assessment Centre stating that the provisions of sub-section (2A) of section 142 may be invoked and such case shall be dealt with in accordance with the provisions of sub-section (7).*

*(2) The faceless assessment under sub-section (1) shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board.*

*(3) The Board may, for the purposes of faceless assessment, set up the following Centre and units and specify their functions and jurisdiction, namely:—*

*(i) a National Faceless Assessment Centre to facilitate the conduct of faceless assessment proceedings in a centralised manner;*

*(ii) such assessment units, as it may deem necessary to conduct the faceless assessment, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under this Act, seeking information or clarification on points or issues so identified, analysis of the material furnished by the*

*assessee or any other person, and such other functions as may be required for the purposes of making faceless assessment, and the term "assessment unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;*

*(iii) such verification units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification and the term "verification unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board:*

***Provided*** *that the function of verification unit under this section may also be performed by a verification unit located in any other faceless centre set up under the provisions of this Act or under any scheme notified under the provisions of this Act; and the request for verification may also be assigned through the National Faceless Assessment Centre to such verification unit;*

*(iv) such technical units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter under this Act or an agreement entered into under section 90 or 90A, which may be required in a particular case or a class of cases, under this section and the term "technical unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;*

*(v) such review units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of review of the income determination proposal assigned under sub-clause (b) of clause (xvi) of sub-section (1), which includes checking whether the relevant and material evidence has been brought on record, relevant points of fact and law have been duly incorporated, the issues requiring addition or disallowance have been incorporated and such other functions as may be required for the purposes of review and the term "review unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the*

*Board.*

*(4) The assessment unit, verification unit, technical unit and the review unit shall have the following authorities, namely:—*

*(i) Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be;*

*(ii) Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;*

*(iii) such other income-tax authority, ministerial staff, executive or consultant, as may be considered necessary by the Board.*

*(5) All communications, —*

*(i) among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the National Faceless Assessment Centre;*

*(ii) between the National Faceless Assessment Centre and the assessee, or his authorised representative, or any other person shall be exchanged exclusively by electronic mode; and*

*(iii) between the National Faceless Assessment Centre and various units shall be exchanged exclusively by electronic mode:*

*Provided that the provisions of this sub-section shall not apply to the enquiry or verification conducted by the verification unit in the circumstances as may be specified by the Board in this behalf.*

*(6) For the purposes of faceless assessment—*

*(i) an electronic record shall be authenticated by —*

*(a) the National Faceless Assessment Centre by way of an electronic communication;*

*(b) the assessment unit or verification unit or technical unit or review unit, as the case may be, by affixing digital signature;*

*(c) assessee or any other person, by affixing his digital signature or under electronic verification code, or by logging into his registered account in the designated portal;*

*(ii) every notice or order or any other electronic communication shall be delivered to the addressee, being the assessee, by way of—*

*(a) placing an authenticated copy thereof in the registered account of the assessee; or*

*(b) sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative; or*

*(c) uploading an authenticated copy on the Mobile App of the assessee,*

*and followed by a real time alert;*

*(iii) every notice or order or any other electronic communication shall be delivered to the addressee, being any other person, by sending an authenticated copy thereof to the registered email address of such person, followed by a real time alert;*

*(iv) the assessee shall file his response to any notice or order or any other electronic communication, through his registered account, and once an acknowledgement is sent by the National Faceless Assessment Centre containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated;*

*(v) the time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000 (21 of 2000);*

*(vi) a person shall not be required to appear either personally or through authorised representative in connection with any proceedings before any unit set up under this section;*

*(vii) in a case where a variation is proposed in the income or loss determination proposal or the draft order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per such income or loss determination proposal, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority of the relevant unit;*

*(viii) where the request for personal hearing has been received, the income-tax authority of relevant unit shall allow such hearing, through National Faceless Assessment Centre, which shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board;*

*(ix) subject to the proviso to sub-section (5), any examination or recording of the statement of the assessee or any other person (other than the statement recorded in the course of survey under section 133A) shall be conducted by an income-tax authority in the relevant unit, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board;*

*(x) the Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the assessee, or his authorised representative, or any other person is not denied the benefit of faceless assessment merely on the consideration that such assessee or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end;*

*(xi) the Principal Chief Commissioner or the Principal Director General, as the case may be, in-charge of the National Faceless Assessment Centre shall, with the prior approval of the Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Assessment Centre and the units set up, in an automated and mechanised environment.*

*(7) (a) The Principal Chief Commissioner or the Principal Director General, as the case may be, in-charge of the National Faceless Assessment Centre shall, in accordance with the procedure laid down by the Board in this regard, if he considers appropriate that the provisions of sub-section (2A) of section 142 section 142 may be invoked in the case,—*

*(i) forward the reference received from an assessment unit under clause (xxxii) of sub-section (1) to the Principal Chief Commissioner or Chief Commissioner or Principal*

*Commissioner or Commissioner having jurisdiction over such case, and inform the assessment unit accordingly;*

*(ii) transfer the case to the Assessing Officer having jurisdiction over such case in accordance with sub-section (8);*

*(b) where a reference has been received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner under sub-clause (i) of clause (a), he shall direct the Assessing Officer, having jurisdiction over the case, to invoke the provisions of sub-section (2A) of section 142*

*(c) where a reference has not been forwarded to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, having jurisdiction over the case, in a case referred to in sub-clause (i) of clause (a), the assessment unit shall proceed to complete the assessment in accordance with the procedure laid down in this section.*

*(8) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Principal Chief Commissioner or the Principal Director General, as the case may be, in-charge of National Faceless Assessment Centre may, at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board.*

*(9) [Omitted by the Finance Act, 2022, w.r.e.f. 1-4-2021.]*
*(10) Omitted by the Finance Act, 2022, w.e.f. 1-4-2022.]*
*Explanation.—In this section, unless the context otherwise requires—*

*(a) "addressee" shall have the same meaning as assigned to it in clause (b) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*
*(b) "authorised representative" shall have the same meaning as assigned to it in sub-section (2) of section 288*
*(c) "automated allocation system" means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources;*
*(d) "automated examination tool" means an algorithm for standardised examination of draft orders, by using suitable technological tools, including artificial intelligence and machine learning, with a view to reduce the scope of discretion;*

*(e) "computer resource" shall have the same meaning as assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*

*(f) "computer system" shall have the same meaning as assigned to it in clause (l) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*

*(g) "computer resource of assessee" shall include assessee's registered account in designated portal of the Income-tax Department, the Mobile App linked to the registered mobile number of the assessee, or the registered email address of the assessee with his email service provider;*

*(h) "digital signature" shall have the same meaning as assigned to it in clause (p) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*

*(i) "designated portal" means the web portal designated as such by the Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Assessment Centre;*

*(j) "Dispute Resolution Panel" shall have the same meaning as assigned to it in clause (a) of sub-section (15) of section 144C;*

*(k) "faceless assessment" means the assessment proceedings conducted electronically in 'e-Proceeding' facility through assessee's registered account in designated portal;*

*(l) "electronic record" shall have the same meaning as assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*

*(la) "electronic verification code" means a code generated for the purpose of electronic verification as per the data structure and standards specified by the Principal Director General or Director General, as the case may be, in-charge of information technology;*

*(m) "eligible assessee" shall have the same meaning as assigned to in clause (b) of sub-section (15) of section 144C;*

*(n) "email" or "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;*

*(o) "hash function" and "hash result" shall have the same meaning as assigned to them in the Explanation to sub-*

*section (2) of section 3 of the Information Technology Act, 2000 (21 of 2000);*

*(p) "Mobile app" shall mean the application software of the Income-tax Department developed for mobile devices which is downloaded and installed on the registered mobile number of the assessee;*

*(q) [***]*

*(r) "real time alert" means any communication sent to the assessee, by way of Short Messaging Service on his registered mobile number, or by way of update on his Mobile App, or by way of an email at his registered email address, so as to alert him regarding delivery of an electronic communication;*

*(s) "registered account" of the assessee means the electronic filing account registered by the assessee in designated portal;*

*(t) "registered e-mail address" means the e-mail address at which an electronic communication may be delivered or transmitted to the addressee, including—*

*(i) the e-mail address available in the electronic filing account of the addressee registered in designated portal; or*

*(ii) the e-mail address available in the last income-tax return furnished by the addressee; or*

*(iii) the e-mail address available in the Permanent Account Number*

*(iv) in the case of addressee being an individual who possesses the Aadhaar number, the e-mail address of addressee available in the database of Unique Identification Authority of India; or*

*(v) in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs; or*

*(vi) any e-mail address made available by the addressee to the income-tax authority or any person authorised by such authority;*

*(u) "registered mobile number" of the assessee means the mobile number of the assessee, or his authorised representative, appearing in the user profile of the electronic filing account registered by the assessee in designated portal;*

*(v) "video conferencing or video telephony" means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time.*

**Section 151A:-**

> *"151A. (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of assessment, reassessment or re-computation under section 147 or issuance of notice under section 148 35[or conducting of enquiries or issuance of show-cause notice or passing of order under section 148A] or sanction for issue of such notice under section 151, so as to impart greater efficiency, transparency and accountability by—*
>
> *(a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;*
> *(b) optimising utilisation of the resources through economies of scale and functional specialisation;*
>
> *(c) introducing a team-based assessment, reassessment, re-computation or issuance or sanction of notice with dynamic jurisdiction.*
>
> *(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification: Provided that no direction shall be issued after the 31st day of March, 2022.*
>
> *(3) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament."*

34. Under these sections, the Central Government is empowered to make schemes by notifying the same in the Official Gazette for the purposes mentioned therein.

**Scheme framed under Section 130 of the Act.**

***MINISTRY OF FINANCE***
***(Department of Revenue)***
***(CENTRAL BOARD OF DIRECT TAXES)***
***NOTIFICATION***
***New Delhi, the 28th March, 2022***

*"S.O. 1400(E).—In exercise of the powers conferred by sub-sections (1) and (2) of section 130 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following Scheme, namely:-*

*1. Short title and commencement.—*

*(1) This Scheme may be called the Faceless Jurisdiction of Income tax Authorities Scheme, 2022.*

*(2) It shall come into force with effect from the date of its publication in the Official Gazette.*

*2. Definitions.— (1) In this Scheme, unless the context otherwise requires, —*

*(a) —Act means the Income-tax Act, 1961 (43 of 1961);*
*(b) —automated allocation means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources;*

*(2) words and expressions used herein and not defined, but defined in the Act, shall have the meaning respectively assigned to them in the Act.*

*3. Scope, Powers and Performance of functions of income-tax authorities. — For the purpose of this Scheme, —*

*(a) the exercise of all or any or the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities, by or under the Act as referred to in section 120 of the Act; or*

*(b) vesting the jurisdiction with the Assessing Officer as referred to in section 124 of the Act,*

*shall be in a faceless manner, through automated allocation, in accordance with and to the extent provided in—*

*(i) section 144B of the Act with reference to making faceless assessment of total income or loss of assessee;*

*(ii) the Faceless Appeal Scheme, 2021 notified under sub-sections (6B) and (6C) of section 250 of the Act with reference to the disposal of appeals;*

*(iii) the Faceless Penalty Scheme, 2021 notified under sub-sections (2A) and (2B) of section 274 of the Act with reference to imposition of penalty under Chapter XXI of the Act;*

*(iv) the e-Verification Scheme, 2021 notified under sub-sections (1) and (2) of section 135A of the Act with reference to the calling for of information under section 133 of the Act, collecting certain information under section 133B of the Act, or calling for information by prescribed authority under section 133C of the Act, or exercise of power to inspect register of companies under section 134, or exercise of power of Assessing Officer under section 135 of the Act;*

*(v) the e-Settlement Scheme, 2021 notified under sub-sections (11) and (12) of section 245D of the Act with reference to the settlement of pending applications by the interim Board;*

*(vi) the e-advance rulings Scheme, 2022 notified under sub-sections (9) and (10) of section 245R of the Act with reference to dispute resolution for persons or class of persons, as specified by the Board, who may opt for dispute resolution under the Chapter XIX-AA of the Act with reference to dispute arising from any variation in the specified order fulfilling the specified conditions. [Notification No. 15/2022/F. No. 370142/13/2022-TPL] SHEFALI SINGH, Under Secy.*

**Scheme framed under Section 135A of the Act**

***MINISTRY OF FINANCE***
*(Department of Revenue)*
*(CENTRAL BOARD OF DIRECT TAXES)*
*NOTIFICATION*
*New Delhi, the 13th December, 2021*

*S.O.5187(E):-- In exercise of the powers conferred by sub-sections (1) and (2) of section 135A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following Scheme, namely:--*

1. *Short title and commencement.-(1) This Scheme may be called the e-Verification Scheme, 2021.*

*(2) It shall come into force on the date of its publication in the Official Gazette.*

*2. Definitions.-(1) In this Scheme, unless the context otherwise requires,--*

*(a) "Act" means the Income-tax Act, 1961 (43 of 1961);*

*(b) "addressee" shall have the same meaning as assigned to it in clause (b) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*

*(c) "authorised representative" shall have the same meaning as assigned to it in sub-section (2) of section 288 of the Act;*

*(d) "automated allocation system" means an algorithm for randomized allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimize the use of resources;*

*(e) "Commissioner of Income-tax (e-Verification)" means the prescribed income-tax authority under section 133C of the Act read with rule 12D of the Income-tax Rules, 1962.*

*(f) "computer resource" shall have the same meaning as assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*

*(g) "computer system" shall have the same meaning as assigned to it in clause (l) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*

*(h) "designated portal" means the web portal designated as such by the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be;*

*(i) "digital signature" shall have the same meaning as assigned to it in clause (p) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*

*(j) "electronic record" shall have the same meaning as assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*

*(k) "e-mail" or "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;*

*(l) "Prescribed Authority" shall mean any income-tax authority working in the Directorate of Income-tax (Intelligence and Criminal Investigation), who is authorised by the Board to act as such authority for the purposes of this Scheme;*

*(m) "registered account" of the assessee means the electronic filing account registered by the assessee in designated portal;*

*(n) "registered e-mail address" means the e-mail address at which an electronic communication may be delivered or transmitted to the addressee, including- (i) the e-mail address available in the electronic filing account of the addressee registered in the designated portal; or (ii) the e-mail address available in the last income-tax return furnished by the addressee; or (iii)) the e-mail address available in the permanent account number database relating to the addressee; or (iv) in the case of addressee being an individual who possesses the Aadhaar number, the e-mail address of addressee available in the database of Unique Identification Authority of India; or (v) in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs; or (vi) any e-mail address made available by the addressee to the income-tax authority or any person authorised by such authority;*

*(o) "registered mobile number" of the addressee means either or both of- (i) the mobile number of the assessee, or his authorised representative, appearing in the user profile of the electronic filing*

*account registered by the assessee in designated portal; (ii) in the case of addressee, being an individual who possesses the Aadhaar number, the mobile number available with the database of Unique Identification Authority of India.*

*(p) "risk management strategy" means an algorithm for standardised examination of information, by using suitable technological tools, including artificial intelligence and machine learning, with a view to reduce the scope of risk, as decided by the Board from time to time:*

*(q) "rules" means Income-tax Rules, 1962;*

*(r) "scrutiny assessment" means assessment under section 143 or section 144 or section 147 or section 153A or section 153C of the Act:*

*(s) "video telephony" means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time.*

*(2) Words and expressions used herein and not defined but defined in the Act shall have the meaning respectively assigned to them in the Act.*

*3. Scope of the Scheme:- (1) The scope of the Scheme shall be in respect of:*

*(i) calling for information under section 133 of the Act;*

*(ii) collecting certain information under section 133B of the Act;*

*(iii) calling for information by the prescribed income-tax authority under section 133C of the Act;*

*(iv) exercise of power to inspect registers of companies under section 134 of the Act; and*

*(v) exercise of power of Assessing Officer under section 135 of the Act.*

*(2) The Scheme shall be applicable to exercise the functions referred to in sub-paragraph (1) for processing or utilisation of the information which is,--*

*(i) in possession of the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be; or*

*(ii) made available to the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, by- (a) the Director General of Income-tax (Intelligence and Criminal Investigation); (b) the Commissioner of Income-tax in charge of the Processing Centre for processing of returns; (c) the Commissioner of Income-tax in charge of the Centralised Processing Centre (TDS) for processing of statement of tax deducted at source; or (d) any other authority, body or person.*

*4. Electronic Collection and Verification.--(1) The Commissioner of Income-tax (e-Verification) shall collect the information referred to in sub-paragraph (1) of paragraph 3, in accordance with the procedure laid down by the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be.*

*(2) The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, shall make available the information referred to in sub-paragraph (2) of paragraph 3, to the Commissioner of Income-tax (e-Verification)- (i) which was uploaded to the registered account or sent on the registered mobile number, wherever available, of the assessee and not accepted by him or in a case where no response has been received from the assessee within ninety days; (ii) in respect of which no registered e-mail account or mobile number is on record.*

*(3) The Commissioner of Income-tax (e-Verification) shall process the information made available to it for initial e-verification.*

*(4) The initial e-verification by the Commissioner of Income-tax (e-verification) shall be through an automated issuance of communication to the source from where the information is received and the Principal Director General of Income-tax (Systems) or*

*Director General of Income-tax (Systems), as the case may be, shall enable such automated communication.*

*(5) In cases where the mismatch between the amount accepted by the assessee and the amount reported by the reporting entity persists, the information after such initial e-verification shall be run through a risk management strategy laid down by the Board and the information found to be no or low risk on such risk criteria, where no further action is required, shall be processed for closure.*

*(6) The remaining information shall be transferred electronically by the Principal Director General of Income-lax (Systems) or Director General of Income-tax (Systems), as the case may be, to the Prescribed Authority through a process of automated allocation system.*

*(7) The verification of the information so allocated, shall be completed by the Prescribed Authority in the manner as per the procedure laid down in this regard by the Director General of Income-tax (Intelligence and Criminal Investigation), with the prior approval of the Board.*

*(8) The information verified as above, shall be sent back electronically in the form of a preliminary verification report for verification to the Commissioner of Income-tax (e-Verification).*

*(9) The Commissioner of Income-tax (e-Verification) shall match the preliminary verification report with the information in the return of income of the respective assessee, where such return is available electronically and prepare a final verification report.*

*(10) Based on the final verification report, the information found to be low risk in accordance with the criteria approved by the Board shall be considered for closure.*

*(11) The remaining information in the form of final verification report shall be processed in accordance with sub-paragraph 12.*

*(12) If the information referred to in sub-paragraph (11),- (i) pertains to a pending scrutiny assessment, it shall be made available electronically to the Faceless*

*Assessing Officer or Jurisdictional Assessing Officer, as the case may be. (ii) does not pertain to a pending scrutiny assessment, it shall be utilised for further necessary action in accordance with the provisions of the Act.*

*5. Random Allocation of information.--The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall, with the approval of the Board devise a process to randomly allocate or transfer the information, referred to in sub-paragraph (6) of paragraph 4, to the Prescribed Authority*

*6. Issue and service of notice.-- (1) For the purpose of verification of information, the Prescribed Authority shall issue notice to a person requiring him to furnish information or documents as necessary for such verification.*

*(2) The notice shall be issued under digital signature of the Prescribed Authority.*

*(3) The information or documents called for under sub-paragraph (1) shall be furnished on or before the date specified in the notice or as extended by the Prescribed Authority on the request made by the person.*

*7. Response to notice.--The Director General of Income-tax (Systems) Shall in consultation with the Director General of Income-tax (Intelligence and Criminal Investigation) - (i) shall specify the procedure, formats and standards for furnishing response to the notices; and (i) may specify a machine readable structured format for furnishing the information or documents by the person in response to the notice issued under paragraph 6.*

*8. No personal appearance.-(1) No person shall be required to appear personally or through authorised representative before the Prescribed Authority in connection with any proceedings.*

*(2) In exceptional cases, where personal appearance is requested by such person, the Prescribed Authority may allow personal appearance through video conferencing or video telephony, to the extent technologically feasible.*

*9. Communication exclusively by electronic mode.-- For the purposes of this Scheme,- (a) all communications between the Commissioner of Income-tax (e-Verification) and various authorities from whom the information is received, shall be in the electronic mode; (b) all communications between the Commissioner of Income-tax (e-Verification) and the Director General of Income-tax (Intelligence and Criminal Investigation), shall be in the electronic mode; (c) every notice or any other communication under this Scheme from the Prescribed Authority shall be delivered to the person or his authorised representative electronically, to the extent technologically feasible; (d) the person or the authorised representative shall furnish his response to any notice or any other electronic communication, under this Scheme, to the Prescribed Authority electronically, to the extent technologically feasible; (e) all communications between the Commissioner of Income-tax (e-Verification) and the Faceless Assessing Officer or the Jurisdictional Assessing Officer shall be conducted through the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be.*

*10. Authentication of electronic record.--For the purposes of this Scheme, an electronic record shall be authenticated by the - (i) Commissioner of Income-tax (e-Verification) or the Prescribed Authority as the case may be, by affixing its digital signature; (ii) person or his authorised representative, by affixing his digital signature if he is required under the rules to furnish his return of income under digital signature, and in any other case, by communicating through his registered e-mail address.*

*11. Power to specify procedure and processes.- (1) The Director General of Income-tax (Intelligence and Criminal Investigation) shall, with the approval of the Board, specify from time to time, procedures and processes for effective implementation and functioning of this Scheme, with respect to the following matters:- (a) Standard Operating Procedures and techniques of verification to be followed, by the prescribed authorities while verifying such information; (b) managing administration functions such as receipt, scanning, data entry, storage and retrieval of*

*information and documents in a centralised manner; (c) grievance redressal mechanism for handling grievances under the Directorate of Income-tax (Intelligence and Criminal Investigation).*

*(2) The Director General of Income-tax (Systems) shall, with the approval of the Board, specify from time to time, procedures and processes for effective implementation and functioning of this Scheme, with respect to the following matters:- (a) mode and format for issue of acknowledgment of the response furnished by the addressee; (b) provision of web portal facility including login facility, tracking status of verification, display of relevant details, and facility of download; (c) call centre to answer queries and provide support services, including outbound calls and inbound calls seeking information or clarification.*

*[Notification No.137/2021/F.No.370142/57/2021-TPL(Part-I)]*
*SHEFALI SINGH, Under Secy."*

**Scheme framed under Section 151A of the Act**

***MINISTRY OF FINANCE***
*(Department of Revenue)*
*(CENTRAL BOARD OF DIRECT TAXES)*
*NOTIFICATION*
*New Delhi, the 29th March, 2022*

*S.O.1466(E)-In exercise of the powers conferred by sub-section (1) and (2) of section 151 A of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby makes the following scheme.*

*1. Short title and commencement.-(1) This Scheme may be called the e-Assessment of Income Escaping Assessment Scheme, 2022.*

*(2) It shall come into force with effect from the date of its publication in the Official Gazette.*

*2. Definitions.-(1) In this Scheme, unless the context otherwise requires,-*

*(a) "Act" means the Income Tax Act, 1961 (43 of 1961);*

*(b) "automated allocation" means an algorithm for randomized allocation of cases, by using suitable technological tools, including artificial intelligence and*

*machine learning, with a view to optimize the use of resources.*

*(2) Words and expressions used herein and not defined, but defined in the Act, shall have the meaning respectively assigned to them in the Act.*

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

*(a) assessment, reassessment or re-computation 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.*

*[Notification No.18/2022/F.No.370142/16/2022-TPL (Part1)]*
*SHEFALI SINGH, Under Secy".*

35. As per scheme framed under Section 130, the powers and functions conferred on the Jurisdictional Assessing Authority as per Section 120 or 124 as the case may be was required to be done in a faceless manner through automated allocation to the extent provided in Section 144B of the Act with reference to making assessment or reassessment of total income or loss of income.

36. Section 120 deals with the jurisdiction of Income Tax Authorities and Section 124 deals with jurisdiction of Assessing Authorities. For ready reference, the above provisions are extracted hereunder:

## Section 120

*"120. (1) Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.*

*Explanation.—For the removal of doubts, it is hereby declared that any income-tax authority, being an authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions of the income-tax authority lower in rank and any such direction issued by the Board shall be deemed to be a direction issued under sub-section (1).*

*(2) The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.*

*(3) In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income-tax authority authorised by it may have regard to any one or more of the following criteria, namely :—*

*(a) territorial area;*
*(b) persons or classes of persons;*
*(c) incomes or classes of income; and*
*(d) cases or classes of cases.*

*(4) Without prejudice to the provisions of sub-sections (1) and (2), the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein,—*

*(a) authorise any Principal Director General or Director General or Principal Director or Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;*

*(b) empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the*

*Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by an Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director, and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such Additional Commissioner or Additional Director or Joint Commissioner or Joint Director by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.*

*(5) The directions and orders referred to in sub-sections (1) and (2) may, wherever considered necessary or appropriate for the proper management of the work, require two or more Assessing Officers (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases; and, where such powers and functions are exercised and performed concurrently by the Assessing Officers of different classes, any authority lower in rank amongst them shall exercise the powers and perform the functions as any higher authority amongst them may direct, and, further, references in any other provision of this Act or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such higher authority and any provision of this Act requiring approval or sanction of any such authority shall not apply.*

*(6) Notwithstanding anything contained in any direction or order issued under this section, or in section 124, the Board may, by notification in the Official Gazette, direct that for the purpose of furnishing of the return of income or the doing of any other act or thing under this Act or any rule made thereunder by any person or class of persons, the income-tax authority exercising and performing the powers and functions in relation to the said person or class of persons shall be such authority as may be specified in the notification".*

**Section 124**

*"124. (1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any*

*area, within the limits of such area, he shall have jurisdiction—*

*(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and*

*(b) in respect of any other person residing within the area.*

*(2) Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the Director General or the Chief Commissioner or the Commissioner; or where the question is one relating to areas within the jurisdiction of different Director Generals or Chief Commissioners or Commissioners, by the Directors General or Chief Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, specify.*

*(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer—*

*(a) where he has made a return under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;*

*(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (1) of section 142 or under section 148 for the making of the return or by the notice under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier.*

*(4) Subject to the provisions of sub-section (3), where an assessee calls in question the jurisdiction of an Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (2) before the assessment is made.*

*(5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if*

> *any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of section 120.]"*

37. Under this Scheme the Central Government notified the procedure to be undertaken for the purpose of assessment, reassessment or re-computation under Section 147 of the Act and 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 faceless manner to the extent provided in Section 144B.

38. For deciding the issue on hand, Sections 148 and 148A are reproduced hereunder:

> *"148. (1) Before making the assessment, reassessment or re-computation under section 147, the Assessing Officer shall, subject to the provisions of section 148A, issue a notice to the assessee, along with a copy of the order passed under sub-section (3) of section 148A, requiring him to furnish, within such period as may be specified in the notice, 76 [not being less than thirty days from the date of such notice but] not exceeding three months from the end of the month in which such notice is issued, a return of his income or income of any other person in respect of whom he is assessable under this Act during the previous year corresponding to the relevant assessment year:*
>
> *Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year:*

*Provided further that where the Assessing Officer has received information under the scheme notified under section 135A, no notice under this section shall be issued without prior approval of the specified authority.*

*(2) The return of income required under sub-section (1) shall be furnished in such form and verified in such manner and setting forth such other particulars, as may be prescribed, and the provisions of this CWP No.15791-2024 [25] (and other connected cases) Act shall, apply accordingly as if such return were a return required to be furnished under section 139:*

*Provided that any return of income required under sub-section (1), furnished after the expiry of the period specified in the notice under the said sub-section, shall not be deemed to be a return under section 139.*

*(3) For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—*

*(i) any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time; or*
*(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or*
*(iii) any information received under an agreement referred to in section 90 or section 90A of the Act; or*
*(iv) any information made available to the Assessing Officer under the scheme notified under section 135A; or*
*(v)any information which requires action in consequence of the order of a Tribunal or a Court; or*
*(vi) any information in the case of the assessee emanating from survey conducted under section 133A, other than under sub-section (2A) of the said section, on or after the 1st day of September, 2024.*

***148A. Conducting inquiry, providing opportunity before issue of notice under section 148.***

*The Assessing Officer shall, before issuing any notice under section 148,—*

*(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;*

*(b) provide an opportunity of being heard to the assessee, [***] by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);*

*(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);*

*(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires: Provided that the provisions of this section shall not apply in a case where,—*

*(a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or*

*(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or*

> *(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, 2[relate to, the assessee; or*
>
> *(d) the Assessing Officer has received any information under the scheme notified under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.] Explanation.— For the purposes of this section, specified authority means the specified authority referred to in section 151.]*

39. On a conjoint reading of Section 148 and 148A, made it clear that before issuing notice under Section 148, the Assessing Officer to conduct any enquiry, if required with the prior approval of specified authority for taking up action on information which suggests the income chargeable to tax has escaped assessment to provide opportunity of being heard to the assessee by issuing show cause notice. Thereafter, upon consideration of the reply if any is filed by the assessee, the Assessing Officer has to decide whether or not it is a fit case to issue notice under Section 148. If the Assessing Officer comes to an opinion that it is a fit case for reassessment, he is required to pass order under Section 148A(d), within a period of one month from the end of the month in which the reply is received.

40. Thereafter, the Assessing Officer is required to issue notice under Section 148 before making assessment, reassessment or re-computation under Section 147, along with order passed under Section 148A(d) of the Act.

41. In the above backdrop, notices issued by the Jurisdictional Assessing Officers were challenged before the respective Jurisdictional High Courts and upon consideration of the cases, this Court had held that as per section 151A of the Income Tax Act and the scheme made thereunder, the JAO has no jurisdiction to issue the said notices. Later the matter was carried to the Hon'ble Apex Court by the Revenue and pending the Special Leave Petitions, Section 147A was brought into Income Tax Act, 1961 with effect from 01.04.2021. Keeping in view of the subsequent developments in the matter, the Hon'ble Supreme Court while setting aside the orders passed by various Jurisdictional High Courts remanded the matters for fresh consideration by reserving liberty to the assesses to challenge Section 147A of the Income Tax Act, 1961.

42. The counsel for the petitioners would strenuously contend that the amendment is unconstitutional inasmuch as the intent of the legislature in bringing out the said provision into the Act is to see that the judgments rendered by various High Courts in this regard are nullified. It is contended that in order to validate the acts done by the authorities though the same was without jurisdiction, the present amendment was brought in. They would further contend that in order to validate any enactment, there should be ambiguity in the provision, that there was no such ambiguity either in Section 151A or in the scheme made thereunder. In such circumstances, there is no occasion for the Central Government to bring the amendment to the Act. It is further contended that if the legislature is allowed to make such amendments with retrospective effect, the same would be in violation of the Doctrine of separation of powers which is the basic structure of the Constitution. Reliance is placed on judgment of Hon'ble Apex Court in the case of ***"Shri Prithvi Cotton Mills Ltd. and another Vs. Broach Borough Municipality and another[1]"*** to contend that such a validation

[1] (1969) 2 SCC 283

cannot be permitted especially so as to nullify the judgment rendered by various High Courts. It is further contended that the legislature has no competence to make such law with retrospective effect more particularly when the rights of the assessees are at stake. In the said decision, it was *inter alia* held as follows:-

> *"4. When a Legislature sets out to validate a tax declared by a Court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the condition on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a Court holds a tax to be invalidly imposed because the power to tax is wanting or the statue or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax do declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does to it may neutralize the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must*

> *be within the competence of the legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a Validating Law, therefore, 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 and makes adequate provisions in the Validating Law for a valid imposition of the tax."*
>
> (emphasis supplied)

43. Reliance is also placed on the judgment of Hon'ble Apex Court in the case of ***"State of Tamilnadu and another Vs. M.Rayappa Gounder and others[2]",*** the relevant portion of which reads as follows:-

> *"3. The question as to the power of the assessing authority to re-assess the receipts that had escaped assessment under the Madras Entertainments Tax Act, 1939 had come up for consideration before the High Court of Madras in WP No.513 of 1963 (Madras) R Sundararaja Naidu V. Entertainment Tax Officer. Therein the High Court in Madras held that there was no power to re-asses under that Act. Thereafter the State Legislature enacted the Act. The Act among other provisions contains Section 7, a provision relating to validation of assessment and collection of certain taxes. That sections reads.*
>
> *"Notwithstanding anything contained in this Act or in the principal Act or in any judgment, decree or order of any Court no assessment or re-assessment or collection of any tax due on any payment for admission to any entertainment or any cinematograph exhibition which has escaped assessment to tax, or which has been assessed at a rate lower than the rate at which it is assessable, under Section 4 or 4-A of the principal At, made at any*

[2] (1971) 3 SCC 1

*time after the date of the commencement of the principal Act and before the date of the publication of this Act in the Fort St. George Gazette shall be deemed to be invalid or ever to have been invalid on the ground only that such assessment or re-assessment or collection was not in accordance with law and such tax assessed or reassessed or collected or purporting to have been assessed or reassessed or collected, shall, for all purposes, be deemed to be and to have been always validity assessed or reassessed or collected and accordingly-*

*(a) all acts, proceedings or things done or taken by the State Government or by any officer of the State Government or by any other authority in connection with the assessment or reassessment or collection of such tax, shall, for all purposes, be deemed to be and to have always been done or taken in accordance with law.*

*(b) no suit or other proceeding shall be maintained or continued in any Court against the State Government or any person or authority whatsoever for the refund of any tax so paid; and*

*(c) no Court shall enforce any decree or order directing the refund of any tax so paid."*

*The effect of this provision is to overrule the decision of the Madras High Court and not to change the law retrospectively. What the provision says is that notwithstanding any judgment of the Court, the reassessment invalidity made must be deemed to be valid. The Legislature has no power to enact such a provision. A question similar to the one before us came up for consideration before this Court in The Municipal Corporation of the City of Ahmebad V. The New Shrock Spg. And Wog. Co. Ltd. Civil Appeals Nos.2062 to 2064 and 2072 and 2251 of 1969 decided on April 17, 1970 AIR 1970 SC 1292. Dealing with that question this is what this Court observed;*

*"This is a strange provision. Prima facie that provisions appears to command the Corporation to refuse to refund the amount illegally collected despite the orders of this Court and the High Court. The State of Gujarat was not well advised in introducing this provision. That provision attempts to make a direct inroad into the judicial powers of the State. The Legislatures under our Constitution have within the prescribed limits, powers to make laws*

*prospectively as well as retrospectively. By exercise of those powers, the Legislature can remove the basis of a decision rendered by a competent Court thereby rendering that decision ineffective. But no Legislature in this country has power to ask the instrumentalities of the State to disobey or disregard the decision given by Courts. The limits of the power of Legislatures to interfere with the directions issued by Courts were considered by several decisions of this Court. In Shri Prithvi Cotton Mills Ltd., V. The Broach Borough Municipality, Civil Appeals Nos.2197 and 2198 of 1966, decided on April 25, 1969, AIR 1970 SC 192, our present Chief Justice speaking for the Constitution Bench of the Court observed:*

*xxx*

***6. "Mahal Chand Sethia v. State of West Bengal***[3]*, speaking for the Court stated the legal position in these words:*

***"****A Court of law can pronounce upon the validity of any law and declare the same to be null and void if it was beyond the legislative competence of the Legislature or if it infringed the rights enshrined in Part III of the Constitution. Needles to add it can strike down or declare invalid any Act or direction of a State Government which is not authorized by law. The position of a Legislature is however different. It cannot declare any decision of a Court of law to be void or of no effect.*

*7. Again Shah, J. (one of us in Janpada Sabha, Chhindwara V. The Central Provinces Ltd., and State of Madhya Pradesh V. Amalgamated Coal Field Ltd. Civil Appeals Nos.125 to 134 of 1967, decided on 23rd February, 1970 , AIR 1971 SC 57, speaking for the Constitution Bench explained the legal position in these words:*

*Proceeding further, it was observed:*

*"On the words used in the Act, it is plain that the Legislature attempted to overrule or set aside the decision of this Court. That in our Judgment is not open to the Legislature to do under our constitutional scheme. It is open to the Legislature within certain limits to amend the*

[3] Criminal Appeal No.75 of 1969
September 10, 1969 (SC)

> *provisions of the Act retrospectively and to declare what the law shall be deemed to have been, but it is not open to the Legislature to say that a judgment of a Court properly constituted and rendered in exercise of its powers in a matter brought before it shall be deemed to be ineffective and the interpretation of the law shall be otherwise than as declared by the Court."*
>
> (emphasis supplied)

44. In ***"S.R. Bhagwat and another Vs. State of Mysore***"[4], the principles laid down by the Hon'ble Supreme Court with regard to validation of laws were as follows:

> *"12. It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect. We may only refer to two of these judgments.*
>
> *13. The principle which emerged from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events, at large. It cannot, however, set aside an individual decision inter parties and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate Court or tribunal.*
>
> *15. We may note at the very outset that in the present case the High Court had not struck down any legislation which was sought to be re-enacted after removing any defect retrospectively by the impugned provisions. This is a case where on interpretation of existing law, the High Court had given certain benefits to the petitioners. That order of mandamus was sought to be nullified by the enactment of the impugned provisions in a new statue.*

[4](1995) 6 SCC 16

*This in our view would be clearly impressible legislative exercise".*

45. In ***"State of Tamilnadu Vs. State of Kerala and another[5]"***, the Hon'ble Apex Court observed as under**:**

*"99. In Mahal Chand Sethia, while dealing with the argument that although it was open to the State Legislature by an Act and the Governor by an Ordinance to amend the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, it was incompetent for either of them to validate an order of transfer which had been quashed by the issue of a writ of certiorari by the High Court and the order of transfer being virtually dead, could not be resuscitated by the Governor or legislature and the validating measures could not touch any adjudication by the Court. Miter J. Speaking for the Court stated the legal position: (UJ p.619, para4)*

*"4. … A legislature of a State is competent to pass any measure which is within its legislative competence under the Constitution of India. Of course, this is subject to the provisions of Part III of the Constitution. Laws can be enacted either by the Ordinance making power of a Governor or the legislature of a State in respect of the topics covered by the entries in the appropriate List in the Seventh Schedule to the Constitution. Subject to the above limitations laws can be prospective as also retrospective in operation. A court of law can pronounce upon the validity of any law and declare the same to be null and void if it was beyond the legislative competence of the legislature or if it infringed the rights enshrined in Part II of the Constitution. Needless to add it can strike down or declare invalid any Act or direction of a State Government which is not authorized by law. The position of a legislature is however different. It cannot declare any decision of a Court of law to be void or of no effect."*

*32. I may, however, observe that even though the real object of the Act may be to set aside the result of the mandamus issued by the Calcutta High Court, yet, the section does not mention this object at all. Probably this was so because the jurisdiction of a High Court and the*

[5] (2014) 12 SCC 696

*effectiveness of its orders derived their force from Article 226 of the Constitution itself. These could not be touched by an ordinary act of Parliament. Even if Section 3 of the Act seeks to take away the basis of the judgment of the Calcutta High Court, without mentioning it, by enacting what may appear to be a law, yet, I think that, where the rights of the citizen against the State are concerned, we should adopt an interpretation which upholds those rights. Therefore, according to the interpretation I prefer to adopt the rights which had passed into those embodied in a Judgment and became the basis of a mandamus from the High Court could not be taken away in this indirect fashion."*

*105. The importance of power of judicial review in rule of law has been significantly highlighted in P.Sambamurthy. In that case, this Court while holding that provisio to clause (5) of Article 371-D was violative of the basic structure doctrine, observed that: (SCC p.369, para 4)*

*"4. … if the exercise of the power of judicial review can be set at naught by the State Government by overriding the decision against it, it would sound the death knell of the rule of law."*

***Peoples union for civil liberties:***
*107 In people's union for civil liberties, the question under consideration before the three-Judge bench of this Court was the validity of Representation of the People (Amendment) Ordiaence, 2002. The amendment followed the decision of this Court in Assn. for Democratic Reforms. M.B. Shah, J speaking for the majority noticed the earlier decisions of this Court in P. Samba Murthy, Cauvery reference, Municipal Corp. of the City of Ahmedabad, Prithvi Cotton and Mahalchand Sethia and stated : (peoples union for civil liberties case SCC p 438 para 37)*

*"37. … the legislature can change the basis on which a decision is rendered by this Court and change the law in general. However, this power can be exercised subject to constitutional provision, particularly legislative competence and if it is violative of fundamental rights enshrined in Para III of the Constitution, such law would be void as provided under Article 13 of the Constitution. The legislature also cannot declare any decision of a Court of law to be void or of no effect."*

***P. Kannadasan***

*110. Prithvi Cotton has been followed in Hindustan Gum and Chemicals, Vijay Mills Co. and P.Kannadasan. It is not necessary to burden this judgment with all the three judgments as, in our view, reference to one of them i.e., P.Kannadasan this Court noted that the Constitution of India recognized the doctrine of separation of powers between the three organs of the State, namely, the legislature, the executive and the judiciary. The Court said: (SCC pp. 685-86, para 15)*

*"15…. It must be remembered that our Constitution recognizes and incorporates the doctrine of separation of powers between the three organs of the State viz., the legislature, the executive and the judiciary. Even though the Constitution has adopted the parliamentary form of Government where the dividing line between the legislature and the executive becomes thin, the theory of separation of powers is still valid. Ours is also a federal form of Government. The subjects in respect of which the Union and the States can make laws are separately set out in List I and List II of the Seventh Schedule to the Constitution respectively. (List III is, of course, a concurrent list.) The Constitution has invested the Supreme Court and High Courts with the power to invalidate laws made by Parliament and the State Legislatures transgressing the constitutional limitations. Where an Act made by a State Legislature is invalidated by the courts on the ground that the State Legislature is invalidated by the courts on the ground that the State Legislature was not competent to enact it, the State Legislature cannot enact a law declaring that the judgment of the Court shall not operate; it cannot overrule or annul the decision of the Court. But this does not mean that the other legislature which is competent to enact that law cannot enact that law. It can. Similarly, it is open to a legislature to alter the basis of the judgment as pointed out by this Court in Shri Prithvi Cotton Mills Ltd., V. Broach Borough Municipality – all the while adhering to the constitutional limitations; in such a case, the decision of the court becomes ineffective in the sense that the basis upon which it is rendered, is changed. The new law or the amended law so made can be challenged on other grounds but not on the ground that it seeks to ineffectuate or circumvent the decision of the Court. This is what is meant by 'checks and balances' inherent in a system of Government incorporating the concept of separation of powers. This aspect has been repeatedly emphasized by*

> *this Court in numerous decisions commencing from Shri Prithvi Cotton Mills. Under our Constitution, neither wing is superior to the other. Each wing derives its power and jurisdiction from the Constitution. Each must operate within the sphere allotted to it. Trying to make one wing superior to the other would be to introduce an imbalance in the system and a negation of the basic concept of separation of powers inherent in our system of Government."*
>
> (emphasis supplied)

46. In ***"Commissioner of Income Tax Vs. Vatika Township Pvt. Ltd.[6]"*** the Hon'ble Apex Court observed as under:-

> "*31. ….our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit : law looks forward not backward. As was observed in Phillips vs. Eyre[3], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.*
>
> *32. The obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd[4]. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the*

[6] (2014) 367 ITR 466 (SC)

*counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.*

*33. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Government of India & Ors v. Indian Tobacco Association [5], the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in the case of Vijay v. State of Maharashtra & Ors. [6] It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are confronted with any such situation here.*

*34. In such cases, retrospectively is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by out weighing factors."*

(emphasis supplied)

47. In ***"State of Karnataka V. Karnataka Pawn Brokers Association and others[7]"*** speaking through (Deepak Gupta, J), the Hon'ble Apex Court observed as under:

> "18. The second issue is whether the effect of *the judgment in Manakchand Motilal case[8] can be undone by bringing out amendments in question. A large number of authorities have been cited in this regard. We may refer to a few of them.*
>
> *19. In* ***"Shri Prithvi Cotton Mills Ltd., V. Borough Municipality[9]",*** *a Constitution Bench of this Court, dealing with the question of validity of a validation Act passed with a view to get over the judgment of this Court, held that even if it has competence, the Legislature cannot merely pass a law that a decision of this Court shall not bind. This Court held as follows: (SCC pp.286-87, para 4)*
>
> *"4. …. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances…"*
>
> *20.xx*
> *21.xx*
> *22.xx*
> *23.xx*
>
> *24. On analysis of the aforesaid judgments it can be said that the Legislature has the power to enact validating laws including the power to amend laws with retrospective effect. However, this can be done to remove causes of invalidity. When such a law is passed, the Legislature basically corrects the errors which have been pointed out in a judicial pronouncement. Resultantly, it amends the law, by removing the mistakes, committed in the earlier*

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[7] (2018) 6 SCC 363
[8] Manakchand Motilal v. State of Karnataka, 1991 SCC Online Kar 139: ILR 191 Kar 1928
[9] (1969) 2 SCC 283

*legislation, the effect of which is to remove the basis and foundation of the judgment. If this is done, the same does not amount to statutory overruling.*

*25.However, the Legislature cannot set at naught the judgments which have been pronounced by amending the law not for the purpose of making corrections or removing anomalies but to bring in new provisions which did not exist earlier. The legislature may have the power to remove the basis or not exist earlier. The Legislature may have the power to remove the basis or foundation of the judicial pronouncement but the Legislature cannot overturn or set aside the judgment, that too retrospectively by introducing a new provision. The Legislature is bound by the mandamus issued by the Court. A judicial pronouncement is always binding unless the very fundamentals on which it is based are altered and the decision could not have been given in the altered circumstances. The Legislature cannot, by way of introducing a new provision. The Legislature is bound by the mandamus issued by the Court. A judicial pronouncement is always binding unless the very fundamentals on which it is based are altered and the decision could not have been given in the altered circumstances. The Legislature cannot, by way of introducing an amendment, overturn a judicial pronouncement and declare it to be wrong or a nullity. What the Legislature can do is to amend the provisions of the statue to remove the basis of the judgment.*

*26.xx*

*27.Therefore, the State, insofar as it has made the amended provisions retrospective, has attempted to nullify the writ of mandamus issued by the Court in favour of the respondents. This mandamus could not have been set at naught by making the provisions retrospective. This would be a direct breach of the doctrine of separation of powers as laid down in State of T.N.[10]. We are clearly of the view that the State Legislature could not have nullified the judgment passed in Manakchand Motilal case by retrospectively amending the Acts. Therefore, the validating Acts insofar as they are retrospective, are held to be illegal."*

(emphasis supplied)

[10] State of T.N. v. State of Kerala (2014) 12 SCC 696

48. In ***"Madras Bar Association Vs. Union of India and another[11]"***, while dealing with the independence of Judiciary, the Hon'ble Apex Court held as under:

> ***Separation of powers***
>
> *"20. Sir Edward Coke on being summoned by King James I to answer why the King could not himself decide cases which had to go before his own courts of justice, asserted[12] (Prohibitions Del Roy case, ER p.1343)*
> *"… no King after the conquest assumed to himself to give any judgment in any cause whatsoever, which concerned the administration of justice within his realm, but these were solely determined in the Courts of justice".*
> *When the King said that: (ER p.1343)*
>
> *"he thought the law was founded on reason, and that he and others had reason, as well as the Judges"*
>
> ***Coke answered: (ER p.1343)***
>
> *"True it was, that God had endowed His Majesty with excellent science and great endowments of nature; but His Majesty was not learned in the laws of his realm of England, and causes which concern the life, or inheritance, or gods, or fortunes of his subjects, are not to be decided by natural reason, but by the artificial reason and judgment of the law, which law is an at which requires long study and experience, before that a man can attain to the cognizance of it; and that the law was the golden metwand and measure to try the causes of the subjects; and which protected His Majesty in safety and peace. ("The Higher Law-Background of American Constitutional Law" by Edward S.Corwin, pp.38-39).*
>
> *26. The doctrine of separation of powers informs the Indian Constitutional structure and is an essential constituent of rule of law. In other words, the doctrine of separation of powers, though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of the Indian Constitution. The Constitution has made demarcation, without drawing*

[11] (2022) 12 SCC 455
[12] Prohibitions Del Roy, (1607) 12 Co Rep 64: 77 ER 1342

*formal lines between the three organs-legislature, executive and judiciary. Separation of powers between three organs – the legislature, executive and judiciary – is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality under Article 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality under Article 14 of the Constitution.*

***(B) Permissible Legislative overruling:***

*45. The judgment in Shri Prithvi Cotton Mills Ltd., v. Broach Borough Municipality[13] was relied upon by both sides. The validity of the rules framed by Municipal Corporation under Section 73 of the Bombay Municipal Boroughs Act, 1925 for levying a rate on open lands was the subject-matter of challenge in Patel Gordhandas Hargovindas v. Municipal Commissioner[14]. The relevant rule was declared ultra vires of the Act itself. Later, the State Legislature passed a validation Act seeking to validate the imposition of tax, the validity of which was considred in Shri Prithvi Cotton Mills Ltd., This Court held that it is not sufficient to merely declare that the decision of the Court shall not bind as such declaration would amount to the reversal of a decision of the Court which the legislature cannot do. It was further observed that a Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.*

*46. It is open to the legislature within certain limits to amend the provisions of an Act retrospectively and to declare what the law shal be deemed to have been, but it is not open to the legislature to say that a judgment of a court properly constituted and rendered in exercise of its powers in a matter brought before it shall be deemed to be ineffective and the interpretation of the law shall be otherwise than as declared by the Court. The test of judging the validity of the amending and validating enactment is, whether the legislature enacting the validating statue has competence over the subject-matter; whether by validation, the said legislature has removed*

[13] (1969) 2 SCC 283
[14] (1964) 2 SCR 608: AIR 1963 SC 1742

*the defect which the Court had found in the previous laws; and whether the validating law is consistent with the provisions of Part III of the Constitution. In State of T.N. v. State of Kerala, this Court held that any law enacted by the legislature may be invalidated if it is an attempt to interfere with judicial process by being in breach of the doctrine of separation of powers.*

*47.The judgment of this Court in "Madan Mohan Pathak v. Union of India"[15] requires a close scrutiny as it was adverted to and relied upon by both sides. A writ petition was filed in the High Court of Calcutta for a mandamus directing the Life Insurance Corporation ("LIC") to act in accordance with the terms of settlement dated 24.01.1974 read with administrative instructions dated 29.03.1974. The writ petition was allowed by the learned Single Judge against which a letters patent appeal ("LPA") was preferred by LIC. During the pendency of the LPA, LIC (Modification of Settlement) Act, 1976 came into force. The LPA was withdrawn in view of the subsequent legislation and the decision of the learned Single Judge became final. Validity of the said statute was assailed in a writ petition filed under Article 32 by the employes of LIC. Bhagwait, J., speaking for the majority, was of the opinion that the judgment of the Calcutta High Court not a mere declaratory judgment holding an impost or tax as invalid so that a validating statute can remove the defect pointed out in the judgment. He observed that the Judgment of the Calcutta High Court gave effect to the rights of the petitioners by mandamus, directing LIC to pay annual cash bonus. As long as the judgment of the learned Single Judge is not reversed in appeal, it cannot be disregarded or ignored. LIC was held to be bound by the writ of mandamus issued by the Calcutta High Court. Beg., J. in his concurrent opinion, held that the rights which accrued to the employees on the basis of the mandamus issued by the High Court cannot be taken away either directly or indirectly by subsequent legislation.*

*48.Thereafter, Madan Mohan Pathak came up for discussion in "Sri Ranga Match Industries v. Union of India"[16]. Jeevan Reddy, J. was of the opinion that Maddan Mohan Pathak case cannot be treated as an authority for the proposition that mandamus canot be set aside by a legislative act. Hansaria, J. was not in agreeemtn with such view. Relying upon the judgment of this Court in A.V.*

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[15] (1978) 2 SCC 50: 1978 SCC (L&S) 103
[16] 1994 Supp (2) SCC 726

*Nachane v. Union of India[17], Hansaria, J. held that the legal stand taken by Beg, J. in Madan Mohan Pathak case had received majority's endorsement and it was because of this that retrospectivity given to the relevant rule assailed in A.V. Nachane was held to have nullified the effect of the writ and was accordingly invalid. In view of the difference of opinion, the matter was referred to a larger Bench. We are informed by the learned Amicus Curiae that the difference of opinion could not be resolved as the case was settled out of Court.*

*49. In Virender Singh Hooda, this Court did not accept the contention of the petitioners therein that vested rights cannot be taken away by retrospective legislation. However, it was observed that taking away of such rights would be impermissible if there is violation of Articles 14, 16 or any other constitutional provision. The appointments already made in implementation of a decision of this Court were protected with the reason that "the law does not permit the legislature to take away what has been granted in implementation of the Court's decision. Such a course if impermissible." This Court in Cauvery Water Disputes Tribunal declared the Ordinance which sought to displace an interim order passed by the statutory tribunal as unconstitutional as it set aside an individual decision inter partes and therefore, amounted to a legislative exercise of judicial power. When a mandamus issued by the Mysore High Court was sought to be annulled by a legislation, this Court quashed the same in S.R. Bhagwat v. State of Mysore[18] on the ground that it was impermissible legislative exercise. Setting at naught a decision of the Court without removing the defect pointed out in the judgment would sound the death knell of the rule of law. The rule of law would cease to have any meaning, because then it would be open to the Government to defy a law and yet to get away with it.*

*50.The permissibility of legislative override in this country should be in accordance with the principles laid down by this Court in the aforementioned as well as other judgments, which have been culled out as under:*

*50.1 The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment. Such law can be retrospective. Retrospective*

[17] (1982) 1 SCC 205: 1982 SCC (L&S) 53
[18] (1995) 6 SCC 16: 1995 SCC (L&S) 1334

> *amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution.*
>
> *50.2. The test for determining the validity of a validating legislation is that the judgment pointing out the defect would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the Court at the time of rendering its judgment. In other words, the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed.*
>
> *50.3.Nullification of mandamus by an enactment would be impermissible legislative exercise (see: S.R. Bhagwat). Even interim directions cannot be reversed by a legislative veto (see: Cauvery Water Disputes Tribunal and Medical Council of India v. State of Kerala[19]).*
>
> *50.4 Transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India.*
>
> (emphasis supplied)

49. In ***"Bhubaneshwar Singh and another Vs. Union of India and others[20]"*** while dealing with validating Act with retrospective operation, the Hon'ble Apex Court held as under:

> *"11. From time to time controversy has arisen as to whether the effect of judicial pronouncements of the High Court or the Supreme Court can be wiped out by amending the legislation with retrospective effect. Many such Amending Acts are called Validating Acts, validating the action taken under the particular enactments by removing the defect in the statute retrospectively because of which the statute or the part of it had been declared ultra vires. Such exercise has been held by this Court as not to amount to encroachment on the judicial power of the courts. The exercise of rendering ineffective the judgments or orders of competent courts by changing the very basis by legislation is a well-known device of*

[19] (2019) 13 SCC 185
[20] (1994) 6 SCC 77

> *validating legislation. This Court has repeatedly pointed out that such validating legislation which removes the cause of the invalidity cannot be considered to be an encroachment on judicial power. At the same time, any action in exercise of the power under any enactment which has been declared to be invalid by a court cannot be made valid by a Validating Act by merely saying so unless the defect which has been pointed out by the court is removed with retrospective effect. The validating legislation must remove the cause of invalidity. Till such defect or the lack of authority pointed out by the court under a statute is removed by the subsequent enactment with retrospective effect, the binding nature of the judgment of the court cannot be ignored."*
>
> (emphasis supplied)

50. In ***"Sree Sankaracharya University of Sanskrit and others Vs. Dr. Manu and another[21]"*****,** the Hon'ble Apex Court dealt with the scope and operation of retrospective permissibility, the relevant paras of which reads as follows:

> "35. The proposition of law that a clarificatory provision may be made *applicable retrospectively is so well established that we do not wish to burden this judgment by referring to rulings in the same vein. However, it is necessary to dilate on the role of a clarification/explanation to a statue and how the same may be identified and distinguished from a substantive amendment.*
>
> *36.An explanation/clarification may not expand or alter the scope of the original provision, vide Bita Coop. Development Cane Mktg. Union Ltd., v. Bank of Bihar. Merely describing a provision as an "Explanation" or a "clarification" is not decisive of its true meaning and import. On this aspect this Court in Virtual Soft Systems Ltd., v. CIT[22] observed as under: (Virtual Soft Systems case 12, SCC pp. 687-88, para 51)*

[21] (2023) 19 SCC 30
[22] (2007) 9 SCC 665: (2007) 289 ITR 83

*37.xx*

*"51. Even if the statue does contain a statement to the effect that the amendment is declaratory or clarificatory, that is not the end of the matter.*

*This Court will not regard itself as being bound by the said statement in the statue itself, but will proceed to analyze the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is an amendment which is intended to change the law and which applies to future periods."*

*38. From the aforesaid authorities, the following principles could be culled out:*

*38.1 If a statue is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.*

*38.2 In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be clarification or a declaration of the previous law and therefore applied retrospectively.*

*38.3. An explanation/clarification may not expand or alter the scope of the original provision.*

*38.4 Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyze the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively."*

(emphasis supplied)

51. In ***"Bakhtawar Trust and others Vs. M.D.Narayan and others[23]"*** the Hon'ble Apex Court dealt with the aspect of the validating enactment with retrospective effect as under:

> "*26. Where a legislature validates an executive action repugnant to the statutory provisions declared by a Court of law, what the legislature is required to do is first to remove the very basis of invalidity and then validate the executive action. In order to validate an executive action or any provision of a statute, it is not sufficient for the legislature to declare that a judicial pronouncement given by a Court of law would not be binding, as the legislature does not possess that power. A decision of a Court of law has a binding effect unless the very basis upon which it is given is so altered that the said decision would not have been given in the changed circumstances.*
>
> *"27. Here, the question before us is, whether the impugned Act has passed the test of constitutionality by serving to remove the very basis upon which the decision of the High Court in the writ petition was based. This question gives rise to further two questions - first, what was the basis of the earlier decision; and second what, if any, may be said to be the removal of that basis?*
>
> *28. In the earlier decision of the High Court, it was found that licence to construct the building upto 80 feet was repugnant to the Zonal Regulations framed u/s 13 of the Planning Act which provided a maximum height of new building as 55 feet. Thus, the provision of Zonal Regulations which provided maximum height of 55 feet in case of a new building was, therefore, the basis upon which the High Court proceeded to conclude that the construction of the building violated the prescribed norms. It is manifest that the impugned Act has retrospectively modified the Zonal Regulations of 1972 by raising the height of a building from 55 feet to above 165 feet. The provision of law upon which the High Court has placed reliance has, therefore, undergone a material alteration. The High Court would now find it impossible to take the view that the said building was erected in violation of the law, and that the licence granted therefore, was accordingly legally invalid."*
>
> (emphasis supplied)

[23] (2003) 5 SCC 298

52. By placing reliance on these judgments the counsel for petitioners submit that the intent behind bringing Section 147A by way of an amendment is not sustainable and the same is unconstitutional. They would further submit that by inserting the said provision into the Income Tax Act, 1961, the vested right of the assessees to be assessed under faceless manner was taken away so as to justify the wrong done by the Jurisdictional Assessing Authorities with retrospective effect. Further, it is contended if at all any judgment or decision rendered by a Court is to be set aside, the same has to be done through process of law by a superior Court, but not by way of an amendment with retrospective effect, as was done in the case on hand.

53. In ***"Sedco Forex International Drill.INC and others Vs. Commissioner of Income Tax, Dehradun and another[24]"***, while explaining the scope of a provision which is in nature of clarificatory, the Hon'ble Supreme Court held as under:

> "*17. As was affirmed by this Court in Goslino Mario a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. (See also Reliance Jute and Industries Ltd., v. CIT). An explanation to a statutory provision may fulfill the*

[24] (2005) 12 SCC 717 (emphasis supplied)

> *purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section. If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force. But if it changes the law it is not presumed to be retrospective, irrespective of the fact that the phrases used are "it is declared" or "for the removal of doubts".*
>
> *18. There was and is no ambiguity in the main provision of Section 9(1)(ii). It includes salaries in the total income of an assessee if the assessee has earned it in India. The word "earned" had been judicially defined in S.G. Pgnatale by the High Court of Gujarat, in our view, correctly, to mean as income "arising or accruing in India". The amendment to the section by way of an Explanation in 1983 effected a change in the scope of that judicial definition so as to include with effect from 1979, "income payable for service rendered in India."*
>
> (emphasis supplied)

54. In ***"State of Telangana Vs. M/s.Tirumala Constructions[25]"***, while dealing with Telangana Value Added Tax (2nd Amendment) Act, 2017 and its applicability after repeal of VAT Act, 2005, the Hon'ble Supreme Court held as under:

> *"106. A subsidiary argument was that acts done in pursuance of the ordinance cannot lapse, because they are saved, by virtue of the repeal and savings clause (Section 17438) of the State GST Act, all action taken pursuant to the ordinance, 2023 SCC OnLine SC 813 The relevant part of Section 174 (2) inter alia, is as follows:*
>
> *"when it was in force, would be saved. In the opinion of this court, there is no merit in that argument. The invalidity of the amendment by the state legislature (which conformed to the ordinance, on 02.12.2017) went to its root of the jurisdiction of those acting under the amended provisions of the State GST, rendering them (as indeed, the substantive provisions) void and*

[25] (2023) 11 Centax 259 (SC) (emphasis supplied)

*unenforceable. Furthermore, even if for some reason, there were any doubts regarding validity and continuance of any notice, or proceedings, initiated pursuant to the provisions of the ordinance, their invalidity is such that they cannot be sustained. Furthermore, as held in Krishna Kumar Singh (supra) unless the consequences are "irreversible" there is ordinarily no question of any action- taken under an ordinance that is rendered void, due to operation of the provisions of the Constitution, being continued. Though the observations of this court were in the context of ordinances lapsing due to their not being presented before the House of the legislatures, the same principle would, in this court's considered view, apply to cases, where the legislature ceases to have competence over the subject matter."*

(emphasis supplied)

## 55. CONTENTIONS OF THE REVENUE

(i) Sri N. Venkataraman, the learned Additional Solicitor General of India would submit that in order to eliminate physical interface between the assessees and the officers manning the Act, e-assessment regime was started in the year 2019, so as to take up the assessments by converting into technological mode, as a transition testing. Later, with effect from 01.04.2021, the Department introduced a scheme to take up the assessments in faceless manner through National Faceless Assessment Centre (NFAC). The said scheme was formulated as per enabling provision provided under Section 151A of Income Tax Act, 1961. Accordingly, Central Government issued Notification

No.18/2022, dt.29.03.2022, formulated the scheme called the e-assessment of Income Escaping Assessment Scheme, 2022. It was further contended that under the said scheme for the purpose of 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 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. In other words, the learned Additional Solicitor General of India would contend that the intention of the Legislature is to initiate/conduct proceedings prior to making an assessment under Section 147 of the Act, by issuing notice under Section 148 vests with the Jurisdictional Assessing Officer inasmuch as the scheme in clear and unequivocal terms indicate that “and in a faceless manner, to the extent provided in Section 144B of the Act with reference to making assessment or reassessment of the total income or loss of the assessee”, meaning thereby the procedure contemplated under Section 144B has to be undertaken for

making assessment in faceless manner for the purpose of section 147.

(ii) He would further contend that a perusal of Section 144B of Income Tax Act, 1961 refers Sections 143, 144 or 147 as the case may be with respect to the cases referred to in sub section 2 of Section 144B. Sub Section 2 of section 144B reads as under:

> *"The faceless assessment under sub section (1) shall be made in respect of such territorial area or persons or class of persons, or incomes or class of incomes, or cases or class of cases as may be specified by the board."*

(iii) By placing reliance on Section 144B (1) & (2), it is contended that assessment or reassessment under Section 147 of the Act shall be undertaken in a faceless manner, but not the proceedings under Sections 148 or Section 148A of the Act. He would further submit that Section 148 or 148A were never brought under the purview of faceless assessment, which is why, Section 148 was not referred to in Section 144B of the Act. In the absence of enabling provision under the statute, the question of

conducting/initiating proceedings under Sections 148 or 148A in faceless manner do not arise.

(iv) He would further submit that the intention of the Legislature was clear from the date of formulating the scheme under Section 151A and enacting Section 144B was to conduct assessment under Section 147 of the Act in faceless manner. Further under the scheme, Section 148 was mentioned only for the purpose of allocation of cases through risk management strategy formulated by the board for the purpose of issuance of notice under the said section. He would further submit that a conjoint reading of Section 144B and the scheme framed under Section 151A would make it clear that it was never intended to take up the proceedings in a faceless manner as far as Section 148 is concerned. He would further submit that from 01.04.2022 onwards not even a single notice was issued under Section 148 or 148A of the Act in faceless manner.

(v) While elaborating the arguments, the learned Additional Solicitor General of India submits that it is the discretion of the Legislature especially in policy matters and keeping in

view of the same, proceedings to be initiated under Section 148 or 148A, the said power was retained with the JAO. He would further submit that the petitioners have no choice to contend, how to assess and who to assess more particularly, when it is not a Constitutional right.

(vi) He would further submit that the Central Government issued three notifications (3 schemes).

> *"i. Notification No.15 of 2022, dt.28.03.2022 in exercise of powers conferred under sub sections (1) & (2) of Section 130 of the Income Tax Act (43 of 1961). The said scheme may be called as the Faceless Jurisdiction of Income Tax Authorities Scheme, 2022."*

(vii) By referring to this scheme, the learned Additional Solicitor General of India would submit that all the powers and performance of all or any of the functions conferred on or as the case may be assigned to Income Tax Authorities, by or under the Act as referred to in Section 120 of the Act or vesting the jurisdiction with the Assessing Officer as referred to in section 124 of the Act shall be done in a faceless manner through automated allocation in accordance with and to the extent provided in Section 144B of the Act with reference to making faceless assessment of total income or loss of income etc. The learned Additional

Solicitor General of India by placing reliance on Section 1 i.e., short title and commencement of this scheme, would contend that the scheme is called as “Faceless Jurisdiction of Income Tax Authorities Scheme, 2022”. In other words, the proceedings under this scheme have to be undertaken in a faceless manner, meaning thereby all the proceedings under the scheme to be initiated in complete faceless manner.

(viii) Further, it is contended that by Notification No.137 of 2021, the Central Government in exercise of powers conferred by sub sections (1) & (2) of Section 135A of the Income Tax Act, 1961 (43 of 1961), the e-verification scheme, 2021 was issued which is totally non-faceless and the proceedings are to be initiated by the Jurisdictional Assessing Officers only. While making this submission, the learned Additional Solicitor General of India would contend that under this scheme e-verification would be done electronically by the Jurisdictional Assessing Officers. Further, by juxtaposing the short title and commencement of these two schemes, the learned Additional Solicitor General of India draws the attention of the Court to say that

the scheme formulated under Section 130 is to be initiated in complete faceless manner as the title of the scheme itself says Faceless Jurisdiction of Income Tax Authorities Scheme, 2022, whereas the scheme formulated under Section 135A is called as e-verification scheme, 2021, which shall be done in complete non-faceless manner.

(ix) Referring to the above schemes, the learned Additional Solicitor General of India would contend that the scheme i.e., Notification No.18 of 2022, dt.29.03.2022 is called as “E-assessment of Income Escaping Assessment Scheme, 2022” and therefore the proceedings under this scheme are to be initiated in a hybrid mode i.e., the Jurisdictional Assessing Officers would initiate proceedings under Section 148A and 148 and thereafter if it is a fit case, then the case will be referred to National Faceless Assessment Centre, so as to allot the same to Faceless Assessing Officer through risk management strategy through automated allocation. He would further submit that the scheme is formulated for the purposes of initiating proceedings in faceless manner to the extent of any income

chargeable to tax as escaped assessment for any assessment year.

(x) The learned Additional Solicitor General of India by referring to clause 3 (b) of the scheme would contend that, the cases shall be allotted 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 faceless manner to the extent provided in Section 144B of the Act with reference to making assessment or re-assessment of total income or loss of assessee. Thereafter, the proceedings will be initiated under Section 147 in faceless manner. While contending so, the learned Additional Solicitor General of India emphatically submits that Legislature never intended to initiate proceedings under Section 148 or 148A in faceless manner and the said power is conferred on Jurisdictional Assessing Officer. In support of his contention he places reliance on Notification No.23 of 2021, dt.31.03.2021 issued in exercise of powers conferred by sub sections (1), (2) and (5) of Section 120 of Income Tax Act. The Central Board of Direct Taxes conferred powers

and functions of Assessing Officers concurrently to facilitate the conduct of faceless assessment proceedings under Section 144B of the Act in respect of all persons or class of persons, or incomes or class of incomes, or cases or class of cases in the territory of India. It is further contended that under this notification, concurrent jurisdiction was conferred on JAOs and FAOs to take up the matter in faceless assessment proceedings as provided for under Sections 144B of the Act.

(xi) He would further submit that a combined reading of Section 151A, the scheme made thereunder, sub section (5) of Section 120 along with Notification dt.31.03.2021 would make it clear that there is no bar for the JAOs to initiate proceedings under Section 148 or 148A.

(xii) He would further submit that, subsequently another notification was issued vide Notification No.61 of 2022, dt.10.06.2022 in exercise for powers conferred under sub sections (1), (2) and (5) of Section 120 of Income Tax Act, the Central Board of Direct Taxes conferred powers and functions on the Assessing Officers concurrently, to

facilitate the conduct of faceless assessment proceedings under Section 144B of the Act, in supersession of earlier Notification No.23 of 2021, dt.31.03.2021. By placing reliance on this notification, the learned Additional Solicitor General of India would contend that there is no bar under the statute, the scheme or in the notification to initiate proceedings concurrently by the Jurisdictional Assessing Officers.

(xiii) He would further submit that, if there is any conflict between the statute and the scheme, it is the statute that would prevail over the scheme. While contending so, the learned Additional Solicitor General of India would further submit that no procedure is contemplated under Section 144B of the Act in a faceless manner, so as to initiate proceedings under Section 148 or 148A. With these contentions, the learned Additional Solicitor General of India would submit that the writ petitions are liable to be dismissed and the amendment brought into the Act by inserting Section 147A would also need not be gone into. He would further submit that as an abundant caution and for the removal of doubts, the amendment was made to the

Act, but not to nullify the judgments rendered by various High Courts. He would further submit that by bringing the amendment under challenge was to achieve certainty and clarity and to avoid litigation by giving retrospective effect from 01.04.2021.

(xiv) He would further submit that the amendment was passed in the Parliament and the same was gazetted on 30.03.2026, thereby Section 147A was inserted into Income Tax Act, 1961. In so far as, the contention of the petitioners that the amendment was made to the repeal Income Tax Act, 1961 is concerned, he would contend that the Income Tax Act, 1961 was repealed on 01.04.2026 by which time the amendment was already brought into force with retrospective effect from 01.04.2021. By placing reliance on Section 536(2)(c) of Income Tax Act, 2025, he would submit that the provisions of the repealed Income-tax Act shall continue to apply to any proceeding pending on the date of commencement of this Act and to any proceedings initiated on or after the 1st April, 2026 (including notices, assessment, re-assessment, recomputation, rectification, penalty, reference, revision

and appeals) in respect of any tax year beginning before the 1st April, 2026 and such proceedings shall be carried out as per the procedure specified in the repealed Income-tax Act are saved.

(xv) In support of the above contentions, the learned Additional Solicitor General of India places reliance on the following judgments.

56. ***"Rai Ramakrishna and others Vs. State of Bihar[26]"***, where the Hon'ble Supreme Court while dealing with the applicability of a Legislation with retrospective effect held as under:

> *"10. The other point on which there is no dispute before us is that the legislative power conferred on the appropriate legislatures to enact laws in respect of topics covered by several entries in the three Lists can be exercised both prospectively and retrospectively. Where the legislature can make a valid law, it may provide not only for the prospective operation of the material provisions of the said law, but it can also provide for the retrospective operation of the said provisions. Similarly, there is no doubt that the legislative power in question includes the subsidiary or the auxiliary power to validate laws which have been found to be invalid. If a law passed by a legislature is struck down by the Courts as being invalid for one infirmity or another, it would be competent to the appropriate legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed.*

[26] 1963 SCC ONLINE SC 31

> *This position is treated as firmly established since the decision of the Federal Court in the case of The United Provinces V.Mst. Atiqa Begum.*
>
> *11. It is also true that though the Legislature can pass a law and make its provisions, retrospective, it would be relevant to consider the effect of the said retrospective operation of the law both in respect of the legislative competence of the legislature and the reasonableness of the restrictions imposed by it. In other words, it may be open to a party affected by the provisions of the Act to contend that the retrospective operation of the Act so completely alters the character of the tax imposed by it as to take it outside the limits of the entry which gives the legislature competence to enact the law; or, it may be open to it to contend in the alternative that the, restrictions imposed by the Act are so unreasonable that they should be struck down on the ground that they contravene his fundamental rights guaranteed under Article 19(1) (f) and (g). This position cannot be, and has not been, disputed by Mr. Sastri who appears for the respondent, vide The State of West Bengal v. Subodh Gopal Bose (2) and Express Newspaper (Private) Ltd., v. The Union of India."*
>
> (emphasis supplied)

57. In ***"Shri Prithvi Cotton Mills Ltd., and another vs. Broach Borough Municipality and others[27]",*** the Hon'ble Apex Court while dealing with the validity of retrospectively validation Act held as under:

> "*4. Before we examine s.3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general. When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legis-lative*

[27] (1969) 2 SCC 283 (emphasis supplied)

*competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to' tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat, makes the new meaning binding upon courts. The legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a Validating law, therefore, 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 and makes adequate provisions in the Validating law for a valid imposition of the tax."*

(emphasis supplied)

58. In ***"Bhubaneshwar Singh and another Vs. Union of India and others[28]"*** the Apex Court while dealing with the plenary powers of Legislature had held as under:

> *"9. The question is as to whether by introduction of sub-section (2) in Section 10 with retrospective effect, i.e., w.e.f. 1-5-1972, the respondents are absolved of their liability and are exonerated from the responsibility of complying with the direction given by the High Court and this Court in the earlier writ application filed on behalf of the petitioner. It is well settled that Parliament and State Legislatures have plenary powers of legislation on the subjects within their field. They can legislate on the said subjects prospectively as well as retrospectively. If the intention of the legislature is clearly expressed that it purports to introduce the legislation or to amend an existing legislation retrospectively, then subject to the legislative competence and the exercise being not in violation of any of the provisions of the Constitution, such power cannot be questioned."*
>
> *"11. From time to time controversy has arisen as to whether the effect of judicial pronouncements of the High Court or the Supreme Court can be wiped out by amending the legislation with retrospective effect. Many such Amending Acts are called Validating Acts, validating the action taken under the particular enactments by removing the defect in the statute retrospectively because of which the statute or the part of it had been declared ultra vires. Such exercise has been held by this Court as not to amount to encroachment on the judicial power of the courts. The exercise of rendering ineffective the judgments or orders of competent courts by changing the very basis by legislation is a well-known device of validating legislation. This Court has repeatedly pointed out that such validating legislation which removes the cause of the invalidity cannot be considered to be an encroachment on judicial power. At the same time, any action in exercise of the power under any enactment which has been declared to be invalid by a court cannot be made valid by a Validating Act by merely saying so unless the defect which has been pointed out by the court is removed with retrospective effect. The validating*

[28] (1994) 6 SCC 77 (emphasis supplied)

> *legislation must remove the cause of invalidity. Till such defect or the lack of authority pointed out by the court under a statute is removed by the subsequent enactment with retrospective effect, the binding nature of the judgment of the court cannot be ignored."*
>
> (emphasis supplied)

59. In "***State of Tamilnadu Vs. Arooran Sugars Ltd.***[29]**"** while dealing with the issue of Legislative competence to amend, delete or obliterate a statute or to enactment a statute prospectively or retrospectively, the Apex Court held as under:

> *"13. The legislature by different deeming clauses and through statutory fiction requires the Court to treat that amendments so introduced by Act 7 of 1974 had never been introduced in the principal Act. The power of the legislature to amend, delete or obliterate a statute or to enact a statute prospectively or retrospectively cannot be questioned and challenged unless the court is of the view that such exercise is in violation of Article 14 of the constitution. It need not be impressed that whenever any Act or amendment is brought in force retrospectively or any provision of the Act is deleted retrospectively, or any provision of the Act is deleted retrospectively, in this process rights of some are bound to be effected one way or the other. In every case, it cannot be urged that the exercise by the legislature while introducing a new provision or deleting an existing provision with retrospective effect per se shall be violative of Article 14 of the constitution. If that stand is accepted, then the necessary corollary shall be that legislature has no power to legislate retrospectively, because in that event a vested right is effected; of course, in special situation this court has held that such exercise was violative of Article 14 of the constitution. Reference in this connection may be made to the cases of state of Gujarat & Another V. Raman Lal Keshav Lala Soni & others,(1983) 2 SCR 287; T.R. Kapur V. State of Haryana, 1986 (Supp) SCC 584; and Union of India V. Tushar Ranjan Mohanty, 1994(5) SCC 450. In the case of state of Gujarat V.*

[29] (1997) 1 SCC 326

*Raman Lal (Supra)) a Constitution Bench on the facts and circumstances of that case observed:*

*"The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature-made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the constitution neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history."*

*In same terms this Court expressed the opinion in the cases of T.R. Kapur V. State of Haryana (supra) and Union of India V. Tushar Ranjan Mohanty (supra) in respect of alterations in rules framed under Article 309 of the constitution retrospectively regarding conditions of service."*

(emphasis supplied)

60. In ***"National Agricultural Co-operative Marketing Federation of India Limited and another Vs. Union of India and others[30]",*** the Hon'ble Apex Court while dealing with the judicially recognized limitations to enact law with retrospective effect held as under:-

[30] (2003) 5 SCC 23

> *"15. The Legislative power either to introduce enactments for the first time or to amend the enacted law with retrospective effect, is not only subject to the question of competence but is also subject to several judicially recognized limitations with some of which we are at present concerned. The first is the requirement that the words used must expressly provide or clearly imply retrospective operation. The second is that the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional. The third is apposite where the legislation is introduced to overcome a judicial decision. Here the power cannot be used to subvert the decision without removing the statutory basis of the decision.*
>
> *17. A validating clause coupled with a substantive statutory change is therefore only one of the methods to leave actions unsustainable under the un-amended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent."*

(emphasis supplied)

61. In ***"NHPC Ltd., vs. State of Himachal Pradesh Secretary and others[31]"*** the Hon'ble Apex Court laid down the law with regard to the permissible extent and manner of removing the material basis of a judgment by correcting the anomalies pointed out by a Court in a legislation while referring to various judgments referred to therein held as under:

> *"34. In the following decisions, this Court has laid down the law with regard to the permissible extent and manner of removing the material basis of a judgment, by correcting the anomalies pointed out by a Court in a legislation:*

[31] (2023) 17 SCC 1

*"34.1. In M/s. Tirath Ram Rajendra Nath, Lucknow vs. State of Uttar Pradesh, A.I.R. 1973 SC 405, this Court held that there is a distinction between encroachment on the judicial power and nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the legislature but the latter is within its permissible limits. In that case, the U.P. Sales Tax Act (Amendment and Validation) Act, 1970 was upheld by this Court.*

*"34.2. In Hindustan Gum and Chemicals Ltd. Vs. State of Haryana, (1985) 4 SCC 124, this Court held that it is permissible for a competent legislature to overcome the effect of a decision of a court setting aside the imposition of a tax by passing a suitable Legislation, by amending the relevant provisions of the statute concerned with retrospective effect, thus taking away the basis on which the decision of the court has been rendered and by enacting an appropriate provision validating the levy and collection of tax made before the decision in question was rendered. In that decision, reliance was placed on Shri Prithvi Cotton Mills Ltd. Vs. Broach Borough Municipality, a Constitution Bench decision of this Court, which has laid down the requirements which a validating law should satisfy in order to validate the levy and collection of a tax which has been declared earlier by a court as illegal. The relevant portion of the said judgment reads as under:*

*"When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and*

*the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralize the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the Legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a validating law, therefore, 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 and makes adequate provisions in the validating law for a valid imposition of the tax."*

*34.3. In "Indian Aluminimum Co. v. State of Kerala", A.I.R 1996 SC 1431, the principles regarding the abrogation of a judgment of a court of law by a subsequent legislation were culled out in the following words:*

*"56. From a resume of the above decisions the following salient principles would emerge:*
*(1) The adjudication of the rights of the parties is the essential judicial function. Legislature has to lay down the norms of conduct or rules which will govern the parties and the transaction and require the court to give effect to them;*
*(2) The Constitution has delineated delicate balance in the exercise of the sovereign power by the Legislature, Executive and Judiciary;*
*(3) In a democracy governed by rule of law, the Legislature exercises the power under Articles 245 and 246 and other companion Articles read with the entries in the respective Lists in the Seventh Schedule to make the law which includes power to amend the law.*
*(5) The Court, therefore, need to carefully scan the law to find out: (a) whether the vice pointed out by the Court and invalidity suffered by previous law is cured complying with*

*the legal and constitutional requirements; (b) whether the Legislature has competence to validate the law; (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution.*
*(7) The Court does not have the power to validate an invalid law or to legalise impost of tax illegally made and collected or to remove the norm of invalidation or provide a remedy. These are not judicial functions but the exclusive province of the Legislature. Therefore, they are not the encroachment on judicial power.*
*(8) In exercising legislative power, the Legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the Court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date.*
*(9) The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the Legislature must have competence to do the same."*
*In the aforesaid case, the issue that arose for consideration was as to the vires of Section 11 of the Kerala Electricity Surcharge (Levy and Collection) Act, 1989. It was observed that the said provision was valid and not an incursion on judicial power, notwithstanding the fact that the effect of Section 11 was to validate collection of tax made under an invalid law.*

*34.4. A Constitution Bench of this Court in State of Temilnadu vs. Aroorgan Sugars Ltd., (1997) 1 SCC 326, summarised the law on the legislative device of abrogation, to remove the basis of a judicial pronouncement in the following words: (Chviti Venkanna Yadav case, SCC p.299, para 30)*

*"30. From the aforesaid authorities, it is settled that there is a demarcation between legislative and judicial functions predicated on the theory of separation of powers. The legislature has the power to enact laws including the power*

*to retrospectively amend laws and thereby remove causes of ineffectiveness or invalidity. When a law is enacted with retrospective effect, it is not considered as an encroachment upon judicial power when the legislature does not directly overrule or reverse a judicial dictum. The legislature cannot, by way of an enactment, declare a decision of the court as erroneous or a nullity, but can amend the statute or the provision so as to make it applicable to the past. The legislature has the power to rectify, through an amendment, a defect in law noticed in the enactment and even highlighted in the decision of the court. This plenary power to bring the statute in conformity with the legislative intent and correct the flaw pointed out by the court can have a curative and neutralizing effect. When such a correction is made, the purpose behind the same is not to overrule the decision of the court or encroach upon the judicial turf, but simply enact a fresh law with retrospective effect to alter the foundation and meaning of the legislation and to remove the base on which the judgment is founded. This does not amount to statutory overruling by the legislature. In this manner, the earlier decision of the court becomes non- existent and unenforceable for interpretation of the new legislation. No doubt, the new legislation can be tested and challenged on its own merits and on the question whether the legislature possesses the competence to legislate on the subject matter in question, but not on the ground of over-reach or colourable legislation."*

*34.5. In Bakhtawar Trust vs. M.D. Narayan, (2003) 5 SCC 298, this Court observed as under while laying down a three-pronged test to determine the vires of a validating Act: (SCC p.307, paras 14-15)*

*"14. The validity of any statute may be assailed on the ground that it is ultra vires the legislative competence of the legislature which enacted it or it is violative of Part III or any other provision of the Constitution. It is well settled that Parliament and State Legislatures have plenary powers of legislation within the fields assigned to them and subject to some constitutional limitations, can legislate prospectively as well as retrospectively. This power to make retrospective legislation enables the legislature to validate prior executive and legislative Acts retrospectively after curing the defects that led to their invalidation and thus makes ineffective judgments of competent courts declaring the invalidity. It is also well settled that a validating Act may even make ineffective judgments and orders of competent courts provided it, by*

*retrospective legislation, removes the cause of invalidity or the basis that had led to those decisions.*

*15. The test of judging the validity of the amending and validating Act is, whether the legislature enacting the validating Act has competence over the subject-matter; whether by validation, the said legislature has removed the defect which the Court had found in the previous laws; and whether the validating law is consistent with the provisions of Part III of the Constitution.*

*34.6. In Cheviti Venkanna Yadav vs. State of Telangana, (2017) 1 SCC 283, this Court considered a question relating to the validity of an amendment with retrospective effect after a provision of the Act was struck down by the Court- When does it not amount to the statutory overruling of a judgment by the legislature? This Court held that the legislature has the power to legislate including the power to retrospectively amend laws, thereby removing causes of ineffectiveness or invalidity of laws. Further, when such correction is made, the purpose behind the same is not to overrule the decision of the court or encroach upon the judicial turf, but simply enact a fresh law with retrospective effect to alter the foundation and meaning of the legislation and to remove the base on which the judgment is founded. The order of the High Court, inter alia, holding that the amended provisions did not usurp the judicial power was upheld.*

*34.7. In Madras Bar Assn. v. Union of India, (2022) 12 SCC 455, L. Nageswara Rao J., speaking for the majority (2:1) laid down the following principles, as regards the permissibility of abrogation, to remove the basis of a judgment: (SCC p. 509, para 50)*
*"50.The permissibility of a legislative override in this country should be in accordance with the principles laid down by this Court in the aforementioned as well as other judgments, which have been culled out as under:*

*50.1 The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment. Such law can be retrospective. Retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. (Lohia Machines Ltd. And Anr. V. Union of India.*

*50.2 The test for determining the validity of a validating legislation is that the judgment pointing out the defect*

*would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the Court at the time of rendering its judgment. In other words, the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed.*

*50.3 Nullification of mandamus by an enactment would be impermissible legislative exercise (See: S.R. Bhagwat and Ors. v. State of Mysore, , (1995) 6 SCC 16). Even interim directions cannot be reversed by a legislative veto (See: Cauvery Water Disputes Tribunal, 1993 Supp (1) SCC 96 and Medical Council of India v. State of Kerala and Ors., (2019) 13 SCC 185).*

*50.4. Transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the Rule of law and of Article 14 of the Constitution of India.*
*34.8. In a recent judgment of this Court in the case of Dr.Jaya Thakur vs. Union of India, 2023 SCC OnLine SC 813, this Court held that a writ of mandamus could not be nullified by a subsequent legislation made by the legislator. That a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance simply overrules a judgment unless the foundation of the judgment is removed. Referring to several judgments of this court on the Doctrine of Abrogation, the following principles as to the manner in which the device of abrogation could be employed, were identified as under: (SCC p.318, para 114)*
*"114. "It could, thus, clearly be seen that this Court has held that the effect of the judgments of this Court can nullified by a legislative act removing the basis of the judgment. It has further been held that such law can be retrospective. It has, however, been held that retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. It has been held that the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed. This Court has, however, clearly held that nullification of mandamus by an enactment would be impermissible legislative exercise. This Court has further held that transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India."*

*35. What follows from the aforesaid judicial precedent is, a legislature cannot directly set aside a judicial decision. However, when a competent legislature retrospectively removes the substratum or foundation of a judgment to make the decision ineffective, the same is a valid legislative exercise provided it does not transgress on any other constitutional limitation. Such a legislative device which removes the vice in the previous legislation which has been declared unconstitutional is not considered to be an encroachment on judicial power but an instance of abrogation recognised under the Constitution of India. The decisions referred to above, manifestly show that it is open to the legislature to alter the law retrospectively, provided the alteration is made in such a manner that it would no more be possible for the Court to arrive at the same verdict. In other words, the very premise of the earlier judgment should be removed, thereby resulting in a fundamental change of the circumstances upon which it was founded.*

*36. The power of a legislature to legislate within its field, both prospectively and to a permissible extent, retrospectively, cannot be interfered with by Courts provided it is in accordance with the Constitution. It would be permissible for the legislature to remove a defect in an earlier legislation, as pointed out by a constitutional court in exercise of its powers by way of judicial review. This defect can be removed both prospectively and retrospectively by a legislative process and previous actions can also be validated. However, where a legislature merely seeks to validate the acts carried out under a previous legislation which has been struck down or rendered inoperative by a Court, by a subsequent legislation without curing the defects in such legislation, the subsequent legislation would also be ultra-vires. Such instances would amount to an attempt to 'legislatively overrule' a Court's judgment by a legislative fiat, and would therefore be illegal and a colourable legislation."*

(emphasis supplied)

62. In ***"Virender Singh Hooda and others vs. State of Haryana and another[32]"***, the Hon'ble Apex Court, while dealing

[32] (2004) 12 SCC 588

with power to make laws by every sovereign legislature possess right to make retrospective legislation, held as under:

> *"34. Every sovereign legislature possesses the right to make retrospective legislation. The power to make laws includes power to give it retrospective effect. Craies on Statute Law (7th Edn.) at page 387 defines retrospective statutes in the following words. "A statute is deemed to be retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past".*
>
> *Judicial Dictionary: (13th Edition) K.J.Aiyar, Butterworth, pg.857, states that the word 'retrospective' when used with reference to an enactment may mean (i) affecting an existing contract; or (ii) re-opening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure. Words and Phrases: Permanent Edition: Vol.37A page 224/225. defines a 'retrospective' or retroactive law" as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.*
>
> *35: Harvard Law Review, page 692 it was observed that "it is necessary that the legislature should be able to cure inertent defects in statutes or their administration by making what has been aptly called 'small repairs'. Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus, the interest in the retroactive curing of such a defect in the administration of government outweighs the individual's interest in benefiting from the defect."*
>
> *The above passage was quoted with approval by the Constitution Bench of this Court in the case of The Assistant Commissioner of Urban Land Tax and Ors. V. The Buckingham and Carnatic Co. Ltd., , etc., [1969] 2 SCC 55. In considering the question as to whether the*

*legislative power to amend a provision with retrospective operation has been reasonably exercised or not, various factors.have to be considered. It was observed in the case of Stott v. Stott Realty Co., 284 N. W, 635,640,288 Mich. 35, (as noted in Words and Phrases, Permanent Edition, Volume 37A, page 225) that*

*"The constitutional prohibition of the passage of 'retroactive laws' refers only to retroactive laws that injuriously affect some substantial or vested right, and does not refer to those remedies adopted by a legislative body for the purpose of providing a rule to secure for its citizens the enjoyment of some natural right, equitable and just in itself, but which they were not able to enforce on account of defects in the law or its omission to provide the relief necessary to secure such right." Crates on Statute Law (7th Edn.) at page 396 observes that "If a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right."*

*Thus public interest at large is one of the relevant considerations in determining the constitutional validity of a retrospective legislation."*

(emphasis supplied)

63. In ***"State Bank's Staff Union (Madras Circle) Vs. Union of India and others[33]"***, the Hon'ble Apex Court dealing with the retrospective operation of law held as under:

*24. Craies on Statute Law (7th Edn.) at p. 396 observes that:*
*"If a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right."*

(emphasis supplied)

[33] (2005) 7 SCC 584

64. In ***"Rohtas Project Ltd., through Director Shri Paresh Rastogi Vs. Commissioner of Income Tax (Central)***[34]***"*** while dealing with vested right in an assessee to be assessed by a particular Assessing Officer the Hon'ble High Court of Allahabad held as under:

> *"24. So far as Section 127(1) is concerned, there is no dispute about this position. The twin requirement under Section 127(2) has some complication. It is true that under Act, 1961 i.e. Section 120 read with Section 124, Assessing Officer is vested with jurisdiction over an area where any person carrying on the business or profession resides. Therefore, in normal course, an Assessee is entitled to be assessed by Assessing Officer having jurisdiction as stated in the aforesaid provisions but there is no such vested right in an Assessee to be assessed by a particular Assessing Officer. In given case, Competent Authority may transfer a matter from one Assessing Officer to another, may be having effect of change of place also but that will not affect any substantial right of Assessee.*
>
> *25. On this aspect, we find support from judgment in Panna Lal Binjraj Vs. Union of India, AIR 1957 (SC) 397, wherein Court held that infringement of right to be assessed by Assessing Officer having jurisdiction in a particular area by transferring case to another cannot be said to be an infringement, material in nature. It is only a deviation of a minor character from general standard and does not necessarily involve a denial of equal rights for simple reason that even after such transfer, case is dealt with under the normal procedure which is prescribed in the Act, 1961. Production and investigation of books of account, enquiries to be made by Income Tax Officer are same in a transferred case as in others which remain with Assessing officer of area in which other Assessee resides or carries on business. There is thus no differential treatment and*

[34] 2017 SCC ONLINE All 5480

> *no scope for argument that particular Assessee is discriminated with reference to other Assessees similarly situated whose cases are not transferred, therefore, transfer of case from one place to another is a matter which may disturb some convenience of Assesseee but if other factors of importance of higher degree are available, an order of transfer otherwise validly passed, is not to be assailed as something which has caused no serious prejudice to Assessee."*
>
> (emphasis supplied)

65. In ***"Gammon India Ltd., vs. Special Chief Secretary and anothers***[35]***",*** while dealing with savings clause, the Hon'ble Apex Court held as under:

> *"72. In the instant cases, there is a simultaneous repeal and the reenactment and the A.P.V.A. Tax Act clearly saves the earlier provisions in toto. Consequently, rights and liabilities accrued or incurred under the A.P.G.S. Tax Act shall continue even after it is repealed.*
>
> *73. On critical analysis and scrutiny of all relevant cases and opinions of learned authors, the conclusion becomes inescapable that whenever there is a repeal of an enactment and simultaneous reenactment, the reenactment is to be considered as reaffirmation of the old law and provisions of the repealed Act which are thus reenacted continue in force uninterruptedly unless, the reenacted enactment manifests an intention incompatible with or contrary to the provisions of the repealed Act. Such incompatibility will have to be ascertained from a consideration of the relevant provisions of the reenacted enactment and the mere absence of saving clause is, by itself, not material for consideration of all the relevant provisions of the new enactment. In other words, a clear legislative intention of the reenacted enactment has to be inferred and gathered whether it intended to preserve all the rights and liabilities of a repealed statute intact or modify or to obliterate them altogether.*
>
> *74. On the touchstone of the principles of law culled out from the judgments of various courts applied to the facts*

[35] 2006 3 SCC 354

> *of these cases lead to a definite conclusion that the Assistant Commissioner (Commercial Taxes), Warangal Division was fully justified in initiating and completing the proceedings under the A.P.G.S. Tax Act even after it is repealed."*
>
> (emphasis supplied)

66. In ***"State of Telangana and others Vs. Tirumala Constructions[36]"***, while dealing with the validity of amendment to a repealed Act, the Hon'ble Apex Court held as under:

> *"C. Validity of Telangana Act tested from the touch stone of its originating as an ordinance*
>
> *103. Telangana had argued that although with effect from 1st July 2017, due to the enactment of the CGST Act, its state legislature could not per se enact a new law on a subject matter contained within the original entry 54 of the State list, nevertheless, the approval of the ordinance which amended the existing State - law on 02.07.2017 had the effect of relating back to the original date when in fact it was validly amended. This is sought to be supported by the theory of the relating back of the law to a date when the power to enact existed. The argument in support was that in terms of its effect there is no difference between an ordinance [which is merely a product of a different procedure i.e., or executive law making] as compared to enactment of law by the legislature. An ordinance may have a limited life but once confirmed, or enacted, it acquires permanence. Even during the time it is in force, it is as effective and as binding on the subject matter and the State as an enacted law. The effect of an ordinance was explained in A.K. Roy (supra), in the following terms:*
> *"[..] the Constitution makes no distinction in principle between a law made by the legislature and an ordinance issued by the President. Both, equally, are products of the exercise of legislative power and, therefore, both are*

[36] 2023 15 SCC 578

*equally subject to the limitations which the Constitution has placed upon that power".*

*110. In the present case, the Telangana ordinance was promulgated on 17.6.2016. The Telangana State GST Act was enacted and received the assent of the Governor on 25.05.2017; it was brought into force on 01.07.2017. The state GST Act contained a savings and repeal law, which sought to save acts done, privileges and rights accrued under the repealed enactment, i.e. the State VAT Act. It was sought to be argued that once the State Legislature approved the ordinance and enacted the amendment, in conformity with it, the provisions of the Ordinance became part of the act. The question of legislative competence would not arise, because the mere confirmation of an ordinance is within the competence of the State legislature. Since the law was introduced through a different procedure, i.e. ordinance, the effect of that law, empowering the VAT officials to reopen or complete assessments, was no different.*

*113. The state of Telangana had argued to the contrary, and explained that when the ordinance was issued, there was no doubt about the state possessing legislative competence. As of that date (17.06.2017) the power to amend existing laws, was permissible under Section 19 of the Amendment. However, that argument is not tenable, because the ordinance's validity and effect might not have been suspect on the date of its promulgation; yet, the issue is that on the date when it was in fact, approved and given shape as an amendment, the State legislature had ceased to possess the power. By that time, the State GST and the Central GST Acts had come into force (on 01.07.2017). Therefore, Section 19 ceased to be effective. The original entry (Entry 54 of the State List) ceased to exist. In the circumstances, the state legislature had no legislative competence to enact the amendment, which approved the ordinance, which consequently was rendered void."*

(emphasis supplied)

67. In ***"Cherukuri Kutumbayya Vs. The Municipal Council, Vijayawada[37]",*** this Court while dealing with the expression "save as otherwise provided", held as under:

> "*6.The expression "save as otherwise provided" in Sub-section (2) means 'except to the extent specific provision is made'. In other words, Sub-section (2) will come into play only in cases which are not governed by any other specific provisions of law. Therefore, it is only where there is no other special provision in respect to any other type of land this sub-section is attracted. Since the Legislature has enacted a specific provision in regard to agricultural lands, it is reasonable to infer that that category of lands contemplated by that sub-section should be governed by it."*
>
> (emphasis supplied)

68. In the case of ***"Lalu Prasad Yadav and another Vs. State of Bihar and another[38]"***, the Hon'ble Apex Court while dealing with the expression "save as otherwise provided", held as under:

> *"35. We have surveyed Section 378 in its entirety to have complete conspectus of the provision. The opening words - "save as otherwise provided in sub- section (2)" - are in the nature of exception intended to exclude the class of cases mentioned in sub-section (2) out of operation of the body of sub-section (1). These words have no other meaning in the context but to qualify the operation of sub-section (1) and take out of its purview two types of cases referred in sub-section (2), namely, (i) the cases in which offence has been investigated by the Delhi Special Police Establishment constituted under 1946 Act and (ii) the cases in which the offence has been investigated by any other agency empowered to make investigation into an offence under any Central Act other than 1973 Code. By*

[37] 1958 SCC ONLINE AP 200

[38] 2010 5 SCC 1

> *construing Section 378 in a manner that permits appeal from an order of acquittal by the state government in every case, except two class of cases mentioned in sub-section (2), full effect would be given to the exception (clause) articulated in the opening words.*
>
> *36. As noticed above, the words - "save as otherwise provided in sub-section (2)" - were added in 1973 Code; Section 417 of 1898 Code did not have these words. It is familiar rule of construction that all changes in wording and phrasing may be presumed to have been deliberate and with the purpose to limit, qualify or enlarge the pre-existing law as the changes of the words employ. Any construction that makes exception (clause) with which section opens unnecessary and redundant should be avoided."*
>
> (emphasis supplied)

69. In ***"Commissioner of Customs Vs. Canon India Pvt. Ltd.[39]",*** while dealing with the validating provision, the Hon'ble Apex Court held that it is a mere surplusage and the relevant paragraphs are as under:

> "*166.7. Therefore, the validating provision under Section 97 of the Finance Act, 2022 is a mere surplusage with respect to validation of the show cause notices issued by DRI officers under Section 28. It cannot be challenged on the ground that it does not cure the defect pointed out in Canon India (supra) when no defect can be made out therein as a result of this review petition.*
>
> *167. The contention that Section 97 could not have overruled the finding of fact relating to the actual exercise of jurisdiction in Canon India (supra) is untenable for the following reasons:*
> *167.1 The argument that once a particular officer has exercised the function of assessment, it is a jurisdictional fact that has occurred to the exclusion of all other groups in the Customs Department and therefore, only that officer or his superiors, who had undertaken assessment under Section 17 in the first place, shall have the*

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*jurisdiction to issue notices for recovery of duty under Section 28, does not hold water.*

*167.2 As discussed above, the functions of assessment and re-assessment under Section 17 and the recovery of duty under Section 28 are distinct. Therefore, the exercise of functions under Section 17 can only act as a "jurisdictional fact" for the purpose of excluding the jurisdiction of other proper officers empowered under that section for the exercise of the rest of the functions specified therein. Similarly, the exercise of the function of issuing show cause notices under Section 28 by a particular proper officer serves as a jurisdictional fact which would exclude the jurisdiction of other proper officers empowered under Section 28.*

*167.3 Canon India (supra) proceeded on an erroneous assumption that the jurisdiction of the proper officer under Sections 17 and 28 is linked. This is due to the erroneous understanding of the provisions of Act, 1962 that functions under Section 28 involve re-assessment.*

*167.4 Therefore, the very basis of the determination of jurisdictional fact for exercise of functions under Section 28 has been clarified by us. Thus, we are of the considered view that the challenge to Section 97, on the ground of inability of a validating Act to overrule a finding of fact, is unfounded and liable to be dismissed.*

*183.5 Section 97 of the Finance Act, 2022 which, inter-alia, retrospectively validated all show cause notices issued under Section 28 of the Act, 1962 cannot be said to be unconstitutional. It cannot be said that Section 97 fails to cure the defect pointed out in Canon India (supra) nor is it manifestly arbitrary, disproportionate and overbroad, for the reasons recorded in the foregoing parts of this judgment. We clarify that the findings in respect of the vires of the Finance Act, 2022 is confined only to the questions raised in the petition seeking review of the judgment in Canon India (supra). The challenge to the Finance Act, 2022 on grounds other than those dealt with herein, if any, are kept open."*

(emphasis supplied)

70. Upon analyzing the various contentions and judgments relied on by both the parties, the consideration of this Court is as under:

Section 147A of Income Tax Act, 1961 was inserted vide Finance Act, 2026 with retrospective effect. For proper appreciation, Section 147A is reproduced as under:-

Assessing Officer for purposes of Sections 148 and 148A.

> *"147A. Notwithstanding anything contained in any judgment, order or decree of any Court on 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."*

71. A perusal of Memorandum explaining the provisions in the Finance Bill, 2026, it is stated therein that "with the notice under Section 148, the case gets transferred to National Faceless Assessment Centre (NFAC) for carrying out the assessment in faceless manner as per Section 144B." It further reads that the tax payer does not know the identity of officers, who are part of the assessment unit in NFAC. All communications with the tax payer at this stage are carried out by NFAC. It is further stated that the assessment units are provided powers of the Assessing Officers by virtue of section 144B (3), which provides that the "assessment

unit", wherever used in said section shall refer to an Assessing Officer having powers so assigned by the Central Board of Direct Taxes (CBDT).

72. It is further observed in the Memorandum of the scheme that, the legislature has clearly demarcated the line between the assessment and pre-assessment enquiry process which culminates in issuing of notice under section 148. By referring to this Memorandum, it was never the intention of the Legislature to mandate the assessment units in NFAC to involve in pre-assessment enquiry in any manner, whether for issuance of notice under Section 148A or under section 148. It was specifically contended that the faceless assessment for re-assessment under Section 147 was only required to be carried out to the extent provided under Section 144B and the objective of the scheme framed under Section 151A was also the same.

73. The Revenue relied on judgment rendered by Hon'ble Gujarat High Court in the case of ***"Snehdham Trust Vs. Assistant Commissioner of Income Tax***[40]***"***

> ***"****27. On perusal of Section 148 of the Act, it is clear that the same is subject to the provisions of Section 148A of*

[40](2026) 485 ITR 24 (Guj) (emphasis supplied)

*the Act except certain eventualities enumerated therein. In the regular course, when an information is made available as per the Explanation 1 of Section 148 of the Act through Risk Management Strategy formulated by the Board, the case is required to be allocated through automated allocation as defined under the Scheme, 2022. We are concerned with Clause (b) of the Scope of the Scheme as the assessment and reassessment are already taken care of by the provisions of Section 144B of the Act in itself.*

*28. So far as the issuance of notice under Section 148 of the Act is concerned, after the information is collected through Risk Management Strategy formulated by the Board as referred to under Section 148 of the Act for issuance of notice, the case is allocated through automated allocation to the Assessing Officer. Therefore, the question arises as to who the Assessing Officer should be, whether the Jurisdictional Assessing Officer or the Assessing Officer of an assessment unit as per Section 144B of the Act. If we peruse Section 144B of the Act, there is no Assessing Officer as such, but it also only refers to the "assessment unit" which comprises of various Assessing Officers. If we peruse clause (i) of Sub-section (1) of Section 144B of the Act, it stipulates that the National Faceless Assessment Centre shall assign the case selected for the purpose of faceless assessment under Section 144B of the Act to a specific "assessment unit" through automated allocation system prior to selection of the case to be allocated to the specific assessment unit through automated allocation system and Section 144B of the Act has no role to play for the purpose of faceless assessment.*

*29. Therefore, if we read paragraph No.(3) of the Scheme, 2022, which refers to the issuance of the notice through automated allocation in accordance with the Risk Management Strategy formulated by the Board only. The contention on behalf of the petitioners that the issuance of notice also should be in a faceless manner is also required to be considered from the subsequent prefix after the words "and in faceless manner" which is further qualified by the words "to the extent provided in Section 144B of the Act with reference to making assessment or reassessment of total income or loss of assessee". If we further analyse the provisions of Section 144B of the Act, it provides that National Faceless Assessment Centre shall intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid*

*down in Section 144B of the Act. Both the clauses (i) and (ii) of section 144B of the Act which have come into operation with effect from 01.04.2022 only refer to assessment proceedings and thereafter, from clause (iii) onwards, the proceedings prescribed for assessment starts by referring to the issuance of notice under Sections 142(1) and 143(2) of the Act. Therefore, the procedure prescribed under Section 144B of the Act only refers to the faceless assessment and it nowhere provides for the notice to be issued under Section 148 of the Act in a faceless manner. Therefore, the words "and in faceless manner" as appears in the Scheme, 2022 is further qualified "to the extent provided in Section 144B of the Act with reference to making assessment or reassessment of total income or loss of the assessee". A submission is also made that to the extent in Section 144B of the Act with reference to making assessment or reassessment would also include that the procedure which is prescribed for assessment or reassessment should also be applicable for issuance of the notice under Section 148 of the Act. Taking such contentions to its logical conclusion, it appears that if the procedure prescribed under Section 144B of the Act for assessment is to be applied also for the notice to be issued under Section 148 of the Act, then it would also lead that the provisions of Section 148A of the Act which provide for inquiry by the Assessing Officer and passing of order by the Assessing Officer to come to a prima-facie conclusion that whether it is a fit case to reopen is not available in the Scheme, 2022. If we read the Scheme literally as canvassed before us by learned advocates for both the sides, as it is unambiguous and plain in language, no further interpretation is required to be made by reading the provisions of Section 148A of Act in the Scheme, 2022. If the Scheme is also applied to the procedure prescribed under Section 148A of the Act, the same shall be altered by adding the procedure of discarding which is not intended by the legislature. Therefore, we are of the opinion that the decision of the Bombay High Court in case of Kairos Properties (P.) Ltd. (Supra) wherein, the Scheme, 2022 is also extended to the procedure prescribed in Section 148A of the Act, would amount to alter the Scheme, 2022 itself.*

*30. The Hon'ble Bombay High Court while considering the provisions of Section 148A of the Act has held that the scope of scheme as defined in paragraph No.3 by excluding the applicability of Section 148A of Act from the scope of the scheme would lead to an absolute absurdity*

*and would amount to alter the Scheme. In such circumstances, we are with due respect not in agreement with the Bombay High Court to insert the provisions of Section 148A of the Act to be read in the scope of the scheme. Therefore, the logical conclusion which comes that if Section 148A of the Act is not part of the Scheme, 2022, then issuance of notice under Section 148 of the Act by the Faceless Assessing Officer would be an empty formality because issuance of notice under Section 148 of Act is consequence of the order which is passed under Section 148A(d) of the Act. As held by the this Court in case of Talati and Talati LLP (Supra), the notice issued under Section 148 of the Act by the Jurisdictional Assessing Officer in search cases is held to be a valid notice and would also justify our view that the notice under Section 148 of the Act has to be issued by the Assessing Officer who has passed the order under Section 148A (d) of the Act. If the notice is issued by the Faceless Assessing Officer under Section 148 of the Act on the basis of the order which has been passed by the Jurisdictional Assessing Officer under Section 148A (d) of the Act, the same would result into absurdity.*

*31. Therefore, the logical conclusion which can be deduced from reading of the provisions of the Act together with the intention of the legislature and the Scheme, 2022, we are of the opinion that so far as issuance of notice under Section 148 of the Act is concerned, the contention raised on behalf of the Revenue based upon the Office Memorandum of the Central Board of Direct Taxes dated 20th February, 2023 which is even considered by the Hon'ble Bombay High Court would be in line of the legislative intent so as to operate the two aspects separately, one by issuance of notice under Section 148 of the Act by automated allocation and other by conducting assessment or reassessment proceedings under Section 147 of the Act in a faceless manner to the extent as provided under Section 144B of the Act.*

(emphasis supplied)

74. In this connection, it is pertinent to extract clause 3 of the scheme dated 29.03.2022.

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

> *(a) assessment, reassessment or re-computation 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."*

75. A close perusal of clause 3 of the scheme makes it clear that for the purpose of the scheme, issuance of notice under Section 148 of the Act, shall be through automated allocation in accordance with risk management stagey formulated by the board. Admittedly, in all these matters, the cases are identified by the respective Jurisdictional Assessing Officers, so as to initiate proceedings under section 148A and 148 of the Act. Further, this aspect of the matter was not disputed by the Revenue inasmuch as it was categorically submitted during the course of hearing that no such arrangement was made so as to identify the cases for the purpose of initiating proceedings under Section 148A and 148. With this admission made by the Revenue, it is clear that the cases were identified by the JAOs' which cannot be permitted as the same runs contrary to the scheme formulated as per section 151A of the Act.

76. Though, the learned Additional Solicitor General of India has argued that automated allocation would be done while initiating the proceedings under Section 147 of the Act, the said contention cannot be appreciated inasmuch as, in clear and unambiguous terms the scheme spelt out the manner in which the allocation shall be made i.e., through automated allocation. Further, the word “shall” was used immediately after clause 3(b), meaning thereby JAOs’ are ousted to exercise the powers under Section 148 of the Act, and the same has to undertaken in faceless manner.

77. Further a perusal of the memorandum explaining the provisions in the Finance Bill, 2026 w.r.t. the insertion of new Section 147A of Income Tax Act, 1961, it is stated therein, that with the issuance of notice under Section 148, the case gets transferred to the National Faceless Assessment Centre (NFAC) for carrying out the assessment in a faceless manner to initiate further action as per Section 147. It is pertinent to note that as per this memorandum, upto the stage of issuance of notice under Section 148, the Jurisdictional Assessing Officer is entitled to initiate action and thereafter the case gets transferred to NFAC for carrying out assessment under Section 147 in a faceless manner

to the extent provided under Section 144B. This would mean that upto the stage of Section 148, the JAO can initiate action and thereafter the proceedings under Section 147 would be initiated in faceless manner. In other words, the case identified for re-assessment will be dealt with by two (02) different officers i.e., by JAO upto the stage of Section 148 and thereafter the case get transferred to NFAC, to initiate action under Section 147, in faceless manner.

78. In this connection Section 127 of the Income Tax Act, 1961 assumes importance as it deals with the power to transfer cases. For ready reference Section 127 is extracted hereunder:

> *"(1) The Director General or Chief Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.*
>
> *(2)Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner,-*
>
> *(a)where the Directors General or Chief Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Director General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving*

*the assessee a reasonable opportunity of being heard in that matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;*

*(b) where the Directors General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.*

*(3)Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.*

*(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.*

*Explanation. - In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year."*

79. Under this provision, procedure is contemplated to transfer any case from one or more Assessing Officers to any other assessing officer or assessing officers. Therefore, if a case is to be transferred from one officer to another officer (in the case on hand, from JAO to FAO) the procedure contemplated under

the said provision has to be necessarily followed. Further, the assessee is entitled to reasonable opportunity of being heard in the matter and after recording the reasons for doing so, the officers mentioned in Section 127 can transfer the case to any other officer or officers. Admittedly, this is not being followed by the Revenue while transferring the case to National Faceless Assessment Centre (NFAC) after issuance of notice under Section 148. Thereby, the transfer is being effected by taking shelter under Section 130 of the Act under which faceless jurisdiction of Income Tax Authorities was conferred. For proper appreciation, at the cost of repetition, it is relevant to extract Section 130 of the Act.

> *"130. (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of—*
>
> *(a) exercise of all or any of the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities by or under this Act as referred to in section 120; or*
>
> *(b) vesting the jurisdiction with the Assessing Officer as referred to in section 124; or*
>
> *(c) exercise of power to transfer cases under section 127; or*
>
> *(d) exercise of jurisdiction in case of change of incumbency as referred to in section 129,*
>
> *so as to impart greater efficiency, transparency and accountability by—*

*(i) eliminating the interface between the income-tax authority and the assessee or any other person, to the extent technologically feasible;*

*(ii) optimising utilisation of the resources through economies of scale and functional specialisation;*

*(iii) introducing a team-based exercise of powers and performance of functions by two or more income-tax authorities, concurrently, in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases, with dynamic jurisdiction.*

*(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:*

*Provided that no direction shall be issued after the 31st day of March, 2022.*

*(3) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament."*

(emphasis supplied)

80. Thus, under Section 130 (1) (a) of the Act the Central Government may make a scheme by Notification in the Official Gazette for the purposes of exercise of all or any of the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to Income Tax Authorities by or under this Act as referred to in Section 120. In tune with Section 130, the Central Government issued Notification No.15 of 2022, dated 28.03.2022 formulating scheme called as "Faceless Jurisdiction of Income-Tax Authorities Scheme, 2022". Under this scheme as

per clause 3(a), the exercise of all or any or the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to Income Tax Authorities, by or under the Act as referred to in Section 120 of the Act, shall be in a faceless manner through automated allocation, in accordance with and to the extent provided in Section 144B of the Act.

81. In other words, all the powers conferred under Sections 120, 124 and Section 127 of the Act on the Income Tax Officers shall be done in faceless manner as per Section 130. The Revenue contended that since there is no Notification issued conferring power on Faceless Assessing Officer (FAO), the question of exercising the powers by FAO under Sections 148A or 148 do not arise. If the argument of the Revenue is to be accepted, then it is for the Revenue to show that after issuance of notice under Section 148, there is an order passed by the proper officers mentioned under Section 127 of the Act, so as to transfer the case from Jurisdictional Assessing Officer (JAO) to National Faceless Assessment Centre (NFAC), inasmuch as, it is not in dispute that according to Revenue the re-assessment or re-computation is undertaken by two (02) different officers i.e., by Jurisdictional Assessing Officer (JAO) upto the stage of section

148 and thereafter by FAO to conduct proceedings under Section 147. From the above, it is clear that the Revenue is blowing hot and cold in the matter, so as to suit its convenience. Therefore, the contention of the Revenue that there is no corresponding Notification issued conferring power on FAO cannot be countenanced.

82. Further the contention of the Revenue that by virtue of Notification No.61 of 2022, dt.10.06.2022, which was issued in supersession of notification No.23 of 2021, dt.31.03.2021 issued by the Central Board of Direct Taxes, directing the Income Tax Authorities of units specified in column (2) of the schedule mentioned therein, having their head quarters at the places mentioned in column (3) therein, shall exercise the powers and functions of assessing officers concurrently, to facilitate the conduct of faceless assessment proceedings under Section 144B of the Act in all respects and the same would enable the Jurisdictional Assessing Officers (JAOs) to initiate proceedings under Sections 148A and 148 of the Act, cannot be accepted inasmuch as the said Notification runs contrary to Section 130, Section 151A of the Act and the scheme made thereunder. In other words, when the Act and the scheme specifically state that

proceedings are to be initiated in a faceless manner, the same cannot be allowed to be exercised by the Jurisdictional Assessing Officer (JAO) through the Notification referred to herein above. Accordingly, the contention of the Revenue in this regard is liable to be rejected.

83. In view of the findings recorded above, with great respect, we are not in agreement with the opinion expressed by the Hon'ble High Court of Gujarat in Snehdham Trust case.

84. Apart from the same, the scheme was brought into force so as to eliminate the interface between the tax authorities and the assessees to impart greater efficiency and transparency. By allowing the JAOs to exercise power under section 148, the very purpose of bringing the scheme would be defeated inasmuch as the intent of the Legislature is to undertake the entire proceedings in faceless manner.

85. Further, absolutely no explanation whatsoever is forthcoming from the Revenue, as to why Section 148 is included in the scheme, if the same is not intended to proceed in faceless manner. Unless appropriate amendment is made to the scheme, the JAO has absolutely no role to play Under Section 148 of the

Act. In the absence of any such amendment, the argument that the JAOs have concurrent jurisdiction under the Notification dt.10.06.2022 merits no appreciation, inasmuch as the same is contrary to Sections 130 and 151A of the Act. Viewed from any angle, the contention of the Revenue cannot be countenanced and it is incumbent for the authorities to initiate proceedings under Section 148A and 148 of the Act in faceless manner alone and the same cannot be given a go by to suit the convenience of the Revenue.

86. As an alternative submission, the Revenue contended that Section 148A of the Act was not included in the scheme dated 29.03.2022 and this would mean that JAO can initiate proceedings under Section 148A. To answer this submission, it is pertinent to note that the very intent of the Legislature in bringing the scheme is to conduct re-assessment or re-computation in a faceless manner. Further, unless inquiry is conducted by providing opportunity to the assessee, under Section 148A, no notice can be issued under Section 148. Further, proceedings under Section 147 would not be initiated, unless the procedure contemplated under Sections 148A and 148 are exhausted. Therefore, the very purpose of initiating

proceedings under Section 148A is to assess or re-assess such income or re-compute the loss as provided for under Section 147 of the Act. In that view of the matter, it cannot be said that merely because Section 148A is not included in the scheme, thereby it gives powers to JAOs to exercise its jurisdiction under this section. Accordingly, the said contention of the Revenue is liable to be rejected.

87. The Revenue further contended that even as per the scheme, the proceedings are to be undertaken in a faceless manner to the extent provided in Section 144B of the Act with reference to making assessment or re-assessment of total income or loss of income. Emphasizing this aspect, the Revenue contends that Sections 148 and 148A were not included in Section 144B and therefore the question of conducting proceedings in faceless manner as far as Sections 148A and 148 do not arise. In this connection, it is appropriate to refer to sub-section (1) of 151A of the Act. Under this section, the Central Government may make a scheme, by notification in the official gazette for the purposes of assessment, re-assessment or re-computation under section 147 or issuance of notice under Section 148 or conducting of enquiries or issuance of show cause

notice or passing of order under Section 148A or sanction for issue of such notice under Section 151. Further, a perusal of sub section (2) of Section 151A would make it clear that, for the purpose of giving effect to this scheme made under sub-section (1), the Central Government may by notification in the official gazette, direct that any of the provisions of Income Tax Act, 1961, shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. On a conjoint reading of sub-sections (1) & (2) of Section 151A with the scheme framed there under, it is succinctly clear that the Central Government in its wisdom decided to include Section 148 into the scheme. Having included the same into the scheme, it is incumbent for the authorities to issue notice under Section 148 in a faceless manner. Whereas, in all these cases, in complete defiance of the scheme, the JAOs have initiated proceedings under Section 148 which is not permissible under law. Therefore, the contention of the Revenue in this regard is also liable to be rejected.

88. Further, provisio to sub section (2) of Section 151A of the Act specifically states that no direction shall be issued after 31.03.2022. In other words, the intention of the Central

Government was never to initiate proceedings under Section 148 in faceless manner, the said Section ought to have been removed from the scheme on or before 31.03.2022 in terms of provisio to Section 151A(2) of the Act. Therefore, the amendment brought in through Section 147A with retrospective effect without excluding Section 148 from the scheme, is not sustainable under law.

89. Further, the Revenue contended that as per clause (1) of the scheme, it is only an e-assessment scheme and not a faceless scheme. It was further contended that however the expression “faceless” occurs in the last segment of the scheme and for a completely different purpose. In this regard, as already observed supra, having included Section 148 into the scheme, the Revenue cannot contend that the expression in faceless only relates to initiation of proceedings under Section 147. A plain reading of the scheme would make it clear that no discretion is given to the authorities manning the Act to conduct proceedings in non-faceless manner.

90. The Parliament through Finance Act, 2026 (No.4 of 2026) introduced Section 147(A) into the Income Tax Act, 1961.

Section 147A, at the cost of repetition, for ready reference is reproduced hereunder:

> ***"****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".*

91. A perusal of the memorandum would show that the said Section was introduced so as to clarify jurisdiction to issue notice under Section 148, where income has escaped assessment and for carrying out pre-assessment procedure under Section 148A. By placing reliance on the Memorandum, the Revenue would contend that, the Legislature has clearly demarcated the line between assessment and re-assessment process which culminates in issuing of notice under Section 148. The Jurisdictional Assessing Officer (JAO) carries out pre-assessment inquiry and thereafter reaches a conclusion whether it is a fit case for re-assessment or not. If it is a fit case, in his opinion, notice under Section 148 would be given to the assessee and thereafter the proceedings are carried out in a faceless manner by NFAC. It was further contended that the legislature

had no intention to involve the NFAC in pre-assessment inquiry in any manner whether for issuance of notice under Section 148A or under Section 148. The faceless assessment for re-assessment under Section 147 was only required to be carried out to the extent provided under Section 144B and the intent of the scheme framed under Section 151A was also the same. Further, the amendment was brought in to achieve certainty, clarity and to avoid litigation, as divergent views have been expressed on this issue by various High Courts. Therefore, in order to remove the doubts, the amendment is made with retrospective effect from 01.04.2021.

92. On a conjoint reading of the Memorandum and Section 147A of the Act makes it clear that, the amendment was brought in to achieve certainty, clarity and to avoid litigation. However, a plain reading of the scheme made under Section 151A, it is apparently clear that Section 148 is brought under the said scheme, so as to initiate proceedings in faceless manner as aforesaid. By introducing Section 147A, admittedly the scheme made under Section 151A remained un-amended. Without amending the said scheme, any clarification or validation through amendment cannot be permitted especially when the basis is not

removed. Therefore, by introducing Section 147A of the Act, the Legislature is trying to over reach the judgments rendered by various High Courts in this regard, in direct conflict with Doctrine of separation of powers, which is the basic structure of the Constitution.

93. The Hon'ble Supreme Court of India in the case of ***"Shri Prithvi Cotton Mills Ltd., Vs. Boroach Borough Municipality & others[41]"*** had held that a Court's decision must always bind, unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. If the Legislature has the power over the subject matter and competence to make a valid law, it can at any time make such valid law and make it retrospectively, so as to bind even the past transactions. While holding so, the Hon'ble Supreme Court also observed that the validity of a validating law, therefore, 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 and makes adequate provisions in the validating law for a valid imposition of

[41] (1969) 2 SCC 283

tax. In the cases on hand, no doubt the Legislature has got plenary power to validate any law, but the same is subject to certain limitations, viz., while validating the law it shall remove the defect which the Courts had found in the existing law. Admittedly, in all these cases, no defect whatsoever was expressed by various High Courts either in the scheme or in the Act in the earlier round of litigation. All that the Courts have held that JAOs have no jurisdiction to exercise powers under Section 148 of the Act. In such circumstances, without amending the scheme made under Section 151A of the Act, insertion of Section 147A into Income Tax Act, 1961 in the name of clarification or validation cannot be permitted.

94. Further, the Hon'ble Supreme Court in the case of ***"State of Tamilnadu and another vs. M.Rayappaiah Gounder and another[42]"*** while referring to the case of ***"The Municipal Corporation of the City of Ahmedabad vs. The New Shrock Spg. and Wvg. Co. Ltd.,[43]"*** had held that the Legislature under our constitution have within the prescribed limits, powers to make laws prospectively as well as retrospectively. By exercise of those

[42] (1971) 3 SCC 1
[43] AIR 1970 SC 1292

powers the legislature can remove the basis of a decision rendered by a competent Court, thereby rendering that decision ineffective. But, no Legislature in this Country has power to ask the instrumentalities of the State to disobey or disregard the decision given by Courts.

95. From the above judgments it is clear that, if any law enacted by Legislature, if it is found beyond the Legislative competence, the Courts have got powers to declare the same to be null and void and it can strike down the same, especially if the Legislature tries to over reach any decision rendered by the Court. In other words, the Legislature cannot nullify the judgment rendered by any Court by enacting law without removing the basis.

96. Further, in the earlier round of litigation either this Court or any other High Court found fault with the scheme made under Section 151A. It was held that having included Section 148 into the scheme, the JAOs have no jurisdiction to issue notices under Section 148. Admittedly, even as on today, Section 148 remains in the scheme and without making amendment to the scheme, incorporation of any provision to nullify the judgments

rendered by various High Courts, is beyond Legislative competence and legally impermissible. Such acts of Legislature over reach which unsettle the decisions of Courts and lead to chaos cannot be allowed.

97. Further, Section 147A starts with non-obstante clause, for the removal of doubts, it was 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 faceless assessment centre or any assessment unit referred to in sub-section (3) of section 144B. As already observed supra, the amendment was brought in so as to nullify the judgments rendered by various Hon'ble High Courts. Further, through the aforesaid judgments, the respondents were directed to follow their own scheme framed under section 151A, while holding that JAOs have no jurisdiction to initiate proceedings under Section 148A or 148. In the aforesaid situation, without amending Section 151A or the scheme made there under, the impugned amendment inserted through Section 147A does not stand for judicial scrutiny.

98. The Revenue filed additional affidavit setting out the factual and statistical position, on an All India basis in relation to the returns of the Income filed in respect of assessment years 2016-17 to 2025-26, notices issued under Section 148 of the Act for Income Escaping Assessment as against 8,82,146 assessees, i.e., 0.127% of notices issued out of the total assessees of 69,40,62,325 who filed returns. The additional affidavit further reads that re-assessment orders were passed under Section 147 as against 6,46,897 assessees and the remaining 1,46,544 assessees cases remain pending at various stages, after excluding the re-assessment proceedings dropped against some of the assesees. By drawing attention of this Court to the averments made in the additional affidavit, the Revenue would contend that the income assessed on re-assessment totals to Rs.21,74,803/- crores (Rs.21.71 lakh crores), therefore in view of public interest especially when most of the assessees against whom the reassessment proceedings have been initiated subjected themselves to the inquiry under Section 148A without questioning the jurisdiction, no interference is warranted. The Revenue would further submit that any adverse orders at this

stage, will have far reaching consequences adversely effecting National and public interest.

99. We have considered the submission of the Revenue and in view of the findings recorded supra, additional submissions will not have any bearing in the matter, inasmuch as, merely because there was no challenge to the proceedings initiated under Section 148 by most of the assessees, that by itself, will not give any right to the Revenue to undertake assessment in non-faceless manner, contrary to the statutory provisions already discussed at length.

100. During the course of hearing, it is brought to the notice of this Court that the Hon'ble High Court of Punjab and Haryana at Chandigarh rendered its decision on the issue on hand by judgment dated 10.09.2026, whereunder after referring to various contentions raised by the assessees and the revenue, Section 147A of Income Tax Act was held to be unconstitutional. We have perused the judgment rendered by the Hon'ble High Court of Punjab and Harayana, the operation of which stayed by the Hon'ble Supreme Court of India vide order dt.18.09.2026 in

SLP (Civil) No.33196 of 2026. However, we have dealt with the matter independently and recorded reasons as aforesaid.

101. Further, as per Finance Act, 2026 (No.4 of 2026), through Section 9, after Section 147 of Income Tax Act, 1961, Section 147A was inserted and it shall be deemed to have been inserted with effect from the 1st day of April, 2021. In this connection, the petitioners have contended that as per Section 2(a), Sections 2 to 129, clause (b) of section 152 and section 156 shall come into force on the 1st day of April, 2026. It was further contended that Income Tax Act, 1961 was repealed on 31.03.2026 and Income Tax Act, 2025 has come into force with effect from 01.04.2026, in such circumstances, any amendment/insertion cannot be made to a Repealed Act and would contend that Section 147A cannot be given effect to from 01.04.2021.

102. On the contrary, the Revenue would submit that Finance Act, 2026 (No.4 of 2026) has received the assent of the President on 30.03.2026 and was published in the gazette, therefore the contention of the petitioners is without basis

inasmuch as, as on 30.03.2026, Income Tax Act, 1961 was not repealed.

103. In order to deal with the ground raised by the petitioner, it is appropriate to refer Section 1 (3) of Income Tax Act, 2025, which reads “save as otherwise provided in this Act, it shall come into force on 1st day of April, 2026”. Similarly, as per section 2 (a) of the Finance Act, 2026 (No.4 of 2026) “Sections 2 to 129, clause (b) of Section 152 and Section 156 shall come into force on the 1st day of April, 2026”. From the above, it is clear that the Income Tax Act, 1961 got repealed on the mid night of 31.03.2026 and Income Tax Act, 2025 has come into force from 01.04.2026. Though, it is contended by the Revenue that the Finance Act, 2026 (No.4 of 2026) received the assent of the President on 30.03.2026, on a reading of Section 2(a) of the said Act, it is mentioned therein, that it would come into force from 01.04.2026 and Section 147A shall be deemed to have been inserted with effect from 01.04.2021. Further Section 536 of Income Tax Act, 2025 deals with repeal and savings. Section 536(2)(c) provides that the provisions of the repealed Income Tax Act shall continue to apply to any proceeding pending on the date of commencement of this Act and to any proceedings initiated on

or after the 1st April, 2026 (including notices, assessment, re-assessment, re-computation, rectification, penalty, reference, revision and appeals) in respect of any tax year beginning before the 1st April, 2026 and such proceedings shall be carried out as per the procedure specified in the repealed Income Tax Act. Further, clause (u) of sub-section (2) of 536 provides that any scheme which has been notified under the provisions of the repealed Income Tax Act with a view to eliminate the interface with the assessee or any other person, the said scheme shall be deemed to have been made (i) under the corresponding provisions of this Act or (ii) under section 532 where there is no such corresponding provision and shall continue in force accordingly. Therefore, in terms of Section 536 (2) (c) and (u), the proceedings initiated under the Repealed Act shall be done in accordance with the provisions of the Repealed Act and the scheme made thereunder.

104. On an overall consideration of the respective submissions, it is clear that Income Tax Act, 1961 was repealed on the mid night of 31.03.2026. Therefore insertion of Section 147A to Income Tax Act, 1961 is not sustainable especially Finance Act, 2026 (No.4 of 2026) clearly says that it shall come

into force on 01.04.2026. Further, it is specifically contended by the Revenue that the Finance Act, 2026 (No.4 of 2026) received assent of the President on 30.03.2026 as on that date, the Income Tax Act, 1961 was not repealed. In this connection, it is relevant to refer section 5 of General Clauses Act, as it assumes importance, which reads thus:

> *"5. Coming into operation of enactments. –(1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent,-*
>
> *(a) in the case of a Central Act made before the commencement of the Constitution, of the Governor General, and*
> *(b) in the case of an Act of Parliament, of the President.*
>
> *(2) omitted*
>
> *(3) Unless the contrary is expressed, a Central Act or regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement."*

105. On a reading of section 5 of General Clauses Act, it is clear that, if any Act does not express the date of which it come into operation, then it will come into force from the date on which it received assent of the President. In the case on hand, Finance Act, 2026 (No.4 of 2026), though received the assent of the President on 30.03.2026, as per Section 2 (a) of the Act, it shall come into force from 01.04.2026. Since, Finance Act, 2026 has

expressly provided 1st day of April, 2026, it cannot be said that the same has come into force on 30.03.2026, the date on which it received the assent of the President. Further, our view is fortified by judgment of Hon'ble Apex Court in the case of ***"Common Cause Vs. Union of India and others[44]",*** *wherein* Hon'ble Apex Court at para 28 held as under:-

> *"28. The submission that by virtue of Section 5 of General Clauses Act, the Act has come into force is misconceived. Section 5 of the General Clauses Act has no application. Section 5 is applicable only when the Act does not express any date with effect from which the Act would come into force. It will apply to such cases where there is no provision like Section 1(3) of the Act or Section 1(2) of the 44th Constitutional Amendment. When the Legislature itself provides that the date of coming into force of the Act would be a date to be notified by the Central Government, Section 5 of the General Clauses Act will have no application. It is plain and evident from the language of the provision. Section 5(1) provides that 'where any Central Act is not expressed to come into operation on particular day, then it shall come into operation on the day on which it receives the assent'. Sub-clause (3) provides that 'unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement'.' In simple words it would mean that unless otherwise provided a Central Act would come into operation on the date it receives Presidential assent and is construed as coming into operation immediately on the date preceding its commencement. Thus, if a Central Act is assented by the President on 23.8.1995 then it would be construed to have come into operation on the mid-night between 22nd and 23rd August, 1995. Sub-section (3) has to be read as a corollary to sub-section (1). Sub-section (1) provides that the Act would come into operation on the date it receives the assent of the President where a particular day w.e.f. which the Act would come into force is not prescribed whereas sub-*

[44] (2003) 8 SCC 250

> *section (3) provides the exact time of the day/night when the Act would come into force. It would not apply to cases where the legislature has delegated the power to the executive to bring into force the Act from a date to be notified by publication in the Official Gazette."*
>
> (emphasis supplied)

106. From the above judgment, it can be culled out that any enactment shall come into force from the date on which, it is expressly provided under that enactment. If the enactment does not express a particular day as to coming into its operation, in such case, the date on which the said Act received assent from the President would be the date on which the said Act would come into force. In that view of the matter, any amendment/insertion made to the Repealed Act is not sustainable under law and it has no legal sanctity, accordingly the same is liable to be struck down from the date of its inception or nativity.

107. For the foregoing reasons, this Court is of the considered opinion that Section 147A of the Income Tax Act, 1961 is unconstitutional and the same is accordingly struck down. Further, as we held that Section 147A as unconstitutional, all the proceedings initiated by the respective Jurisdictional Assessing Officers (JAOs) under Sections 148A and 148 are without

jurisdiction and are liable to be set aside, inasmuch as the same have to be undertaken in faceless manner. Accordingly the writ petitions are allowed and impugned proceedings/orders are set aside.

There shall be no order as to costs. As a sequel, pending applications, if any shall stand closed.

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**JUSTICE NINALA JAYASURYA**

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**JUSTICE T.C.D. SEKHAR**

12.10.2026
DR

**Whether the order is :**
Speaking Yes/No / Reasoned Yes/No
Reportable Yes/No / Non-Reportable Yes/No

**14**

**HON'BLE SRI JUSTICE NINALA JAYASURYA**
**AND**

**THE HONOURABLE SRI JUSTICE T.C.D. SEKHAR**

**WP No.28520 of 2023 & BATCH**
**Date 12.10.2026**

**U**
**DR**