IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15791-2024 (O&M)

Jyoti Sareen

….. Petitioner

Versus

Union of India and others

….Respondents

WITH

CWP-25013-2024	**CWP-107-2025**	**CWP-12573-2025**
CWP-16565-2024	**CWP-10866-2025**	**CWP-12601-2025**
CWP-21249-2024	**CWP-10873-2025**	**CWP-12613-2025**
CWP-21266-2024	**CWP-11162-2025**	**CWP-12818-2025**
CWP-21271-2024	**CWP-11169-2025**	**CWP-12819-2025**
CWP-22553-2024	**CWP-11338-2025**	**CWP-12824-2025**
CWP-24223-2024	**CWP-11363-2025**	**CWP-12938-2025**
CWP-24630-2024	**CWP-11372-2025**	**CWP-12983-2025**
CWP-24662-2024	**CWP-11469-2025**	**CWP-1367-2025**
CWP-24952-2024	**CWP-11640-2025**	**CWP-13930-2025**
CWP-24988-2024	**CWP-11644-2025**	**CWP-13941-2025**
CWP-25471-2024	**CWP-11645-2025**	**CWP-13959-2025**
CWP-25986-2024	**CWP-11646-2025**	**CWP-14189-2025**
CWP-26114-2024	**CWP-11861-2025**	**CWP-14738-2025**
CWP-28861-2024	**CWP-11863-2025**	**CWP-15072-2025**
CWP-7153-2024	**CWP-11968-2025**	**CWP-15122-2025**
CWP-10060-2025	**CWP-12357-2025**	**CWP-15164-2025**
CWP-10076-2025	**CWP-12366-2025**	**CWP-1517-2025**
CWP-10116-2025	**CWP-12508-2025**	**CWP-15575-2025**
CWP-10115-2025	**CWP-12512-2025**	**CWP-1577-2025**
CWP-10211-2025	**CWP-12524-2025**	**CWP-15883-2025**
CWP-10295-2025	**CWP-12564-2025**	**CWP-15902-2025**
CWP-10297-2025	**CWP-12570-2025**	**CWP-15915-2025**

CWP-1695-2025	**CWP-245-2025**	**CWP-516-2025**
CWP-17442-2025	**CWP-248-2025**	**CWP-518-2025**
CWP-17559-2025	**CWP-2628-2025**	**CWP-5268-2025**
CWP-17561-2025	**CWP-268-2025**	**CWP-534-2025**
CWP-17564-2025	**CWP-269-2025**	**CWP-536-2025**
CWP-17565-2025	**CWP-299-2025**	**CWP-5557-2025**
CWP-17645-2025	**CWP-300-2025**	**CWP-5600-2025**
CWP-17647-2025	**CWP-314-2025**	**CWP-617-2025**
CWP-17662-2025	**CWP-337-2025**	**CWP-6366-2025**
CWP-17663-2025	**CWP-4085-2025**	**CWP-6566-2025**
CWP-17893-2025	**CWP-4265-2025**	**CWP-685-2025**
CWP-18053-2025	**CWP-436-2025**	**CWP-6935-2025**
CWP-18819-2025	**CWP-440-2025**	**CWP-7254-2025**
CWP-18821-2025	**CWP-443-2025**	**CWP-7666-2025**
CWP-189-2025	**CWP-449-2025**	**CWP-768-2025**
CWP-194-2025	**CWP-451-2025**	**CWP-7738-2025**
CWP-196-2025	**CWP-453-2025**	**CWP-833-2025**
CWP-203-2025	**CWP-454-2025**	**CWP-8562-2025**
CWP-204-2025	**CWP-458-2025**	**CWP-909-2025**
CWP-205-2025	**CWP-459-2025**	**CWP-919-2025**
CWP-212-2025	**CWP-464-2025**	**CWP-9763-2025**
CWP-206-2025	**CWP-469-2025**	**CWP-9851-2025**
CWP-217-2025	**CWP-478-2025**	**CWP-15963-2023**
CWP-219-2025	**CWP-485-2025**	**CWP-9861-2025**
CWP-220-2025	**CWP-486-2025**	**CWP-6175-2024**
CWP-223-2025	**CWP-491-2025**	**CWP-8405-2024**
CWP-225-2025	**CWP-504-2025**	**CWP-9264-2024**
CWP-227-2025	**CWP-506-2025**	**CWP-9572-2024**
CWP-231-2025	**CWP-509-2025**	**CWP-16509-2024**
CWP-233-2025	**CWP-511-2025**	**CWP-16512-2024**
CWP-234-2025	**CWP-5122-2025**	**CWP-16515-2024**
CWP-238-2025	**CWP-513-2025**	**CWP-19873-2024**
CWP-244-2025	**CWP-515-2025**	**CWP-20811-2024**

CWP-20812-2024	**CWP-13279-2025**	**CWP-28298-2024**
CWP-20813-2024	**CWP-13202-2025**	**CWP-25952-2024**
CWP-20820-2024	**CWP-13282-2025**	**CWP-25283-2024**
CWP-20825-2024	**CWP-13419-2025**	**CWP-25011-2024**
CWP-22152-2024	**CWP-13430-2025**	**CWP-24992-2024**
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CWP-22526-2024	**CWP-13796-2025**	**CWP-24943-2024**
CWP-23276-2024	**CWP-13938-2025**	**CWP-24954-2024**
CWP-23429-2024	**CWP-15600-2025**	**CWP-24802-2024**
CWP-23372-2024	**CWP-15914-2025**	**CWP-24240-2024**
CWP-34236-2024	**CWP-18095-2025**	**CWP-24230-2024**
CWP-262-2025	**CWP-18610-2025**	**CWP-23977-2024**
CWP-2708-2025	**CWP-19704-2025**	**CWP-23971-2024**
CWP-5245-2025	**CWP-21457-2025**	**CWP-23688-2024**
CWP-5526-2025	**CWP-21989-2025**	**CWP-7968-2023**
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CWP-13141-2025	**CWP-28334-2024**	**CWP-24820-2026**
CWP-13200-2025	**CWP-28330-2024**	**CWP-25651-2026**
CWP-13193-2025	**CWP-28329-2024**	**CWP-21604-2026**

CWP-21581-2026	**CWP-31431-2024**	**CWP-23562-2024**
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CWP-25006-2024	**CWP-11125-2025**	**CWP-12190-2024**

CWP-2348-2024	**CWP-20512-2026**	**CWP-31114-2024**
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CWP-19718-2026	**CWP-21897-2026**	**CWP-16076-2026**
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CWP-20179-2026	**CWP-21912-2026**	**CWP-17828-2026**
CWP-20191-2026	**CWP-21930-2026**	**CWP-18523-2026**
CWP-20225-2026	**CWP-21947-2026**	**CWP-18602-2026**
CWP-20403-2026	**CWP-21948-2026**	**CWP-18714-2026**
CWP-20420-2026	**CWP-21949-2026**	**CWP-18742-2026**
CWP-20450-2026	**CWP-21951-2026**	**CWP-18744-2026**
CWP-20463-2026	**CWP-21953-2026**	**CWP-18747-2026**
CWP-20469-2026	**CWP-22054-2026**	**CWP-18760-2026**
CWP-20484-2026	**CWP-22072-2026**	**CWP-18993-2026**

CWP-19046-2026	**CWP-12822-2025**	**CWP-17814-2026**
CWP-19124-2026	**CWP-13092-2025**	**CWP-18077-2026**
CWP-19302-2026	**CWP-18607-2025**	**CWP-18521-2026**
CWP-19463-2026	**CWP-21111-2025**	**CWP-18599-2026**
CWP-20501-2026	**CWP-21447-2025**	**CWP-18604-2026**
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CWP-20876-2026	**CWP-26436-2025**	**CWP-18743-2026**
CWP-21062-2026	**CWP-35256-2025**	**CWP-18746-2026**
CWP-21088-2026	**CWP-21505-2026**	**CWP-18751-2026**
CWP-21292-2026	**CWP-21600-2026**	**CWP-18980-2026**
CWP-21388-2026	**CWP-21689-2026**	**CWP-19045-2026**
CWP-21451-2026	**CWP-21727-2026**	**CWP-19049-2026**
CWP-21469-2026	**CWP-17283-2026**	**CWP-19180-2026**
CWP-9823-2024	**CWP-35257-2025**	**CWP-19407-2026**
CWP-24994-2024	**CWP-19150-2025**	**CWP-19465-2026**
CWP-30472-2024	**CWP-20573-2025**	**CWP-20859-2026**
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CWP-11532-2025	**CWP-21114-2025**	**CWP-21072-2026**
CWP-12829-2025	**CWP-21139-2025**	**CWP-21228-2026**
CWP-18090-2025	**CWP-21286-2025**	**CWP-21326-2026**
CWP-18614-2025	**CWP-21713-2025**	**CWP-21437-2026**
CWP-21136-2025	**CWP-22015-2025**	**CWP-21455-2026**
CWP-21645-2025	**CWP-23124-2025**	**CWP-21472-2026**
CWP-22069-2025	**CWP-25594-2025**	**CWP-29764-2024**
CWP-27110-2025	**CWP-25863-2025**	**CWP-33067-2024**
CWP-38851-2025	**CWP-25880-2025**	**CWP-18611-2026**
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CWP-21666-2026	**CWP-26670-2025**	**CWP-16006-2026**
CWP-21705-2026	**CWP-30225-2025**	**CWP-16052-2026**
CWP-21728-2026	**CWP-15009-2026**	**CWP-17216-2026**
CWP-17023-2026	**CWP-15892-2026**	**CWP-17480-2026**
CWP-20833-2024	**CWP-16247-2026**	**CWP-17482-2026**
CWP-444-2025	**CWP-16261-2026**	**CWP-17490-2026**

CWP-20109-2026	**CWP-22918-2026**	**CWP-37202-2025**
CWP-20110-2026	**CWP-22919-2026**	**CWP-493-2025**
CWP-20111-2026	**CWP-22945-2026**	**CWP-498-2025**
CWP-20112-2026	**CWP-22975-2026**	**CWP-502-2025**
CWP-20113-2026	**CWP-22976-2026**	**CWP-788-2025**
CWP-20114-2026	**CWP-22985-2026**	**CWP-1418-2025**
CWP-20115-2026	**CWP-23015-2026**	**CWP-1780-2025**
CWP-20116-2026	**CWP-23075-2026**	**CWP-2407-2025**
CWP-20131-2026	**CWP-23180-2026**	**CWP-2771-2025**
CWP-20142-2026	**CWP-22748-2026**	**CWP-4008-2025**
CWP-11865-2025	**CWP-24213-2025**	**CWP-5081-2025**
CWP-21144-2025	**CWP-22044-2025**	**CWP-6132-2025**
CWP-25824-2025	**CWP-26667-2025**	**CWP-6514-2025**
CWP-26674-2025	**CWP-26688-2025**	**CWP-7525-2025**
CWP-29028-2025	**CWP-30546-2025**	**CWP-7732-2025**
CWP-29762-2025	**CWP-31118-2025**	**CWP-8817-2025**
CWP-22159-2026	**CWP-26676-2025**	**CWP-10019-2025**
CWP-22203-2026	**CWP-26675-2025**	**CWP-10134-2025**
CWP-22204-2026	**CWP-26755-2025**	**CWP-10428-2025**
CWP-22250-2026	**CWP-22039-2025**	**CWP-14085-2025**
CWP-22251-2026	**CWP-23944-2026**	**CWP-22302-2025**
CWP-22307-2026	**CWP-20837-2024**	**CWP-24742-2026**
CWP-22322-2026	**CWP-30380-2024**	**CWP-21490-2024**
CWP-22374-2026	**CWP-30683-2024**	**CWP-28813-2024**
CWP-22376-2026	**CWP-24817-2024**	**CWP-21288-2025**
CWP-22526-2026	**CWP-10058-2025**	**CWP-25593-2025**
CWP-22539-2026	**CWP-12354-2025**	**CWP-26747-2025**
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CWP-22807-2026	**CWP-17445-2025**	**CWP-13642-2025**
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CWP-22824-2026	**CWP-10875-2025**	**CWP-20598-2025**
CWP-31113-2025	**CWP-508-2025**	**CWP-21076-2025**
CWP-22917-2026	**CWP-18616-2025**	**CWP-21096-2025**

CWP-21118-2025	**CWP-25883-2025**	**CWP-6577-2025**
CWP-21119-2025	**CWP-21491-2024**	**CWP-33077-2024**
CWP-22724-2026	**CWP-23970-2025**	**CWP-29523-2024**
CWP-22995-2026	**CWP-22049-2025**	**CWP-30457-2024**
CWP-22723-2026	**CWP-11972-2025**	**CWP-26041-2024**
CWP-22680-2026	**CWP-21655-2025**	**CWP-21464-2024**
CWP-26664-2025	**CWP-21487-2026**	**CWP-21993-2024**
CWP-22401-2026	**CWP-21486-2026**	**CWP-3939-2024**
CWP-13663-2025	**CWP-21488-2026**	**CWP-13608-2024**
CWP-25840-2025	**CWP-26386-2026**	
CWP-13133-2025	**CWP-26436-2026**	

1.	The date when the judgment is reserved	08.09.2026
2.	The date when the judgment is pronounced	10.09.2026
3.	The date when the judgment is uploaded	11.09.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present: Dr. Sanjay Bansal, Senior Advocate with
Mr. Iman Singla, Advocate,
Mr. Brij Mohan Monga, Advocate,
Mr. Gurdeep Singh, Advocate,
Mr. Sushrut Singla, Advocate and
Ms. Kannopriya Gupta, Advocate,

Ms. Radhika Suri, Senior Advocate with
Mr. Abhinav Narang, Advocate and
Ms. Parnika Singla, Advocate

Mr. Sandeep Goyal, Senior Advocate with
Mr. Rishab Singla, Advocate,
Mr. Anirudh Garg, Advocate,
Ms. Aakriti, Advocate,

Ms. Urvi Khanna, Advocate,
Mr. Aditya Gupta, Advocate,
Mr. Rishab Bansal, Advocate,
Mr. Mohit Bassi, Advocate,
Ms. Alisha Chawla, Advocate,
Ms. Shrasti Shivhare, Advocate,
Ms. Rashmi Gupta, Advocate and
Mr. Vansh Vinayak, Advocate

Mr. Pankaj Jain, Senior Advocate with
Mr. Divya Suri, Advocate,
Mr. Yogesh Kumar Mittal, Advocate and
Mr. Sachin Bhardwaj, Advocate

Mr. Ved Jain, Advocate,
Mr. Nischay Kantoor, Advocate,
Ms. Vandana Kothari, Advocate,
Mr. Kartik Bansal, Advocate,
Mr. S.K. Mukhi, Advocate,

Ms. Munisha Gandhi, Senior Advocate with
Mr. Viraj Gandhi, Advocate,
Mr. Adarsh Kumar Dubey, Advocate,
Mr. Vaibhav Sharma, Advocate and
Ms. Salina Chalana, Advocate

Mr. Salil Dev Singh Bali, Senior Advocate with
Mr. Sandeep Dhanda, Advocate

Mr. Vishav Bharti Gupta, Advocate,
Ms. Ubhai Bharti Gupta, Advocate,
Ms. Mamta Gupta, Advocate,
Mr. Pranav Gupta, Advocate,
Mr. Alok Mittal, Advocate,
Mr. Rohit Kaura, Advocate,
Mr. B.M. Monga, Advocate,
Mr. Kamal Gupta, Advocate,
Mr. Nikhil Goyal, Advocate,
Ms. Ruby, Advocate,
Mr. M.S. Kanda, Advocate,
Ms. Nisha Rana, Advocate,
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Mr. Salil Kapoor, Advocate,
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for the petitioner(s).

Mr. N. Venkataraman, Additional Solicitor General of India (through VC),
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Ms. Gauri Neo Rampal, Senior Standing Counsel (through VC)

for the respondent(s)-Income Tax Department

* * * * *

DEEPAK SIBAL, J.

1. These are a bunch of petitions seeking therein to declare Section 147A of the Income-tax Act, 1961 (for short – the Act) to be ultra vires Articles 14, 19(1) (g) and 265 of the Indian Constitution. After the grant of declaration as above, the petitioners pray for quashing the notices issued to them under Section 148 of the Act by their respective jurisdictional Assessing Officers (for short –jurisdictional AOs). The petitioners further submit that even if Section 147A of the Act is held to have been legally promulgated by the legislature, the impugned notices, issued under Section 148 of the Act, are liable to be set aside because the petitioners' respective jurisdictional AOs, who issued the impugned notices, were not chosen randomly through automated allocation which violates

Section 151A of the Act read with the scheme dated 29.03.2022 framed thereunder.

2. For the sake of convenience, facts are being extracted from amended *CWP-15791-2024 - Jyoti Sareen vs. Union of India and others*.

3. The petitioner is an Advocate practicing in this Court. She is an Income Tax Assessee and her PAN number is APRPS8105E. The petitioner being a professional is earning income under the head "Business and Profession". For the Assessment Year 2020-21, the petitioner filed her Income Tax Return on 30.09.2020. The petitioner's return was processed. Thereafter, an intimation under Section 143(1) of the Act was received by her. On 28.03.2024, the petitioner received a message on her registered mobile number informing her that some proceedings had been initiated against her by the Income Tax Authorities and in this regard she was advised to go on to the Income Tax Business Application Portal. On doing so, the petitioner found that a notice dated 15.03.2024, under Section 148 of the Act, had been issued to her by her jurisdiction AO. As per the said notice the petitioner's jurisdictional AO had received information that on 14.03.2022 a search had been conducted under Section 132 of the Act in the case of the petitioner or in the case of a person in respect of which the petitioner was assessable. To reassess her income, for the assessment year 2020-21, the petitioner was asked to file a return in the prescribed form. As per the said notice, the same had been issued after obtaining prior approval from the Principal Commissioner of Income Tax, Chandigarh-I but the petitioner claims that no such approval was provided to her. Through the notice dated 15.03.2024, issued under Section 148 of the Act, the petitioner was not informed the reasons as to why such proceedings had

been initiated against her. According to the petitioner, since no proceedings under Section 132 of the Act had been conducted on any of her premises, she was also ignorant as to who was the person on whose premises search proceedings under Section 132 of the Act had been conducted leading to the issuance of notice under Section 148 of the Act to her. On 28.06.2024 the petitioner received an intimation informing her that proceedings against her shall be conducted in a faceless manner. The petitioner challenged the notice dated 15.03.2024, issued under Section 148 of the Act, through filing of a petition before this Court being CWP-15791-2024 which petition was allowed by a Division Bench of this Court through judgment dated 19.07.2024 primarily for the reason that the impugned notice issued by the petitioner's jurisdictional AO violated Section 151A of the Act read with the scheme framed thereunder dated 29.03.2022. The reliance placed upon by the respondent authorities on an office memorandum and other internal communications to justify issuance of the impugned notice by the petitioner's jurisdictional AO was rejected in the light of the clear mandate under Section 151A read with Section 144B of the Act. To arrive at its afore conclusion, this Court agreed with and relied upon the law laid down, in similar facts, by the Telangana High Court in the case of ***Kankanala Ravindra Reddy Vs. Income-tax Officer and others, 2023 SCC OnLine TS 4476,*** the Bombay High Court in ***Hexaware Technologies Ltd. vs. Assistant Commissioner of Income-tax & others, 2024 SCC OnLine Bom 1249*** and the Gauhati High Court in ***Ram Narayan Sah Vs. Union of India and others, 2024 SCC OnLine Gau 1424.***

4. The judgment of this Court dated 19.07.2024 was challenged by the respondents before the Supreme Court through filing of Special Leave

Petition (C) No.000950-2025. However, while the afore Special Leave Petition, along with other Special Leave Petitions, was pending before the Supreme Court, through the Finance Bill, 2026, Section 147A of the Act was promulgated w.e.f. 01.04.2021. Section 147A started with a non-obstante clause that notwithstanding anything contained in any judgment, order or decree of any court or in Section 151A or in any scheme framed under Section 151A, for the removal of doubts, it was clarified through Section 147A 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.

5. In the light of the introduction of Section 147A of the Act, the Supreme Court set aside the judgment(s) impugned before it and remitted the matters to the respective jurisdictional High Courts for fresh consideration. The assessees were granted liberty to amend their writ petitions, if so advised, within four weeks from the date of uploading of the order of the Supreme Court dated 10.04.2026 so as to enable them to lay challenge to Section 147A of the Act. The Supreme Court clarified that it had not expressed any opinion on the merits of the controversy, including the validity, scope, effect, retrospectivity or applicability of the amended provision and that all such questions were left open to be decided by the respective jurisdictional High Courts. The High Courts were requested to decide the matters preferably by 30.09.2026 and in the meanwhile interim stay of further assessment / reassessment proceedings pursuant to the notice impugned by the assessees was granted. However, such grant of interim stay was subject to further terms and conditions, if any, to be

imposed by the respective jurisdictional High Courts. Operative part of the order of the Supreme Court dated 10.04.2026 reads as follows: -

"21. It appears to us that the assessees 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 favour of the assessees are set aside on this limited ground. The matters areaccordingly remitted to the respective High Courts for fresh consideration. Ordered accordingly.

23. The assessees are granted liberty to amend their writ petitions, if so advised, within a period of four (4) 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 (3) 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."

6. In terms of the liberty granted by the Supreme Court through its order dated 10.04.2026, the petitioner amended her original petition to include therein the challenge to the newly introduced Section 147A of the Act.

7. Dr. Sanjay Bansal, Mrs. Radhika Suri, Mrs. Manisha Gandhi, Mr. Pankaj Jain and Mr. Sandeep Goyal, learned Senior Advocates as also Mr. Ved Jain and Mr. Sunil Kumar Mukhi, Advocates, who appeared on behalf of the petitioners, submitted that the Bombay High Court through its judgments in ***Hexaware Technologies Ltd.'s*** case (supra) and ***Kairos Properties Pvt. Ltd. Vs. Assistant Commissioner of Income Tax and others, 2024 SCC OnLine Bom 2571****,* this Court through its judgments pronounced in ***Jatinder Singh Bhangu & another vs. Union of India & others, 2024 SCC OnLine P&H 9337*** and ***Jasjit Singh vs. Union of India and others, 2024 SCC OnLine P&H 9677,*** the Telangana High Court in the case of ***Kankanala Ravindra Reddy's*** case (supra) and the Gauhati High Court in ***Ram Narayan Sah's*** case (supra), after analyzing the provisions of the Act, categorically held that in the light of Section 151A of the Act read with the scheme framed thereunder dated 29.03.2022, notices under Section 148 of the Act could only be issued by a Faceless Assessment Officer; without amending Section 151A of the Act and/or the scheme framed thereunder dated 29.03.2022 and thus without curing the defect pointed out by the constitutional courts through the afore referred judgments, through the retrospective enactment of Section 147A, the legislature could not nullify the effect of the judgments delivered by the

constitutional courts; promulgation of Section 147A of the Act by the legislature, without amending Section 151A and Section 130 of the Act and/or the schemes framed thereunder is a glaring example of legislative outreach and breach of separation of powers between the legislature and the judiciary which the Indian Constitution clearly seeks to maintain; simply because Section 147A of the Act begins with a non-obstante clause, it cannot nullify the effect of law laid down by the constitutional courts; Section 151A of the Act read with the scheme framed thereunder dated 29.03.2022, which still exists in the Act, clearly provides that notices under Section 148 of the Act are required to be issued randomly through automated allocation and in a faceless manner and in the light of such clear mandate of law the "clarification" sought to be made through the introduction of Section 147A of the Act is in direct conflict with such substantive provisions within the same Act; Section 147A of the Act is also in conflict with Section 130 of the Act read with the scheme framed thereunder dated 28.03.2022 as per which all the functions and duties by Income Tax authorities are required to be done through the faceless regime in terms of Section 144B of the Act; as per the memorandum attached to the Finance Bill, 2026 through which Section 147A of the Act was introduced, Section 147A was promulgated by the legislature to achieve certainty and clarity as also to avoid litigation but introduction of Section 147A of the Act has resulted in everything to the contrary; since there were divergent views expressed by different High Courts as to whether notices under Section 148 of the Act could be issued by the assessees' jurisdictional AOs, there were cross Special Leave Petitions, filed by the respective aggrieved parties, pending before the Supreme Court at the time when Section 147A was introduced; in the light of the afore fact, the revenue should have invited an opinion of the Supreme Court which would have granted a final closure to this issue rather than retrospective enactment of Section 147A which has resulted in breeding of litigation across the length and breadth of this country before different High Courts and which litigation is not likely to end with judgment(s) to be rendered by the jurisdictional High Court(s); partial implementation of the faceless regime at the assessment/ reassessment stage defeats the entire purpose behind introduction of the faceless regime; even the timing of introduction of Section 147A of the Act by the legislature when the issue as to whether an assessee's jurisdictional AO could issue a notice under Section 148 of the Act was pending adjudication before the Supreme Court was not appropriate because by doing so the respondents have literally stalled an opinion by the Supreme Court which in the afore facts was highly desirable and that Section 147A of the Act is also arbitrary because it artificially bifurcates the different stages of assessment especially when proceedings under Sections 148 and 147 of the Act are statutorily required to be an integral part of the same process.

8. Alternatively, the submissions made by the learned counsels for the petitioner(s) was that even if this Court does not find favour with the submissions made on behalf of the petitioner(s) with regard to the challenge to the vires of Section 147A of the Act still the impugned notices issued under Section 148 of the Act are liable to be set aside as they have not been issued by AOs chosen randomly by way of automated allocation in terms of Section 151A of the Act read with the scheme framed thereunder dated 29.03.2022.

9. In support of their submissions, reliance was placed by learned counsel of the petitioners on the following judgments: -

1. ***NHPC Ltd. Vs. State of Himachal Pradesh Secretary and others, (2023) 17 SCC 1***

2. ***Janapada Sabha Chhindwara Vs. Central Provinces Syndicate Ltd. and another, (1970) 1 SCC 509***

3. ***State of Tamil Nadu Vs. State of Kerala and another, (2014) 12 SCC 696***

4. ***S.R. Bhagwat and others Vs. State of Mysore, (1995) 6 SCC 16***

5. ***Commissioner of Income Tax (Central)-I, New Delhi Vs. Vatika Township Private Ltd., (2015) 1 SCC 1***

6. ***S.T. Sadiq Vs. State of Kerala and others, (2015) 4 SCC 400***

7. ***Tata Motors Ltd. Vs. State of Maharashtra and others, (2004) 5 SCC 783***

8. ***State of Karnataka and others Vs. Karnataka Pawn Brokers Association and others, (2018) 6 SCC 363***

9. ***Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income-tax (1986), 3 SCC 461***

10. ***M/s Hiralal Rattanlal Vs. State of U.P. and another, (1973) 1 SCC 216***

10. Countering the submissions on the challenge to the vires of Section 147A of the Act, Mr. N. Venkataraman, the learned Additional Solicitor General of India, submitted that a harmonious reading of Sections 130, 135A, 144B, 147, 148, 148A and 151A of the Act read with the schemes framed by the Government of India under Sections 130, 135A and 151A of the Act lead to the irresistible conclusion that the assessees' jurisdictional AOs are entitled not only to do the pre assessment process but also issue a notice under Section 148 of the Act; introduction of Section 147A was necessary because the Act stood repealed with effect from 01.04.2026 and therefore, no amendment to the Act could have been carried out post 01.04.2026; on the strength of the collected

data more than 95% of the assessees in the country had submitted themselves to the notices issued to them under Section 148 of the Act by their respective jurisdictional AOs; the financial impact arising out of the assessment notices by the jurisdictional AOs was around Rs.17 lakh crores and therefore, an adverse decision by a constitutional court at this stage could have far reaching fiscal consequences adversely effecting both national and public interest; the Act being a central legislation mandates uniform assessment practice and therefore, divergent opinions expressed by the different constitutional courts necessitated uniformity through the introduction of Section 147A of the Act; the true spirit of the Parliamentary mandate under Section 144B of the Act for assessment, re-assessment and re-computation is being done fully in a faceless manner and the dispute raised by the petitioners centers only around the pre-assessment proceedings under Section 148A/148 of the Act; the schemes framed under Section 130 of the Act requires assessment to be done in a faceless manner; on the other hand the scheme framed under Section 135A of the Act is totally non-faceless while the scheme framed under Section 151A of the Act is hybrid – both faceless and non-faceless; an assessee is only entitled to a fair assessment but as to who should be his Assessing Officer is not an assessee's fundamental or constitutional right; the plea raised by the petitioner is extremely hyper technical; the entire process of assessment by either the assessee's jurisdictional AO or faceless AO is through electronic means with no personal interface; there are two broad technological systems which work in conjunction, one of which is the Risk Management Strategy which works under the control and supervision of Director General system which picks up cases on automated allocation basis for assessment, re-assessment or re-computation with there being no manual interference either by the assessees or by the income tax authorities; cases which are picked up under the Risk Management Strategy are handed over to the NFAC under Section 144B of the Act which is also done through electronic means; pre-assessment process under Section 148A of the Act and collection of information under Section 135A of the Act does not and need not involve a faceless assessment; finalization of assessment, re-assessment or re-computation is done under Section 147 of the Act also in a faceless manner; the expression notwithstanding anything contained in any judgment, order or decree of any Court in Section 147A of the Act seeks to convey that the ratios rendered by the constitutional courts holding that notices under Section 151A of the Act or the scheme framed thereunder ought to have been issued only by a faceless assessment officer stands altered; consequently, the first part of Section 147A of the Act clearly proceeds to alter, modify or change the basis of the judgments of the constitutional courts rendered against the Revenue; the later portion of Section 147A of the Act provides the basis of the change by clearly prescribing that the interpretation given by different constitutional courts against the Revenue that the faceless assessment officer of the assessee who ought to have issued notices under Section 148 of the Act stands clearly altered, modified or removed by substituting or overcoming the decision by clarifying that Section 148A proceedings, culminating in the issuance of notices under Section 148 of the Act by the assessee's jurisdictional AO are deemed to have been validly issued; if Section 147A of the Act is today tested it will not be possible for any Court to interpret that it is the faceless Assessing Officer alone who should have issued a notice under Sections 148A and 148 of the Act as such an inference is now not possible because the ratios of the judgments of the constitutional courts to that effect now stand altered or substituted and therefore, the twin requirements of validation stand fulfilled; being sovereign and plenary, the Parliament can make retrospective laws which can also extinguish vested rights; the mode and manner of validation is also a sovereign right and privilege of the Parliament and that the style and manner of the legislation cannot be made restricted or constrained.

11. In response to the alternate submissions raised on behalf of the petitioner(s) Mr. Venkataraman submitted that three notifications, two dated 31.03.2021 and one dated 10.06.2022, all issued under Section 120 of the Act conferred concurrent powers of assessment on the assessee's jurisdictional AO and the faceless AO; after the introduction of Section 144B(1) of the Act, jurisdiction of an assessee's jurisdictional AO from conducting assessment under Sections 143, 144 and 147 of the Act was ousted; pre-assessment proceedings under Section 148A and notice under Section 148 were specifically kept outside the purview in Section 144B(1) of the Act; thereafter Section 151A and the scheme framed thereunder was introduced wherein there is no reference to Section 148A and therefore, in terms of the afore-referred notifications issued under Section 120 of the Act only the assessee's jurisdictional AO could conduct proceedings under Section 148A of the Act and that being so, mere reference to Section 148 in the scheme under Section 151A of the Act would not confer exclusive jurisdiction on the AO under the faceless regime because if Section 151A with the scheme framed thereunder is harmoniously read with Section 144B(1) and the notification dated 10.06.2022, the only conclusion which can be arrived at is that proceedings under Section 148A culminating in

the issuance of notice under Section 148 can only be by the assessee's jurisdictional AO.

12. The learned Additional Solicitor General of India relied on the following judgments to support his afore submissions: -

1. ***NHPC Ltd. Vs. State of Himachal Pradesh Secretary and others, (2023) 17 SCC 1***
2. ***Hari Singh and others Vs. Military Estate Officer and another, (1972) 2 SCC 239***
3. ***Shri Prithvi Cotton Mills Limited and another Vs. Broach Borough Municipality and others, (1969) 2 SCC 283***
4. ***J.S. Yadav Vs. State of Uttar Pradesh and another, (2011) 6 SCC 570***
5. ***Virender Singh Hooda and others Vs. State of Haryana and another, (2004) 12 SCC 588***
6. ***State Bank's Staff Union (Madras Circle) Vs. Union of India and others, (2005) 7 SCC 584***
7. ***Rohtas Project Limited through Director Shri Paresh Rastogi Vs. Commissioner of Income Tax (Central) 7/81-B, Tilak Nagar, Kanpur and others, 2017 SCC OnLine All 5480***

13. Learned counsel for the parties have been heard.

14. At the outset, it would be apposite to refer to the relevant portions of Sections 148A, 148 and 147 of the Act which read as follows: -

<u>Section 148A</u>

> 148A. (1) Where the Assessing Officer has information which suggests that income chargeable to tax has escaped assessment in the case of an assessee for the relevant assessment year, he shall, before issuing any notice under section 148 provide an opportunity of being heard to such assessee by serving upon him a notice to show cause as to why a notice under section 148 should not be issued in his case and such notice to show cause shall be accompanied by the information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year.

(2) On receipt of the notice under sub-section (1), the assessee may furnish his reply within such period, as may be specified in the notice.

(3) The Assessing Officer shall, on the basis of material available on record and taking into account the reply of the assessee furnished under sub-section (2), if any, pass an order with the prior approval of the specified authority determining whether or not it is a fit case to issue notice under section 148.

(4) The provisions of this section shall not apply to income chargeable to tax escaping assessment for any assessment year in the case of an assessee where the Assessing Officer has received information under the scheme notified under section 135A.

Explanation.—For the purposes of this section and section 148, "specified authority" means the specified authority referred to in section 151.]

<u>Section 148</u>

148. (1) Before making the assessment, reassessment or recomputation 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

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.

<u>Section 147</u>

147. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or re-compute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

Explanation.—For the purposes of assessment or reassessment or re-computation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.

15. Section 148A of the Act prescribes the procedure before issuance of notice under Section 148. As per Section 148A if an Assessing Officer has information which suggests that an assessee's income, chargeable to tax, has escaped assessment for the relevant assessment year, he shall issue a notice upon the assessee, under Section 148A (1) of the Act, bringing to the assessee's notice the information in his possession. On receipt of the said notice the assessee may file a response. Thereafter, on the basis of material available on record, including the reply to the show cause notice by the assessee, if any, the Assessing Officer is required to pass an order under Section 148A (3) of the Act, with the prior approval of the specified authority, determining as to whether it is a fit case for issuance of notice under Section 148 of the Act.

16. As per Section 148 of the Act, before assessment, re-assessment or re-computation under Section 147 of the Act, the Assessing Officer is required to serve upon the assessee a copy of the order passed under Section 148A(3) of the Act requiring the assessee to file a return of his income or income of any other person in respect of whom he is assessable under the Act during the previous year corresponding to the relevant assessment year.

17. Under Section 147 of the Act, the Assessing Officer assesses, re-assesses or re-computes the assessee's income chargeable to tax which has escaped assessment.

18. Prior to introduction of the Finance Act 2018, the entire procedure of assessment or reassessment or re-computation under the Income Tax Laws was being done in a physical manner which involved interface between the assessee and his assessing officer. Notices under Sections 143(3) and 148 of the Act were manually issued and served through conventional physical mode. On receipt of such notice the assessee would visit the office of his jurisdictional AO where assessment or reassessment or re-computation proceedings would take place. Apparently, personal interface between the tax payer and the officers of the Income Tax department led to certain undesirable practices on the part of tax officials resulting in revenue loss to the Union. Therefore, the Government of India launched scheme(s), in a phased manner, for faceless assessment and through electronic mode. Further, the Government of India also sought to select cases for scrutiny in a random manner and through electronically issued notices by the central cell without disclosing the name, designation or location of the Assessing Officer. This intent of the Government of India was duly reflected in the speech dated July 05, 2019 by the Minister of Finance, Government of India, as delivered by her in the Parliament, the relevant portion of which is reproduced below for reference: -

> ***"124.*** *The existing system of scrutiny assessments in the Income-tax Department involves a high level of personal interaction between the taxpayer and the Department, which leads to certain undesirable practices on the part of tax officials. To eliminate such instances, and to give shape to the vision of the Hon'ble Prime Minister, a scheme of faceless assessment in electronic mode involving no human interface is being launched this year in a phased manner. To start with, such e-assessments shall be carried out in cases requiring verification of certain specified transactions or discrepancies.*

> ***125.*** *Cases selected for scrutiny shall be allocated to assessment units in a random manner and notices shall be issued electronically by a Central Cell, without disclosing the name, designation or location of the Assessing Officer. The Central Cell shall be the single point of contact between the taxpayer and the Department. This new scheme of assessment will represent a paradigm shift in the functioning of the Income Tax Department."*
>
> ***(emphasis supplied)***

19. Similar intent of the Government of India is also found in the speech of the Union Minister of Finance in the Parliament, delivered on 01.02.2020, the relevant portion of which is reproduced below: -

> "**125. Faceless appeals**
>
> Our government is committed to bringing in transformational changes so that maximum governance is provided with minimum government. In order to impart greater efficiency, transparency and accountability to the assessment process, a new faceless assessment scheme has already been introduced. Currently, most of the functions of the Income Tax Department starting from the filing of return, processing of returns, issuance of refunds and assessment are performed in the electronic mode without any human interface. In order to take the reforms initiated by the Department to the next level and to eliminate human interface, I propose to amend the Income Tax Act so as to enable Faceless appeal on the lines of Faceless assessment."
>
> ***(emphasis supplied)***

20. In her budget speech in the Parliament on 01.02.2021, the Minister of Finance, Government of India again reiterated the afore intent of the Government of India, the relevant portion of which speech is also reproduced below:-

> **"Faceless ITAT**
>
> 158. For ease of compliance and to reduce discretion, we are committed to make the taxation processes faceless. The Government has already introduced faceless assessment and appeal this year.

159. The next level of income tax appeal is the Income Tax Appellate Tribunal. I now propose to make this Tribunal faceless. We shall establish a National Faceless Income Tax Appellate Tribunal Centre. All communication between the Tribunal and the appellant shall be electronic. Where personal hearing is needed, it shall be done through video-conferencing."

(emphasis supplied)

21. Apparently, in the light of the afore intent the legislature enacted Sections 130, 135A, 144B and 151A. Sections 130, 135A and 151A were brought into effect from 01.11.2020 whereas Section 144B came into force from 01.04.2021. These Sections and the schemes framed by the Government of India under Sections 130, 135A and 151A are relevant and are therefore, reproduced below for ready reference: -

Faceless jurisdiction of income-tax authorities.

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.

Faceless collection of information.

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 specialisation;
(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:
[**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.

Faceless Assessment.

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 variations, 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 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 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;

(*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.

Faceless assessment of income escaping assessment.

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."

<u>Scheme framed under Section 135A of the Act</u>

"MINISTRY OF FINANCE
(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 13th December, 2021

(INCOME-TAX)

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 randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise 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 subsection (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 Centralised 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-tax (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

(ii) 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 authorized 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)]

<u>Scheme framed under Section 130 of the Act</u>

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 Incometax 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 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-sections (1) and (2) of section 151A 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-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 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 of the Scheme.—For the purpose of this Scheme,—
(a) assessment, reassessment or recomputation under section 147 of the Act,
(b) issuance of notice under section 148 of the Act, shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in section

148 of the Act for issuance of notice, and in a faceless manner, to the extent provided in section 144B of the Act with reference to making assessment or reassessment of total income or loss of assessee.

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

22. As per Section 130 of the Act, read with the scheme framed thereunder dated 28.03.2022, the exercise of all or any of the powers and performance of all or any of the functions conferred on or assigned to income tax authorities by or under the Act as referred to in Section 120 of the Act or vesting of jurisdiction with the Assessing Officer as referred to in Section 124 of the Act was required to 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 faceless assessment of total income or loss of the assessee.

23. Under sub-sections 1, 2 and 5 of Section 120 of the Act, a notification dated 10.06.2022 was issued by the Government of India which was in supersession of all earlier notifications issued prior thereto. Through this notification directions were issued that to facilitate the conduct of faceless assessment proceedings under Section 144B of the Act income tax authorities or units mentioned in the notification would concurrently exercise powers and functions of the Assessing Officer.

24. After the enactment of Sections 130, 135A, 144B and 151A and framing of schemes under Sections 130, 135A and 151A as also issuance of the notification dated 10.06.2022 under Section 120 of the Act, jurisdictional AOs issued notices to the assessees under Section 148 of the Act which were challenged by the assessees before their respective jurisdictional High Courts primarily on the ground that such notices should and could have been issued

only by faceless Assessing Officers and in support of such submissions the assessees placed heavy reliance on Section 151A of the Act and the scheme framed thereunder dated 29.03.2022.

25. On 13.09.2023, a Single Bench of Calcutta High Court in the case of ***Triton Overseas Private Limited Vs. Union of India and others, 2023 SCC OnLine Cal 6585*** decided the afore issue in the revenue's favour and the operative part of such judgment reads as follows: -

> "3. Mr. Dutt, learned advocate appearing for the respondents submits that first of all the ground taken by the petitioner is hypertechnical since mode of service does not affect the contents and merit of the notice and secondly that the issuance of the aforesaid impugned notice under Section 148 of the Act is justifiable and sustainable in law in view of the office memorandum dated 20th February, 2023 being F No. 370153/7/2023-TPL issued by the CBDT and particularly paragraph 4 of the said office memorandum upon which she relies is quoted as hereunder :
>
> > *"4. It is also pertinent to note here that under the provisions of the Act both the JAO as well as units under NFAC have concurrent jurisdiction. The Act does not distinguish between JAO or NFAC with respect to jurisdiction over a case. This is further corroborated by the fact that under section 144B of the Act the records in a case are transferred back to the JAO as soon as the assessment proceedings are completed. So, section 144B of the Act lays down the role of NFAC and the units under it for the specific purpose of conduct of assessment proceedings in a specific case in a particular Assessment Year. This cannot be construed to be meaning that the JAO is bereft of the jurisdiction over a particular assessee or with respect to procedures not falling under the ambit of section 144B of the Act. Since, section 144B of the Act does not provide for issuance of notice under section 148 of the Act, there can be no ambiguity in the fact that the JAO still has the jurisdiction to issue notice under section 148 of the Act."*
>
> *4. Considering the facts and circumstances of the case and submissions of the parties and in view of the aforesaid circular of the Board, I find no merit in the writ petition being WPO 1566 of 2023 and accordingly the same is dismissed."*

26. A perusal of the afore quoted portion of the judgment of the Calcutta High Court in ***Triton Overseas Private Limited's*** case (supra) clearly reveals that the said judgment was rendered in the revenue's favour in the light of an office memorandum dated 20.03.2023 issued by the CBDT as per which memorandum the assessee's Jurisdictional AO continued to have jurisdiction to issue notice under Section 148 of the Act.

27. A Division Bench of the Telangana High Court in ***Kankanala Ravindra Reddy's*** case (supra) also considered the same issue as above and through judgment dated 14.09.2023 rendered a decision in favour of the assessee. The operative part of the judgment of the Telangana High Court in the case of ***Kankanala Ravindra Reddy's*** case (supra) reads as under: -

> "***20.*** *Keeping the aforesaid view of the hon'ble Supreme Court, it would be relevant at this juncture to take note certain provisions of the Income-tax Act which stood amended with effect from April 1, 2021 by virtue of the Finance Act, 2021. Section 144B inserted by virtue of the Finance Act, 2021, with effect from April 1, 2021 provides for faceless assessment and sub- section (1) of the said newly inserted section 144B is an non obstante clause. The relevant portion of sub-section (1) of section 144B necessary for adjudication of the preliminary issue under consideration is reproduced herein under:*
>
> *"Notwithstanding anything to the contrary contained in any other provisions 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;"*

***21.** In continuation to the aforesaid provisions, it would be relevant to take note of yet another provision of law, i.e., sub-section (1) of section 151A which was inserted with effect from November 1, 2020. It refers to faceless assessment of income escaping assessment which would be relevant for better understanding of the issue being decided in the present batch of writ petitions, which again for ready reference is being reproduced herein under:*

"151A. (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of assessment, reassessment or recomputation 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, 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, recomputation or issuance or sanction of notice with dynamic jurisdiction."

***22.** Similarly, the Central Board of Direct Taxes had also amended section 130 of the Income-tax Act so far as conferring jurisdiction on the income- tax authorities in the light of the faceless assessment procedure being adopted. The amended section 130 and sub-section (1) which is relevant for the present issue under consideration again for ready reference is being reproduced herein under:*

"130. (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purpose 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."

__23.__ In furtherance to the powers conferred under sub-sections (1) and (2) of section 130 of the aforesaid Income-tax Act, the Central Board of Direct Taxes framed a scheme called as the "Faceless Jurisdiction of Income-tax Authorities Scheme, 2022" ((2022) 442 ITR (St) 197). A plain reading of the aforesaid notification would clearly reflect that as has been amended under section 130. The Central Board of Direct Taxes has framed a scheme which defines the Act to be the Income-tax Act and it specifically defines automated allocation which is defined under section 2(1)(b), which again for ready reference is being re-produced herein under (page 197 of 442 ITR (St)):

"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;"*

Further section 3 of the said scheme deals with vesting of the jurisdiction with the Assessing Officer, which again for ready reference is being reproduced herein under:

> *"(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;"*

__24.__ In furtherance to the aforesaid notification, the Central Board of Direct Taxes again in exercise of its powers conferred under sub-sections (1) and (2) of section 151A framed another scheme called as the e-Assessment of Income Escaping Assessment Scheme, 2022 ((2022) 442 ITR (St) 198), which defines automated allocation is reproduced herein under (page 198 of 442 ITR (St)):

"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."*

And the scope of the scheme again has been envisaged in section 3 of the said scheme, which again for ready reference is being reproduced herein under (page 198 of 442 ITR (St)):

"For the purpose of this Scheme, —

> *(a) assessment, reassessment or recomputation under section 147 of the Act,*
>
> *(b) issuance of notice under section 148 of the Act,*

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

25. *A plain reading of the aforesaid two notifications issued by the Central Board of Direct Taxes dated March 28, 2022 and March 29, 2022, it would clearly indicate that the Central Board of Direct Taxes was very clear in its mind when it framed the aforesaid two schemes with respect to the proceedings to be drawn under section 148A, that is to have it in a faceless manner. There were two mandatory conditions which were required to be adhered to by the Department, firstly, the allocation being made through the automated allocation system in accordance with the risk management strategy formulated by the Board under section 148 of the Act. Secondly, the reassessment has to be done in a faceless manner to the extent provided under section 144B of the Act.*

26. *After the introduction of the above two schemes, it becomes mandatory for the Revenue to conduct/initiate proceedings pertaining to reassessment under sections 147, 148 and 148A of the Act in a faceless manner. Proceedings under section 147 and section 148 of the Act would now have to be taken as per the procedure legislated by Parliament in respect of reopening/reassessment, i.e., proceedings under section 148A of the Act.*

27. *In the present case, both the proceedings, i.e., the impugned proceedings under section 148A of the Act, as well as the consequential notices under section 148 of the Act were issued by the local jurisdictional officer and not in the prescribed faceless manner. The order under section 148A(d) of the Act and the notices under section 148 of the Act are issued on April 29, 2022, i.e., after the "Faceless Jurisdiction of the Income-tax Authorities Scheme, 2022" and the "e-Assessment of Income Escaping Assessment Scheme, 2022" were introduced.*

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35. *In view of the aforesaid discussions, it is by now very clear that the procedure to be followed by the respondent-Department upon treating the notices issued for reassessment being under section 148A, the subsequent proceedings were mandatorily required to be undertaken under the substituted provisions as laid down under the Finance Act, 2021. In the absence of which, we are constrained to hold that the procedure adopted by the respondent-Department is in contravention to the statute, i.e., the Finance Act, 2021, at the first instance. Secondly, it is also in direct contravention to the directives issued by the hon'ble Supreme Court in the case of Ashish Agarwal supra."*

(emphasis supplied)

28. Thus, in ***Kankanala Ravindra Reddy's*** case (supra), the Telangana High Court held that, consequent upon the introduction of the "Faceless Jurisdiction of Income Tax Authorities scheme, 2022" under Section 130 of the Act and the "e-Assessment of Income Escaping Assessment Scheme, 2022", under Section 151A of the Act, the entire proceedings for reassessment under Sections 147, 148 and 148A of the Act were mandatorily required to be initiated and conducted in a faceless manner.

29. The same issue, as above, was then considered by a Division Bench of the Bombay High Court in ***Hexaware Technologies Ltd.'s case*** *(supra)*. After analyzing the various provisions of the Act and in particular Section 151A of the Act and the scheme framed thereunder, the Bombay High Court was of the view that there is no question of concurrent jurisdiction of the jurisdictional AO and the faceless AO for the issuance of notice under Section 148 of the Act when specific jurisdictions in this regard had been assigned to the jurisdictional AO and the faceless AO in the scheme dated 29.03.2022. It was further held that after the enactment of Section 151A and framing of the scheme thereunder dated 29.03.2022, notices under Section 148 of the Act could only be issued by a faceless AO to the exclusion of the assessee's jurisdictional AO. The judgment of the Telangana High Court in ***Kankanala Ravindra Reddy's*** case (supra) was considered and followed whereas the judgment of the Calcutta High Court in ***Triton Overseas (P) Ltd.'s*** case (supra) was not relied upon. The relevant observations of the Bombay High Court in ***Hexaware Technologies Ltd.'s*** case (supra) are as follows: -

> *"49. Further, in our view, there is no question of concurrent jurisdiction of the jurisdictional assessing officer and the faceless assessing officer for issuance of*

notice under Section 148 of the Act or even for passing assessment or reassessment order. When specific jurisdiction has been assigned to either the jurisdictional assessing officer or the faceless assessing officer in the scheme dated 29-3-2022, then it is to the exclusion of the other. To take any other view in the matter, would not only result in chaos but also render the whole faceless proceedings redundant. If the argument of the Revenue is to be accepted, then even when notices are issued by the faceless assessing officer, it would be open to an assessee to make submission before the jurisdictional assessing officer and vice versa, which is clearly not contemplated in the Act. Therefore, there is no question of concurrent jurisdiction of both faceless assessing officer or the jurisdictional assessing officer with respect to the issuance of notice under Section 148 of the Act. The scheme dated 29-3-2022 [(2022) 442 ITR (St.) 198] in Para 3 clearly provides that the issuance of notice "shall be through automated allocation" which means that the same is mandatory and is required to be followed by the Department and does not give any discretion to the Department to choose whether to follow it or not. That automated allocation is defined in Para 2(b) of the scheme to mean 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. Therefore, it means that the case can be allocated randomly to any officer who would then have jurisdiction to issue the notice under Section 148 of the Act. It is not the case of Respondent 1 that Respondent 1 was the random officer who had been allocated jurisdiction.

50. With respect to the arguments of the Revenue i.e. the Notification dated 29-3-2022 [(2022) 442 ITR (St.) 198] provides that the scheme so framed is applicable only "to the extent" provided in Section 144-B of the Act and Section 144-B of the Act does not refer to issuance of notice under Section 148 of the Act and hence, the notice cannot be issued by the faceless assessing officer as per the said scheme, we express our view as follows:

51. Section 151-A of the Act itself contemplates formulation of scheme for both assessment, reassessment or recomputation under Section 147 as well as for issuance of notice under Section 148 of the Act. Therefore, the scheme framed by the Central Board of Direct Taxes, which covers both the aforesaid aspect of the provisions of Section 151-A of the Act cannot be said to be applicable only for one aspect i.e. proceedings post the issue of notice under Section 148 of the Act being assessment, reassessment or recomputation under Section 147 of the Act and inapplicable to the issuance of notice under Section 148 of the Act. The scheme is clearly applicable for issuance of notice under Section 148 of the Act

<u>and accordingly, it is only the faceless assessing officer which can issue the notice under Section 148 of the Act and not the jurisdictional assessing officer. The argument advanced by the respondent would render Clause 3(b) of the scheme otiose and to be ignored or contravened, as according to the respondent, even though the scheme specifically provides for issuance of notice under Section 148 of the Act in a faceless manner, no notice is required to be issued under Section 148 of the Act in a faceless manner. In such a situation, not only Clause 3(b) but also the first two lines below Clause 3(b) would be otiose, as it deals with the aspect of issuance of notice under Section 148 of the Act.</u> The respondents, being an authority subordinate to the Central Board of Direct Taxes, cannot argue that the scheme framed by the Central Board of Direct Taxes, and which has been laid before both Houses of Parliament is partly otiose and inapplicable. The argument advanced by the respondent expressly makes Clause 3(b) otiose and impliedly makes the whole scheme otiose. If Clause 3(b) of the scheme is not applicable, then only Clause 3(a) of the scheme remains. What is covered in Clause 3(a) of the scheme is already provided in Section 144-B(1) of the Act, which section provides for faceless assessment, and covers assessment, reassessment or recomputation under Section 147 of the Act. Therefore, if the Revenue's arguments are to be accepted, there is no purpose of framing a scheme only for Clause 3(a) which is in any event already covered under faceless assessment regime in Section 144-B of the Act. The argument of the respondent, therefore, renders the whole scheme redundant. An argument which renders the whole scheme otiose cannot be accepted as correct interpretation of the scheme. The phrase "to the extent provided in Section 144-B of the Act" in the scheme is with reference to only making assessment or reassessment or total income or loss of the assessee. Therefore, for the purposes of making assessment or reassessment, the provisions of Section 144-B of the Act would be applicable as no such manner for reassessment is separately provided in the scheme. For issuing notice, the term "to the extent provided in Section 144-B of the Act" is not relevant. The scheme provides that the notice under Section 148 of the Act, shall be issued 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. Therefore, "to the extent provided in Section 144-B of the Act" does not go with issuance of notice and is applicable only with reference to assessment or reassessment. The phrase "to the extent provided in Section 144-B of the Act" would mean that the restriction provided in Section 144-B of the Act, such as keeping the international tax jurisdiction or central circle jurisdiction out of the ambit of Section 144-B of the Act would also apply under the scheme. Further, the exceptions provided in sub-

sections (7) and (8) of Section 144-B of the Act would also be applicable to the scheme.

52. When an authority acts contrary to law, the said act of the authority is required to be quashed and set aside as invalid and bad in law and the person seeking to quash such an action is not required to establish prejudice from the said act. An act which is done by an authority contrary to the provisions of the statute, itself causes prejudice to the assessee. All assessees are entitled to be assessed as per law and by following the procedure prescribed by law. Therefore, when the Income Tax Authority proposes to take action against an assessee without following the due process of law, the said action itself results in a prejudice to the assessee. Therefore, there is no question of the petitioner having to prove further prejudice before arguing the invalidity of the notice.

53. xx xx xx xx xx

54. With reference to the decision of the Calcutta High Court in Triton Overseas (P) Ltd. case [Triton Overseas (P) Ltd. v. Union of India, 2023 SCC OnLine Cal 6585] , the Calcutta High Court has passed the order without considering the scheme dated 29-3-2022 as the said scheme is not referred to in the order. Therefore, the said judgment cannot be treated as a precedent or relied upon to decide the jurisdiction of the assessing officer to issue notice under Section 148 of the Act. The Calcutta High Court has referred to an Office Memorandum dated 20-2-2023 being F. No. 370153/7/2023 TPL which has been dealt with above. Therefore, no reliance can be placed on the said office memorandum to justify that the jurisdictional assessing officer has jurisdiction to issue notice under Section 148 of the Act. Further, the Telangana High Court in Kankanala Ravindra Reddy v. CIT [Kankanala Ravindra Reddy v. CIT, 2023 SCC OnLine TS 4476] has held that in view of the provisions of Section 151-A of the Act read with the scheme dated 29-3-2022 the notices issued by the jurisdictional assessing officers are invalid and bad in law. We are also of the same view."

(emphasis supplied)

30. The issue as to whether after the enactment of Section 151A of the Act and framing of the scheme thereunder dated 29.03.2022, the assessee's jurisdictional AOs could issue notices under Section 148 of the Act then arose before the Gauhati High Court in ***Ram Narayan Sah's*** case (supra). The issue was decided in favour of the assessee by holding as follows: -

*"**8.** A careful perusal of the scheme reveals that the scope of the scheme is for the purpose of the assessment, reassessment, recomputation under section 147 of the Act and issuance of notices under section 148 of the Act and the same shall be by a process through automated allocation in accordance with the risk management strategy formulated by the Board as referred to in section 148 of the Act for issuance of the notice and in a faceless manner and to the extent provided under section 144B of the Act with reference to making the assessment or reassessment of total income or loss of the assessee.*

***9.** A perusal of section 151A along with the scheme reveals that the statute in order to obviate prejudice and bias has resorted to issuance of notices by automated allocation through the risk management strategy. The judgments referred to by the learned counsel for the petitioner supports the contention raised by the writ petition and hold that the notices are required to be issued in an automated manner without there being any interface between the Department and the assessee. The judgment relied upon by the learned counsel for the respondent however had discussions on the issue as to whether there is any vested or any fundamental right in respect of the assessee's demand for automated issuance of notice. The Delhi High Court vide judgment and order dated May 26, 2023 passed in W.P. (C) No. 3535 of 2021 (Sanjay Gandhi Memorial Trust v. CIT (Exemptions) [(2023) 455 ITR 164 (Delhi); 2023 SCC OnLine Del 3161.] and C.M. Appl. No. 10693 of 2021 Magick Woods Exports P. Ltd. v. Addl./Joint/Dy./Asst. CIT/ITO [(2022) 440 ITR 607 (Mad).] has categorically held that there is no fundamental right or legal right available to an assessee to demand that the notices though automated digital allocation should be issued.*

***10.** The question of whether the petitioner has the fundamental right or not may not be required to be answered in the present proceedings inasmuch as Mr. Keyal has fairly submitted that in terms of the provisions of section 151A, the Department has already framed a scheme and the same is notified by notification dated March 29, 2022 ((2022) 442 ITR (Stat) 198).*

***11.** As discussed above, the scope of the scheme is for the purposes of the assessment, reassessment, recomputation under section 147 and for issuance of notices under 148 and which shall be done through automated allocations by the Department.*

***12.** If that be so then the Department is required to follow the procedure prescribed in terms of the scheme and accordingly the Department will withdraw* *the notices and thereafter issue fresh notices if permissible under law as per the scheme read with section 151A."*

31. Even before a Division Bench of this Court the issue as to whether in the light of Section 151A and the scheme framed thereunder dated 29.03.2022 notices under Section 148 of the Act could be issued by the jurisdictional AO was considered in ***Jatinder Singh Bhangu and another vs. Union of India and others (2024) 466 ITR 474*** and decided in the assessee's favour through the following observations: -

15. <u>From the perusal of Section 151A, it is quite evident that scheme of faceless assessment is applicable from the stage of show cause notice under Section 148 as well as 148A. Clause 3 (b) of notification dated 29.03.2022 issued under Section 151A clearly provides that scheme would be applicable to notice under Section 148. Even otherwise, it is a settled proposition of law that assessment proceedings commence from the stage of issuance of show cause notice. The object of introduction of faceless assessment would be defeated if show cause notice under Section 148 is issued by Jurisdictional Assessing Officer</u>. The respondents are heavily placing reliance upon office memorandum and letter issued by departmental authorities. It is axiomatic intax jurisprudence that circulars, instructions and letters issued by Board or any other authority cannot override statutory provisions. The circulars are binding upon authorities and Courts are not bound by circulars. The mandate of Section 144B, 151A read with notification dated 29.03.2022 issued thereunder is quite lucid. There is no ambiguity in the language of statutory provisions, thus, office memorandum or any other instruction issued by Board or any other authority cannot be relied upon. Instructions/circulars can supplement but cannot supplant statutory provisions.

16. In the wake of above discussion and findings, we find it appropriate to subscribe view expressed by Bombay, Telangana and Gauhati High Court. The instant petitions deserve to be allowed and accordingly allowed.

17. The notices issued by Jurisdictional Assessing Officer under Section 148 are hereby quashed with liberty to respondent to proceed in accordance with procedure prescribed by law."

(emphasis supplied)

32. To the same effect is another Division Bench judgment of this Court in ***Jasjit Singh vs. Union of India (2024) 467 ITR 52 (P&H)*** wherein it has been held as follows:-

> *"16. We are in agreement with the view taken by the co-ordinate Bench [Jatinder Singh Bhangu v. Union of India, (2024) 466 ITR 474 (P&H).] and hold that such circular or instructions by the Board could not have been issued to override statutory provisions or to make them otiose or obsolete. Legislative enactments having financial implications are required to be followed strictly and mandatorily. By exercising the powers contained in sections 119 and 120 of the Act, 1961 as well as section 144B(7) and (8), the authorities cannot be allowed to usurp the legal provisions to their own satisfaction and convenience causing hardship to the assessees. It also leaves confusion in the minds of the taxpayers. In the opinion of this court, instructions and circulars can be issued only for the purpose of supplementing the statutory provisions and for their implementation.*
>
> *17. In view of the aforesaid discussion, there is no occasion to distinguish or take a different view as suggested by the learned counsel for the Revenue from what has already been held by the co-ordinate Bench.*
>
> *18. Keeping in view the law laid down by the co-ordinate Bench [Jatinder Singh Bhangu v. Union of India, (2024) 466 ITR 474 (P&H).] , notices issued by the jurisdictional Assessing Officer under section 148 of the Act, 1961 and the proceedings initiated thereafter without conducting the faceless assessment as envisaged under section 144B of the Act, 1961, have been found to be contrary to the provisions of the Act, 1961 and accordingly notices dated February 28, 2023, March 16, 2023, March 20, 2024 and March 30, 2023 and order dated March 30, 2023, are set aside for want of jurisdiction."*

33. Then was rendered another judgment by the Bombay High Court in ***Kairos Properties Pvt. Ltd. Vs. Assistant Commissioner of Income Tax and others, 2024 SCC OnLine Bom 2571*** wherein a Division Bench, other than the Division Bench which decided ***Hexaware Technologies Ltd.'s*** case (supra), decided the afore issue in favour of the assessee. The following observations

by the Bombay High Court in ***Kairos Properties Pvt. Ltd.'s*** case (supra) are relevant: -

> *"12. On a plain reading of sub-section (1) of Section 151-A, it is seen that it clearly provides that the Central Government may make a scheme by notification in the Official Gazette for the purposes of assessment, reassessment or recomputation under Section 147 or issuance of notice under Section 148 or conducting of enquiries, etc. or sanction for issue of such notice under Section 151, so as to impart greater efficiency, transparency and accountability which could be in terms of clauses (a), (b) and (c) of sub-section (1) of Section 151-A, namely, eliminating the interface between the Income Tax Authority and the assessee or any other person, to the extent technologically feasible; optimising utilisation of resources through economies of scale and functional specialisation; and introducing a team-based assessment, reassessment, recomputation or issuance or sanction of notice with dynamic jurisdiction. Sub-section (2) makes it explicit that for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, the Central Government can also 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 and further under sub-section (3), every notification issued under sub-sections (1) and (2) shall be laid before each House of Parliament.*
>
> *13. It is thus clear from the implications as brought about by the provisions of Section 151-A that Notification dated 29-3-2022 [(2022) 442 ITR (St.) 198] is issued in terms of what has been provided under Section 151-A. It has been issued after the amendments were incorporated in sub-section (1) by the Finance Act, 2021 [(2021) 432 ITR (St.) 52] with effect from 1-4-2022. <u>It would be thus difficult to accept a proposition when in Para 3(a) of the scheme defining the scope of the scheme when the words "assessment","reassessment" or "recomputation" under Section 147 of the Act are explicitly provided, and further when clause (b) in Para 3 of the scheme provides for issuance of notice under Section 148 of the Act, it would not take within its ambit the provisions of Section 148-A which are the initial steps, which in a given case are required to be taken in issuance of notice under Section 148 of the Act. Section 148-A provides for "conducting inquiry, providing opportunity before issue of notice under Section 148". Thus, this provision postulates a procedure inextricably linked to Section 148 which would apply to all cases of reassessment with a proviso stipulating exceptions to the rule. In other words, Section 148-A in its</u>*

object, intent and purpose is inextricably connected with the assessment, reassessment or recomputation, for which a notice under Section 148 may be issued. Any other view would mean that the requirement to adopt the faceless procedure under the scheme is a mere ministerial requirement for issuance of the notice. Such a reading would not be in conformity with the objectives spelt out in clauses (a), (b) and (c) of Section 151-A(1).

14. Thus, to accept a contention that merely because the notification does not explicitly refer to the provisions of Section 148-A, the scope of the scheme as defined in para 3 would exclude the applicability of Section 148-A, would lead to an absolute absurdity, and more particularly, considering the express provisions of sub-section (1) of Section 151-A. Also it is not possible to accept reading of the provisions of Section 144-B dehors Section 151-A(1). Sub-section (2) of Section 151-A is specifically incorporated to empower the Central Government to exclude the applicability of any of the provisions of the Act and/or to make such provisions applicable with exceptions, modifications and adaptations. Nothing of this nature is found in the notification to infer any exclusion of Section 148-A, and when it clearly concerns the entire assessment, reassessment or recomputation under Section 147 and issuance of notice in that regard under Section 148 of the Act.

15. Thus, the Central Government has not applied the provisions of sub-section (2) of Section 151-A to specifically exclude the application of Section 148-A from the scope of the scheme in Para 3 of Notification dated 29-3-2022 [(2022) 442 ITR (St.) 198], it would hence not be possible to accept the Revenue's contention that the provisions of Section 148-A stands excluded from the applicability of the faceless mechanism.

16. For the aforesaid reasons, we would not accept Mr Mohanty's submission that the scope of the scheme would exclude the applicability of Section 148-A and if steps are taken by the jurisdictional assessing officer under Section 148-A culminating into issuance of a notice under Section 148 of the Act, the entire exercise being undertaken outside the faceless mechanism would be required to be quashed and set aside. There cannot be any other reading of these provisions along with the notification."

(emphasis supplied)

34. Thereafter, a Division Bench of Delhi High Court, through its judgment dated 28.10.2024 in ***T.K.S. Builders (P) Ltd. Vs. Income Tax Officer,***

2024 SCC OnLine Del 7508 decided that notice under Section 148 of the Act could be issued by the jurisdictional AO. Relevant observations in this regard are as under: -

> *"99. Returning then to the Faceless Reassessment Scheme, 2022 itself, we find sufficient merit in the interpretation of its clauses as has been commended for our consideration by the respondents. Clause 3 of the said scheme provides that assessment, reassessment or recomputation under section 147 of the Act as well as issuance of notice under section 148 would be through automated allocation in accordance with the risk management strategy and in a faceless manner. The respondents rightly draw our attention to the usage of punctuation at various places in clause 3. A careful reading of that clause shows that the draftsman has used a comma immediately after the phrase "shall be through automated allocation". Yet another comma appears after the phrase "for issuance of notice". It thus appears to have been the clear intent of the author to separate and segregate the phases of initiation of action in accordance with risk management strategy, the formation of opinion whether circumstances warrant action under section 148 of the Act being undertaken by issuance of notice and the actual undertaking of assessment itself.*
>
> *100. Beyond the specific use of punctuation within clause 3, a comprehensive reading of the Faceless Reassessment Scheme, 2022, supported by the extensive material presented by the respondents, bolsters the clear intent underlying each phase of the faceless assessment process.*
>
> *101. As we had noticed in the preceding parts of this decision, the risk management strategy and the Insight Portal pushes information to the jurisdictional Assessing Officer and is principally not concerned with faceless assessment at all. The risk management strategy essentially enables the jurisdictional Assessing Officer to firstly examine the veracity of disclosures made and examine the return against various parameters and information which has been collated by the Directorate of Systems. It thus provides the jurisdictional Assessing Officer with an insight in respect of various transactions to which the assessee may be connected as well as data pertaining to that assessee which has otherwise been aggregated and mapped on the basis of material existing on the system of the respondents. The respondents would, therefore, appear to be correct in their submission that when material comes to be placed in the hands of the jurisdictional Assessing Officer by the risk management strategy, it would consequently be entitled to initiate the process of*

reassessment by following the procedure prescribed under section 148A. If after consideration of the objections that are preferred, it stands firm in its opinion that income was likely to have escaped assessment, it would transmit the relevant record to the National Faceless Assessment Centre. It is at that stage and on receipt of the said material by National Faceless Assessment Centre that the concepts of automated allocation and faceless distribution would come into play. The actual assessment would thus be conducted in a faceless manner and in accordance with an allocation that the National Faceless Assessment Centre would make. This, in our considered opinion, would be the only legally sustainable construction liable to be accorded to the scheme. Our conclusion would thus strike a harmonious balance between the evaluation of information made available to an Assessing Officer, the preliminary consideration of information for the purposes of formation of opinion and its ultimate assessment in a faceless manner.

102. We are also, in this regard, guided by the principles of beneficial construction and thus avoiding an interpretation that would render portions of the Act or the Faceless Assessment Scheme superfluous or ineffective should be avoided. To assert that the jurisdictional Assessing Officer's powers become redundant under the faceless assessment framework would conflict with beneficial construction, as it would undermine provisions specifically established to support comprehensive data analysis and informed decision-making, such as the jurisdictional Assessing Officer's access to risk management strategy and Insight Portal information.

103. We are fully cognisant of the contrarian view which was expressed in this respect in Hexaware Technologies Ltd. v. Asst. CIT [(2024) 464 ITR 430 (Bom); 2024 SCC OnLine Bom 1249.] and which stands reflected in para 36 of the report which has been extracted hereinabove. However, for reasons assigned in the preceding parts of this decision, we find ourselves unable to concur with the interpretation accorded by the Bombay High Court upon clause 3 of the Faceless Reassessment Scheme, 2022. As was noted by us earlier, clause 3 clearly contemplates the initial enquiry and formation of opinion to reassess being part of one defined process followed by actual assessment in a faceless manner. It thus divides the process of reassessment into two stages and when viewed in that light it is manifest that it strikes a just balance between the obligation of the jurisdictional Assessing Officer to scrutinise information and the conduct of assessment itself through a faceless allocation. The distribution of functions between the jurisdictional Assessing Officer and National Faceless Assessment Centre is complimentary and concurrent as contemplated under the various

> *schemes and the statutory provisions. This balanced distribution underscores the legislative intent to create a seamless integration of traditional and faceless assessment mechanisms within a unified statutory framework. This we so hold and observe since we have, principally, been unable to countenance a situation where the jurisdictional Assessing Officer stands completely deprived of the jurisdiction to evaluate data and material that may be placed in its hands."*

35. A Division Bench of the Rajasthan High Court then considered the same issue and through its judgment dated 19.03.2025 in ***Sharda Devi Chhajer Vs. Income-tax Officer and another, 2025 SCC OnLine Raj 3386*** rendered its decision in the assessee's favour by holding as follows: -

> ***"11.*** *This court further observes that the phrase "to the extent provided in section 144B of the Act" in the Scheme is with reference to only making assessment and reassessment of the total income or loss of the assessee and, therefore, does not go with issuance of notice. The Scheme provides that the notice under section 148 of the Act, shall be issued 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. Further, the exceptions provided in sub-sections (7) and (8) of section 144B of the Act would also be applicable to the Scheme.*
>
> ***12.*** *A reference to random in the Scheme is with reference to selection of Assessing Officer at random and not selection of section 148 cases as random. If the cases for issuance of notice under section 148 of the Act are selected based on criteria of risk management strategy, then obviously, the same are not randomly selected. The term "randomly" by definition mean something which is chosen by chance rather than according to a plan. Therefore, if the cases are chosen based on risk management strategy, they certainly cannot be said to be random. The computer/system cannot select cases on random but selection can be based on certain well-defined criteria.*
>
> ***13.*** *This court observes that statute so created, was required to eliminate the interface between the Income-tax authorities and the assessee, while optimising the utilisation of the resources and also creating a harmonious atmosphere with a dynamic jurisdiction. The Scheme of the Central Government, in the opinion of this court, was also to further fortify the legislative intention of strengthening the process of assessment, reassessment and recomputation. This court further observes that even the strong rigours, having been provided for the purpose of*

sections 148 and 148A of the Act of 1961 and the sanction under section 151A coupled with the Central Board of Direct Taxes Scheme, were meant to strengthen the system of revenue assessment.

14. *This court further observes that the automated allocation in a faceless manner was to be given effect to, as far as possible, and any deviation from the same, would not only hamper the legislative intention behind the revenue assessment to be made faceless, but will also create a concurrent and a parallel jurisdiction, thereby leading to conflict between the two jurisdictions.*

15. *This court also observes that the Faceless Assessing Officer has been assigned specific jurisdiction and the Scheme dated March 29, 2022 ((2022) 442 ITR (St) 198) also clearly indicates that the Faceless Assessing Officer has to be the jurisdictional authority. The opening of multiple jurisdictional avenues will not only lead to confusion, but will also result into a failure on the part of the Revenue, to give a concrete opportunity to the assessee. The concurrent jurisdiction of the Faceless Assessing Officer and the jurisdictional Assessing Officer, if accepted, would defeat the very purpose of statutory provisions, i.e., sections 151A and 144B of the Act of 1961. The words carefully chosen by the Central Board of Direct Taxes, include "automated allocation",and the baseline for the same being "algorithm for randomised allocation",clearly show that the technology was supposed to be used for the purpose of allocating jurisdiction to a random officer.*

16. *This court is of the opinion that section 151A of the Act of 1961 deals with the assessment, reassessment and recomputation provided in sections 147 and 148 of the Act of 1961, and, therefore, the same has to be faceless and the Faceless Assessing Officer has to have an exclusive jurisdiction to issue the notices.*

17. *The Scheme to the extent of section 144B of the Act of 1961 for issuance of notice cannot be said to be relevant for the purpose of issuing notices under sections 147 and 148 of the Act of 1961. Sections 147 and 148 have been kept separately. The restrictions provided for the purpose of section 144B shall be relevant.*

18. *This court further observes that any jurisdictional error in the notices has to be cured and thus, the notices which have been issued for assessment and reassessment and which are the impugned notices under section 148 of the Act of 1961, do not withstand the broader scheme of law, which requires automated allocation based on algorithm and random assignment of the Assessing Officer.*

Part 2(i)(a) of the Scheme clearly demarcates as to how the assessment and reassessment has to take place.

19. *This court is conscious of the fact that any reform or change for betterment is always resisted by the persons in control, particularly those who do not visualize the pragmatic and progressive paths which require vision and wisdom. The Legislature in its own vision and wisdom, for enhancing the efficiency of the taxation system by making it more transparent and impartial, decided to have infused technology in the shape of an algorithm for randomised allocations of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources. The common tendency to cling to control and old methods has to be dealt with firmly and ways and means including loopholes to fall back upon the old regime of control is an imminent danger which has to be thwarted off. The legislative intention, legislative vision and legislative wisdom has to be given full meaning in terms of technology and progressiveness, and thus, once an effective and strong step has been taken towards faceless regime, then maintaining the strings of local control to the prejudice of a common man would not only undermine the legislative wisdom but gains in terms of such a progressive and pragmatic step would stand to reduce. Once the gear of progress has been applied in a democratic set up, the same has to be strongly supported and sustained. The Central Board of Direct Taxes circular read with section 151A of the Act of 1961 has to be given full meaning and any ways and means to defeat the technology or to manually try to control the same would go against the legislative purpose.*

20. *Thus, this court holds that the mandate of section 151A of the Act of 1961 has to be strictly followed as there cannot be a way out of doing the same. This court also holds that the jurisdictional Assessing Officer shall not have the jurisdiction to issue notices under section 148 of the Act of 1961, as it would not only render section 151A weak, but may also lead to its diminishing activation. For the purpose of assessment and reassessment under sections 147, 148 and 148A and in the light of the sanction under section 151A, adherence has to be made to algorithm based random assessing system, and therefore, the impugned notices deserve to be quashed.”*

36. Through judgment dated 24.06.2025 in ***TVS Credit Services Ltd. Vs. Deputy Commissioner of Income-tax and another, 2025 SCC OnLine***

Mad 18383, a Division Bench of the Madras High Court then decided the issue in question in the assessee's favour.

37. Then were delivered the following two judgments holding that in terms of Section 151A of the Act, read with the scheme framed thereunder dated 29.03.2022, only a faceless AO could issue a notice under Section 148 of the Act: -

a) ***Shree Cement Ltd. Vs. Assistant Commissioner of Income-tax and others,*** **2025 SCC OnLine Raj 7121**

b) ***Ramachandra Reddy Ravi Kumar Vs. Deputy Commissioner of Income-tax and another,*** **2025 SCC OnLine Kar 25217**

38. A Division Bench of the Gujarat High Court, through its judgment dated 17.09.2025, passed in ***Snehdham Trust vs. Assistant Commissioner of Income Tax, 2025 SCC OnLine Guj 5771,*** decided the issue in question in the revenue's favour through the following observations: -

> *"27. On perusal of section 148 of the Act, it is clear that the same is subject to the provisions of section 148A of the Act except certain eventualities enumerated therein. In the regular course, when an information is made available as per Explanation 1 to section 148 of the Act through the 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 the 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 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 April 1, 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 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 appear in the Scheme, 2022 are 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 the 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 the case of Kairos Properties Pvt. Ltd. v. Asst. CIT [(2024) 468 ITR 168 (Bom); (2024) 2 HCC (Bom) 369.] 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 3 by excluding the applicability of section 148A of the 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 the Act is a consequence of the order which is passed under section 148A(d) of the Act. As held by this court in the case of Talati and Talati LLP v. Office of Asst. CIT, [(2024) 469 ITR 643 (Guj); 2024 SCC OnLine Guj 4297.] , 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 in 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 February 20, 2023 which is even considered by the hon'ble Bombay High Court would be in line with 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."*

39. Then was rendered a judgment dated 25.10.2025, by a Division Bench of the Andhra Pradesh High Court in ***Prameela Pasumarthi v. Deputy Commissioner of Income Tax, 2025 SCC OnLine AP 4052***, deciding the issue in the assessee's favour by holding as follows: -

> *"(E) Considering the background in notifying the e-Assessment of Income Escaping Assessment Scheme, 2022 notified by the Government of India on March 29, 2022 ([2022] 442 ITR (St.) 198), and in the light of the decisions of various High Courts stated supra and upon careful consideration of the contentions raised by the learned counsel appearing on either side, we hold that the impugned notices and orders which have been issued by the jurisdictional Assessing Officer, are outside the faceless mechanism as provided under the provisions of section 144B read with section 151A and the "e-Assessment of Income Escaping Assessment Scheme, 2022" notified by the Government of India on March 29, 2022 ([2022] 442 ITR (St.) 198) under section 151A, are bad and illegal. It is made clear that the jurisdictional Assessing Officer ("JAO") had no jurisdiction to issue the impugned orders/notices."*

40. Thus, divergent views emerged from different High Courts with regard to jurisdiction of the jurisdictional AOs to issue notices under Section 148 of the Act after the enactment of sections 130, 135A, 144B and 151A of the Act read with the respective schemes framed under Sections 130, 135A and 151A of the Act. There was one judgment of the Telangana High Court, two judgments of the Bombay High Court, two judgments of this Court, two judgments of the Rajasthan High Court, one judgment of the Madras High Court, one judgment of the Karnataka High Court, one judgment of the Andhra Pradesh High Court and one judgment of the Gauhati High Court favouring the

assessees with one judgment of the Calcutta High Court, one judgment of the Delhi High Court and one judgment of the Gujarat High Court rendering opinions in favour of the revenue. The respective parties, aggrieved by the afore referred judgments, knocked the doors of the Supreme Court raising their respective grievances through filing of Special Leave Petitions but while the matter was pending adjudication before the Supreme Court, the Finance Bill, 2026 (now an Act of Parliament) was promulgated *inter alia* through which Section 147A was enacted with effect from 01.04.2021.

41. Relevant portion of the memorandum, which was attached with the Finance Bill, 2026, explaining the reasons behind introduction of Section 147A, reads as follows: -

> *"**Memorandum Explaining Provisions in the Finance Bill, 2026***
>
> *"Clarification regarding jurisdiction to issue notice under section 148 where income has escaped assessment and for carrying out pre-assessment procedure under section 148A.*
>
> *The Income-tax Act, 1961 provides a two-step procedure for carrying out reassessment under section 147. The first step provides for procedure before a notice under section 148 is issued for carrying out reassessment. This first step starts with a notice under section 148A which enables the Assessing Officer to carry out enquiries so as to determine whether the case is fit for issuance of notice under section 148. The notice under section 148 is accompanied with an reasoned order under section 148A(d)/148A(3) by the Assessing Officer.*
>
> *2. With the notice under section 148, the case gets transferred to the National Faceless Assessment Centre (NaFAC) for carrying out the assessment in a faceless manner as per section 144B. The taxpayer does not know the identity of officers who are part of the assessment unit in NaFAC. All communications with the taxpayer at this stage are carried out by NaFAC. The assessment units is provided powers of the Assessing Officer by virtue of section 144B(3) which provides that '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).*

3. It is clear from the aforesaid scheme of the Act that the legislature has clearly demarcated the line between assessment and pre-assessment enquiry process which culminates in issuing of notice under section 148. The Assessing Officer carries out pre-assessment enquiry and therefore reaches a conclusion if it is a fit case of reassessment. This satisfaction is reflected in intimation to the assessee by way of notice under section 148. Thereafter, the proceedings are carried out in a faceless manner by NaFAC.

4. Accordingly, it was never the intention of the legislature to mandate the NaFAC or the Assessment Units in NaFAC to involve pre-assessment enquiry in any manner whether for issuance of notice under section 148A or under section 148. The faceless assessment for reassessment under section 147 was only required to be carried out to the extent provided under section 144B. The intended objective of the scheme framed under section 151A that is e-Assessment of Income Escaping Assessment Scheme, 2022 was also the same.

5. However, divergent views have been expressed on this issue by various High Courts, some in favour of the revenue and some in assessee's favour. The matter is now pending in Hon'ble Supreme Court. The present amendment seeks to achieve certainty and clarity and avoid litigation.

6. The Income-tax Act, 2025 is coming into force from the 1st of April, 2026. The objective of the new law has been to provide simplicity in language and provisions so as to avoid interpretational issues and prevent litigation. Therefore, there is an urgent need to clarify the position of law in the new Income-tax Act, 2025. The intention of the legislature also needs to be clearly laid out in the Income-tax Act, 1961 so that the intent is uniformly reflected in the two Acts.

7. Accordingly, it is proposed to clarify in the Income-tax Act, 1961 that notwithstanding anything contained in any judgment, order or decree of court, the Assessing Officer for the purposes of section 148 and section 148A shall mean and shall always be deemed to have meant Assessing Officer other than the National Faceless Assessment Centre or any of its assessment units. Suitable amendment is also carried out in the Income-tax Act, 2025 so that correct interpretation is taken and litigation is minimized and certainty is achieved.

8. The clarification in Income-tax Act, 1961 shall come into force with retrospective effect from 1st day of April, 2021. The amendment in the Income-tax Act, 2025 shall come into force with effect from 1st day of April, 2026."

(emphasis supplied)

42. Thus, as per the afore quoted memorandum, Section 147A was being enacted, with retrospective effect, to achieve certainty and clarity as also to avoid litigation. Further, since the Income Tax Act, 2025 was to come into force from 01.04.2026 and the objective of the new law was to provide simplicity in the language of the provisions, so as to avoid interpretational issues and prevent litigation, there was an urgent need to clarify the position of law. The intention of the legislature was also needed to be clearly laid out in the Income-tax Act, 1961 so that the intent was uniformly reflected in the two Acts.

43. Section 147A of the Act 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."*

44. Section 147A of the Act begins with a non-obstante clause – "Notwithstanding anything contained in any judgment, order or decree of any court or in Section 151A or in any scheme framed thereunder." Through the retrospective enactment of Section 147A, the legislature primarily sought to validate the notices issued to the assessees under Section 148 of the Act by their respective jurisdictional AOs by neutralizing the effect of judgments of the constitutional courts through which it had been held that notices issued to the assessees under Section 148 of the Act by their jurisdictional AOs were illegal because in terms of Section 151A of the Act, read with the scheme framed thereunder, such notices were required to be issued only by a faceless AO.

45. Now is the stage to refer to the law laid down by the Supreme Court with regard to the removal of the basis of a judgment rendered by a constitutional court through adoption of the legislative course of abrogation.

46. In ***Janapada Sabha Chhindwara etc. vs. The Central provinces Syndicate Ltd. & another (1970) 1 SCC 509***, a Constitution Bench of the Supreme Court held that though it is open to the legislature, within certain limits, to amend the provisions of a statute, even retrospectively, but the legislature, through an enactment, cannot overrule or set aside decisions rendered by the constitutional courts or to say that a judgment of a Court rendered in exercise of its powers in a matter brought before it shall be deemed to be ineffective and that the interpretation of the law declared by the Court shall be otherwise than what has been held by the Court. The relevant paragraph of the judgment in ***Janapada Sabha's*** case (supra) reads as follows:-

> ***"10.*** *The nature of the amendment made in Act 4 of 1920 has not been indicated. Nor is there anything which enacts that the notifications issued without the sanction of the State Government must be deemed to have been issued validly under Section 51(2) without the sanction of the Local Government. <u>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 provisions of an 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 exrecise 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</u>."*

(emphasis supplied)

47. In ***Shri Prithvi Cotton Mills Ltd. and another Vs. Broach Borough Municipality and others, AIR 1970 SC 192***, another Constitution

Bench of the Supreme Court held that when the legislature sets out to validate a tax declared by a Court to have been illegally collected under an ineffective or invalid law, the cause for ineffectiveness or invalidity, must be removed before validation can be said to have taken place effectively and that it would not be sufficient for the legislature to declare merely that the decision of the court shall not bind for that tantamounts to reversing a judicial decision which power the legislature does not possess. It was 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. Relevant portion of the said judgment reads as follows: -

> *"<u>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</u>. 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 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. <u>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</u>."*
>
> ***(emphasis supplied)***

48. In ***Indian Aluminium Co. and others vs. State of Kerala and others, (1996) 7 SCC 637*** the principles laid down by the Supreme Court with regard to validation laws were as follows: -

> ***56.*** *From a resume of the above decisions the following 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 transactions and require the court to give effect to them;*
> *(2) The Constitution 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.*
> *(4) Courts in their concern and endeavour to preserve judicial power equally must be guarded to maintain the delicate balance devised by the Constitution between the three sovereign functionaries. In order that rule of law permeates to fulfil constitutional objectives of establishing an egalitarian social order, the respective sovereign functionaries need free play in their joints so that the march of social progress and order remains unimpeded. The smooth balance built with delicacy must always be maintained;*

(5) In its anxiety to safeguard judicial power, it is unnecessary to be overzealous and conjure up incursion into the judicial preserve invalidating the valid law competently made;

(6) The court, therefore, needs 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 encroachment on judicial power.

(8) <u>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. The legislature can change the character of the tax or duty from impermissible to permissible tax but the tax or levy should answer such character and the legislature is competent to recover the invalid tax validating such a tax on removing the invalid base for recovery from the subject or render the recovery from the State ineffectual. It is competent for the legislature to enact the law with retrospective effect and authorise its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the court or the direction given for recovery thereof</u>.

(9) <u>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</u>."

(emphasis supplied)

49. On the same issue another Constitution Bench of the Supreme Court in ***State of Tamil Nadu Vs. M/s Arooran Sugars Ltd., (1997) 1 SCC 326*** held as follows: -

> *"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 neutralising 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 overreach or colourable legislation."*

50. In ***S.R. Bhagwat vs. State of Mysore (1995) 6 SCC 16*** the Supreme Court held as under: -

> ***"18.*** *A mere look at sub-section (2) of Section 11 shows that the respondent State of Karnataka, which was a party to the decision of the Division Bench of the High Court against it had tried to get out of the binding effect of the decision by resorting to its legislative power. The judgments, decrees and orders of any court or the competent authority which had become final against the State were sought to be done away with by enacting the impugned provisions of sub-section (2) of Section 11. Such an attempt cannot be said to*

be a permissible legislative exercise. Section 11(2), therefore, must be held to be an attempt on the part of the State Legislature to legislatively overrule binding decisions of competent courts against the State. It is no doubt true that if any decision was rendered against the State of Karnataka which was pending in appeal and had not become final it could rely upon the relevant provisions of the Act which were given retrospective effect by sub-section (2) of Section 1 of the Act for whatever such reliance was worth. But when such a decision had become final as in the present case when the High Court clearly directed respondent-State to give to the petitioners concerned deemed dates of promotions if they were otherwise found fit and in that eventuality to give all benefits consequential thereon including financial benefits, the State could not invoke its legislative power to displace such a judgment. Once this decision had become final and the State of Karnataka had not thought it fit to challenge it before this Court presumably because in other identical matters this Court had upheld other decisions of the Karnataka High Court taking the same view, it passes one's comprehension how the legislative power can be pressed in service to undo the binding effects of such mandamus. It is also pertinent to note that not only sub-section (2) of Section 11 seeks to bypass and override the binding effect of the judgments but also seeks to empower the State to review such judgments and orders and pass fresh orders in accordance with provisions of the impugned Act. The respondent-State in the present case by enacting sub-section (2) of Section 11 of the impugned Act has clearly sought to nullify or abrogate the binding decision of the High Court and has encroached upon the judicial power entrusted to the various authorities functioning under the relevant statutes and the Constitution. Such an exercise of legislative power cannot be countenanced."

(emphasis supplied)

51. In ***Delhi Cloth & General Mills Co. Ltd. and another v. State of Rajasthan, (1996) 2 SCC 449***, the Supreme Court struck down the Kota Municipal Limits (Continued Existence) Validating Act by observing as follows: -

15. *In the case of the village of Raipura there was a preliminary notification calling for objections to the extension of the limits of the Kota Municipality to include it, but it was not followed by a final notification. In the case of the village of Ummedganj there was a notification extending the limits of the Kota Municipality to include it, but it had not been* *preceded by a notification inviting the objections of the public thereto. Later, another notification was published whereby the village of Ummedganj was excluded from the limits of the Kota Municipality. The provisions of Sections 4 to 7 of the 1959 Act and the earlier provisions of the 1951 Act in the same behalf were, therefore, not met in the case of either the village of Raipura or the village of Ummedganj. The Full Bench of the Rajasthan High Court has held that these provisions were mandatory and that judgment has become final.*

***16.** The Validating Act provides that, notwithstanding anything contained in Sections 4 to 7 of the 1959 Act or in any judgment, decree, order or direction of any court, the villages of Raipura and Ummedganj should be deemed always to have continued to exist and they continue to exist within the limits of the Kota Municipality, to all intents and for all purposes. This provision requires the deeming of the legal position that the villages of Raipura and Ummedganj fall within the limits of the Kota Municipality, not the deeming of facts from which this legal consequence would flow. A legal consequence cannot be deemed nor, therefrom, can the events that should have preceded it. Facts may be deemed and, therefrom, the legal consequences that follow.*

***17.** Sections 4 to 7 remained on the statute book unamended when the Validating Act was passed. Their provisions were mandatory. They had admittedly not been followed. The defect of not following these mandatory provisions in the case of the villages of Raipura and Ummedganj was not cured by the Validating Act. The curing of the defect was an essential requirement for the passing of a valid validating statute, as held by the Constitution Bench in the case of Prithvi Cotton Mills Ltd. [(1969) 2 SCC 283 : (1970) 1 SCR 388] It must, therefore, be held that the Validating Act is bad in law and it must be struck down.*

52. In ***State of T.N. v. State of Kerala, (2014) 12 SCC 696***, a Five Judge Bench of the Supreme Court again dealt with the issue as to whether the legislature could set at naught judgments of the constitutional courts and laid down the following principles: -

***126.** On deep reflection of the above discussion, in our opinion, the constitutional principles in the context of Indian Constitution relating to separation of powers between the legislature, executive and judiciary may, in brief, be summarised thus:*

***126.1.** Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India. The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law. In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs—legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of powers, the separation of powers between the legislature, executive and judiciary is not different from the Constitutions of the countries which contain express provision for separation of powers.*

126.2. *Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution. Separation of judicial power is a significant constitutional principle under the Constitution of India.*

126.3. *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.*

126.4. *The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature (Parliament and State Legislatures) void if it is found to have transgressed the constitutional limitations or if it infringed the rights enshrined in Part III of the Constitution.*

126.5. *The doctrine of separation of powers applies to the final judgments of the courts. The legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aliunde. In other words, 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.*

126.6. *If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. 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 law it removes the defect which the courts had found in the existing law.*

126.7. *The law enacted by the legislature may apparently seem to be within its competence but yet in substance if it is shown as an attempt to interfere with the judicial process, such law may be invalidated being in breach of doctrine of separation of powers. In such situation, the legal effect of the law on a judgment or a judicial proceeding must be examined closely, having regard to legislative prescription or direction. The questions to be asked are:*

(i) Does the legislative prescription or legislative direction interfere with the judicial functions?

(ii) Is the legislation targeted at the decided case or whether impugned law requires its application to a case already finally decided?

(iii) What are the terms of law; the issues with which it deals and the nature of the judgment that has attained finality?

If the answer to Questions (i) and (ii) is in the affirmative and the consideration of aspects noted in Question (iii) sufficiently establishes that the impugned law interferes with the judicial functions, the Court may declare the law unconstitutional.

53. In ***NHPC Ltd. Vs. State of Himachal Pradesh Secretary and others, (2023) 17 SCC 1,*** the Supreme Court, after considering the entire law

on the subject, culled out the following principles which the legislative device of abrogation must be in accordance with :-

> *"**39.1.** There is no legal impediment to enacting a law to validate a legislation which has been held by a court to be invalid, provided, such a law removes the basis of the judgment of the court, by curing the defects of the legislation as it stood before the amendment.*
> ***39.2.** The validating legislation may be retrospective. It must have the effect 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.*
> ***39.3.** Retrospective amendment should be reasonable and not arbitrary and must not be violative of any constitutional limitations.*
> ***39.4.** Setting at naught a decision of a court without removing the defect pointed out in the said decision is opposed to the rule of law and the scheme of separation of powers under the Constitution of India.*
> ***39.5.** Abrogation is not a device to circumvent an unfavourable judicial decision. If enacted solely with the intention to defy a judicial pronouncement, an Amendment and Validation Act, 1997 may be declared as ultra vires."*
>
> ***(emphasis supplied)***

54. After considering the afore referred judgments of the Supreme Court it can safely be concluded that even though the doctrine of separation of powers is not an express part of the Indian Constitution but this doctrine is clearly visible from the scheme of our Constitution. The Indian Constitution makes a clear demarcation between the judiciary, executive and the legislature and seeks to maintain separation of powers between the three organs of the State. Such division is fundamental to the rule of law. A breach by either also negates equality enshrined under Article 14 of the Indian Constitution. Under Articles 245, 246 and other companion Articles, read with the respective lists in the seventh schedule of the Indian Constitution, the legislature has the right to "make" laws which includes the power to amend the law but the legislature

cannot "declare" what the law laid down by the constitutional courts was meant to be. The legislature also cannot directly annul a judgment of a constitutional court or through a mere declaration overrule a judicial decision. To permit so would allow the legislature to legislatively superimpose judgments which would have attained finality between the parties and that would result in chaos.

However, granted the legislative competence, the legislature can, even retrospectively, enact a law validating a statute which has been held by a Court to be illegal provided that through such validating law the legislature removes the basis or foundation of the judgment of the Court by curing the defect(s) pointed out by the courts in the statute as it existed before the promulgation of the validation law. The effect of the validating legislation should be such that the judgment of the Court pointing out the defect would have not been passed if the validating law existed before the Court at the time of delivering its judgment and that after taking into effect the validating law it should not be possible for the Court to arrive at the same decision. Through enacting the validating law, the legislature must bring the law in line with the decision of the Court. Setting at naught a decision of a Court without removing the defect pointed out through the decision of the Court is opposed to the rule of law and also breaches the doctrine of separation of powers recognized by the Indian Constitution. Abrogation is not to be used as a device by the legislature to bye-pass an unfavourable judicial decision and that if the validating legislation is enacted solely with the intention to defy a judicial pronouncement, such legislation would be an example of legislature overreach and therefore, unconstitutional.

55. In the light of the afore discussion and reference to the law settled by the Supreme Court the decks are now clear for us to analyze and determine as to whether Section 147A, enacted retrospectively by the legislature, is constitutionally valid ?

56. As noticed earlier, the Telangana High Court in ***Kankanala Ravindra Reddy's*** case (supra), categorically held that a notice under Section 148 of the Act is required to be issued only by a randomly chosen Assessing Officer through automated allocation and that after the introduction of the schemes dated 28.03.2022 and 29.03.2022, framed under Sections 130 and 151A respectively, it becomes mandatory for the revenue to conduct/ initiate proceedings pertaining to reassessment under Sections 147, 148 and 148A of the Act, in a faceless manner.

57. Similarly, in ***Hexaware Technologies Ltd.'s*** case (supra), a Division Bench of the Bombay High Court clearly held that in terms of the scheme dated 29.03.2022, framed under Section 151A of the Act, issuance of notice under Section 148 of the Act can only be by a faceless AO to the exclusion of the assessee's jurisdictional AO. To the same effect are the judgments of the Bombay High Court in ***Kairos Properties Pvt. Ltd.'s*** case (supra); of this Court in ***Jatinder Singh Bhangu's*** case (supra) and ***Jasjit Singh's*** case (supra); the Rajasthan High Court in ***Shree Cement Ltd.***'s case (supra) and ***Sharda Devi Chhajer's*** case (supra); the Madras High Court in ***TVS Credit Services Ltd.'s*** case (supra); the Karnataka High Court in ***Ramachandra Reddy Ravi Kumar's*** case (supra); the Andhra Pradesh High Court in ***Prameela Pasumarthi's*** case (supra) and the Gauhati High Court in ***Ram Narayan Sah's*** case (supra).

58. The non-obstante clause, with which Section 147A of the Act begins, seeks to wipe out the effect of any judgment, order or decree of any Court or whatever is contained in Section 151A or in the scheme framed thereunder but in the non-obstante clause reference to Section 130 of the Act or the scheme framed thereunder dated 28.03.2022 is conspicuously found missing. This fact assumes importance because the afore referred scheme was *inter alia* relied upon by the Telangana High Court in ***Kankanala Ravindra Reddy's*** case (supra) to hold that a notice under Section 148 of the Act could only have been issued by a faceless AO.

Section 147A only seeks to remove doubts and clarify that an Assessing Officer for the purpose of issuance of notices under Section 148 and 148A of the Act shall mean and shall always deemed to have meant an Assessing Officer other that the National Faceless Assessment Centre or any assessment unit referred to in Section 144B (3). Section 147A is noticeably silent with regard to the categoric findings returned by the constitutional courts that as per the scheme dated 29.03.2022, framed under Section 151A, allocation of AOs is required to be done randomly and through automated allocation.

59. Thus, the afore referred two reasons which *inter alia* formed the basis of the judgments of the constitution courts to set aside the notices issued under Section 148 of the Act were not cured through the retrospective enactment of Section 147A. In fact, they even find no reference therein.

60. Further, in ***Kankanala Ravindra Reddy's*** case (supra), ***Hexaware Technologies Ltd.'s*** case (supra), ***Jasjit Singh's*** case (supra), ***Jatinder Singh Bhangu's*** case (supra), ***Kairos Properties Pvt. Ltd.'s*** case (supra), ***Ram Narayan Sah's*** case (supra), ***Shree Cement Ltd.***'s case (supra), ***Sharda Devi***

Chhajer's case (supra); ***TVS Credit Services Ltd.'s*** case (supra), ***Ramachandra Reddy Ravi Kumar's*** case (supra), ***Prameela Pasumarthi's*** case (supra) and ***Ram Narayan Sah's*** case (supra) the constitution courts categorically held that in terms of Section 151A of the Act, read with the scheme framed thereunder dated 29.03.2022, a notice under Section 148 of the Act could "only" be issued by a faceless AO.

Through and even after the retrospective enactment of Section 147A, Section 151A of the Act and the scheme framed thereunder continue to exist on the statute book and without any amendment. Thus, the primary basis on which the constitutional courts had held that notices issued under Section 148 of the Act could not have been issued by the assessees' jurisdictional AOs has not been removed through the retrospective enactment of Section 147A. Without amending Section 151A of the Act or the scheme framed thereunder, the "clarification" made by the legislature through the retrospective enactment of Section 147A that Assessing Officers for the purpose of issuance of notices under Section 148 of the Act mean and shall always deemed to have meant to be Assessing Officers other than the faceless AOs is in defiance of and in conflict with the law laid down by the constitutional courts. Through such "clarification", the legislature visibly seeks to substitute its opinion over and above the findings returned by the constitutional courts which is legally impermissible. Section 147A is also clearly found to be in direct conflict with Section 151A, read with the scheme framed thereunder, all of which provisions simultaneously exist in the same statute. In the absence of any amendment to Section 151A and/or the scheme framed thereunder, simply because Section 147A begins with a non-obstante clause, would not make its retrospective enactment pass the test of a constitutionally enacted validation law. Rather, by the retrospective enactment of Section 147A, in the manner in which it has been done, the legislature has clearly trenched upon judicial power and through the introduction of Section 147A the legislature directly seeks to upset findings returned through judgments of several constitutional courts. The attempt by the legislature is clearly to circumvent unfavourable judicial decisions.

Even today, if a matter is listed before the constitutional courts which rendered the afore verdicts as to who is the competent Assessing Officer to issue a notice under Section 148 of the Act, there would be no change in the rendering of the above referred verdicts because such verdicts were primarily based on Section 151A and the scheme framed thereunder dated 29.03.2022 which provision and the scheme still continue to exist on the statute book as they existed at the time when the judgments of the constitutional courts were rendered. In the light of the considered and categoric findings returned by the constitutional courts after carefully analyzing Section 151A of the Act and the scheme framed thereunder that only a faceless AO can issue a notice under Section 148 of the Act, the "clarification" which is in clear defiance of and contrary to the afore findings, made by the legislature through the retrospective enactment of Section 147A of the Act would be of no help to the respondents.

61. Under Section 151A (1) of the Act, the Central Government framed a scheme dated 29.03.2022 in clause 3(b) whereof it was specifically mentioned that such scheme applies to the issuance of notices under Section 148 of the Act. The object behind framing of the said scheme, which is clearly brought out on a bare reading of Section 151A(1) of the Act, was that the scheme was framed for the purpose of imparting greater efficiency,

transparency and accountability by eliminating the interface between the income-tax authorities and the assessees or any other persons. Under Section 151A(2) the Central Government, for the purpose of giving effect to the scheme made under Section 151A(1), by issuance of a notification in the official gazette, could direct that any of the provisions of the Act shall not apply or shall apply with such exceptions, modification etc. as the case may be but in terms of the first proviso to Section 151A(2) no such direction could be issued after 31.03.2022. After having specifically included issuance of notices under Section 148 of the Act in the scheme framed under Section 151A(1) it was only till 31.03.2022 that the Central Government could have issued a notification for the exclusion of applicability of Section 148 of the Act to the scheme framed under Section 151A (1) and not thereafter. Till 31.03.2022 no notification was issued by the Central Government excluding the applicability of Section 148 of the Act to the scheme framed under Section 151A (1). What was prohibited under Section 151A of the Act could and should have not been done through the retrospective enactment of Section 147A.

62. As per the memorandum which accompanied the Finance Bill, 2026, Section 147A was being enacted in the light of emergence of divergent views of the constitutional courts with regard to the jurisdiction of Assessing Officers for issuance of notices under Section 148 of the Act. According to the memorandum, enactment of Section 147A was necessary to bring certainty and clarity as also to avoid litigation. However, through the enactment of Section 147A of the Act, none of the objects behind its enactment stand achieved. Rather, what followed the enactment of Section 147A of the Act resulted in

everything to the contrary. The “clarification” made through the retrospective enactment of Section 147A was that an Assessing Officer, for the purpose of issuance of notice under Section 148 of the Act, meant and was always deemed to have meant to be an Assessing Officer other than the faceless AO. Such “clarification” was in conflict with the findings returned by as many as nine constitutional courts of this country to the effect that as per Section 151A of the Act and the scheme framed thereunder only a faceless AO could issue a notice under Section 148 of the Act. Section 151A and/or the scheme framed thereunder continue to exist on the statute book simultaneously with Section 147A. Therefore, introduction of Section 147A of the Act did not bring any clarity or certainty. It only added to the confusion.

The other purpose behind enactment of Section 147A of the Act was to avoid litigation but such enactment became the breeding ground of litigation as thousands of petitions on the issue in question are pending in at least in eight different High Courts across the length and breadth of this country and that such litigation is also not likely to end before the respective High Courts because the parties aggrieved by the judgment of the respective jurisdictional High Courts would likely take up the matter before the Supreme Court. If it is a judgment of the Supreme Court which is ultimately going to give a quietus to the entire matter then rather than, for the afore “objects”, retrospectively enacting Section 147A, it was desirable for the respondents to have invited an early opinion of the Supreme Court at the time when cross petitions were pending before the Supreme Court, filed by the respective parties aggrieved by the divergent views expressed by different jurisdictional High Courts as that would have finally put a lid on this issue.

63. In the light of the afore discussion, we have no hesitation to declare Section 147A of the Act to be unconstitutional.

64. This brings us to the issue as to whether even in the absence of Section 147A of the Act are the notices issued to the petitioners under Section 148 of the Act, by their respective jurisdictional AOs, sustainable in law.

65. At this stage, reference to Section 151A of the Act and the scheme framed thereunder dated 29.03.2022 is essential. They are again reproduced below for ready reference: -

Faceless assessment of income escaping assessment.

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 [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."

<u>Scheme framed under Section 151A of the Act</u>

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-sections (1) and (2) of section 151A 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-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 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 of the Scheme. —For the purpose of this Scheme, —
(a) assessment, reassessment or recomputation under section 147 of the Act,
(b) issuance of notice under section 148 of the Act,
shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in section 148 of the Act for issuance of notice, and in a faceless manner, to the extent provided in section 144B of the Act with reference to making assessment or reassessment of total income or loss of assessee.

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

66. Section 151A enables the Central Government to make a scheme for the purpose of assessment, reassessment or re-computation under Section 147 of the Act or issuance of notice under Section 148 of the Act or conduct enquiries or issuance of show cause notice or passing of order under Section 148A of the Act or sanction for the issue of such notice under Section 151 of the Act so as to impart greater efficiency, transparency and accountability by eliminating the interface between the income-tax authorities and the assessees or any other person to the extent technologically feasible and for optimizing utilization of the resources through economies of scale and functional specialization as also introducing a team-based assessment, reassessment, re-computation or issuance or sanction of notice with dynamic jurisdiction.

In exercise of powers conferred under sub sections (1) and (2) of Section 151A the Central Government framed the afore quoted scheme dated 29.03.2022.

67. After a careful reading of the scheme dated 29.03.2022, framed under Section 151A of the Act, we find that clause 3(b) of the scheme clearly makes it applicable to issuance of notices under Section 148 of the Act. Section

151A under which the said scheme has been framed, defines the purpose behind framing of the scheme which is to impart greater efficiency, transparency and accountability by eliminating the interface between the income tax authorities and the assessees. When clauses 2 and 3 of the scheme are harmoniously read with the purpose behind framing of the scheme, the only conclusion that can be arrived at is that as per the scheme framed under Section 151A, notices under Section 148 are required to be issued through randomized automated allocation and in a faceless manner. This is what is clearly conveyed through a plain reading of the scheme. Such interpretation is also in line with the intent of the Government of India behind introduction of the faceless regime. There is no other way that the scheme can be read to make it meaningful.

68. Thus, if on a plain reading of clause 3(b) of the scheme issuance of notice under Section 148 of the Act is required to be sent through randomized automated allocation and in a faceless manner, then issuance of notice under Section 148 of the Act cannot be permitted to be done in any other manner.

69. It stands settled by the Supreme Court that where the law provides for a thing to be done in a particular manner then it has to be done in that manner and in no other. Reference in this regard can safely be made to the following observations of the Supreme Court in ***Chandra Kishore Jha v. Mahavir Prasad and others, (1999) 8 SCC 266*: -**

> *"17. In our opinion insofar as an election petition is concerned, proper presentation of an election petition in the Patna High Court can only be made in the manner prescribed by Rule 6 of Chapter XXI-E. No other mode of presentation of an election petition is envisaged under the Act or the rules thereunder and, therefore, an election petition could, under no circumstances, be presented to the Registrar to save the period of limitation. <u>It is a well-settled salutary principle that if a statute provides for a thing to be done in a</u>*

particular manner, then it has to be done in that manner and in no other manner."

(emphasis supplied)

70. To the same effect are the following observations of the Supreme Court in ***Cherukuri Mani Vs. Chief Secretary, Govt. of Andhra Pradesh and others, (2015) 13 SCC 722:***

> ***"14.*** *Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure. When the provisions of Section 3 of the Act clearly mandated the authorities to pass an order of detention at one time for a period not exceeding three months only, the government order in the present case, directing detention of the husband of the appellant for a period of twelve months at a stretch is clear violation of the prescribed manner and contrary to the provisions of law. The Government cannot direct or extend the period of detention up to the maximum period of twelve months in one stroke, ignoring the cautious legislative intention that even the order of extension of detention must not exceed three months at any one time. One should not ignore the underlying principles while passing orders of detention or extending the detention period from time to time."*

(emphasis supplied)

71. In this regard the following observations of the Supreme Court in ***Municipal Corporation of Greater Mumbai Vs. Abhilash Lal and others*, (2020) 13 SCC 234** can also be usefully referred to**: -**

> ***"39.*** *The principle that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all, articulated in Nazir Ahmad v. King Emperor [Nazir Ahmad v. King Emperor, 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372 : AIR 1936 PC 253 (2)] , has found widespread acceptance. In the context of this case, it means that if alienation or creation of any interest in respect of MCGM's properties is contemplated in the statute through a particular manner, that end can be achieved only through the prescribed mode, or not at all."*

(emphasis supplied)

72. On the same issue the following observations of the Supreme Court in ***OPTO Circuit India Ltd. Vs. Axis Bank and others, (2021) 6 SCC 707*** would also be relevant: -

> ***"14.*** *<u>This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner</u>. Among others, in a matter relating to the presentation of an election petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an election petition in Chandra Kishore Jha v. Mahavir Prasad [Chandra Kishore Jha v. Mahavir Prasad, (1999) 8 SCC 266] and in the course of consideration observed as hereunder : (SCC p. 273, para 17)*
>
> > *"17. ... It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner."*
> >
> > *Therefore, if the salutary principle is kept in perspective, in the instant case, though the authorised officer is vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be exercised in that manner alone, failing which it would fall foul of the requirement of complying with due process under law. We have found fault with the authorised officer and declared the action bad only insofar as not following the legal requirement before and after freezing the account. This shall not be construed as an opinion expressed on the merit of the allegation or any other aspect relating to the matter and the action initiated against the appellant and its Directors which is a matter to be taken note of in appropriate proceedings if at all any issue is raised by the aggrieved party."*
>
> ***(emphasis supplied)***

73. It is the submission of the respondents that the phrase in the scheme dated 29.03.2022 "*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*" implies that Clause 3 of the said scheme does not apply to issuance of notices under Section 148 of the Act because Section 144B specifically excludes preassessment proceedings under sections 148 and 148A.

Such a submission does not warrant acceptance because when the scheme dated 29.03.2022 is read as a whole, the afore quoted phrase is found to apply only to Clause 3(a) of the scheme and this is so because assessment or reassessment is done under Section 147 of the Act. Further, clause 3(a) of the scheme makes the scheme applicable to proceedings under Section 147 of the Act and under clause 3(b) to issuance of notices under Section 148 of the Act. The scheme does not apply to any other proceedings under the Act. Therefore, if the afore submission of the respondents is to be accepted and the scheme is held not to apply to the issuance of notices under Section 148 then framing of the scheme dated 29.03.2022, under Section 151A of the Act, would itself be rendered as a dead letter because conduct of assessment, reassessment or re-computation under Section 147 of the Act, through randomized automated allocation and in a faceless manner, is already covered under Section 144B of the Act. As per the law settled by the Supreme Court interpretation of the scheme in question, which would render it to a dead letter, should be avoided.

In this regard reference can safely be made to the following observations by a Constitution Bench of the Supreme Court in ***Hardeep Singh v. State of Punjab*****, (2014) 3 SCC 92: -**

> *"**44.** No word in a statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the statute. By construction, a provision should not be reduced to a "dead letter" or "useless lumber". An interpretation which renders a provision otiose should be avoided otherwise it would mean that in enacting such a provision, the legislature was involved in "an exercise in futility" and the product came as a "purposeless piece" of legislation and that the provision had been enacted without any purpose and the entire*

exercise to enact such a provision was "most unwarranted besides being uncharitable".

Reference can also usefully be made to the following findings by the Supreme Court in ***State of W.B. Vs. Kesoram Industries Ltd. and others*, *(2004) 10 SCC 201:-***

> ***"106.*** *The judicial opinion of binding authority flowing from several pronouncements of this Court has settled these principles: (i) in interpreting a taxing statute, equitable considerations are entirely out of place. Taxing statutes cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; (ii) before taxing any person it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (iii) if the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject. There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly."*

It is further the respondents' submission that the scheme dated 29.03.2022 would not apply to issuance of notices under Section 148 of the Act because Section 148 is subject to Section 148A and there is no reference in the scheme to Section 148A, which the court also cannot add to the scheme. This submission is also required to be considered only to be rejected in the light of the reasons given above that a plain reading of the scheme along with the object behind its framing clearly requires issuance of notices under Section 148 of the Act through randomized automated allocation and in a faceless manner as also that acceptance of the afore stand would render the framing of the scheme without any purpose.

The other argument raised on behalf of the respondents is that as per two notifications, both dated 20.10.2014, issued under Section 120 of the Act, the assessee's jurisdictional AO was conferred jurisdiction to conduct proceedings under Section 148 of the Act. Thereafter, through notification dated 31.03.2021 and 10.06.2022, also issued under Section 120 of the Act, concurrent powers of assessment were conferred on the assessees' jurisdictional and faceless AOs but the powers conferred upon the assessee's jurisdictional AO through the aforesaid notifications dated 20.10.2014 were never withdrawn. Therefore, as per the respondents it cannot be said that the impugned notices issued by the petitioners' jurisdictional AOs were without jurisdiction.

After due consideration, the afore argument also deserves to meet the same fate as the other submissions of the respondents because on a plain reading of the scheme framed under Section 151A of the Act, it is unambiguously found that clause 3(b) of such scheme clearly applies to the issuance of notices under Section 148 of the Act and requires such notices to be issued in a faceless manner. If the respondents' submission is accepted then the whole purpose behind enactment of Section 151A of the Act and the scheme framed thereunder to introduce a faceless regime as also to allocate AOs through automated allocation and in a random manner shall stand defeated. Once the scheme provides for randomised automated allocation of AOs there is no question of conferment of concurrent jurisdiction on faceless AOs and jurisdictional AOs. As discussed earlier, if a plain reading of the scheme in question requires notices to be issued under Section 148 of the Act through randomised automated allocation of assessing officers and in a faceless manner then there is no other way that these notices can be permitted to be issued.

Even otherwise, in the light of the conflict between the afore referred notifications issued under Sections 120 of the Act by the CBDT and

Section 151A of the Act read with the scheme framed thereunder, the provisions of the Act read with the scheme framed thereunder shall prevail especially when such scheme has also been accorded approval by both the houses of Parliament.

74. In this regard reference to the following observations by a Constitution Bench of the Supreme Court in ***Commissioner of Central Excise, Bolpur Vs. Ratan Melting & Wire Industries, (2008) 13 SCC 1*** would be useful:-

> *"**6.** Learned counsel for the assessee on the other hand submitted that once the circular has been issued it is binding on the Revenue Authorities and even if it runs counter to the decision of this Court, the Revenue Authorities cannot say that they are not bound by it. The circulars issued by the Board are not binding on the assessee but are binding on the Revenue Authorities. It was submitted that once the Board issues a circular, the Revenue Authorities cannot take advantage of a decision of the Supreme Court. The consequences of issuing a circular are that the authorities cannot act contrary to the circular. Once the circular is brought to the notice of the Court, the challenge by the Revenue should be turned out and the Revenue cannot lodge an appeal taking the ground which is contrary to the circular.*
>
> ***7.** Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. <u>Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law</u>."*
>
> ***(emphasis supplied)***

75. All the afore submissions raised on behalf of the respondents have been aptly considered and rejected by the Bombay High Court in ***Hexaware***

Technologies Ltd.'s case (supra) through observations quoted in the earlier portion of this judgment with which we fully concur.

76. We also subscribe to the earlier quoted/ referred findings returned by the Bombay High Court in ***Kairos Properties Pvt. Ltd.'s*** case (supra); of this Court in ***Jatinder Singh Bhangu's*** case (supra) and ***Jasjit Singh's*** case (supra); the Rajasthan High Court in ***Shree Cement Ltd.***'s case (supra) and ***Sharda Devi Chhajer's*** case (supra); the Madras High Court in ***TVS Credit Services Ltd.'s*** case (supra); the Karnataka High Court in ***Ramachandra Reddy Ravi Kumar's*** case (supra); the Andhra Pradesh High Court in ***Prameela Pasumarthi's*** case (supra) and the Gauhati High Court in ***Ram Narayan Sah's*** case (supra).

77. We have gone through the opinions expressed by the Delhi High Court in ***T.K.S. Builders (P) Ltd.*** (supra), Gujarat High Court in ***Snehdham Trust's*** case (supra) and Calcutta High Court in ***Triton Overseas Private Limited's*** case (supra), with which, in the light of the afore observations of ours, we respectfully differ.

78. Viewed from yet another angle, as mandated under the scheme framed under Section 151A of the Act, the impugned notices issued to the petitioners under Section 148 have also not been issued by AOs appointed randomly and through automated allocation rendering them illegal on this count alone.

79. In the light of the above discussion, after holding Section 147A of the Act to be unconstitutional and directing it to be struck down, we further order setting aside of the notices issued to the petitioner(s) under Section 148 of the Act because such notices have not been issued through the process of randomized allocation of assessing officers and in a faceless manner as is

mandated under Section 151A of the Act read with the scheme framed thereunder dated 29.03.2022.

80. The writ petitions are allowed in the above terms.

[DEEPAK SIBAL]
JUDGE

10.09.2026
gk

[RUPINDERJIT CHAHAL]
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No