

# Navigating the Tax Maze: JAO vs. FAO in India's Faceless Assessment Landscape

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In the intricate world of taxation, clarity and fairness are paramount. As Martin Luther King Jr. wisely stated, **“Injustice anywhere is a threat to justice everywhere.”** This principle resonates deeply in the ongoing debate surrounding the roles of the Jurisdictional Assessing Officer (JAO) and the Faceless Assessing Officer (FAO) in India's tax reassessment process. The introduction of the Faceless Assessment Scheme was aimed to enhance transparency and efficiency, yet it has also sparked significant controversy, leading to divergent views among various High Courts. This article delves into these complexities, highlighting the implications for taxpayers and the potential for Supreme Court intervention.

Reassessment proceedings under section 148 of the Income-tax Act, 1961 (Act) have consistently faced judicial scrutiny. Despite the 2021 revamp of reassessment proceedings with an intention to reduce litigation, the irony is that the legal landscape has witnessed extensive litigation on this topic. Despite the Supreme Court's deliberation in two rounds of litigation aiming to resolve the contentious issues surrounding the issuance of notices issued under old regime post 1 April 2021, new disputes emerged, necessitating further adjudication. The current debate centers on whether such notices should be issued by the JAO or FAO.

Notably, a consensus among various High Courts initially favored the FAO as the appropriate authority for issuing notices, offering relief to taxpayers. However, the Delhi and Gujarat High Courts recently diverged from this view, after evaluating the process of initiation of reassessment proceedings, asserting that the JAO could also be considered the correct issuing body. This split introduces fresh complexity, compelling the Supreme Court to render a conclusive verdict. The anticipated decision will significantly influence

thousands of cases which have been kept in abeyance due to this issue.

### **The Controversy**

The Faceless Assessment Scheme, introduced via Notification No. 18/2022, mandates that reassessment proceedings under section 148 of the Act be conducted without direct interaction between tax authorities and assessees. However, the question arises: **Who holds the authority to issue these notices—the JAO or the FAO?**

The relevant extracts from the Faceless Assessment scheme (specifically clause 3) are as follows:

“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.”*

Thus, the plain reading of the scheme requires the notice to be issued in a faceless manner.

Controversy arose when in reality JAOs issued notices, deviating from the prescribed faceless and automated allocation process. This prompted challenges based on non-compliance with the procedures of the Faceless Assessment Scheme.

### **Divergent High Court views:**

<b>Court</b>	<b>Case Name</b>	<b>Critical Observations</b>
Bombay High Court	Hexaware Technologies Ltd. v. Assistant Commissioner of Income Tax <a href="#">[TS-5260-HC-2024(Bombay)-O]</a>	The case reinforced the view that the JAO's authority was superseded by the faceless assessment scheme. The Court emphasized that Clause 3(b) mandates notices under section 148 to follow automated allocation, thereby eliminating the JAO's role in issuing such notices.
Telangana High Court	Kankanala Ravindra Reddy v. Income-tax Officer <a href="#">[TS-5629-HC-2023(Telangana)-O]</a>	The Court emphasized that reassessment must be conducted facelessly, invalidating notices issued by the JAO. The Court highlighted that the introduction of the faceless assessment scheme on 29 March 2022, necessitated compliance with the automated allocation process, thereby stripping the JAO of jurisdiction in such matters.
Gujarat High Court	Talati and Talati LLP v. Assistant Commissioner of Income Tax <a href="#">[TS-6223-HC-2024(Gujarat)-O]</a>	Conversely, the Court upheld the validity of notices issued by the JAO, even in search proceedings. It clarified that the Faceless Assessment Scheme's notification does not eliminate the JAO's authority to issue such notices when based on information from

		search and seizure operations under section 132 of the Act. This ruling suggests that the JAO retains significant power, even within the faceless assessment context.
Delhi High Court	T.K.S. Builders v. Income Tax Officer	Emphasized that the JAO's role is not entirely overridden by the faceless system, asserting their critical powers for a balanced assessment process. The judgment highlighted the complementary role of JAOs, necessary for ensuring continuity and accountability within the faceless assessment framework.  The Court stressed the importance of punctuation in Clause 3, indicating that the phases of initiation, issuance of notice, and assessment are distinct yet interconnected. It suggested that the faceless mechanism should not limit the role of JAOs entirely.
Bombay High Court	Kairos Properties Private Limited vs Assistant Commissioner Income-Tax  <a href="#">[TS-6019-HC-2024(Bombay)-O]</a>	The Court held that with the introduction of the faceless assessment scheme on 29 March 2022, reassessment notices must be issued through an automated allocation process in a faceless manner, even for cases assessed within the central charge circle. The Court clarified that the provisions of section 148A, which involve conducting inquiries and providing opportunities before the issuance of a notice under section 148, fall within the ambit of the faceless assessment scheme.

## Analysis of Judicial Reasoning

The divergent views among the High Courts reflect deeper legal principles and interpretations of the provisions of the Act. The below issues stem from the contrasting interpretations of the High Courts:

### Concurrent Jurisdiction

Concurrent jurisdiction refers to multiple authorities having the power to oversee cases simultaneously within the same scope. The Bombay High Court's assertion that there is no concurrent jurisdiction between the JAO and FAO for issuing notices contrasts sharply with the Delhi High Court's position that allows for such dual authority. This inconsistency raises questions about the operational efficiency of the tax system and the potential for conflicting assessments.

### Interpretation of Clause 3 of Faceless Assessment Scheme 2022

The interpretation of Clause 3 of the Faceless Assessment Scheme is critical. High Courts have varied in their readings; some emphasize a strictly automated and faceless process, while the other suggest interconnected yet distinct procedural steps.

- **Delhi High Court Interpretation:** The Delhi High Court emphasized the importance of punctuation in Clause 3. The Court noted that the commas signify a clear intent to separate different phases of the reassessment process:
  - **First Comma:** "Shall be through automated allocation" is set apart by a comma, suggesting it pertains to the initiation of action based on the Risk Management Strategy (RMS).
  - **Second Comma:** Another comma appears after "for issuance of notice," indicating that the issuance of the notice itself is a distinct step.
  - **Segregation of Phases:** These commas reflect the draftsman's intention to treat the initiation of action, the formation of opinion for action under section 148, and the actual undertaking of assessment as separate yet interconnected phases.
- **Bombay High Court Interpretation:** The Bombay High Court focused on the structure of Clause 3, particularly the sub-clauses:
  - **Sub-clauses (a) and (b):** Clause 3 is divided into two distinct sub-clauses—(a) dealing with assessment, reassessment, and recomputation, and (b) specifically addressing the issuance of notice under section 148.
  - **Automated Allocation and Extent:** Sub-clause (b) mandates that the issuance of notices under section 148 must follow the automated allocation procedure outlined in Clause 2(b). The part of the clause after "and" pertains to the "extent" provided in section 144B concerning assessment and reassessment, not the issuance of notices.
  - **Two Parts of Sub-clause (b):** Sub-clause (b) consists of two separate parts. The first part deals exclusively with the issuance of notices under section 148, while the second part addresses assessment and reassessment procedures.

### Role of Technology:

The reliance on technology and automated processes in the faceless assessment scheme is intended to enhance efficiency and reduce human bias. However, the Courts have recognized that certain aspects, particularly those involving human judgment, such as the JAO's assessment of information from search operations, cannot be entirely automated. This balance between technology and human oversight is crucial for maintaining the integrity of the tax assessment process.

### Role of Faceless Mechanism

Another crucial issue is whether the faceless mechanism is limited to the selection of cases or also includes the allocation of cases. The Delhi High Court judgment highlighted this ambiguity, as it emphasized the complementary role of the JAO within the faceless system. The guidance would be required whether the faceless assessment process encompasses both the selection and allocation of cases or if it is restricted to just the selection phase. This will have significant implications for the efficiency and transparency of the tax assessment process.

### Implications for Taxpayers

The conflicting interpretations among High Courts create uncertainty for taxpayers. Those facing reassessment may find themselves caught in a legal limbo, unsure of the validity of notices issued against them. This inconsistency not only complicates compliance but also raises concerns about fairness and transparency in the tax assessment process.

### Supreme Court Intervention

Given the divergent views and the potential for widespread implications, the Supreme Court has taken cognizance of this issue. A definitive ruling from the Apex Court could provide much-needed clarity, establishing a uniform approach to the roles of JAO and FAO in reassessment proceedings. Such a decision would not only resolve the current controversy but also reinforce the principles of fairness and justice in the tax system.

The Supreme Court should also potentially analyse whether search cases can be conducted by the JAO or FAO. The Gujarat High Court case brought this issue to the forefront, with the Gujarat High Court ruling that the JAO can issue notices under section 148 based on information received, even in search proceedings. This decision underscores the need for clarity on the roles and responsibilities of JAOs and FAOs in search cases, ensuring consistency and adherence to the faceless assessment framework.

### **Conclusion**

As the landscape of tax reassessment evolves, the roles of the JAO and FAO remain pivotal and it is hoped the Supreme Court decision on this aspect comes quickly. The ongoing legal battles highlight the need for a coherent framework that balances efficiency with taxpayer rights. The Supreme Court's forthcoming decision will be crucial in shaping the future of India's tax reassessment regime, ensuring that justice prevails in the face of complexity. It is imperative that the tax system reflects this ethos, safeguarding the rights of all taxpayers while fostering a transparent and efficient assessment process.