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Location: HIGH COURT OF ORISSA, CUTTACK
Date: 19-Nov-2026 11:44:57

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.38333 of 2026

[CNR No.ODHC010659032026]

Biswajit Kar …. ***Petitioner(s)***

Mr. Jagamohan Pattanaik, Adv.

-versus-

Union of India & Ors. …. ***Opposite Party(s)***

Mr. Satya Narayan Patnaik, CGC
(for O.P. No.1)
Mr. Avinash Kedia,
Junior Standing Counsel (for O.P. Nos.2 to 4)

CORAM:
HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI
HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER

18.11.2026

Order No. 01. **W.P.(C) No.38333 of 2026 & I.A. No.16502 of 2026**

1. This matter is taken up through Hybrid Arrangement (video conferencing/physical mode).

2. Challenging the notices dated 29.08.2024 *vide* Annexure-3 issued under Section 148 of the Income Tax Act, 1961 (for short, "the IT Act") by the Income Tax Officer, Ward Puri, Puri for the Assessment Year 2018-19 (Financial Year 2017-18), the Petitioner has approached this Court by way of filing this Writ Petition invoking provisions under Articles 226 and 227 of the Constitution of India, *inter alia*, with the prayer to declare Section 147A[1] as introduced by

[1] *Section 147A of the IT Act as inserted by virtue of the Finance Act, 2026 reads as follows:*
"147A. Assessing Officer for purposes of Sections 148 and 148A.—

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Section 9 of the Finance Act, 2026 (Act No.4 of 2026)(for short, "the Act, 2026") with retrospective effect from 1st April, 2021 as unconstitutional.

3. Learned counsel appearing for the Petitioner submitted that provisions of Section 151A of the IT Act empower the Central Government to frame scheme for assessment, reassessment or recomputation under Section 147 pursuant to notice to be issued under Section 148. In exercise of such power as conferred, the Central Government in Ministry of Finance, Department of Revenue, Central Board of Direct Taxes issued Notification No.18 of 2022 [S.O. 1466(E)], dated 29th March, 2022 envisaging "the e-Assessment of Income Escaping Assessment Scheme, 2022". While Clause 2(1)(b) thereof defines the term "automated allocation", it postulates the scope of scheme in Clause-3.

3.1. It is submitted that since Clause 1(2) of the Scheme is explicit that "It shall come into force with effect from the date of its publication in the Official Gazette", it is implicit that the said scheme does not have retrospective operation. It is, therefore, contended by Sri Sunil Mishra, learned Advocate that issue of notice invoking said scheme for the

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Notwithstanding anything contained in any judgement, 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."

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purpose of assessment under Section 148 of the IT Act is exceptionable and unconscionable.

3.2. Although the concerned authority has issued a foundational notice to exercise its power of assessment under Section 148, Section 9 of the 2026 Act, which introduced Section 147A with retrospective effect from 1st April, 2021, vests arbitrary power in the authority, thereby attracting the *vice* of unconstitutionality under the Constitution of India, inasmuch as it dispensed with the modality of faceless assessment for the purpose of Section 148 and Section 148A of the IT Act. In essence what is agitated by the learned Advocate is that even though Section 147A has been inserted in the IT Act, 1961 with retrospective effect, the Jurisdictional Assessing Officer having issued the impugned notices, being not randomly selected by way of automated allocation process, the very exercise of power would be contrary to express provisions of Section 151A read with the Scheme promulgated thereunder by virtue of Ministry of Finance Department of Revenue, Central Board of Direct Taxes, Notification bearing SO No.1466(E), dated 29.03.2022.

3.3. Learned counsel drew attention of this Court to the fact that the question of competence of issue of notice for assessment under Section 148 by the Jurisdictional Assessing Officer in the teeth of Section 151A read with Scheme

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formulated thereunder was before different High Court and divergent views were expressed. During pendency of such matters before the Hon'ble Supreme Court of India, the Parliament introduced and promulgated Section 147A with retrospective effect from 01.04.2021. Citing a judgment dated 10th September, 2026 rendered by the Hon'ble High Court of Punjab and Haryana at Chandigarh in the case of *Jyoti Sareen Vs. Union of India and others, CWP No.15791-2024 (O & M), [Neutral Citation: 2026:PHHC:128067-DB],* it is submitted that the constitutional validity of enactment of Section 147A was subject-matter therein. Having regard to the provisions of Articles 14, 19(1)(g) and 265 of the Constitution of India, the said High Court appreciated that the modality specified under Section 151A being not followed while issuing notices to exercise power to assess under Section 148 was not followed and held that the proceeding is vitiated. It was further held in the said judgment that Section 147A as introduced by virtue of Section 9 of the Finance Act, 2026 is unconstitutional. Said impugned judgment is carried before the Hon'ble Supreme Court in appeal being *Civil Appeal No.13059 of 2026 (Arising out of Special Leave to Appeal (Civil) No.33196 of 2026)* in *Union of India and others Vs. Bharat Industrial Enterprises PVT LTD*, wherein *vide* order dated 18th September, 2026 it has been observed as follows:

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"2. By the impugned Judgment, the High Court has declared Section 147A of the Income Tax Act 1961, (for short, "the Act, 1961"), as unconstitutional.

3. Broadly, three questions arise for our consideration:

(i) Whether the High Court erred in holding that the notices under Section 148 and Section 148A respectively must be issued only by the Faceless Assessing Officer more particularly when Section 144B, the sole repository of the Faceless Regime, makes no reference to Sections 148 and 148A respectively and the scheme dated 29.03.2022 framed under Section 151A restricts the application of the faceless manner to the extent provided in Section 144B?

(ii) Whether the High Court erred in holding that the notices under Section 148 and 148A respectively must be issued only by the Faceless Assessing Officer, overlooking the fact that no Notification under Section 120 was ever issued by the Board which empowered the Faceless Assessing Officer to perform such functions or ousted the jurisdiction of the Jurisdictional Assessing Officer from performing such functions?

(iii) Whether the High Court erred in holding that Section 147A does not pass the muster of a Validation Enactment, overlooking

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the fact that Section 147A operates notwithstanding any Judgment, Section 151A and the Scheme dated 29.03.2022 framed under Section 151A, and prescribes the Assessing Officer for the purposes of Sections 148 and 148A respectively, which is not the Faceless Assessing Officer, thereby removing the defect pointed out by various High Courts and clarifying the position as to who the Assessing Officer is?

4. Leave granted.

5. The impugned judgment and order passed by the High Court shall remain stayed from its operation on the condition that the assessment and reassessment proceedings shall not proceed further till the final disposal of the main matter."

3.4. Learned counsel drew attention of this Court to an order dated 10th April, 2026 of the Hon'ble Supreme Court of India passed in the case of *Income Tax Officer, Ward 2(1), Chandigarh and others Vs. Tej Pratap Singh, Special Leave Petition (C) No.014521 of 2026*, wherein the challenge was laid to notices issued under Section 148 of the IT Act on the ground that they were issued by the Jurisdictional Assessing Officer(s) rather than through the prescribed faceless mechanism or competent Faceless Assessing Officer(s). After taking notice of insertion of Section 147A of the IT Act by virtue of Section 9 of the Act, 2026, the Supreme Court of

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India *vide* order dated 10th April, 2026 granted liberty as follows:

> *"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."*

3.5. It is reminded that co-ordinate bench of this Court having taken note of the aforesaid position in the case of *Aditya Park Properties Private Limited Vs. Central Board of Direct Taxes (CBDT) and others, WP(C) No.23691 of 2025, vide* order dated 5th May, 2026 observed as follows:

> *"2. However, all the assesses, who have approached the High Courts across the Country were permitted to amend the writ petition within the time stipulated therein, so that the challenge to a newly inserted provision can be made.*
>
> *3. In view of the liberty having granted by the Apex Court, the petitioner is also granted leave to file an application for amendment of the writ petition if he intends to challenge the newly inserted provision, i.e., Section 147A of the Income Tax Act within the time stipulated in the said order. In terms of the liberty granted by the Apex Court, list the said application within forty-eight hours from the date of filing of the same.*
>
> *4. It is, however, made clear that the Apex Court has already passed an interim order of stay of the further*

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assessment/re-assessment proceedings pursuant to the impugned notices and, therefore, no further interim order need to be recorded in this regard."

3.6. He, therefore, fervently prayed that since the above matter in *Aditya Park Properties (supra)* is still *sub judice* before this Court, the present matter challenging the constitutional validity of Section 147A as introduced by virtue of the Finance Act, 2026, as also the notice under Section 148 read with Section 142 of the IT Act be admitted.

4. Learned Junior Standing Counsel appearing for the Department has not disputed the aforesaid position. However, he prays for accommodation to file counter affidavit.

5. Issue notice to the opposite parties.

5.1. Mr. Sataya Narayan Patnaik, learned Central Government Counsel accepts and waives issue of formal notice on behalf of Opposite Party No.1 and Mr. Avinash Kedia, learned Junior Standing Counsel accepts and waives issue of formal notice on behalf of Opposite Party Nos.2 to 4.

6. Since the Hon'ble Supreme Court of India in *Tej Pratap Singh (supra)* has granted stay of further assessment/reassessment proceedings pursuant to notice under Section 148 of the IT Act, no further interim order needs to be recorded in this regard.

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7. List this matter on 16th December, 2026 along with W.P.(C) No.23691 of 2025.

(Dr. Sanjeeb K Panigrahi)
Judge

(Murahari Sri Raman)
Judge

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