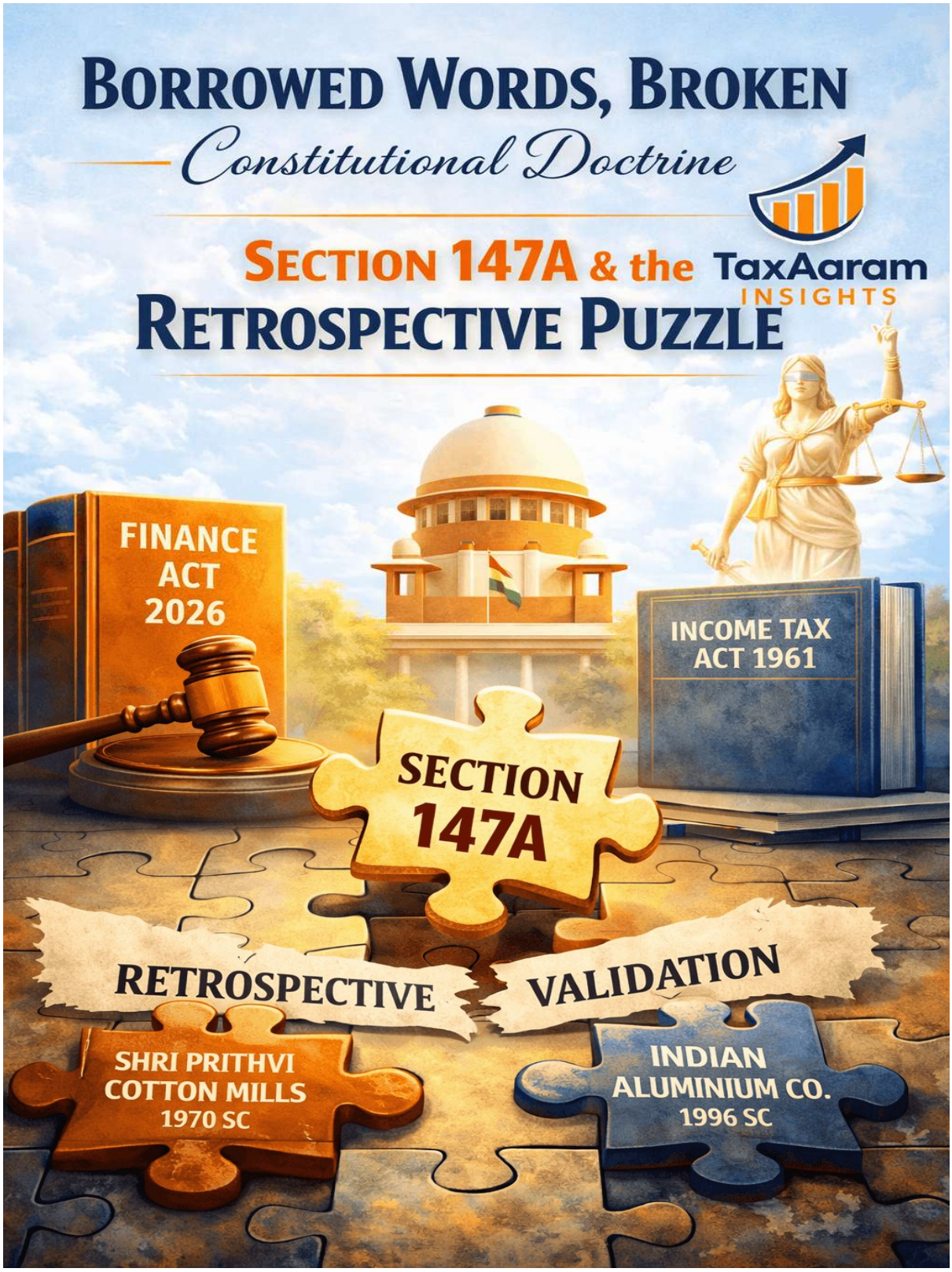
BORROWED WORDS, BROKEN
Constitutional Doctrine
SECTION 147A & the RETROSPECTIVE PUZZLE
TaxAaram INSIGHTS
FINANCE ACT 2026
INCOME TAX ACT 1961
SECTION 147A
RETROSPECTIVE
VALIDATION
SHRI PRITHVI COTTON MILLS 1970 SC
INDIAN ALUMINIUM CO. 1996 SC

Borrowed Words, Broken Constitutional Doctrine: Section 147A & Retrospective Puzzle

Introduction: A Legislative Déjà Vu with Constitutional Consequences

Who would have anticipated that at a time when the six decade old Income-tax Act, 1961 has itself been repealed and replaced by the new Income-tax Act, 2025, primarily to shed archaic legal jargon and usher in clarity and simplicity, the Finance Act, 2026 would simultaneously turn back the clock and revive, almost verbatim, the very legislative language drawn from equally old, Hon'ble Supreme Court's jurisprudence on retrospective validation in municipal taxation laws. In a striking paradox, the statute seeks to move forward in form while looking decisively backward in substance.

More than half a century after the seminal ruling of the Hon'ble Supreme Court in '*Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality'*, [1970 AIR 192] the Finance Act, 2026 appears to transplant, almost word for word, the legislative template once used in a municipal validation statute into the framework of national income tax law. What was originally conceived as a narrowly tailored constitutional response to cure a specific defect in a local municipal enactment is now being deployed in a vastly different fiscal, administrative and institutional context.

This is not a matter of mere drafting coincidence. The retrospective amendments introduced in the Finance Act, 2026 unmistakably draw upon the language, structure and technique of those earlier validating enactments examined and upheld by the Hon'ble Supreme Court, including in *Shri Prithvi Cotton Mills* and later in *Indian Aluminium Co. v. State of Kerala* [1996 AIR 1431]. The near verbatim legislative borrowing suggests a conscious attempt to anchor the present amendments within the established doctrine of retrospective validation.

In recent decades of fiscal legislative practice, budget amendments of this nature and breadth, framed in such assertive terms of retrospective reconstruction, have been virtually unprecedented in Indian tax jurisprudence. On earlier occasions, Explanations were inserted and described as clarificatory, and even those were subjected to rigorous judicial scrutiny. This time, however, the legislative assertion appears to have travelled considerably further. The amendments begin with sweeping non obstante clauses, "Notwithstanding anything contained in any judgment, order or decree of any court" and proceed to retrospectively redefine statutory architecture.

The use of sweeping non obstante clauses, the invocation of "for the removal of doubts", and the assertion that the law "shall always be deemed" to have meant something different are not accidental formulations. They reflect a deliberate legislative strategy to bring the present amendments within the perceived protective umbrella of established judicial doctrine on retrospective validation.

Yet, constitutional validity does not flow from borrowed language alone. It turns on whether the underlying conditions that justified such validation in the past are equally present today. It is precisely this foundational question that renders the Finance Act, 2026 amendments both

constitutionally intriguing and deeply contestable. This article is a continuation of the author's earlier piece titled *"Retrospective Rewriting of Legislative Intent: Constitutional Examination of the Finance Bill, 2026 Retrospective Amendments"*, and seeks to further deepen the constitutional analysis by examining the present amendments through the precise doctrinal lens laid down by the Hon'ble Supreme Court in its leading decisions on retrospective validation.

Since the present retrospective amendments appear to be modelled on the jurisprudence of *Shri Prithvi Cotton Mills* and *Indian Aluminium,* line of cases, then it becomes imperative to revisit the actual facts and reasoning of these decisions. Only then can it be meaningfully examined whether the Finance Act, 2026 amendments truly fall within the permissible doctrine of "removal of defect", or whether they cross the constitutional boundary into retrospective reconstruction of legislative intent.

The Doctrine of Validation in Shri Prithvi Cotton Mills: A Closer Examination of Facts

The doctrine of retrospective validation finds its most authoritative articulation in the Constitution Bench judgment in Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality. However, its application requires a careful appreciation of the precise factual and statutory context in which the principle was evolved.

The controversy in that case arose under Section 73 of the Bombay Municipal Boroughs Act, 1925, which empowered municipalities to levy a "rate" on lands and buildings. Significantly, the statute did not define the expression "rate" in any precise or exhaustive manner. However, the Rules framed under the Act applied the rates on the basis of the percentage on the capital value of lands and buildings.

In the decision of '*Patel Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad'* [1963 AIR 1742] the hon'ble Supreme Court interpreted the term "rate" in its established and customary legal sense, drawing a special meaning from English legislative history and practice, and Indian legislation and held that it referred to a levy based on annual letting value and not on capital value. The levy imposed on the basis of capital value was accordingly struck down.

The Gujarat Legislature, through the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963, addressed this precise defect. The validating enactment retrospectively authorised levy based on capital value and was complemented by insertion of provisions in the statute itself which made it clear that tax on lands and buildings could be levied on the basis of annual letting value, capital value, or a percentage of capital value.

It is pertinent to note here that the retrospective amendment did not overturn the original expressed legislative intent. The validating law did not reverse an earlier legislative position. The Legislature merely filled up the definitional vacuum by inserting explicit provisions in the statue itself defining the inclusive meaning of the expression 'rate' to include both bases of levy viz. 'annual letting value' as well as 'capital value'.

This distinction is of fundamental importance. The Supreme Court upheld the validity of this exercise on the ground that the Legislature had removed the defect identified by the Court and had fundamentally altered the basis on which the earlier judgment rested.

The Case of 'Indian Aluminium Co.': Validation Through Enactment of Enabling Law, Not Reversal of Original Legislative Intent

The constitutional discipline governing retrospective validation, as articulated in '*Shri Prithvi Cotton Mills'*, was reaffirmed and applied in a distinct factual setting in the case of *'Indian Aluminium Co. v. State of Kerala*'. A close examination of this judgment further clarifies the limits of legislative power and strengthens the doctrinal framework within which the present Finance Act, 2026 retrospective amendments must be evaluated.

The controversy in that case arose from the levy of electricity surcharge in the State of Kerala. The surcharge had been imposed through executive orders issued under the Kerala Essential Articles Control Act. This levy was challenged before the hon'ble Kerala High Court in the case of '*Chakolas Spinning & Weaving Mills Ltd. v. K.S.E Board'* [1988 [2] KLT 680].

The hon'ble High Court undertook a substantive examination of the nature of the levy and held that, notwithstanding its nomenclature, the surcharge was in reality a compulsory exaction intended to augment State revenue, and therefore bore the character of a tax. Having reached this conclusion, the Court examined whether the parent statute conferred authority to impose such a tax.

It found that the Kerala Essential Articles Control Act did not empower the executive to levy a tax. Consequently, the surcharge was held to be ultra vires on the ground of lack of legislative authority in the delegate. The defect identified by the Court was thus precise and jurisdictional. It arose from the absence of proper legal authority to impose what was, in substance, a tax.

Following the dismissal of the State's challenge, the Legislature intervened by enacting the Kerala Electricity Surcharge (Levy and Collection) Act, 1989. This statute retrospectively validated the levy of surcharge and provided a proper legislative foundation for its imposition.

When the validity of this enactment came up for consideration before the Supreme Court, the Court upheld it by applying the settled principles of validating legislation. The Court noted that the Legislature possessed competence under Entry 53 of List II to levy tax on consumption or sale of electricity. The earlier defect lay not in lack of legislative competence, but in the fact that the levy had been imposed through executive action without statutory backing.

The validating Act directly addressed this defect. It converted what was earlier an unauthorised executive levy into a valid statutory impost backed by legislative authority. In doing so, it removed the very basis on which the High Court had invalidated the levy.

Significantly, the Legislature did not contradict any earlier declared legislative intent. There was no prior statutory provision indicating that such a levy could not be imposed, nor was there any inconsistency between the validating Act and an earlier legislative mandate. The problem was not contradiction, but absence. The Legislature supplied what was missing.

The "JAO-FAO" Controversy: A Jurisdictional Safeguard, not a Procedural Formality

The controversy surrounding reassessment jurisdiction under Sections 148 and 148A must be examined in the backdrop of the legislative architecture consciously designed and introduced by Parliament.

The insertion of Section 151A with effect from 1 April 2021 marked a conscious legislative shift towards a faceless reassessment framework. Parliament expressly empowered the Central Government to frame a scheme governing issuance of notice under Section 148, conduct of enquiries under Section 148A, and completion of reassessment proceedings under Section 147, all in a faceless manner. Pursuant to this mandate, the e-Assessment of Income Escaping Assessment Scheme, 2022 was notified, providing that issuance of notices under Section 148 would be undertaken through automated allocation based on a risk management strategy and in a faceless mode, to the extent provided under Section 144B.

The legislative intent underlying this framework is neither implicit nor ambiguous. It represents a clearly articulated structural reform aimed at eliminating human interface between the Assessing Officer and the assessee, curbing discretion and subjectivity, and enhancing transparency and accountability in tax administration. The faceless regime has been consistently projected as a transformative measure designed to reinforce the credibility, objectivity and fairness of the assessment process.

In the context of reassessment proceedings, these objectives assume their greatest significance at the threshold stage of issuance of notices under Sections 148A and 148. It is at this stage that the power to reopen completed assessments is exercised, and therefore, the need to eliminate discretion and ensure institutional neutrality is most critical.

If reassessment proceedings, though otherwise conducted in a faceless environment, are initiated by jurisdictional Assessing Officers operating outside the faceless architecture, the very foundation of the reform stands compromised. More importantly, if completed faceless assessments, which the Legislature itself projects as unbiased and merit-based outcomes, are subjected to reopening at the discretion of jurisdictional officers functioning outside this faceless hierarchy, the very purpose and credibility of the faceless regime stand seriously undermined. Such an approach reintroduces, at the most crucial stage, the very elements of subjectivity and discretion that the reform sought to eliminate.

The attempt to characterise this issue as a mere hyper-technical or procedural lapse fails to appreciate its true legal character. The question is not one of procedural compliance, but of jurisdictional legitimacy. It goes to the root of the statutory framework governing reassessment. The requirement that notices under Sections 148A and 148 be issued within the faceless framework is not incidental; it is integral to the legislative design.

It is in this context that the scheme framed under Section 151A must be understood as mandating, in clear and unequivocal terms, that even the initiation of reassessment proceedings is to be undertaken in a faceless manner. Any deviation from this framework is not a curable irregularity, but a fundamental departure from the statutory mandate itself.

Judicial Response and the Nature of the Defect

Several High Courts, while examining reassessment notices issued by jurisdictional Assessing Officers, interpreted Section 151A and the scheme framed thereunder in accordance with their plain language and declared objective. On this basis, notices issued outside the faceless mechanism were held to be without jurisdiction and were accordingly quashed.

It is important to appreciate that these judgments did not introduce any new interpretive principle. They did not expand the scope of the statute or impose extraneous conditions. They merely enforced the statutory architecture as enacted and implemented.

The defect identified by courts, therefore, was not a drafting ambiguity. It was a failure of compliance with a jurisdictional mandate consciously introduced by the Legislature itself.

The Retrospective Amendment: Section 147A

In response to these judicial pronouncements, the Finance Act, 2026 has inserted Section 147A with retrospective effect from 1 April 2021. The provision declares that, notwithstanding anything contained in any judgment or in Section 151A or any scheme framed thereunder, the Assessing Officer for the purposes of Sections 148 and 148A shall always be deemed to have meant an Assessing Officer other than the faceless assessment units.

The intended effect of this amendment is to retrospectively validate reassessment notices issued by jurisdictional Assessing Officers and to declare that the law always permitted such issuance, notwithstanding the faceless framework introduced earlier.

For better understanding, the text of the said new section 147A inserted retrospectively in the Income Tax Act, 1961, is being reproduced below.

"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."

This section is deemed to be inserted retrospectively from 1 April 2021.

Recent Supreme Court Developments

Taking note of the retrospective amendments introduced by the Finance Act, 2026, the Hon'ble Supreme Court, in proceedings before a Bench led by the Hon'ble Chief Justice of India, has passed a significant interim order which materially shapes the contours of the ongoing controversy. The Court has set aside the judgments of the High Courts on the JAO versus FAO issue and has granted liberty to taxpayers to institute or suitably amend their writ petitions before the respective High Courts so as to specifically challenge the constitutional validity of the retrospective amendments. The Court has further permitted all other connected and ancillary contentions to be urged in such proceedings. Importantly, the High Courts have been

requested to adjudicate these challenges expeditiously, preferably by 31 July 2026. In the interregnum, the Hon'ble Supreme Court has directed that further assessment proceedings shall remain stayed, thereby maintaining status quo until the constitutional validity of the amendments is judicially examined.

Application of the 'Removal of Defect Doctrine' of the 'Prithvi Cotton Mills' Judgement to the Retrospective Insertion of Section 147A in the Income Tax Act, 1961

Read together, the two authoritative judgements of '*Shri Prithvi Cotton Mills'* and *'Indian Aluminium*', establish a consistent constitutional principle. Retrospective validation is permissible where the Legislature fills a gap, removes a defect, or supplies a missing element that led to invalidation. It is not permissible where the Legislature seeks to overturn judicial decisions by retrospectively rewriting its own clearly articulated intent.

When the specific factual matrix and the underlying doctrine of "removal of defect" emerging from the two leading and authoritative pronouncements of the Hon'ble Supreme Court on the constitutional validity of the retrospective validation legislation are juxtaposed with the retrospective insertion of an altogether new Section 147A by the Finance Act, 2026, the distinction that emerges is both stark and constitutionally significant.

In the faceless reassessment mechanism, introduced by the Finance Act, 2021 w.e.f. 1.4.2021, there was no ambiguity in the statutory framework. Section 151A expressly empowered the Government to frame a faceless scheme covering issuance of notices under Sections 148A and 148. The scheme framed pursuant thereto clearly mandated automated allocation and faceless issuance of notices.

The legislative intent was not implicit or uncertain. It was explicit, structured and repeatedly emphasised as a cornerstone of tax reform.

The hon'ble High Courts on PAN India basis, in quashing notices issued by jurisdictional Assessing Officers, did not rely on interpretational ambiguity. They enforced the statutory mandate as it stood.

The retrospective amendment now seeks to declare that the law always meant something different. It seeks to negate the faceless requirement at the threshold stage and validate notices issued outside the faceless framework.

This is not a case of removing a defect. The defect identified by courts was non-compliance with a jurisdictional mandate. That mandate itself is now being retrospectively diluted.

In the faceless reassessment framework, there was no absence of power, no statutory vacuum, and no ambiguity in legislative design. Section 151A, read with the e-Assessment of Income Escaping Assessment Scheme, 2022, clearly mandated a faceless mechanism even at the stage of issuance of notices under Sections 148A and 148. The High Courts, in quashing notices issued by jurisdictional Assessing Officers, merely enforced this explicit statutory mandate.

The defect identified by the courts was not a gap in the law. It was non-compliance with the law as enacted.

The retrospective insertion of Section 147A, however, does not cure this defect. It does not address any absence of legislative competence or ambiguity in statutory language. Instead, it seeks to declare that the law always meant something fundamentally different from what was expressly provided in Section 151A and the scheme framed thereunder.

This is not an exercise in removing the basis of a judgment. It is an exercise in retrospectively altering the very legislative intent that formed the basis of the statutory framework.

In this light, the retrospective amendment of insertion of an altogether new section 147A in the Income Tax Act, 1961, by the Finance Act, 2026, do not fall within the recognised category of curative or validating legislation. It does not cure the defect identified by the High Courts, but instead seek to neutralise the consequences of judicial enforcement of the original statutory mandate. The distinction is subtle in form but profound in constitutional substance, and it is this distinction that renders the present amendments vulnerable to challenge under the settled doctrine of the Supreme Court.

Concluding Reflections: **Borrowed Language, Broken Constitutional Doctrine**

The Finance Act, 2026 retrospective amendments present a striking case of legislative déjà vu. They adopt, almost verbatim, the language and structure of classical validating statutes that once withstood constitutional scrutiny before the hon'ble Supreme Court. However, as the foregoing analysis demonstrates, constitutional validity does not flow from borrowed phraseology. It flows from adherence to principle.

Both '*Shri Prithvi Cotton Mills'* and '*Indian Aluminium Co.*' stand as authoritative expositions of the limits within which retrospective validation may operate. In each of these cases, the Legislature acted to complete the law, not to contradict it. In *Prithvi Cotton Mills*, the statute did not define the expression "rate", and it was this absence of clarity that led to judicial invalidation. The retrospective amendment merely supplied that missing definition and clarified that the levy could be based on both annual letting value and capital value. There was no earlier statutory mandate confining the levy to one basis alone, and therefore no question of reversing legislative intent. The amendment filled a vacuum.

Similarly, in '*Indian Aluminium Co.'*, the defect lay in the absence of statutory authority to impose what was, in substance, a tax. The Legislature responded by enacting a law within its constitutional competence, thereby supplying the missing jurisdictional foundation. Once again, the Legislature did not contradict itself. It remedied an absence.

In both cases, the judicial decisions were neutralised only because their foundational basis was removed through legitimate legislative correction.

The present retrospective amendments stand on an entirely different footing.

Section 151A, read with the faceless reassessment scheme, embodies a clear, conscious and widely publicised legislative mandate. It is not a case of silence, ambiguity or absence. It is a case of deliberate design. The objective of eliminating human interface at all stages of reassessment, including the issuance of notices under Sections 148A and 148, is explicit and central to the reform.

The High Courts, in quashing notices issued by jurisdictional Assessing Officers, did not read into the statute what was not there. They enforced what was already there.

The retrospective insertion of Section 147A does not clarify this framework. It does not cure a defect. It does not supply a missing element. It does something far more fundamental. It declares that the law always meant the opposite of what it expressly provided.

This is not validation. It is reconstruction. This is not removal of defect. It is legislative reversal. This is not clarification. It is a complete inversion, a 360-degree turning upside down of the original legislative intent.

It is precisely this distinction that separates permissible retrospective legislation from constitutionally suspect intervention. The doctrine laid down in *Shri Prithvi Cotton Mills* and reaffirmed in *Indian Aluminium* does not authorise the Legislature to rewrite its own past. It permits it only to correct its defects.

Where there is no defect, but only judicial enforcement of a clear statutory mandate, retrospective intervention ceases to be curative and assumes the character of overruling.

The retrospective insertion of section 147A in the Income Tax Act, 1961, therefore, presents not merely a question of statutory interpretation, but a deeper constitutional inquiry. It calls upon the courts to reaffirm that while legislative power is wide, it is not unbounded. That validation is permissible, but reconstruction is not. And that the rule of law ultimately rests not on legislative assertion, but on constitutional discipline.

In the final analysis, the constitutional legitimacy of retrospective validation must be tested not by the familiarity of its language, but by the fidelity of its purpose.

[This Article, authored by our Founder Shri Mayank Mohanka, FCA has also been published in Taxsutra]

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