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Who really controls the outcome after courts decide

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Budget 2025 vs Budget 2026: How Retrospective Tax Amendments Quietly Redefined the Balance of Power

Introduction: A Shift Hidden in Plain Sight

For decades, Indian tax litigation rested on a quiet but powerful assumption:

Procedure binds everyone.

Taxpayers were required to comply strictly. Revenue authorities were expected to do the same. Courts enforced that symmetry.

Budget 2025 strained this assumption but Budget 2026 breaks it.

Retrospective amendments are not new to Indian tax law. They have traditionally been justified as exceptional measures used sparingly to correct drafting anomalies or to protect revenue where judicial interpretation created unintended consequences.

However, a comparative reading of **Budget 2025** and **Budget 2026** reveals a deeper structural shift. What began as **selective, sector-specific reversals** has evolved into a **systematic legislative response to procedural victories secured by taxpayers in courts**.

The issue is no longer *whether* retrospective amendments will be used, but **how expansively and strategically** they are now being deployed.

What was not disputed and what was neutralised

Significantly, Budget 2026 does not contest courts on questions of taxability, income characterisation, or valuation. Instead, it addresses something more fundamental i.e. the consequences of procedural failure by the tax administration.

Reassessment notices issued by the "wrong" authority, draft orders passed beyond statutory timelines, transfer pricing orders delayed beyond limitation, or assessments invalidated for DIN defects, all had one thing in common. Courts did not excuse them. It was **FATAL.** Legislatives respond by retroactively redefining those procedures so that failure is no longer fatal by declaring that what courts enforced was never the legislature's intent, even when that intent was only clarified years later after a deep slumber.

A Mildly Uncomfortable Observation here is that traditionally, procedural compliance was seen as a neutral safeguard binding both taxpayers and the revenue equally but Budget 2026 subtly alters that equilibrium.

The amendments do not dispute judicial interpretation on merits. Instead, they remove the consequences of procedural non-compliance by retrospectively redefining the procedure itself.

This raises a legitimate, **though measured, question**:

If procedural discipline can be retrospectively relaxed for one side, does procedure still operate as a meaningful check on administrative power? It is a structural concern.

Lets quickly take the glimpse of these impugned amendments

Budget 2025: Targeted Retrospection in Indirect Taxes

Legislative Approach

Budget 2025 largely confined its retrospective interventions to the **GST framework**, with a focus on revenue protection in areas where courts had interpreted the law expansively.

Key Retrospective Measures

- **Amendment to Section 17(5)(d), CGST Act**, effective retrospectively from **1 July 2017**, substituting *"plant or machinery"* with *"plant and machinery"*.

  This amendment **nullified the Supreme Court's ruling in *Chief Commissioner of Central Goods and Service Tax* v. *Safari Retreats (P.) Ltd.* [2025] 174 taxmann.com 894 (SC)**, which had allowed input tax credit on construction of immovable property used for taxable supplies.
- **Clarification to Schedule III** regarding warehoused goods in SEZ/FTWZ prior to clearance, ensuring such transactions were not treated as "supply". The amendment specifies that no tax refunds will be granted for taxes already paid on these transactions.
- Limited retrospective adjustments in service tax exemptions and block assessment computation provisions.

Character of Budget 2025

- Narrow in scope
- Largely indirect-tax focused
- Overruled **one major Supreme Court judgment**
- Avoided widespread use of "notwithstanding any judgment" clauses

In essence, Budget 2025 appeared **defensive and corrective**, rather than transformational.

Budget 2026: Retrospection as Architecture

Budget 2026 represents a qualitative shift. For the first time in recent memory, retrospective amendments are deployed systematically across the procedural spine of the Income-tax Act—jurisdiction, limitation, timelines, and statutory validity.

These are not marginal provisions. They are the very grounds on which taxpayers have historically restrained administrative excess.

This is not legislative housekeeping but procedural reconstruction and system design

What Budget 2026 does differently:

- Targets **direct tax procedure**
- Uses wide **"notwithstanding any judgment"** clauses

- Backdates changes to **2007, 2009, 2019, 2021**
- **Direct neutralisation of High Court jurisprudence and pending Supreme Court appeals**

Key Retrospective Amendments in Budget 2026

1. Jurisdiction for Reassessment Notices

- **Retrospective from 1 April 2021**
- Clarifies that reassessment notices under Sections 148 and 148A can only be issued by the jurisdictional Assessing Officer (JAO), and not by faceless units.
- Explicitly overrides judicial rulings that had invalidated reassessments on jurisdictional grounds.

Impact: Thousands of reassessment notices previously vulnerable to challenge are now legislatively validated.

2. DRP Timelines and Draft Assessment Orders

- Retrospective amendments dating back to **1 April 2009 and 1 October 2009**
- Deem draft orders under Section 144C as valid if issued within the overall limitation period under Sections 153 or 153B.

Impact: Assessments previously struck down as time-barred stand revived.

3. Transfer Pricing Officer (TPO) Limitation

- Retrospective from **1 June 2007**
- Re-engineers the computation of the 60-day period for passing TPO orders.

Impact: Neutralises High Court decisions that quashed transfer pricing adjustments on limitation grounds.

4. DIN-Related Defects

- Retrospective from **1 October 2019**
- Orders are deemed valid if the DIN is referenced "in any manner", curing technical non-compliance.

Impact: Eliminates a procedural defence that had gained traction across High Courts.

Legislative Style of Budget 2026

- Repeated use of **"notwithstanding any judgment, order or decree"**
- Long retrospective reach (2007 onwards)
- Direct targeting of procedural safeguards relied upon by taxpayers

This represents a **procedural reset**, not a mere clarification.

The Larger Question: What Changed Between 2025 and 2026?

The contrast is stark:

Aspect	**Budget 2025**	**Budget 2026**
Primary Focus	GST / Indirect Tax	Direct Tax Procedure
Nature of Retrospection	Selective	Systemic
Judicial Impact	One major SC ruling	Multiple HC lines & pending SC cases
Time Horizon	Post-GST era	Two decades
Legislative Tone	Corrective	Overriding

Implications for Taxpayers and Advisors

1. **Procedural victories are no longer final**
   Limitation, jurisdiction, and DIN-based reliefs are increasingly vulnerable.
2. **Old matters may not be settled matters**
   Retrospection reaching back to 2007 expands exposure for long-concluded assessments.
3. **Litigation strategy must evolve**
   Reliance solely on technical grounds may offer only temporary relief.
4. **Substance and documentation gain primacy**
   As procedure weakens as a defence, factual and substantive robustness becomes critical.

Why This Matters Beyond Litigation?

The implications extend far beyond pending cases.

Taxpayers make decisions—settlements, provisioning, closures—on the assumption that:

- limitation periods mean finality
- jurisdictional defects mean invalidity
- concluded litigation means closure

When these assumptions can be undone years later, certainty becomes provisional, not legal.

That uncertainty is not sector-specific. It is systemic. **Three consequences are already clear in a changed litigation landscape:**

1. Procedural victories are fragile
   Jurisdictional and limitation-based reliefs now carry legislative risk.
2. Closure is no longer guaranteed
   Retrospection reaching back nearly two decades reopens settled expectations.
3. Substance overtakes strategy
   As the procedural safeguards weaken, factual robustness becomes the only durable defence.

   For taxpayers, the message is measured but unmistakable:

   Judicial relief may still arrive—but increasingly, it arrives with a retrospective caveat valid until legislatively revisited

Is Budget 2026 a necessary assertion of legislative supremacy to protect revenue, or does it mark a turning point in how procedural discipline functions in tax law?

Without becoming academic or preachy, this gives lawyers, tax professionals, and policy people something concrete to engage with. Constitutional and Jurisprudential Lens that bridges the gap between the *letter* of the law (written text) and the *spirit* of the law would stand behind the following:

1. Plenary power of Parliament over taxation

Under Articles **245 and 246** of the Constitution, with Article 245 establishing the territorial extent (Parliament for India, States for their territory) and Article 246 detailing the subject matter by dividing powers into Union, State, and Concurrent Lists, forming the core of India's federal legislative framework so Parliament has wide competence to legislate on taxes, including retrospective amendments, as also repeatedly upheld by the Supreme Court through landmark cases like *Rai Ramkrishna* v. *State of Bihar* and *Ujagar Prints* v. *Union of India* where it was held that the retroactivity of the Amending provisions was not such as to incur any infirmity under Article 19(l)(g). But it failed to address the limit as in upto what extent these amendments don't violate the fundamental rights.

2. Doctrine of legislative clarification

Courts have recognised that Parliament may retrospectively "clarify" ambiguities exposed by judicial interpretation, especially where conflicting views disrupt uniform application of tax law.

3. No vested right in procedural lapses

Jurisprudence consistently holds that taxpayers do not acquire vested rights in procedural defects of the administration, particularly where substantive tax liability exists.

4. Separation of powers preserved

Parliament does not overrule judgments as precedents; it changes the law itself. Courts remain free to interpret the amended statute, preserving institutional boundaries

But not forgetting the Constitutional Stress on Rule of Law and Finality, it can be argued otherwise.

1. Rule of law as a basic structure principle

The Supreme Court has repeatedly held that certainty, predictability, and non-arbitrariness are core to the rule of law. Frequent or sweeping retrospective cures strain that principle.

2. Doctrine of legitimate expectation

Taxpayers who acted based on settled judicial interpretations may argue that retrospective amendments defeat legitimate expectations, particularly where matters stood concluded.

3. Procedural safeguards as substantive rights

Courts have increasingly treated limitation, jurisdiction, and statutory compliance not as mere formality, but as conditions precedent to valid exercise of power.Income tax assessments can be reopened up to **3 years** from the end of the relevant assessment year (AY). For cases involving concealed income or assets exceeding ?50 lakh, the limit is extended to **10 years**. Notices for reassessment under section 148 must be issued within these specified timelines and here we are talking about settled cases pertaining to as old as 16 years? **It's simply stripping, dispossessing and robbing the taxpayers.**

4. Judicial finality and pending litigation

While Parliament may change the law, retrospective amendments that directly target pending appeals raise concerns about legislative interference with adjudicatory processes, even if constitutionally permissible.

In the chess game of Indian taxation, Budget 2026 proves once again that the government holds the power to change the rules even mid-match. By deploying retrospective 'clarifications' with surgical precision, the Centre has effectively neutralized several taxpayer-favourable High Court and Supreme Court interpretations on jurisdiction, timelines, DIN defects, and transfer pricing limits. Pending litigations now face an uphill battle, reassessments gain fresh life, and procedural defences evaporate overnight. For taxpayers and practitioners, the message is clear: vigilance must extend beyond courts to every Finance Bill. In India's tax landscape, judicial relief is valuable but retrospective legislation remains the ultimate trump card. The era of the new Income-tax Act begins in April 2026 prepare to bite the bullet and for a more revenue-assertive future.

A MUST SAVE THIS Post-2026 Tax Checklist for the taxpayers shall therefore be:

(*a*) Revisit "won" procedural cases
(*b*) Stop treating limitation as final
(*c*) Expect old years to reopen
(*d*) Strengthen factual & substantive records
(*e*) Plan litigation assuming retrospective fixes

(*f*) **Facts now matter more than flaws.**

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