IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3778 OF 2016

Dr. Mrs. Sumitra S. Banerji ….Petitioner
Vs.
The Chairman,
Central Board of Direct Taxes Dept. of
Revenue & Ors. ….Respondents.

Mr. Advait M. Sethna a/w Ms. Raju R. Thakker for the Petitioner.
Mr. Y.R. Mishra a/w A.A.Garge for the Respondent-UOI.

CORAM : ANOOP V. MOHTA AND
G.S. KULKARNI, JJ.
DATE : 14 OCTOBER 2016.

ORDER:-

The Petitioner being an employee of the Government of India, was discharging duties as an Additional Commissioner, Income Tax. The challenge in this Petition, as seen from the prayers, is inter-alia to drop the Departmental Inquiry/Proceedings initiated against the Petitioner and that the Departmental Inquiry against the Petitioner be stayed until the conclusion of the Criminal proceedings pending before the Court of Special Judge at Mumbai.

2 Admittedly, the Petitioner is an employee of the Central Government. The remedy available to the Petitioner is to approach

the Central Administrative Tribunal (CAT), under the provisions of Section 14 of the Administrative Tribunals Act, 1985. The law in this regard is clear in view of the Judgment of the Constitution Bench of the Supreme Court in ***L. Chandra Kumar vs Union of India***[1]**,** in which in paragraph No.99, Their Lordships held as under:-

> *"99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created Chambers, N.M. Road, Fort, Mumbai – 400 023. under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants*

1 1997 3 SCC 261

> *to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."*

(Emphasis supplied)

3 In view of above clear position in law, the Petitioner needs to approach the CAT. Writ Petition is accordingly disposed of, with liberty to the Petitioner to approach the Tribunal. All contentions of the parties on merits, are expressly kept open. Disposed of accordingly No costs.

(G.S. KULKARNI, J.) **(ANOOP V. MOHTA, J.)**