

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.10702 of 2015
Date of decision:24.2.2016**

M/s Jindal Steel and Power Limited

.....Petitioner

The Commissioner of Income Tax, Hissar and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ajay Vohra, Sr. Advocate with
Mr. Vishal Gupta, Advocate and Mr. Rohit Jain,
Advocate for the petitioner.

Mr. Yogesh Putney, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. The petitioner prays for quashing the order dated 27.3.2015, Annexure P.1 passed under Section 263 of the Income Tax Act, 1961 (in short, "the Act") vide which assessment order dated 4.3.2013 passed under section 147 of the Act by respondent No.2 was set aside and the Assessing Officer was directed to make fresh assessment after making necessary and proper enquiry/investigation.

2. A few facts relevant for the decision of the controversy

involved as narrated in the petition may be noticed. The petitioner is a public limited company. It is engaged, inter-alia, in the business of manufacture/generation of steel, power, iron, pig iron, sponge iron etc. at various separate and independent individual units/undertakings located at Raigarh and other locations. For the previous year relevant to the assessment year 2005-06 viz. the year under consideration, the petitioner filed revised return of income on 30th March 2007 declaring income of ₹ 92,06,88,890/-. In the return of income, the petitioner claimed certain deductions under sections 80IA and 80IB of the Act. The said deductions were supported by the audit report in prescribed Form No.10CCB filed alongwith the return of income. All the units in respect of which deduction under sections 80IA and 80IB of the Act was claimed by the petitioner in the assessment year 2005-06 were separate industrial units/undertakings, independently eligible for deduction under the respective sections. The said units were set up in the earlier assessment years and the eligibility of the petitioner to claim deduction under sections 80IA and 80IB of the Act in respect of profits derived from various units was subject matter of not only in the earlier assessment years but also in the assessment year under consideration. Original assessment under section 143(3) of the Act for the assessment year 2005-06 was completed vide order dated 31.12.2007, Annexure P.3 after examining claim of deduction under sections 80IA and 80IB of the Act. The deductions claimed by the petitioner were varied/reduced for the reasons set out in the assessment order.

Aggrieved by the order, the petitioner filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] which was partly allowed vide order dated 11.11.2008, Annexure P.4. While adjudicating the appeal filed by the petitioner, the CIT(A) examined the claim of deduction under sections 80IA and 80IB of the Act and therefore, on the issue of deduction claimed under the said sections, the assessment order stood merged with the order of the CIT(A). Against the order passed by the CIT(A) dated 11.11.2008, Annexure P.4, cross appeals were filed by the petitioner and the respondents before the Tribunal. Vide order dated 6.3.2014, Annexure P.5, the appeal filed by the petitioner was partly allowed whereas the appeal filed by the revenue was dismissed. Thereafter, the petitioner filed appeal before this Court bearing ITA Nos.281 and 282 of 2014 on the issue of taxability of subsidy/incentive which were admitted vide order dated 16.12.2014, Annexure P.6. In the meantime, reassessment proceedings for the assessment year 2005-06 i.e. the year under consideration were initiated by the Assessing Officer vide notice dated 23.3.2012, under section 148 of the Act i.e. after expiry of four years from the end of the relevant assessment year. The Assessing Officer rejected the legal objections raised by the petitioner and proceeded to complete reassessment vide order dated 4.3.2013 under section 143(3)/147 of the Act reducing the amount eligible for deduction in respect of MBF units to ₹ 32,36,61,107/-. The aforesaid reassessment proceedings were initiated by the Assessing Officer on the ground that losses aggregating

to ₹ 8,83,95,939/- suffered in the MBF unit in earlier assessment years were required to be set off on notional basis in order to determine the amount of profits in respect of MBF unit eligible for deduction under section 80IB of the Act. Against the reassessment order dated 4.3.2013, Annexure P.7, the petitioner filed appeal before the CIT(A) which is pending. Subsequently, respondent No.1 issued show cause notice dated 22.10.2013, Annexure P.8 under Section 263 of the Act proposing to revise the reassessment order dated 4.3.2013. It was alleged that the reassessment order was erroneous and prejudicial to the interests of the revenue. Against the said notice, the petitioner filed legal objections challenging the assumption of jurisdiction by respondent No.1 under section 263 of the Act. The petitioner requested respondent No.1 to either drop the revisionary proceedings under section 263 of the Act or to dispose of the legal objections challenging the validity of the said proceedings. The CIT, however, continued with the revisionary proceedings and directed the petitioner to file various details/documents from time to time without disposing of the objections raised by the petitioner. On 18.3.2015, another show cause notice, Annexure P.10 was issued by respondent No.1 requiring the petitioner to show cause why appropriate order under section 263 of the Act should not be passed for the assessment year under consideration. It was alleged by respondent No.1 in the said show cause notice that separate books of account were not being maintained in respect of MBF unit and therefore the said unit was not eligible for

deduction under section 80IB of the Act. The petitioner was directed to furnish reply within three days. The petitioner filed letter dated 23.3.2015, Annexure P.11 inter alia reiterating in detail the legal objections challenging the assumption of revisionary jurisdiction under section 263 of the Act. The petitioner again requested respondent No.1 to dispose of the legal objections raised by it. Respondent No.1 without disposing of the legal objections raised by the petitioner passed the impugned order dated 27.3.2015, Annexure P.1 under Section 263 of the Act. Hence the instant petition by the petitioner.

3. A short reply on behalf of respondent Nos. 1 and 2 has been filed by Principal Commissioner of Income Tax, Gurgaon wherein a preliminary objection has been raised that the petitioner has a statutory efficacious/alternative remedy of appeal before the Tribunal under section 253(1) of the Act. On merits also, the impugned order has been supported.

4. After hearing learned counsel for the parties and perusing the record, we find force in the preliminary objection raised by the respondents. In [Titaghur Paper Mills Co. Ltd. v. State of Orissa](#) (1983) 2 SCC 433, a three-Judge Bench of the Apex Court considered the question whether a petition under [Article 226](#) of the Constitution should be entertained in a matter involving challenge to the order of the assessment passed by the competent authority under the [Central Sales Tax Act, 1956](#) and corresponding law enacted by the State legislature and answered the same in negative by making the following observations:

"Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of [Section 23](#) of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of [Section 23](#) of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under [Section 24](#) of the Act. [The Act](#) provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under [Article 226](#) of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford* in the following passage:

"There are three classes of cases in which a liability may be established founded upon statute. . . . But there is a third class, viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. . . the remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in ***Neville v. London Express Newspapers Ltd.*** and has been reaffirmed by the Privy Council in ***Attorney-General of Trinidad and Tobago v. Gordon Grant & Co. Ltd.*** and ***Secretary of State v. Mask & Co.*** It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore

justified in dismissing the writ petitions in limine."

5. Following the above judgment, the Apex Court in Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and others (1985) 1 SCC 260 observed as under:

"Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

6. Further, the Apex Court in *Commissioner of Income Tax and others vs. Chhabil Dass Agarwal*, (2013) 357 ITR 357, considered the question of entertaining writ petition where alternative statutory remedy was available. After examining the relevant case law on the point, it was recorded as under:-

"14. In the instant case, the only question which arises for our consideration and decision is whether the High Court was justified in interfering with the order passed by the assessing authority under Section 148 of the Act in exercise of its jurisdiction under Article 226 when an equally efficacious alternate remedy was available to the assessee under the Act.

15. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under [Article 226](#) despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under [Article 226](#). (See: [State of U.P. vs. Mohammad Nooh](#), AIR 1958 SC 86; [Titaghur Paper Mills Co. Ltd. vs. State of Orissa](#), (1983) 2 SCC 433; [Harbanslal Sahnia vs. Indian Oil Corpn. Ltd.](#), (2003) 2 SCC 107; [State of H.P. vs. Gujarat Ambuja Cement Ltd.](#), (2005) 6 SCC 499).

16. The Constitution Benches of this Court in [K.S. Rashid and Sons vs. Income Tax Investigation Commission](#), AIR 1954 SC 207; [Sangram Singh vs. Election Tribunal, Kotah](#), AIR 1955 SC 425; [Union of India vs. T.R. Varma](#), AIR 1957 SC 882; [State of U.P. vs. Mohd. Nooh](#), AIR 1958 SC 86 and [K.S. Venkataraman and Co. \(P\) Ltd. vs. State of Madras](#), AIR 1966 SC 1089 have held that though [Article 226](#) confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

(See: [N.T. Veluswami Thevar vs. G. Raja Nainar](#), AIR 1959 SC 422; [Municipal Council, Khurai vs. Kamal Kumar](#), (1965) 2 SCR 653; [Siliguri Municipality vs. Amalendu Das](#), (1984) 2 SCC 436; [S.T. Muthusami vs. K. Natarajan](#), (1988) 1 SCC 572; [Rajasthan SRTC vs. Krishna Kant](#), (1995) 5 SCC 75; Kerala SEB vs. Kurien E. Kalathil, (2000) 6 SCC 293; [A. Venkatasubbiah Naidu vs. S. Chellappan](#), (2000) 7 SCC 695; [L.L. Sudhakar Reddy vs. State of A.P.](#), (2001) 6 SCC 634; [Shri Sant Sadguru Janardan Swami \(Moingiri Maharaj\) Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra](#), (2001) 8 SCC 509; [Pratap Singh vs. State of Haryana](#), (2002) 7 SCC 484 and [GKN Driveshafts \(India\) Ltd. vs. ITO](#), (2003) 1 SCC 72).

17. In *Nivedita Sharma vs. Cellular Operators Assn. of India*, (2011) 14 SCC 337, this Court has held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows:

“12. [In Thansingh Nathmal v. Supdt. of Taxes](#), AIR 1964 SC 1419 this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7).

“7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under [Article 226](#) trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under [Article 226](#) of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

13. [In Titaghur Paper Mills Co. Ltd. v. State of Orissa](#), (1983) 2 SCC 433 this Court observed: (SCC pp. 440-41, para 11)

“11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford*, 141 ER 486 in the following passage: (ER p. 495) ‘... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.’ The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.*, 1919 AC 368 and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd.*, 1935 AC 532 ([PC](#)) and [Secy. of State v. Mask and Co.](#), AIR 1940 PC 105 It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.”

14. [In Mafatlal Industries Ltd. v. Union of India](#), (1997) 5 SCC 536 B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

“77. ... So far as the jurisdiction of the High Court under [Article 226](#)—or for that matter, the jurisdiction of this Court under [Article 32](#)—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power

under [Article 226/Article 32](#), the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.””(See: [G. Veerappa Pillai v. Raman & Raman Ltd.](#), AIR 1952 SC 192; [CCE v. Dunlop India Ltd.](#), (1985) 1 SCC 260; [Ramendra Kishore Biswas v. State of Tripura](#), (1999) 1 SCC 472; [Shivgonda Anna Patil v. State of Maharashtra](#), (1999) 3 SCC 5; [C.A. Abraham v. ITO](#), (1961) 2 SCR 765; [Titaghur Paper Mills Co. Ltd. v. State of Orissa](#), (1983) 2 SCC 433; [H.B. Gandhi v. Gopi Nath and Sons](#), 1992 Supp (2) SCC 312; [Whirlpool Corpn. v. Registrar of Trade Marks](#), (1998) 8 SCC 1; [Tin Plate Co. of India Ltd. v. State of Bihar](#), (1998) 8 SCC 272; [Sheela Devi v. Jaspal Singh](#), (1999) 1 SCC 209 and [Punjab National Bank v. O.C. Krishnan](#), (2001) 6 SCC 569)

18. [In Union of India vs. Guwahati Carbon Ltd.](#), (2012) 11 SCC 651, this Court has reiterated the aforesaid principle and observed:

“8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in [Munshi Ram v. Municipal Committee, Chheharta](#), (1979) 3 SCC 83. In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23).

“23. ... when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.””

19. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to

invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under [Article 226](#) of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

20. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under [Article 226](#) of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. [In Ram and Shyam Co. vs. State of Haryana](#), (1985) 3 SCC 267 this Court has noticed that if an appeal is from “Caesar to Caesar’s wife” the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case, neither has the assessee-writ petitioner described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of instant case.”

7. Learned counsel for the petitioner sought support from pronouncements in *Calcutta Discount Co. Limited vs. ITO*, (1961) 41 ITR

19 (SC), *Whirlpool Corporation vs. Registrar of Trade Marks*, AIR 1999 SC 22, *Bongaigaon Refinery and Petrochemicals Limited vs. Union of India*, (2006) 287 ITR 120 (Gau.), *B&A Plantation & Industries Limited vs. CIT*, (2007) 290 ITR 395 (Gau.), *CHD Developers vs. State of Haryana*, (2015) 57 Taxmann.com 315 (P&H) and *Subhash Bansal vs. ITO, Ward 6, Patiala*, (2008) 217 CTR 83 (P&H) to countenance that inspite of alternative remedy, writ petition was maintainable. In view of the factual matrix and availability of alternative efficacious remedy to the petitioner, no advantage can be derived by the petitioner therefrom. The propositions of law enunciated in these pronouncements are unexceptionable.

8. In view of the above, relegating the petitioner to avail alternative remedy under the Act, we are not inclined to entertain this petition in writ jurisdiction under Article 226 of the Constitution of India. Consequently, the petition stands dismissed. Needless to say, anything observed herein before shall not be taken to be an expression of opinion on the merits of the controversy.

(Ajay Kumar Mittal)
Judge

February 24, 2016
'gs'

(Raj Rahul Garg)
Judge