

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

**CWP No.1089 of 2016
Date of decision:20.1.2016**

M/s Cairn India Limited

.....Petitioner

Deputy Commissioner of Income Tax 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. C.S.Aggarwal, Sr. Advocate with
Mr. Prakash Kumar, Advocate, Mr. Ashim Aggarwal,
Advocate and Mr. Pawan Kumar, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. The petitioner prays for quashing the impugned orders dated 30.11.2015 and 20.2.2015, Annexures P.1 and P.2 passed by respondent No.2 in re-computing the book profit for the purpose of Minimum Alternate Tax (MAT) under Section 115JB of the Income Tax Act, 1961 (in short, "the Act") by increasing the book profit by making an addition of amount of ₹ 253.87 crores as depreciation in the profit and loss account.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner company - Cairn India Limited is a resident company incorporated under the Erstwhile Companies Act, 1956 on 21.8.2006. It is listed on Bombay and National Stock Exchange of India. It is engaged in the business of surveying, prospecting, drilling and exploring, acquiring, developing, producing, maintaining, refining, storing, trading/supplying, transporting, marketing, distributing, importing, exporting and generally dealing in minerals, oils, petroleum, gas and related byproducts and other activities incidental to the above. As part of its business activities, the petitioner company also holds interests in its subsidiary companies which have been granted rights to explore and develop oil exploration blocks in India. The petitioner company entered into production sharing contracts (PSCs) in respect of certain blocks/oil and gas fields. In the revised return filed by the petitioner company on 26.3.2013, it declared total income of ₹ 417,20,94,924/- as per the provisions of the Act and adjusted book profit of ₹ 3505,76,69,697/- under section 115JB of the Act. The return was processed under section 143(1) of the Act. The case was selected for scrutiny under the Act. During the course of assessment proceedings, a reference was made by the Assessing Officer to the Transfer Pricing Officer (TPO) for determining Arm's length Price (ALP) under Section 92CA(3) of the Act in respect of international transactions undertaken by the petitioner during the assessment year in question. Vide order

dated 22.1.2015, the TPO proposed adjustment of ₹ 171,44,78,562/- under Section 92CA(3) of the Act. The petitioner filed various letters before the Assessing Officer. The Assessing Officer in the draft assessment order dated 20.2.2015, Annexure P.2 in addition to accepting the adjustments made by the TPO also proposed an adjustment of ₹ 1,89,67,74,272/- to total income computed under the provisions of the Act. Further, an amount of ₹ 2,69,22,99,920/- was adjusted to book profits under section 115JB of the Act. The petitioner is only challenging action of respondent No.1 in proposing to increase book profit by ₹ 253,87,76,138/- as a result of recomputation of book profit for the purpose of MAT under section 115JB of the Act. Thereafter, the petitioner filed objections to the legality of the draft assessment order before the Dispute Resolution Panel I, New Delhi (DRP) i.e. respondent No.2 on 20.3.2015. Respondent No.2 vide order dated 30.11.2015, Annexure P.1 under Section 144C(5) of the Act upheld the computation of book profit for the purpose of MAT made by the Assessing Officer under section 115JB of the Act in the draft assessment order. Hence the instant writ petition by the petitioner.

3. We have heard learned counsel for the petitioner.

4. A perusal of the averments made in the petition shows that before passing the assessment order, a reference was made to the TPO by the Assessing Officer for determining ALP under section 92CA(3) of the Act in respect of international transactions undertaken by the petitioner during the assessment year in question. Section 144C of the Act lays down

the procedure to be followed by the Assessing Officer before he can pass a final assessment order. The DRP on receipt of objections by the assessee under section 144C(2) of the Act issues directions under section 144C(5) of the Act to the Assessing Officer to enable him to complete the assessment. In the present case, the TPO proposed adjustment of certain amount under Section 92CA(3) of the Act. After considering the reply submitted by the assessee, the Assessing Officer passed draft assessment order dated 20.2.2015. In addition to adjustments proposed by the TPO, the Assessing Officer also proposed adjustment of further amount to the total income computed under the Act. The assessee filed objections before the DRP i.e. respondent No.2 against the draft assessment order. The DRP upheld the order passed by the Assessing Officer. It is well recognized that when 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. In the present case, after going through the narration of overall facts and the impugned orders passed by the respondent authorities, we find and it is not disputed by the learned counsel for the petitioner that the orders are appealable. Consequently, the petitioner should avail the alternative remedy of appeal against the orders passed by the authorities.

5. In [Titagur 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."

6. 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."

7. This Court in Larsen and Toubro Limited v. The State of Haryana and others, 2012(2) 166 PLR 345, considering the question of entertaining writ petition where alternate statutory remedy was available, had in paras 6 and 7 observed thus :-

"6.The following are the broad principles when a writ petition can be entertained without insisting for adopting statutory remedies:-

- i) where the writ petition seeks enforcement of any of the fundamental rights;
- ii) where there is failure of principles of natural justice; or

iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

7. We are not inclined to entertain this petition against the assessment order as it does not fulfil any of the broad outlines noticed herein above.....”.

8. Learned counsel had sought support from pronouncements in *State of Andhra Pradesh vs. P.V.Hanumantha Rao (D) through Lrs and another*, (2003) 10 SCC 121 and *Samsung India Electronics Pvt. Limited vs. Dy. Commissioner of income Tax, Circle 7(I) and others*, (2014) 362 ITR 460 (Delhi) 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.

9. Reliance was also placed upon the judgments in *Commissioner of Income Tax vs. Appollo Tyres Limited*, (1999) 237 ITR 706 (Ker.), *Apollo Tyres Limited vs. Commissioner of Income Tax, Kochi*, (2002) 255 ITR 273 (SC), *Malayala Manorama Co. Limited vs. Commissioner of Income Tax, Trivandrum*, (2008) 300 ITR 251 (SC), *Maruti Suzuki India Limited vs. Additional Commissioner of Income Tax Transfer Pricing officer*, (2010) 328 ITR 210 (Delhi) to assail the impugned orders on merit. The propositions of law enunciated in these pronouncements are unexceptionable. However, as we have refrained from entertaining the writ petition on the ground of availability of efficacious alternative remedy to the petitioner, it is not considered appropriate to express any opinion regarding the applicability or otherwise of these judgments to the present case.

10. 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

January 20, 2016
'gs'

(Raj Rahul Garg)
Judge