

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

**CWP No.2606 of 2016
Date of decision:9.2.2016**

Attar Singh

.....Petitioner

**Income Tax Officer, Ward 1(2) 5th Floor, HSIIDC Building, Vanijya
Nijunj, Phase V, Gurgaon**

.....Respondent

**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. R.Santhanam, Advocate with Mr. Raj Kumar Narang,
Advocate and Mr. Gagan Bajaj, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. This order shall dispose of CWP Nos.2606, 2422 and 2579 of 2016 as learned counsel for the petitioner(s) is agreed that the issues involved in all these petitions are identical. However, the facts are being extracted from CWP No.2606 of 2016.
2. In CWP No.2606 of 2016, the petitioner prays for quashing the notice dated 25.3.2015, Annexure P.8 issued by the respondent

under section 148 of the Income Tax Act, 1961 (in short, “the Act”).

Further prayer has been made to quash the ex parte order dated 30.11.2015, Annexure P.17 rejecting all the objections of the petitioner with regard to lack of jurisdiction to reopen the assessment under section 148 of the Act and the order of assessment dated 16.12.2015, Annexure P.38, raising demand of ₹ 7,72,96,617/- under Section 156 of the Act.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No.2606 of 2016 may be noticed. The petitioner was employed in Delhi Police as ASI till 31.7.2014 and had been drawing salary from Delhi police. For the assessment year 2011-12, the petitioner filed his return of income on 5.3.2013 which was later revised on 6.3.2013 to include the interest income which had inadvertently not been included in the original return. Letters dated 25.2.2013 and 14.3.2013 were issued by Income Tax Officer (Int.) Gurgaon to the petitioner. The petitioner through his counsel furnished the requisite information. It was also intimated by the petitioner that a sum of ₹ 16,10,57,231/- was received on sale of agricultural land. The respondent issued notice under section 148 of the Act dated 25.3.2015 to the petitioner alleging that income chargeable to tax had escaped assessment for the assessment year 2011-12 followed by another notice dated 16.4.2015. The petitioner objected to the notice and sought reasons. The respondent called the counsel for the petitioner and on 3.6.2015 gave him a copy of the reasons recorded

for reopening of assessment. Similarly, another notice under section 143(2) of the Act was issued to the petitioner to which he also objected. The respondent sent reply to the assessee's letter stating that he had jurisdiction to make reassessment. Another letter dated 23.11.2015 was issued to the petitioner proposing to add ₹ 15,61,76,676/- as income chargeable to tax for which details, records and documents were not made available to the petitioner. The petitioner sent another letter dated 30.11.2015 questioning the jurisdiction of the ITO and time to file objections was also sought. The respondent rejected all the pleas of the petitioner by its ex parte order dated 30.11.2015 holding that he had jurisdiction over the petitioner because of his residential address being of Gurgaon and the property sold was in Manesar. The respondent also issued notice dated 1.12.2015 alleging non compliance of notices issued earlier and threatening action for prosecution of the petitioner under section 276D of the Act. Another notice dated 4.12.2015 under section 142(1) of the Act was also issued by him to the petitioner. The petitioner replied to the letter dated 30.11.2015 and summons under section 131 of the Act objecting to the exercise of jurisdiction by the respondent. Without going through the letters sent by the petitioner, the respondent asked the petitioner to furnish details of assets and liabilities. After a lot of correspondence between the petitioner and the respondent authorities, ex parte order of assessment under sections 143 (3)/147 of the Act dated 16.12.2015, Annexure P.38 was passed. The petitioner filed CWP No.26965 of 2015 in this Court which was

dismissed as withdrawn on 1.2.2016 with permission to file fresh one to enable the petitioner to place on record certain documents. Hence the instant writ petitions by the three petitioner-assesseees.

4. After perusing the averments made in the petitions and hearing learned counsel for the petitioners, we find that the orders of assessment have been passed by the respondent authorities against which the petitioners have alternative remedy of appeal. Even otherwise, the petitioners have sought to raise certain disputed questions of fact which cannot be adjudicated in writ jurisdiction under Article 226 of the Constitution of India.

5. 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."

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. 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.”

8. 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.....”.

9. Examining the scope of writ jurisdiction under Article 226 of the Constitution of India where disputed questions of facts are involved, a Division Bench of this Court in *N.C.Mahendra v. Haryana State Electricity Board and others*, AIR 1984 Punjab 26 had laid down that ordinarily a writ would not issue in favour of a person where disputed questions of facts are raised. The relevant portion reads thus:-

“12. An identical legal position ensures within this country and High Courts have repeatedly held that the exercise of jurisdiction under Article 226 of the Constitution is discretionary and not obligatory without being exhaustive, it is settled law that the Court would not ordinarily issue a writ in favour of a person, who has (i) an adequate alternative remedy, (ii) who is guilty of delay which is unexplained, (iii) who is guilty of conduct disentitling him to relief, (iv) where the interest of justice do not require that relief should be granted, (v) where the petitioner raises a disputed question of fact, (vi) where the grant of writ would be futile, and (vii) where the impugned law has not come into force. It would follow from the above that the grant or refusal of a writ is within the judicial discretion of the Court and that indeed is the line which divides the extra ordinary remedy from the ordinary one by of a civil suit.” (Emphasis supplied).

The Hon'ble Supreme Court in State Cadre Authority and another v. K.S.Bajpal and others, (1990) (Suppl.) SCC 713, Bhagubhai Dhanabhai Khalasi and another v. The State of Gujarat and others, (2007) 4 SCC 241 and Mukesh Kumar Agrawal v. State of UP and others, (2009) 13

SCC 693 has held that wherever disputed question of fact is raised in writ proceedings, the writ petition was not an appropriate remedy. Reference may also be made to the judgment of the Apex Court in *Dwarka Prasad Agarwal (D) by Lrs. and another vs. B.D.Agarwal and others*, AIR 2003 SC 2686, wherein it was observed as under:-

“We may, however, hasten to add that as at present advised we do not intend to enter into the contention of the petitioners that their fundamental right under Article 19 of the Constitution of India had been infringed. This Court would have entered into the question, if the facts were undisputed or admitted. The question as regard infringement of fundamental right and that too under Article 19 of the Constitution of India cannot be gone into when the facts are disputed. Whether Dwarka Prasad Agarwal and consequently the substituted petitioners are owners of the newspapers and if so to what extent being disputed, it cannot be said, that by reason of the impugned order dated 3.9.1992 passed by the first respondent herein alone, the fundamental right of the petitioners under Article 19 had been infringed.”

10. In view of availability of alternative remedy and dispute on facts, we do not find any ground to entertain this petition in writ jurisdiction under Article 226 of the Constitution of India. Consequently, finding no merit in the writ petitions, the same are hereby dismissed.

(Ajay Kumar Mittal)
Judge

February 9, 2016
'gs'

(Raj Rahul Garg)
Judge