

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

CWP No.6983 of 2016 (O&M)

Date of decision: 9.5.2016

M/s Jindal Steel and Power Limited

.....Petitioner

**The Assistant Commissioner of Income Tax, Circle 1(1), Gurgaon and
another**

.....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. Ashok Aggarwal, Sr. Advocate with
Mr. Vishal Gupta, Mr. Mukal Aggarwal and Mr. Rohit Jain,
Advocates for the petitioner.

Ajay Kumar Mittal,J.

1. The petitioner prays for quashing the notice dated 24.3.2015 issued under section 148 of the Income Tax Act, 1961 (in short, "the Act") for the assessment year 2008-09, order dated 21.3.2016 disposing of the legal objections filed by the petitioner challenging the validity of reassessment

proceedings and final order dated 31.3.2016 passed under section 143(3)/147 of the Act reassessing the income of the petitioner.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. For the relevant assessment year 2008-09, the petitioner filed return of income declaring income of ₹ 766,72,79,900/- under the normal provisions of the Act and book profit under section 115JB of the Act amounting to ₹ 14,98,73,68,662/-. Original assessment was completed vide order dated 27.12.2010, Annexure P.2 passed under section 143(3) of the Act after examining complete records including books of account, return of income and accompanying documents filed by the petitioner. Deduction under Section 80IA of the Act was restricted to ₹ 223,80,25,060/- as against ₹ 428,94,98,566/- claimed by the petitioner and deduction under section 80IB of the Act was varied to ₹ 65,764,60,593/- against ₹ 62,99,55,219/- claimed by the petitioner. The petitioner challenged the aforesaid additions/disallowances before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 11.7.2011, Annexure P.3 the CIT(A) partly allowed the appeal. Against the said order, cross appeals by the petitioner and the department were filed which are pending before the Tribunal. In the meantime, an order setting aside the original assessment completed under section 143(3) of the Act was passed by the Commissioner of Income Tax (CIT) while exercising revisionary jurisdiction under section 263 of the Act on certain issues. In the fresh assessment completed under section 143(3) read with section 263

of the Act, further additions/disallowance were made by the Assessing Officer on the issue of capital subsidy, disallowances of gratuity and additional depreciation on computer software. The appeals against the order of the CIT under Section 263 of the Act as well as against the fresh assessment completed pursuant thereto were partly allowed by the Tribunal. Thereafter, reassessment proceedings were initiated under section 147 of the Act vide impugned notice dated 24.3.2015, Annexure P.1 issued under section 148 of the Act. The petitioner filed detailed legal objections to the initiation of reassessment proceedings on various grounds vide letter dated 25.8.2015, Annexure P.4. The petitioner vide letter dated 29.3.2016, Annexure P.5 objected to the passing of the order dated 21.3.2016 disposing of the legal objections raised for initiating reassessment proceedings at the fag end of the limitation period and again requested respondent No.1 to drop the reassessment proceedings. The legal objections were however, dismissed by respondent No.1 vide order dated 21.3.2016, Annexure P.1 which was received by the petitioner on 28.3.2016 i.e. three days prior to the limitation period for completion of assessment, leaving no time for the petitioner to approach this court to assail the said order. Respondent No.1 however, proceeded to complete reassessment vide final order dated 31.3.2016 under section 143/147 of the Act i.e. within three days of receipt of order disposing of the legal objections without providing adequate opportunity to make further submissions. Hence the instant writ petition.

3. We have heard learned Senior counsel for the petitioner.

4. Admittedly, the original assessment order was passed on 27.12.2010 under section 143(3) of the Act. The petitioner filed appeal before the CIT(A). Vide order dated 11.7.2011, the CIT(A) partly allowed the appeal. Against the said order, the petitioner as well as the department filed appeals before the Tribunal which are pending. During the pendency of the appeal, order under section 263 of the Act was passed by the CIT while exercising revisionary jurisdiction on certain issues. Further additions/disallowances were made. The appeals filed before the Tribunal were partly allowed. Thereafter, reassessment proceedings were initiated under section 147 of the Act vide notice issued under section 148 of the Act. The objections filed by the petitioner were dismissed vide order dated 21.3.2016 by respondent No.1. Final reassessment order was passed on 31.3.2016 under Section 143/147 of the Act. After hearing learned counsel for the petitioner and perusing the sequence of facts as noticed above, we find that the petitioner has an alternative remedy of appeal against the final reassessment order dated 31.3.2016 passed by respondent No.1 under sections 143/147 of the Act. Further, questions of fact are also involved regarding the claim qua deduction under sections 80IA and 80IB of the Act.

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 the 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 recognized 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 Supreme 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.”

Thus, we are not inclined to entertain this petition against the reassessment orders as all the pleas that are sought to be raised herein can be raised by the petitioner before the appellate authority.

8. Adverting to the judgments relied upon by the learned counsel for the petitioner in ***GKN Driveshafts (India) Limited vs. Income Tax Officer***,

Officer, (2006) 287 ITR 1 (Bom.), *Asian Paints Limited vs. Deputy Commissioner of Income Tax*, (2008) 296 ITR 90 (Bom.), *Aroni Commercials Limited vs. Deputy Commissioner of Income Tax 2(1)*, (2014) 362 ITR 403 (Bombay), *Garden Finance Limited vs. Assistant Commissioner of Income Tax*, (2004) 268 ITR 48 (Gujarat), *Torrent Power SEC Limited vs. Assistant Commissioner of Income Tax*, (2014) 45 Taxmann.com 561 (Guj.), *Pr. Commissioner of Income Tax-09 vs. Tupperware India Pvt. Limited*, ITA No.415 of 2015, decided on 10.8.2015 (Delhi.), *Sahkari Khand Udyog Mandal Limited vs. ACIT*, (2015) 370 ITR 107 (Gujarat), *Synbiotics Limited vs. Assistant Commissioner of Income Tax, Circle 4*, (2015) 370 ITR 119 (Gujarat) and *V.K.Packaging Industries vs. Tax Recovery Officer*, (2004) 366 ITR 283 (Allahabad), suffice it to notice that the principles of law enunciated in these pronouncements are well recognized. However, the applicability of the same is to be judged on the analysis of the factual matrix involved in each individual case which is distinguishable herein as noticed above. Thus, the petitioner cannot derive any advantage from the said pronouncements.

9. In view of above, we do not find any ground to entertain this petition under Articles 226/227 of the Constitution of India. Consequently, the writ petition is dismissed. At this stage, learned counsel for the petitioner

prayed for time to file an appeal against the impugned order. However, one month's time is granted to the petitioner to file an appeal against the final order of reassessment dated 31.3.2016 from the date of receipt of a certified copy of this order raising all the pleas as are sought to be raised in the writ petition. In case, the same is filed within the stipulated period, it shall not be dismissed on the ground of limitation. Needless to say, nothing observed herein shall be taken to be expression of opinion on the merits of the controversy.

(Ajay Kumar Mittal)
Judge

May 09, 2016
'gs'

(Raj Rahul Garg)
Judge