

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

**CWP No.29244 of 2017
Date of decision: 20.12.2017**

Rasanteshwar Singh Dhariwal

.....Petitioner

Vs.

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. J.S.Bhasin, Advocate with Mr. Rajiv Sharma,
Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for quashing the search and seizure proceedings and consequential assessment proceedings initiated by issuance of notices under Section 153A of the Income Tax Act, 1961 (in short, "the Act) in the name of the petitioner for the assessment years 2010-11 to 2015-16 and notice under Section 143(2) of the Act for the assessment year 2016-17 inspite of the fact that statement of the petitioner was recorded and income was surrendered as Director of the Company and assets sold belong to the company and not to the Director. Further prayer has been made for a direction to the respondents for release of cash amounting to ₹ 2,76,35,500/- seized by execution of invalid warrants issued under Section 132(1) of the Act in the name of the petitioner.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is an individual

based at Mohali. He is engaged in the business as Director of M/s Amit Overseas Pvt. Limited having its registered office at New Delhi. The petitioner is regularly assessed to income tax for his income from business and other sources. On 18.5.2017, the petitioner being Director of M/s Amit Overseas Pvt. Limited entered into sale of property. The sale was by way of registered sale deed executed between M/s Amit Overseas Private Limited with M/s C.G. Foods India Limited for sale of company's property at Gurgaon. As per original Memorandum of Understanding entered between the parties on 23.9.2014, the total sale consideration was settled at ₹ 6 crores but after further negotiations, it was reduced to ₹ 5.60 crores with ₹ 2.80 crores to be paid by cheque/draft and balance ₹ 2.80 crores to be paid in cash on execution of registered sale deed. The petitioner received ₹ 2.80 crores cash on 18.5.2015 which he was carrying in his car when intercepted by police at Narayana, New Delhi. The statement of the petitioner was recorded before the police under Section 131(1A) of the Act. The petitioner admitted that the amount possessed by him was cash component of total sale consideration received from M/s C.G. Foods India Pvt. Limited against sale of property sold by him as director of his company. The ADIT (Inv.) New Delhi searched vehicle of the petitioner and seized cash amounting to ₹ 2,76,35,500/- on 19.5.2015. The statement of the petitioner was again recorded under Section 132(4) of the Act during search wherein the petitioner surrendered ₹ 2.80 crores in the hands of his company and agreed to declare it in the return of the company to be filed for the assessment year 2016-17. The ADIT (Inv.) conducted survey at the business premises of the buyers of the above property i.e. M/s C.G.Foods India Pvt. Limited, Delhi and found initial agreement for sale for ₹ 6 crores. The investigating officer summoned the petitioner and again recorded his statement under Section 131(1A) of the

Act wherein the petitioner offered to pay capital gain tax on total sale consideration of ₹ 6 crores in company's case. The petitioner being Director of the company filed income tax return for the assessment year 2016-17 on 26.7.2017 declaring capital gain on total sale consideration of ₹ 6 crores, with unpaid self tax liability of ₹ 1,11,26,415/- for adjustment thereof out of the company's seized cash of ₹ 2,76,35,500/-. The said return without payment of self assessment tax was held defective by the authorities. When no incriminating document or asset was found in search, notices under Sections 153A and 143(2) of the Act dated 25.11.2016 and 11.12.2017 respectively were issued to the petitioner. The petitioner submitted an application to Deputy Commissioner of Income Tax, Mohali (DCIT) for supply of copies of statements/documents seized during search on 19.5.2015. The case of the petitioner was transferred first to DCIT Circle 6(1) Chandigarh and then to Assistant Commissioner of Income Tax, Circle 4(1) Chandigarh (ACIT). The petitioner is aggrieved by the fact that the assessment proceedings have been initiated against him under Section 153A of the Act following execution of a wrong warrant under Section 132(1) of the Act in his name when he was dealing with the assets of the company as its director and had surrendered the cash in the hands of the company being its sale receipt. Hence the instant writ petition by the petitioner.

3. Admittedly, the cash amounting to ₹ 2,76,35,500/- was seized on 19.5.2015 during the course of search of the vehicle of the petitioner. The amount was in the possession of the petitioner though the petitioner claimed that it was the money belonging to the company. At this stage, there is no material on record to establish the truthfulness of the assertion of the petitioner except reliance has been placed on the statement of the petitioner recorded under Section 132(4) of the Act or the sale deed executed by the

company. The petitioner from whose possession the money was seized has been issued notice under Section 153A for the assessment years 2010-11 to 2015-16 and under Section 143(2) of the Act for the assessment year 2016-17 where he would get sufficient opportunity to establish his version. The warrant of the authorization was in the name of the petitioner and the seizure was also from his possession of cash amounting to ₹ 2,76,35,500/-. In such circumstances, the issuance of notices by the competent authority under Sections 153A and 143(2) of the Act as noticed above cannot be held to be without jurisdiction so as to be amenable to challenge under Articles 226/227 of the Constitution of India.

4. 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.”

5. 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.....”.

6. In view of the above, we do not find any ground to interfere in writ jurisdiction under Articles 226/227 of the Constitution of India. Consequently, the writ petition is dismissed. The petitioner would be at liberty to raise all the pleas as have been sought to be raised before the competent authority in accordance with law.

(Ajay Kumar Mittal)
Judge

December 20, 2017
‘gs’

(Amit Rawal)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes