NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 557 of 2018

Raigarh Ispat And Power Pvt. Ltd. 2nd Floor, Krishna Complex, Chaitanya Nagar, Dhimrapur Road, Raigarh Chhattisgarh, District : Raigarh, Chhattisgarh

---- Appellant

Versus

1. Principal Commissioner Of Income Tax (Central) Aaykar Bhawan, Hoshangabad Road, Bhopal (Madhya Pradesh), District : Bhopal, Madhya Pradesh
2. Joint Commissioner Of Income Tax (Central), C.R. Building, Civil Lines, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Assistant Commissioner Of Income Tax, Central, Mahima Complex, Vyapar Vihar, P.S. Tarbahar, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Appellant	:	Shri S. Rajeswara Rao and Shri Manoj Kumar Sinha, Advocates
For Respondents	:	Smt. Naushina Afrin Ali, Advocate

Division Bench : Hon'ble Mr. Justice Manindra Mohan Shrivastava
Hon'ble Mrs. Justice Rajani Dubey

Order On Board

16/07/2018

1. This intra court writ appeal is directed against the order dated 14.5.2018 passed by learned Single Judge in WPT No.91 of 2018 by which the learned Single Judge has exercised discretion not to entertain the writ petition on the face of existence of alternative efficacious remedy.

2. Though learned counsel for the appellant argues before us that the order is being challenged on the jurisdictional aspect also, therefore, the learned Single Judge ought to have exercised discretion to entertain the writ

petition despite existence of alternative remedy, sitting in intra court appeal, we are of the opinion that where the learned Single Judge exercised its jurisdiction in the matter relating to existence of an alternative remedy and has refused to entertain the writ petition on the face of existence of alternative efficacious remedy, we would not be inclined to interfere with the discretion on such limited aspect of existence of alternative remedy unless there is a case of exceptional nature warranting interference at this stage, without insisting the parties to exhaust their alternative remedy. No doubt, existence of alternative remedy, by itself, is no bar to the writ Courts in entertaining the petition where violation of fundamental rights are alleged. Moreover, there are certain circumstances in which existence of alternative remedy may not come in entertaining a writ petition, as held by their Lordships in the Supreme Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai** (AIR 1999 SC 22). Some of those exceptional circumstances are – absence of jurisdiction or malafide exercise of public power or violation of principles of natural justice. Those cases are, however, not exhaustive and in other cases, the Court always has the discretion to entertain the petition and examine the grievance notwithstanding existence of the alternative remedy. Further, even if there are grounds raised relating to jurisdictional aspect, the writ Court may, in its discretion, on the face of alternative statutory remedy, refuse to entertain the petition on that ground. Essentially in such matters, the exercise is of discretion by the writ Court. Unless there are exceptional circumstances like serious miscarriage of justice or extreme hardship, we would not be inclined to interfere with exercise of discretion by the learned Single Judge.

3. In the result, we leave the writ appellant to work out its statutory remedy of appeal in the hierarchy of appeal available under the Income Tax Act.

4. Before parting with the case, we must respond to apprehension of the writ appellant that its application for stay may not be decided early. Every Tribunal created under the law, which has jurisdiction to grant interim relief/stay against an order, is duty bound to decide stay application at the earliest. We hope and trust that the appellant's application for stay shall be considered and decided by the Appellate Authority within two weeks.

5. With the observations as above, the writ appeal is disposed off.

Sd/-	Sd/-
(Manindra Mohan Shrivastava)	**(Rajani Dubey)**
Judge	Judge

Praveen