

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.1486 of 2018
and
CMP No.11739 of 2018

Tvl.Hira Exim

.. Appellant

versus

1. The Commercial Tax Officer (Addl.)
Gudiyatham (West).

2. The Sub Registrar,
Pernambut - 635 810

.. Respondents

Writ Appeal filed against the order dated 20.04.2018 in
W.P.Nos.4369 of 2018.

W.P.Nos.4369 of 2018:

Writ Petition filed under Article 226 of the
constitution of India to issue a Writ of Certiorarified
mandamus calling for the records of the Respondent dated
01.02.2016 in TIN No.33414343623/ 2014-15 and quash the same and
consequently direct the 1st Respondent to raise the attachment
on the petitioners property situated at No.518/3 Erthangal
Hakeem 1st Street Pernambut by suitably writing to the 2nd
Respondent.

For Appellant : Mr.Adithya Reddy

For Respondent : Mr.V.Haribabu (for R1)
Additional Government Pleader (Taxes)
Mr.M.Sricharan Rangarajan (for R2)
Additional Government Pleader.

JUDGMENT

(Order of the Court was delivered by S.MANIKUMAR, J.)

Assessment order dated 01.02.2016 for the assessment year
2014-15 and assessment order of the same date ie. 01.02.2016
for the assessment year 2015-16, were challenged in W.P.Nos.4369
and 4370 of 2015, respectively with a consequential prayer to

raise the objection of the petitioner's property situated at Door No.518/3, Erthangal Hakeem 1st Street, Pernambut by suitably writing to the Sub Registrar, Pernambut, Vellore District.

2. After perusing the files and submissions of the learned Additional Government Pleader, on the ground of availability of alternate remedy, writ Court, by common order in W.P.Nos.4369 and 4370 of 2018 dated 20.04.2018, disposed of the writ petitions by directing the petitioner/appellant to pay 20% of the disputed tax for each of the assessment years, within a period of three years from the date of receipt of a copy of the common order.

3. Writ Court has further directed that on payment of the said amount, petitioner/appellant is directed to treat the impugned assessment orders, as show cause notices and to submit the objections within seven days thereafter. Writ Court has further directed the Commercial Tax Officer (Additional), Gudiyatham (West), Vellore District, 1st respondent to provide an opportunity of personal hearing and to redo the assessment in accordance with law. Writ Court has also made it clear that in the event of failure to comply with the payment of 20% of the disputed tax for each of the assessment years ordered, writ petitions would stand automatically dismissed without any further reference to this Court.

4. While disposing of the writ petitions in the abovesaid manner, upon perusal of the files produced by the learned Additional Government Pleader (Taxes), writ Court has observed that in the assessment order passed, there is mismatch between annexures-I and II details.

5. Being aggrieved by the portion of the order, directing payment of 20% of the disputed tax, for the assessment year 2014-15, within the stipulated time, instant writ appeal has been filed. Mr.Adithya Reddy, learned counsel for the appellant submitted that the observation of the writ Court is unwarranted, when the assessment order itself has been directed to be treated as show cause notice.

6. Considering the limited scope of the appeal, Mr.V.Haribabu, learned Additional Government Pleader (Taxes) was put on notice.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. As rightly contended by the learned Additional Government Pleader (Taxes) before the writ Court, statutes provide for adequate and efficacious remedy, by way of appeal. On more than

one occasion, the Hon'ble Supreme Court, as well as this court, held that, ordinarily, writ petitions should not be entertained, when statutes provide for an effective and alternative remedy. Reference can be made to few decisions, in this regard.

(i) In Union of India v. T.R.Verma, AIR 1957 SC 882, the Hon'ble Supreme Court held that it is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution, unless there are good grounds to do, otherwise.

(ii). In C.A.Ibrahim v. ITO, AIR 1961 SC 609, H.B.Gandhi v. M/s. Gopinath & sons, 1992 (Suppl) 2 SCC 312 and in Karnataka Chemical Industries v. Union of India, 1999 (113) E.L.T. 17(SC) = 2000 (10) SCC 13, the Hon'ble Supreme Court held that where there is a hierarchy of appeals provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction.

(iii). The general principles of law to be followed while entertaining a writ petition, when an alternative remedy is available, as per the decision of the Hon'ble Apex Court in U.P.State Spinning Co. Ltd. Vs. R.S.Pandey and Another (2005) 8 SCC 264, at para No.11 are as follows:

"Except for a period when Article 226 was amended by the Constitution (Forty-Second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided, the high Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction."

(iv) In United Bank of India Vs. Satyawati Tondon and Others {(2010) 8 SCC 110}, the Hon'ble Apex Court, at paragraph Nos.43 to 45, held as follows:-

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they do not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the high Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision etc., and the particular legislation contains a detailed mechanism for redressal of his grievance."

(v). In Nivedita Sharma Vs. Cellular Operators Association of India and Others {(2011) 14 Supreme Court Cases 337}, the Honourable Apex Court held that,

"An alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute are under challenge. The Court has recognised some exceptions to the rule of alternative remedy. However, 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 or grievance still holds the field."

(vi) The Hon'ble Apex Court, after considering a catena of cases, in Shauntlabai Derkar and Another Vs. Maroti Dewaji Wadaskar {(2014) 1 Supreme Court Cases 602}, at para Nos.15 to 18, held as follows:-

"15. Thus, while it can be said that this Court has recognised 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 {Thansigh Nathmal Vs. Supt. of Taxes, AIR 1964 SC 1419}, Titaghur Paper Mills Case {Titaghur Paper Mills Co. Ltd Vs. State of Orissa (1983) 2 SCC 433} 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.

16. In the instant case, the Act provides complete machinery for the assessment/reassessment 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.

17. In the instant case, neither has the writ petitioner assessee 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 the instant case. In light of the same, we are of the considered opinion that the writ Court ought not to have entertained the writ petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the reassessment orders passed and the consequential demand notices issued thereon.

18. In view of the above, we allow this appeal and set aside the judgment and order passed by the High Court in Chhabil Dass Agarwal Vs. Union of India {W.P.(c) No.44 of 2009, decided on 5/10/2010}. We grant liberty to the respondent, if he so desires, to file an appropriate petition/appeal against the orders of reassessment passed under Section 148 of the Act within four weeks' time from today. If the petition is filed before the appellate authority within the time granted by this Court, the appellate authority shall consider the petition only on merits without any reference to the period of limitation. However, it is clarified that the appellate authority shall not be influenced by any observation made by the High Court while disposing of Writ Petition (Civil) No.44 of 2009, in its judgment and order dated 5/10/2010."

(vii) After considering a plethora of judgments, in Union of India and Others Vs. Major General Shri Kant Sharma and Another {(2015) 6 SCC 773}, at para 36, the Apex Court held as follows:-

"The aforesaid decisions rendered by this Court can be summarised as follows:-

(i). The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including the Armed Forces Tribunal Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India (Refer: L.Chandrakumar Vs. Union of India (1997) 3 SCC 261 and S.N.Mukherjee Vs. Union of India (1990) 4 SCC 594.

(ii). The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act (Refer: Mafatlal Industries Ltd., Vs. Union of India (1997) 5 SC 536.

(iii). When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: Nivedita Sharma Vs. Cellular Operators Assn. of India (2011) 14 SCC 337.

(iv). 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. (Refer: Nivedita Sharma Vs. Cellular Operators Assn. of India (2011) 14 SCC 337.)"

(viii) In Veerappa Pillai Vs. Raman & Raman Ltd {1952 SCR 583}, CCE Vs. Dunlop India Ltd {(1985) 1 SCC 260}, Ramendra Kishore Biswas Vs. State of Tripura {(1999) 1 SCC 472}, Shivgonda Anna Patil Vs. State of Maharashtra {(1999) 3 SCC 5}, C.A.Abraham Vs. ITO {(1961) 2 SCR 765}, Titaghur Paper Mills Co Ltd., Vs. State of Orissa {(1983) 2 SCC 433}, H.B.Gandhi Vs. Gopi Nath & Sons {1992 Supp (2) SCC 312}, Whirlpool Corpn Vs. Registrar of Trade Marks {(1998) 8 SCC 1}, Tin Plate Co. of India Ltd., Vs. State of Bihar {(1998) 8 SCC 272}, Sheela Devi Vs. Jaspal Singh {(1999) 1 SCC 209} and Punjab National Bank Vs. O.C.Krishnan {(2001) 6 SCC 569}, the Court held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction.

9. On the facts of this case, writ Court has observed that there is a mismatch in the assessment orders passed, between annexures I and II. Writ Court was of the view that one more opportunity should be granted to the petitioner/appellant subject to certain conditions. Thus, by treating the impugned assessment orders as show cause notices, writ Court has directed payment of 20% of the disputed tax, for each of the assessment years within a period of three weeks from the date of receipt of a copy of the common order.

10. Even taking for granted that the petitioner has to file a statutory appeal under Section 51 of the Tamilnadu Value Added Tax Act, 2006, dealer/petitioner would be statutorily obligated to deposit 25% of the disputed tax. For brevity, Section 51 of the Tamilnadu Value Added Tax Act, 2006, is reproduced hereunder.

51. Appeal to Appellate Assistant Commissioner:

(1) Any person objecting to an order passed by the appropriate authority under section 22, section 24, section 26, sub-sections (1), (2), (3) and (4) of

section 27, section 28, section 29, section 34 or sub-section (2) of section 40 other than an order passed by an Assistant Commissioner (Assessment) may, within a period of thirty days from the date on which the order was served on him, in the manner prescribed, appeal to the Appellate Assistant Commissioner having jurisdiction:

Provided that the Appellate Assistant Commissioner may, within a further period of thirty days admit an appeal presented after the expiration of the first mentioned period of thirty days if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the first mentioned period:

Provided further that in the case of an order under section 22, section 24, section 26, subsections (1), (2), (3) and (4) of section 27, section 28 or section 29, no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be, and twenty-five per cent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by such fee not exceeding one hundred rupees as may be prescribed.

(3) In disposing of an appeal, the Appellate Assistant Commissioner may, after giving the appellant a reasonable opportunity of being heard, and for the sufficient reasons to be recorded in writing - (a) in the case of an order of assessment --

(i) confirm, reduce, enhance or annul the assessment or the penalty or both;

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed; or

(iii) pass such other orders as he may think fit; or

(b) in the case of any other order, confirm, cancel or vary such order:

Provided that at the hearing of any appeal, the appropriate authority shall have the right to be heard either in person or by a representative.

(4) Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred:

Provided that the Appellate Assistant Commissioner may, in his discretion, give such directions as he thinks fit in regard to the payment of the tax before

the disposal of the appeal, if the appellant furnishes sufficient security to his satisfaction, in such form and in such manner as may be prescribed: Provided further that the directions given under the first proviso shall stand vacated, if no order is passed under sub-section (3) within a period of one hundred and eighty days of the issue of order under the said proviso.

11. In the case on hand, having observed that the petitioner/appellant should be provided with an opportunity, has only directed payment of 20% of the disputed tax. Writ Court has even gone to the extent of treating the assessment orders, as show cause notices. Exercise of discretion / indulgence granted by the writ Court, cannot be said to be manifestly illegal, warranting interference. In the light of the decisions and discussion, instant writ appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

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To

1. The Commercial Tax Officer (Addl.)
Gudiyatham (West).
2. The Sub Registrar, Pernambut - 635810

+1 CC to Mr. Adithya Reddy, advocate sr 47120.
+1 CC to Spl. Govt. Pleader sr 46621.

W.A.No.1486 of 2018

and
CMP No.11739 of 2018

GP(CO)
SP(31/07/2018)

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