IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 994 of 2019
Decided on : 16.01.2019

Ajay Chowdhury

. . . Petitioner(s)

Versus

Union of India and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Rajesh Mahna, Advocate
for the petitioner(s).

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AJAY KUMAR MITTAL, J. (Oral)

The petitioner has approached this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of *Certiorari*, for quashing of Assessment Order U/s 144/147, dated 19.12.2017 (Annexure P-1), Order U/s 271(1)(b), dated 28.06.2018 (Annexure P-2) and Order U/s 271(1)(c) dated 28.06.2018 (Annexure P-3) of the Income Tax Act, 1961 (in short 'the Act'), for the Assessment Year 2010-11. A further prayer has also been made for directing the respondents to refund the adjusted refund processed for Assessment Year 2018-19 along with interest.

2. A perusal of the writ petition shows that the challenge has been made to the orders Annexures P-1, P-2 and P-3 on the grounds that no notice was ever served upon the petitioner and accordingly, the *ex-parte* Assessment Order passed under Sections 144/147 of the Act was bad. Reliance was placed upon the judgment of the Apex Court rendered in ***R.K. Upadhyaya Vs. Shanabhai P. Patel,*** (1987) 166 ITR 163, as well as of Delhi High Court in ***Commissioner of Income Tax Vs. Chetan Gupta,*** (2016) 382 ITR 613 (Del) and ***Veena Devi Karnani Vs. Income Tax Officer,*** (2019) 410 ITR 23, to support the aforesaid contention.

3. After hearing learned counsel for the petitioner and perusing the

averments made in the writ petition, we find that the disputed questions of fact have been sought to be raised in the writ petition. Further, the petitioner has an alternative efficacious remedy of appeal against the impugned order(s). The Apex Court in ***Commissioner of Income Tax and others vs. Chhabil Dass Agarwal***, (2013) 357 ITR 357, elaborately 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 in Paras 14 to 20 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.
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> 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 is 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 6 of 8 ::: Downloaded on - 21-01-2019 15:11:27 ::: CWP No.13592 of 2016 7 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).
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> > "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."

5. Keeping in view the availability of alternative remedy of appeal against the impugned order(s) and the law laid down by the Apex Court on the issue, we do not find any ground to interfere in exercise of writ jurisdiction under Articles 226/227 of the Constitution of India. Accordingly, we dismiss the present writ petition by relegating the petitioner to take recourse to the remedies as may be available to him before the appropriate Forum, in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

January 16, 2019
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No