IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.NO.2304 OF 2021
AND
C.M.P.NO.14638 OF 2021

V. Thillainatesan ...Petitioner/Appellant

Vs.

The Additional Commissioner of Income Tax,
Income Tax Department,
National E-Assessment Centre,
Delhi. ...Respondent/Respondent

Appeal filed under Clause 15 of Letters Patent, praying to allow the above Writ Appeal by setting aside the order dated 26.07.2021 passed in W.P.No.15255 of 2021 on the file of this Hon'ble Court and allow the Writ Petition.

Prayer in W.P.No.15255 of 2021:-

Writ petition is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records on the file of the respondent vide Pan NO.AGPPT8271K- ITBA/AST/S/143(3)/2021- 22/1032530155(1) dated 19.04.2021 and quash the same as illegal as devoid of merits and direct the respondent to re-do the assessment for the year 2018-2019 after providing reasonable opportunities to the petitioner by following the due process of law

For Appellant : Mr. Raja Karthikeyan

For Respondent : Mrs. Hema Muralikrishnan
Senior Standing Counsel

J U D G M E N T
(Delivered by T.S.Sivagnanam, J.)

This writ appeal filed by the writ petitioner is directed against the order dated 26.07.2021 passed in W.P. No. 15255 of 2021.

2. The Appeal filed the Writ Petition challenging the assessment order dated 19.04.2021 passed under Section 143(3) read with section 144-B of the Income Tax Act, 1961 ('the Act' for brevity). The primary ground, on which the assessment order was challenged, is by contenting that it is in gross violation of principles of natural justice.

3. The Learned Single Bench dismissed the writ petition, at the admission stage, holding that as against the assessment order, the appellant has appellate remedy under the Act, and he has to avail the alternate remedy and there is no ground to by-pass such remedy. The Learned Writ Court did not go into the merits of the matter. Being aggrieved by such order, the appellant is before us by way of this appeal.

4. We have heard Mr. Raja Karthikeyan, Learned counsel for the Appellant and Mrs. Hema Muralikrishnan, Learned Senior Standing Counsel, who accepts notice on behalf of the respondent-Revenue.

5. Before we examine as to whether the appellant was dis-entitled to approach the Writ Court or not, we note the following facts:-

(1) The appellant is an individual-assessee and for the Assessment Year under consideration, AY 2018-19, he filed his income tax return on 26.07.2018 admitting a total income of Rs.8,10,410/-. The appellant case was selected for Scrutiny under the E-Assessment Scheme, 2019.
(2) The Appellant would state that he is an individual, who is employed and also doing a part-time business, as being a multilevel marketing agent of the products promoted by M/s. Amway.
(3) The appellant would also state that he was not familiar with the E-Assessment Scheme and he was not aware of an E-notice, which was sent to him by the Assessing Officer, pursuant to the appellant's case being selected for scrutiny assessment.
(4) The second e-notice was came to the knowledge of the appellant on 17.11.2020 and after which, he had collected the documents from the Banks on 30.12.2020 and after receiving the Bank Statements, he has filed

his reply on 12.03.2021. After which, the Assessing Officer sent another notice dated 18.03.2021. Whereunder, the reply given by the appellant along with the documents were taken note of and further, details with regard to the credit card payments regarding 'Amway' transactions were called for. The appellant was given only two days' time to furnish the details and the 3rd day being Sunday (21.03.2021). Since the appellant had to obtain the credit card details from ICICI Bank and Standard Chartered Bank, he would not comply with the same within the time frame given.

(5) Furthermore, the Authority called for the details on nine heads, which according to the appellant were voluminous and only two working days' time was provided, which was grossly insufficient.

(6) In the meantime, the respondent issued Show Cause Notice dated 31.03.2021 enclosing the draft assessment order and granted one day time to file objection. The appellant stated to have received the credit card statements from the Standard Chartered Bank on 15.04.2021 and furnished all the details to the respondent on 17.04.2021, as directed in the notice dated 18.03.2021 and the show cause notice dated 31.03.2021. The respondent has received the documents filed by the appellant through E-filing mode on 17.04.2021.

(7) However, the assessment order was passed on 19.04.2021, without taking note of any of the documents filed by the appellant. This necessitated the appellant to approach the Writ Court challenging the assessment order.

6. At this stage, we shall take note of the recent decision of the Hon'ble Supreme Court in Radha Krishnan Industries -vs- State of Himachal Pradesh & Ors. reported in [2021 SCC Online SC 334]. Wherein, one of the questions, which fell for consideration, was with regard to the maintainability of a Writ Petition, when an alternative remedy was available under the relevant statute reads as follows :-

> "C.1 Maintainability of writ petition before the High Court
>
> 25. The High Court has dealt with the maintainability of the petition under Article 226 of the Constitution. Relying on the decision of this Court in Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Limited , the High Court noted that although it can entertain a petition under Article 226 of the Constitution, it must not do so when the aggrieved person has an effective alternate

remedy available in law. However, certain exceptions to this "rule of alternate remedy" include where, the statutory authority has not acted in accordance with the provisions of the law or acted in defiance of the fundamental principles of judicial procedure; or has resorted to invoke provisions, which are repealed; or where an order has been passed in violation of the principles of natural justice. Applying this formulation, the High Court noted that the appellant has an alternate remedy available under the GST Act and thus, the petition was not maintainable.

26. In this background, it becomes necessary for this Court, to dwell on the "rule of alternate remedy" and its judicial exposition. In Whirlpool Corporation v. Registrar of Trademarks, Mumbai , a two judge Bench of this Court after reviewing the case law on this point, noted:

> "14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".
>
> 15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

(emphasis supplied)

27. Following the dictum of this Court in Whirlpool (supra), in Harbanslal Sahnia v. Indian Oil Corpn. Ltd. , this court noted that:

> "7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies : (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. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1].) The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a

> legislation is challenged;
> (iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;
> (v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and
> (vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

In terms of the above decision, if the appellant-assessee is able to establish a case of violation of principles of natural justice, then it is one of the exceptions carved out by the Hon'ble Supreme Court, where despite availability of an alternate remedy, the appellant would be entitled to approach the Writ Court.

7. We also note yet another recent decision of the Hon'ble Supreme Court in Assistant Commissioner of State Tax and Ors. Vs. Commercial Steel Limited reported in [2021-VIL-80-SC]. In the said decision, the Hon'ble Supreme Court pointed out that existence of an alternate remedy is not an absolute bar to the maintainability of a Writ Petition under Article 226 of the Constitution and the Writ Petition can be maintained in an exceptional circumstances, where there is

(i) a breach of fundamental rights;
(ii) a violation of the principles of natural justice;
(iii) an excess of jurisdiction; or
(iv) a challenge to the vires of the statute or delegated legislation.

As pointed out earlier, the appellant's case would fall within the exception No.2 and therefore, the Writ Petition was maintainable.

8. In the preceding paragraphs, we have referred to the factual positions to demonstrate that the appellant-assessee has been dealt with in a most unfair manner. The appellant is an

individual and to the best of his knowledge and ability, he has furnished the details. The Assessing Officer, while completing the assessment, false the appellant for not furnishing the statement of account of the credit cards. The appellant has stated as to why there was a delay in furnishing the details, as he had to obtain the same from the concerned banks and nine particulars called for were voluminous. It may be true that the assessment was an E-Assessment. Nevertheless, if it is a scrutiny assessment under Section 143(3) of the Act, the Assessing Officer is bound to provide adequate opportunity to the appellant. Adequacy of the opportunity would vary from case to case, and there is no straight jacket formula on the same. In case of Companies registered under the Companies Act or other financial institutions, they would have a large team of legal experts to assess and who can appear before the Assessing Officer or who can furnish details, as called for by the Assessing Officer. This may not be a case, when it comes to an individual-assessee. Especially, when a person, like an appellant, who states that he is employed and carrying on a part time business, who being a multi-level marketing person in a chain of marketing persons, who handle projects, manufactured / marketed by M/s. Amway.

9. Therefore, we are of the clear view that the assessment order has been passed in violation of principles of natural justice and therefore, the Writ Petition was maintainable.

10. The other question, which may arise, is whether the opportunity, which can be afforded to the appellant-assessee by the Appellate Authority, would be sufficient? In this regard, we are guided by the decision of the Hon'ble Supreme Court in Tin Box Company -vs- Commissioner of Income-tax reported in [2001] 116 Taxman 491 (SC). In the said decision, the Hon'ble Supreme Court held that opportunity of hearing by the Appellate Authority or the Tribunal or the Court can be of no substitute to that of the opportunity that will be provided by the Assessing Officer, at the first instance.

11. Thus, we are of the clear view that the assessment order calls for interference. In the result, the Writ Appeal is allowed and the order passed in the Writ Petition is set aside and consequently, the Writ Petition is allowed and the assessment order dated 19.04.2021 is quashed and the matter is remanded to the respondent or the appropriate authority for fresh assessment. The said authority shall provide reasonable opportunity and grant sufficient time to the appellant-assessee to produce all records, that may be required for completing the

assessment and thereafter, after inviting additional objections, if any, which the appellant-assessee may desire to submit, the assessment may be done afresh and in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Maya/Sp

To

The Additional Commissioner of Income Tax,
Income Tax Department,
National E-Assessment Centre,
Delhi.

W.A.No.2304 of 2021
and
C.M.P.No.14638 of 2021

SRA(CO)
PM/06/10/2021