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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decision delivered on: 03.06.2021

+ **W.P.(C) 3876/2021 & CM No. 11674/2021**

SONY INDIA PVT. LTD.

..... Petitioner

Through: Mr. Nageswar Rao and Ms. Deepika
Agarwal, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS.

..... Respondents

Through: Mr. Ruchir Bhatia, Advocate along
with Mr. Shlok chandra and Ms.
Mansie Jain and Shrey chakrobatri,
Advs. for revenue.
Ms. Suman Chauhan & Mr. Yogender
Chauhan, Advs. for R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

[Court hearing convened via video-conferencing on account of COVID-19]

1. Pursuant to the last date of hearing, Mr. Ruchir Bhatia, who appears for respondent nos. 1 to 3/revenue, says that the counter-affidavit has been filed. Mr. Nageswar Rao, who appears for the petitioner, affirms that he has received a copy of the aforesaid counter-affidavit.

2. It is, however, Mr. Rao's submission that the issue, which arises for consideration in the present petition, is squarely covered by the judgement of this Court dated 22.04.2021, passed in W.P.(C) No. 9051/2020, titled ***Concentrix Services Netherlands B. V. vs. Income Tax Officer (TDS) &***

*Anr*¹.

2.1. Mr. Bhatia, on the other hand, says that, although, the issue arising in the present petition is covered by the aforementioned judgment, the petitioner, unlike the *Concentrix* case, can take recourse to an alternate remedy.

3. To our minds, in these proceedings, if this is the only defence available to respondent nos. 1 to 3/revenue, as is evident from Mr. Bhatia's submission, i.e., an alternative remedy is available with the petitioner, we are not inclined to reject this petition on that score.

3.1. As has been observed by this Court and other courts including the Supreme Court in several judgments, an alternate remedy is a self-imposed limitation placed on itself by the Court. It does not prevent the Court from entertaining an action, if it, otherwise, has jurisdiction in the matter. [See *Calcutta Discount Co. Ltd. vs. ITO*², (1961) 2 SCR 241; Also see *Whirlpool Corpn. vs. Registrar of Trade Marks*³, (1998) 8 SCC 1]

¹ In short '*Concentrix* Case'

² "27. Mr Sastri mentioned more than once the fact that the Company would have sufficient opportunity to raise this question viz. whether the Income Tax Officer had reason to believe that underassessment had resulted from non-disclosure of material facts, before the Income Tax Officer himself in the assessment proceedings and if unsuccessful there before the appellate officer or the Appellate Tribunal or in the High Court under Section 66(2) of the Indian Income Tax Act. **The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.**"

[Emphasis is ours]

³ "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

3.2. In this case, particularly, we do not see any purpose in relegating the petitioner to the alternate forum, in view of the fact that the issue raised stands already covered by the judgment of this Court in *Concentrix* case; there being no dispute qua the facts. As a matter of fact, the Supreme Court, in *ABL International Ltd. vs. Export Credit Guarantee Corpn. of India Ltd.*, (2004) 3 SCC 553⁴ has observed that even where the facts are disputed, it does not, willy-nilly, restrain a writ Court from entertaining such an action, if it, otherwise, chooses to do so. [Also see *Piramal Healthcare Limited vs. Union of India*, 2013 SCC OnLine Del 2357⁵]

“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. ...”

[Emphasis is ours]

⁴ “19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur [(1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.”

⁵ “16.4 For the sake of brevity, I would advert to principles enunciated in the judgment of the Supreme Court in the case of ABL International Ltd., in which the court considered the very same submissions, which is that, the dispute in issue was contractual in nature, and no mandamus could be issued for recovery of money. This is, in addition to the fact that in ABL's case the Supreme Court discussed, distinguished and explained its earlier

3.3. Accordingly, the impugned orders dated 12.03.2021 and 31.01.2021 are set aside.

4. The writ petition is disposed of in the aforesaid terms. Pending application stands closed too.

RAJIV SHAKDHER, J

TALWANT SINGH, J

JUNE 3, 2021/nk

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judgments, which on the face of it took a somewhat different view. Thus, the Supreme Court in ABL's case, while examining a plethora of past precedents including the Suganmal's case, set out the following legal principles to ascertain maintainability of a writ petition:-

“..27. ..From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

- (a). In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.
- (b). Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refund to entertain a writ petition in all cases as a matter of rule.
- (c). A writ petition involving a consequential relief of monetary claim is also maintainable...”