

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4909-2022 (O&M)
Date of Decision: 15.07.2022

Amritsaria Mal Jain and sons

.... Petitioner

Versus

Principal Commissioner of Income Tax, Patiala

.... Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. S.K. Mukhi, Advocate
for the petitioner.

PANKAJ JAIN, J.

Petitioner an assessee under Income Tax Act, 1961 (hereinafter referred to as 'Act') is a partnership firm. By way of present writ petition, challenge has been laid to show cause notice issued under Section 263(1) of the Act qua assessment year 2017-18, whereby the revisional authority has asked the petitioner to show cause as to why order passed under Section 143(3) of the Act be not revised.

2. As per the facts pleaded in the petition, survey under Section 133A of the Act was conducted at the premises of assessee on 19.09.2016. The petitioner voluntarily surrendered total amount of Rs.30 lakhs vide Annexure P-1. The petitioner claimed that he has been filing his regular return. Return for the assessment year 2017-18 was filed on 02.11.2017 declaring an income of Rs.30,78,270/-, wherein surrendered income was also disclosed treating the same as increase in closing stock and increase in capital account of partners. As per the

petitioner, assessment order under Section 143(3) of Act was passed on 29.05.2019 accepting the returned income as submitted by the petitioner. The order has been placed on record as Annexure P-5.

3. Thereafter on 05.10.2020, after a gap of more than 3 years, the petitioner has been served with the impugned notice under Section 263(1) of the Act. The petitioner responded to the same vide reply dated 17.08.2021. Before any order could be passed by the revisional authority, the present writ petition has been filed. The matter came up for preliminary hearing on 11.03.2022. On the request made by counsel for the petitioner, the same was adjourned to 16.03.2022. On 16.03.2022, the matter was taken up through video conferencing in the light of Pandemic Covid-19. Owing to connectivity issue, the matter was again adjourned to 05.04.2022. On 05.04.2022, the following order was passed:-

“Counsel seeks a short accommodation to cite certain judicial precedents of this Court to advance his contention that exercise of jurisdiction under Article 226 of the Constitution of India would be warranted even at the stage of issuance of a show cause notice under Section 263 (1) of the Income Tax Act, 1961 and that too in a situation where the assessee has already responded and submitted a reply thereto.

List on 04.05.2022”

4. On 04.05.2022, counsel further sought time to address arguments and the matter was adjourned to 25.05.2022. On 25.05.2022, again on request made by counsel for the petitioner, the matter was

adjourned to 11.07.2022.

5. During arguments, counsel for the petitioner in response to the order dated 05.04.2022, relies upon judgments of other High Courts in *Ashoka Buildcon Ltd. vs. Assistant Commissioner of Income Tax and another (2010) 325 ITR 574 (Bom)*, *Virendra Kumar Jhamb vs. N.K. Vohra, Commissioner of Income Tax and others (2009) 222 CTR (Bom) 88* and *LG Electronics India (P) Ltd. vs. Principal Commissioner of Income Tax (2016) 143 DTR (All) 105* to impress upon that the writ petition would be maintainable even against the show cause notice issued under Section 263(1) of the Act. At the same time, the counsel has admitted that the revisional authority has passed order before 31.03.2022 during the pendency of the present writ petition.

6. We have heard learned counsel for the petitioner and have carefully gone through the record of the case.

7. In the facts and circumstances of the present case, it is admitted position that pursuant to the show cause notice issued under Section 263(1) of the Act, petitioner filed reply before filing the writ petition and before the order could be passed, he filed the present writ petition. Even on 05.04.2022, when counsel for the petitioner sought time to address arguments with respect to the maintainability of the present writ petition, he opted not to bring to the notice of this Court that the revisional authority has already passed order. Even thereafter, no effort was made to place on record the said order and/or to challenge the same. Be that as it may, the fact remains that the final order pursuant to show cause notice already stands passed and the same is not subject

matter of the present proceedings.

8. Keeping in view the said fact, we find that in the absence of any challenge to the orders passed pursuant to show cause notice and there being alternate remedy with the petitioner to challenge the final order, the present writ petition will not be maintainable.

9. We are guided by law laid down by Apex Court in the case of *Commissioner of Income Tax, Gujarat vs. Vijaybhai N. Chandrani* reported as (2013) 14 SCC 661, wherein Apex Court held that:

“XX XX XX

14. In our considered view, at the said stage of issuance of the notices under Section 153C, the assessee could have addressed his grievances and explained his stand to the Assessing Authority by filing an appropriate reply to the said notices instead of filing the Writ Petition impugning the said notices. It is settled law that when an alternate remedy is available to the aggrieved party, it must exhaust the same before approaching the Writ Court. In *Bellary Steels & Alloys Ltd. v. CCT, (2009) 17 SCC 547*, this Court had allowed the assessee therein to withdraw the original Writ Petition filed before the High Court as the said proceedings came to be filed against the show-cause notice and observed that the High Court should not have interfered in the matter as the Writ Petition was filed without even reply to the show cause notice. This Court further observed as follows:

“3....In the circumstances, we could have dismissed these civil appeals only on the ground of failure to exhaust statutory remedy, but for the fact that huge investments involving

the large number of industries is in issue.”

15. We are fortified by the decision of this Court in *Indo Asahi Glass Co. Ltd. vs. ITO (2002) 10 SCC 444*, wherein the assessee had approached this Court against the judgment and order of the High Court which had dismissed the Writ Petition filed by the assessee wherein challenge was made to the show cause notice issued by the Assessing Authority on the ground that alternative remedy was available to the assessee. This Court concurred with the findings and conclusions reached by the High Court and dismissed the said appeal with the following observations:

“5. This and the other facts cannot be taken up for consideration by this Court for the first time. In our opinion, the High Court was right in coming to the conclusion that it is appropriate for the appellants to file a reply to the show-cause notice and take whatever defence is open to them.”

16. In the present case, the assessee has invoked the Writ jurisdiction of the High Court at the first instance without first exhausting the alternate remedies provided under the Act. In our considered opinion, at the said stage of proceedings, the High Court ought not have entertained the Writ Petition and instead should have directed the assessee to file reply to the said notices and upon receipt of a decision from the Assessing Authority, if for any reason it is aggrieved by the said decision, to question the same before the forum provided under the Act.

17. In view of the above, without expressing any opinion on the correctness or otherwise of the construction that is placed by the High Court on

Section 153C, we set aside the impugned judgment and order. xx xx xx”

10. Same view has been taken by this Court in ***CWP-10480-2022*** titled as “***Anup Transport Co. Pvt. Ltd. vs. National Faceless Assessment Centre & others***, decided on 30.05.2022.

11. In the matters cited by the petitioner, we find that the question with respect to the alternate remedy being available to the petitioner has not been addressed. Hence, the same will not be applicable to the present case.

12. As a sequel of aforesaid discussion, we find no merit in the present case and the same is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

15.07.2022

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No