IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8499-2022 (O&M)
Date of decision:30.05.2022

Anup Transport Co. Pvt. Ltd. ... Petitioner

versus

National Faceless Assessment Centre & others ... Respondents

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

Present : Mr. Nikhil Goyal, Advocate and
Mr. Rana Gurtej Singh, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J. *(ORAL)*

Instant writ petition assails the assessment order dated 31.03.2022 (Annexure P-15), notice of demand (Annexure P-16) as also notice of penalty (Annexure P-17) carrying even date i.e. 31.03.2022.

It is the contention raised by counsel by adverting to the notice of striking off and dissolution (Annexure P-1) dated 06.12.2019 that the petitioner/company stood dissolved w.e.f. the date of issuance of notice itself as issued by the Government of India, Ministry of Corporate Affairs.

It is argued that even though the assessment proceedings relate to a period of time when the company was in existence but the impugned order has been passed on a date subsequent to the dissolution. Heavy reliance is placed upon Instructions/Circular dated 18.04.2018 at Annexure P-2 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes to contend that the impugned assessment order could not have been passed and rather ought to be treated as a nulity. The same is in violation of the Circular dated 18.04.2018

(Annexure P-2). Further contends that the impugned assessment order would even run in the teeth of Section 250 of the Companies Act.

Having heard counsel at length and having perused the pleadings on record, we are of the considered view that no intervention at this stage is warranted.

There would be an alternate statutory remedy available under Section 246-A of the Income Tax Act which ought to be availed of.

In taking such view, we may refer to the judgment of the Hon'ble Supreme Court in **Munshi Ram vs. Municipal Committee, Chheharta, (1979) 3 SCC 83,** wherein it had been observed that where 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 other forums and modes of seeking remedy are excluded. Such view was reiterated by the Apex Court in **Union of India vs. Guwahati Carbon Limited 2012 (11) SCC 651** and subsequently in Commissioner of **Income Tax and another vs. Chhabil Dass Aggarwal and another 2014(1) SCC 603**.

Learned counsel apart from citing other judgments has placed reliance upon a recent judgment of the Hon'ble Supreme Court in **Magadh Sugar and Energy Ltd. Vs. State of Bihar and others, 2021 SCC Online SC 801,** wherein the issue as regards the exercise of writ jurisdiction under Article 226 of the Constitution of India, against the availability of an alternative remedy of an appeal was dealt with and certain principles were summarised. It was argued that as per parameters laid down, a writ petition under Article 226 of the Constitution of India would be maintainable.

We are of the view that it is only in a case under extraordinary circumstances and where there is a patent infirmity on the face of record that we would be inclined to entertain a writ petition under Article 226 of the Constitution of India.

In the facts of the present case, the assertion as regards violation of Instructions/Circular of CBDT is an issue which the petitioner-company ought to raise in appeal itself. Even in the case of **Magadh Sugar's case (supra),** it had been observed as follows :

> *"Wherein 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."*

In view of the above and without opining on the merits of the case, writ petition is disposed of in terms of granting liberty to the petitioner to avail of its statutory remedy of appeal.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

30.05.2022
harjeet

1. Whether speaking/reasoned? Yes/No

2. Whether Reportable? Yes/No