

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.8621 of 2022
Date of Decision : 27.04.2022**

Satish Kumar Jindal

....Petitioner

Versus

Income Tax Officer Ward 6(1) Ludhiana

.....Respondent

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

Present : Ms. Radhika Suri, Senior Advocate assisted by
Mr. Manpreet S. Kanda, Advocate
for the petitioner.

PANKAJ JAIN, J.

By way of present writ petition the petitioner has laid challenge to notice dated 23rd March, 2022 issued under Clause (b) of Section 148-A of the Income Tax Act, 1961 (for short, 'the Act') (Annexure P-1), notice dated 7th April, 2022 (Annexure P-4) issued under Section 148 and the order dated 7th April, 2022 (Annexure P-3) passed under Clause (d) of Section 148-A of the Act.

2. Petitioner an assessee to Income Tax filed his Income Tax Return for the Assessment Year 2018-19 which is stated to have been accepted by the respondent under Section 143(1) of the Act. Petitioner was served with notice under Section 148-A(b) of the Act on 23rd March, 2022. As per the said notice, information in the case of the assessee has been flagged on the Insight Portal in accordance with Risk Management

Strategy Formulated by the CBDT, New Delhi. As per which, during search at the residence of one Sumit Jindal, some documents were seized and it has come to the notice that RKS Builders have made payments of Rs.4,07,50,000/- for the purpose of purchase of property. Since the assessee was partner of M/s RKS Builders at the relevant point of time to the extent of 20% share hence, it is stated that the information suggested that the income chargeable to tax for the Assessment Year 2018-19 had escaped assessment.

3. As per the petitioner request was made to the authorities for providing information vide Communication dated 28th March, 2022. It is claimed by the Petitioner that on 7th of April, 2022, the respondent passed order under Clause (d) of Section 148-A of the Act without providing information and issued notice under Section 148 for reassessing the income of the assessee. It is against these proceedings that the petitioner has approached this Court under Article 226 of the Constitution of India.

4. Ld. Counsel for the petitioner claims that there is no tangible material linking the purchase of property by M/s RKS Builders to the assessee. Thus, there being absence of live-link between the statement of income of the RKS Builders and the assess, the assumption of jurisdiction at the hands of Assessing Officer is bad in law. It has been further asserted by Counsel for the petitioner that since the authorities failed to supply the requisite documents to the petitioner before passing of impugned order dated 7th April, 2022, the action of the Authorities is in violation of law

laid down by Supreme Court in the case of 'GKN Driveshafts (India) Ltd. vs. Income Tax Officer and others', (2003) 1 SCC 72, reiterated by Bombay High Court in the case of Tata Capital Financial Services Limited vs. Assistant Commissioner of Income Tax Circle 1(3)(1) and others - Writ Petition No.546 of 2022, decided on 15th February, 2022 and law laid down by Delhi High Court in the case of 'Sabh Infrastructure Ltd. vs. Asstt. Commissioner of Income Tax', 2017 SCC OnLine Del 10863.

5. Senior Counsel further asserts that the firm i.e. M/s RKS Builders and the petitioner are different individuals and different assesseees for the purpose of Income Tax Act thus, for any escapement of income at the hands of firm he ought not have been saddled with the proceedings of reassessment.

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

7. Admittedly, in the present case the petitioner was provided with reasons for issuing notice to which the petitioner failed to respond. Request was made for providing information *qua* certified copies of the documents w.r.t. notice under Section 148-A(b) of the Act even though the information already stands furnished as Annexure to notice under Section 148-A(b) of the Act. Once, the petitioner has opted not to respond to the reasons accompanying notice under Section 148-A(b) of the Act, we find that plea raised by the petitioner w.r.t. wrongful assumption of

jurisdiction at the hands of the respondent, is without merit. Surprisingly the petitioner has challenged the assessment on the ground that no documents have been provided to him before passing the impugned order but there is no prayer in the present petition seeking those documents. Faced with the situation, Senior Counsel submits that Communication dated 28th March, 2022 though titled as request letter are indeed objections and be treated so. Bare perusal thereof shall reveal that the objections sought to be raised in present petition have not been raised in the said communication. In the facts of this case we need to observe that the petitioner has been served with notice under Section 148 of the Act. In case the present proceedings culminate in the order of assessment under Section 147 of the Act, the same will be appealable. Statutory appeal is provided under the Act. All pleas raised herein can well be raised in the appeal.

8. Question as to whether High Court should exercise its writ jurisdiction under Article 226 of the Constitution of India if an effective and efficacious alternate remedy is available, has been subject matter of continuous debate over the years. The Apex Court in the case of C.A. Abraham vs. Income Tax Officer, Kottayam and another, AIR 1961 SC 609 observed that –

“3. In our view the petition filed by the appellant should not have been entertained. The Income Tax Act provides a complete machinery for assessment of tax and imposition of penalty and for obtaining relief in respect of any improper orders passed by the Income Tax authorities, and the

appellant could not be permitted to abandon resort to 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 Tribunal.”

Similarly, in the case of 'Commissioner of Income Tax, Gujarat vs. VijayBhai N. Chandrani', (2013) 14 SCC 661, it was held that -

“12. 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.”

13. We are fortified by the decision of this Court in Indo Asahi Glass Co. Ltd. v. 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.”

14. 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.”

9. The Apex Court has further dealt with question of exercise of jurisdiction in the presence of statutory remedy in the case of '**Nivedita Sharma vs. Cellular Operators Assn. of India**', (2011) 14 SCC 337, that where hierarchy of appeals is provided by the statute, the parties must exhaust the statutory remedy before resorting to writ jurisdiction for relief and held that –

“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 1859 6 CBNS 336 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. 1939-40 67 IA 222 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'."

10. Recently, Apex Court summarized the principles governing exercise of writ jurisdiction by the High Court in the presence of alternate remedy in case of **'Radha Krishan Industries vs. State of Himachal**

Pradesh, 2021 SCC OnLine SC 334', holding that -

“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.”

11. Facts of the present case, when viewed in the backdrop of the afore-discussed law, we do not find that this is a case wherein writ jurisdiction under Article 226 of the Constitution of India should be exercised even though statutory remedy shall be available to the appellant against the final order of assessment.

12. Needless to say that the petitioner shall be at liberty to raise all pleas available to him including those raised in the present petition before the statutory authority in appeal.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

April 27, 2022

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No