

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

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CWP-10174-2022

Date of Decision : 30.05.2022

M/s SVC Textile Company Pvt. Ltd.

--Petitioner

Versus

Income Tax Officer Ludhiana and another

--Respondents

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

Present:- Mr. K.L.Goyal, Sr. Advocate with
Mr. Rishab Singla, Advocate
for the petitioner.

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TEJINDER SINGH DHINDSA, J.(ORAL).

Petitioner-company has filed the instant petition seeking quashing of the order dated 30.03.2022 (Annexure P-12) passed by the 2nd respondent along with computation sheet dated 30.03.2022 (Annexure P-13), notice of the demand dated 30.03.2022 (Annexure P-14), whereby assessment of the petitioner-company has been framed.

We have heard learned senior counsel at length.

Even though in para 22 of the writ petition, it has been averred that remedy of the appeal does lie under the statute itself but it has been contended that same would not be an efficacious remedy.

It was primarily contended that during the course of proceedings the petitioner has replied to the notices served and have requested for copy of details of the bank account in which the credit

entries in question have taken place as had been alleged. However, instead of providing the same, respondent No.2 has proceeded with the assessment proceedings and has passed the impugned order. Further contended that the reopening of the assessment is based upon third party information which was never shared with the petitioner despite repeated requests and as such the action is in negation of the principles of natural justice. It is strenuously urged that under such circumstances, the alternative remedy of an statutory appeal would not be seen as a bar as regards the maintainability of a writ petition under Article 226 of the Constitution of India.

Having heard learned counsel at length, we are, however, of the considered view that the petitioner-company ought to avail of a statutory remedy of appeal under Section 246-A of the Income Tax Act.

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 Senior 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 in a case where there has been violation of natural justice, 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 blatant violation of principles of natural justice 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 principles of natural justice would raise a question of fact. It 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, the writ petition is disposed of in terms of granting liberty to the

petitioner-company to avail of the statutory remedy as has been provided under the statute.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

30.05.2022
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- i) Whether speaking/reasoned? Yes/No
- ii) Whether reportable? Yes/No