IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

135 CWP-22556-2022
Date of Decision: 29.10.2022

Indus Portfolio Private Limited .... Petitioner

Versus

Principal Commissioner of Income Tax and others .... Respondents

136 CWP-22557-2022

Indus Portfolio Private Limited .... Petitioner

Versus

Principal Commissioner of Income Tax and others .... Respondents

137 CWP-22562-2022

Indus Portfolio Private Limited .... Petitioner

Versus

Principal Commissioner of Income Tax and others .... Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Abhilaksh Grover, Advocate
for the petitioner.

Mr. Vaibhav Gupta, Advocate
for the respondent.

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G.S.SANDHAWALIA, J. (Oral)

1. This order shall dispose of above said three writ petitions as common questions of facts and law are involved in all the writ petitions. Facts are being taken from CWP-22556-2022.

2. The petitioner challenges the order dated 30.03.2022 (Annexure P-1) wherein assessment has been made for the assessment year 2015-16 under Section 143 (3) read with Section 147 of the Income Tax Act, 1961 (for short, 'the Act'). Apparently, the said order was firstly challenged before the High Court of Delhi and the writ petition was withdrawn on 16.08.2022 on the ground that the said Court would have no territorial jurisdiction. It is not disputed that even prior to the disposal of the writ petition before the High Court of Delhi, the statutory appeal was also filed in April 2022 and it has been specifically averred by the petitioner itself that the limitation was to expire under Section 246 of the Act on 30.04.2022 and an appeal has been preferred and is pending but no Court proceedings have commenced.

3. Counsel for the petitioner has vehemently submitted that while passing the assessment order, no opportunity of being heard was granted and the writ jurisdiction was invoked inasmuch as the show cause notice was issued only on 26.03.2022 (Annexure P-2).

4. Keeping in view the fact that the petitioner has already availed his alternative remedy, we are of the considered opinion that irrespective of the merits as such regarding the factum of the manner in which the respondents have acted in a short time frame the writ jurisdiction of this Court is not maintainable. The petitioner cannot be permitted to sail in two boats at the same time. It is settled principle that the writ jurisdiction is a discretionary jurisdiction as such and once an alternative remedy has already been availed of, this Court would feel shy to exercise the writ jurisdiction.

5. On advance notice, Mr. Vaibhav Gupta, Advocate appears and has rightly placed reliance upon the recent judgment of the Apex Court in ***The State of Maharashtra and others vs. Greatship (India) Limited, 2022 AIR (Supreme Court) 4408*** wherein the Apex Court set aside the order of the High Court which had set aside the tax liability along with interest and penalty under the Maharashtra Value Added Tax, 2002 and the Central Sales Tax, 1956 on the ground of limitation. The Apex Court keeping in view the law laid down in ***United Bank of India Vs. Satyawati Tondon & others, (2010) 8 SCC 110*** observed as under:

> *"7. Applying the law laid down by this Court in the aforesaid decision, the High Court has seriously erred in entertaining the writ petition under Article 226 of the Constitution of India against the assessment order, by- passing the statutory remedies.*
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> *8. Now so far as the reliance placed upon the decisions of this Court by the learned Senior Advocate appearing on behalf of the respondent, referred to hereinabove, are concerned, the question is not about the maintainability of the writ petition under Article 226 of the Constitution, but the question is about the entertainability of the writ petition against the order of assessment by-passing the statutory remedy of appeal. There are serious disputes on facts as to whether the assessment order was passed on 20.03.2020 or 14.07.2020 (as alleged by the assessee). No valid reasons have been shown by the assessee to by-pass the statutory remedy of appeal. This Court has consistently taken the view that when there is an alternate remedy available, judicial prudence demands that the court refrains from exercising its jurisdiction under constitutional*

provisions.

9. In view of the above and in the facts and circumstances of the case, the High Court has seriously erred in entertaining the writ petition against the assessment order. The High Court ought to have relegated the writ petitioner – assessee to avail the statutory remedy of appeal and thereafter to avail other remedies provided under the statute.

10. Under the circumstances, the impugned judgment and order passed by the High Court is hereby quashed and set aside. The writ petition filed before the High Court challenging the assessment order and consequential notice of demand of tax is hereby dismissed. The respondent – assessee is relegated to avail the statutory remedy of appeal and other remedies available under the MVAT Act and CST Act. It is directed that if such a remedy is availed within a period of four weeks from today, the appellate authority shall decide and dispose of the same on its own merits in accordance with law without raising any question of limitation, however, subject to fulfilling the other conditions, if any, under the statute. It is made clear that we have not expressed any opinion on the merits of the case in favour of either of the parties and it is for the appellate authority and/or appropriate authority to consider the appeal/proceedings on its/their own merits and without being influenced in any way by any of the observations made by the High Court which otherwise have been set aside by the present order. The present appeal is allowed in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs."

6. In the present case, the factual aspect remains that the appeal is already filed and pending and therefore, it is open to raise all the pleas before the Appellate Authority.

Accordingly, the petitions stand dismissed.

(G.S.SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

29.10.2022
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Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*