IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-4583 of 2024 (O&M)
Date of Decision:28.02.2024

Mahesh Chander Sharma

....Petitioner

Versus

National Faceless Assessment Centre and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

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Present: Mr. Deepak Agrawal, Advocate,
for the petitioner.

Mr. Vaibhav Gupta, Advocate, for
Mr. Yogesh Putney, Advocate,
for the respondents.

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SANJEEV PRAKASH SHARMA, J. (Oral)

1. Learned counsel for the petitioner vehemently argued in terms of the judgments passed by the Hon'ble Supreme Court in case **Calcutta Discount Co. Ltd.** versus **Income Tax Officer, Companies District I, Calcutta and another** (Civil Appeal No. 197 of 1954, date of decision 01.11.1960), to submit that the High Court can investigate existence of one of the conditions for exercise of jurisdiction under Section 34 of the Income Tax Act, 1961 (for short "the Act of 1961"), whereas learned

counsel appearing on behalf of the respondents has invited attention to the judgment passed by the Hon'ble Apex Court in **The State of Maharashtra and others** versus **Greatship (India) Limited** 2022(13) Scale 770 as well as **The State of Madhya Pradesh and another** versus **M/s Commercial Engineers and Body Building Company Limited 2022(14) Scale 920**, to submit that availability of alternate statutory remedy would be a sufficient ground of judicial prudence to refrain from exercising jurisdiction under the constitutional provisions.

2. Learned counsel for the petitioner submits that the Assessing Officer (AO) has failed to give sufficient time to the petitioner while issuing notice under Section 148 of the Act of 1961 (Annexure P-2) although the petitioner has filed reply but the same has not been considered before passing of the impugned order dated 24.01.2024 (Annexure P-8).

3. We have considered the submissions and the order passed by a co-ordinate Bench of this Court and find that the petitioner has challenged the assessment order dated 24.01.2024 (Annexure P-8) and further the arguments raised in the present writ petition can be ably considered by examining the record. Considering that factual aspects are involved, this Court would refrain from entering into a fishing enquriy while examining a case under writ jurisdiction. We also notice that the judgment cited by the learned counsel of Full Bench of the Hon'ble Supreme Court of India in ***Calcutta Discount Co. Ltd.*** (*supra*) is with regard to the issue where the concerned Income Tax Officer acted without

jurisdiction and in these circumstances Supreme Court held that the writ Court may entertain a plea challenging such assessments done without jurisdiction.

4. The Hon'ble Supreme Court in case of ***The State of Maharashtra and others*** *versus* ***Greatship (India) Limited*** (*supra*) has examined the issue at length after referring to the law as laid down by the Apex Court from time to time and thus held 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, bypassing the statutory remedies.*
>
> *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-passing 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.*
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> *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."

5. Similarly, in case of ***The State of Madhya Pradesh and another*** *versus* ***M/s Commercial Engineers and Body Building Company Limited*** (*supra*), the issue was regarding maintainability of writ petition in relation to tax matters where statutory remedy of appeal is available and it was held that as under:-

"In view of the above, the impugned judgment and order passed by the High Court entertaining the writ petition under Article 226 of the Constitution of India against the Assessment Order denying the benefit of Input rebate is unsustainable and the same deserves to be quashed and set aside and the original writ petitioner is to be relegated to prefer an appeal against the Assessment Order dated 28.02.2015 passed by the Divisional Deputy Commissioner, Commercial Tax, Jabalpur, which may be available under Section 46(1) of the MP VAT Act, 2002."

6. In view of the above facts and circumstances as well as the recent pronouncements, this Court refrains from entertaining the present writ petition. Consequently, the present petition is hereby dismissed.

7. It is made clear that the period for filing of appeal has expired, however, in the circumstances, the appellate authority is directed to hear the appeal on merit if it is filed within a period of 15 days subject to making pre-deposits if required in law.

8. Granting liberty to the petitioner to avail the alternate remedy as available to him before the competent authority in accordance with law.

9. Pending applications, if any, also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

February 28, 2024
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No