IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

PRESENT:
THE HON'BLE JUSTICE TIRTHANKAR GHOSH

W.P.O. NO 500 of 2023

Philips India Limited
-versus-
Deputy Commissioner of Income Tax, Circle 11(1), Kolkata &Ors.

For the Petitioner	:	Mr. Percy Padriwala, Sr. Adv., Mr. Niraj Seth, Adv., Mr. A.K. Dey, Adv., Ms. Kamalika Mukherjee, Adv., Mr. H. Chawla, Adv.
For the Respondents	:	Mr. Smarajit Roy Chowdhury, Adv., Mr. Prithu Dudhoria, Adv.

Reserved On	**:**	**24.12.2024**
Judgement On	**:**	**12.03.2025**

Tirthankar Ghosh, J. :

The present writ petition has been preferred challenging the legality and/or validity of the Assessment Order dated 31st March, 2022, passed by Respondent No. 1 under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relating to the assessment year 2017-18,Notice of Demand issued under Section 156 of the Act and the Penalty Notice issued under Section 274 read with Section 270A of the Act, dated 31st March, 2022.

Learned senior advocate appearing on behalf of the petitioner has argued mainly on the following issues:-

a) The Assessment Order dated 31st March, 2022, was passed manually without mentioning the Document Identification Number (hereinafter referred to as "DIN") in its body and the same was passed in gross violation of the departmental circular bearing no. 19/2019 dated August 14, 2019 (hereinafter referred to as "the said circular") and the said Assessment Order should be treated as invalid and should be deemed to have never been issued as provided in the paragraph 4 of the said circular.

b) The assessment order dated 31st March, 2022, which has been challenged in the present writ petition is barred by limitation, and therefore, respondent no. 1 has no jurisdiction to pass the saidorder.

c) The legality and/or validity of the Assessment Order dated 31st March, 2022, passed under Section 143(3) read with Section 144B of the Act has been challenged, and no order under Section 148A (d) of the Act has been challenged as mentioned in the Affidavit-in-Opposition, which shows lack of application of mind.

d) The time limit provided under the Act and as extended from time to time by TOLA for passing the assessment order for AY 2017-18, the time expired on 21st January, 2022.As the orderwas uploaded on the portal only on 23rd January 2023, the same is barred by limitation.

Learned senior advocate in order to substantiate the issues, referred to the annexures and documents enclosed along with the writ petition. It was pointed out by the petitioner that the assessment order dated 31st March, 2022 for the assessment year 2017-18 as well as the computation sheets and the demand notices issued along with the same do not bear any DIN. The absence of DIN according to the petitioner makes the order nullity as the CBDT Circular No.19/2019 dated 14th August 2019, mandatorily requires generation, allotment and quoting of DIN in notices, orders, summons, letters and other correspondence issued by the Income Tax Department. Additionally, it was also canvassed that on 22nd November 2022, the website of the Income Tax Department clearly showed that no assessment order was passed and on 23rd January 2023 also the website showed that no assessment order was passed and the proceedings were stated to be open on these dates. On 6th February 2023, when the petitioner accessed the portal,it found that the proceedings were shown as closed and the option to download the closure order was provided. This according to the petitioner shows that the order dated 31st March, 2022 was passed manually and did not bear a DIN and was not uploaded in the system at least till 23rd January 2023. The same was not either physically or electronically served on the petitioner and it was admitted by the Respondents in their communication received by the petitioner on 3rd July 2023 issued pursuant to the directions of this Hon'ble Court.

It was further submitted that the letter dated 23rd January 2023 was issued by the Respondent No. 1 which purported to communicate the DIN of the assessment order dated 31st March, 2022 as being ITBA/AST/S/91/2022-23/1049039617(1). Petitioner emphasized that as the year referred to in the DIN raises serious doubt for quoting incorrect financial year, interference of this Court is warranted. So far as the issue relating to DIN is concerned, learned counsel referred to the judgement of this Hon'ble Court in PCIT vs. Tata Medical Centre Trust, [2023]154 taxmann.com 600 (Cal),wherein the Hon'ble Court was pleased to dismiss the appeal filed by the Income Tax Department upholding the conclusion of the Tribunalthat the order passed under Section 263 of the Income Tax Act did not satisfy the requirements mandated by CBDT circular,DIN not being mentioned in the body of the order under Section 263 of the Income Tax Act and the order alsonot furnishing particulars of approval of higher authority in the prescribed format as per para 3 of the circular.The finding of the Tribunal was held to be correct and proper. In order to fortify the contention on the aforesaid issues relating to absence of DIN in the assessment order, several authorities were placedby the Learned Senior Advocate which included the following:*Ashok Commercial Enterprises vs. ACIT [2023] 154 taxmann.com 144 (Bom); Hardik Deepak Salot and Ors vs. ACIT [WP No. 2944 of 2023 (Bom)]; CIT vs. Brandix Mauritius Holdings Ltd. [2023] 149 taxmann.com 238 (Del);Kamlesh Kumar Jha vs. PCIT [2023] 156 taxmann.com 622 (Del).*

The next issue which has been canvassed by the petitionerrefers to the assessment order being invalid and bad-in-law as it was passed beyond the period of limitation as provided under Section 153 of the Act.Atabular chart was relied upon which furnished the following details:

Due date	**AY 17-18**

As per section 153(1) read with section 153(4)	31-12-2020
As per TOLA and various notifications thereunder	30-09-2021
As per clause (x) of Explanation 1 to section 153	21-01-2022
Date when the order was ostensibly passed	31-03-2022
Date when the order was uploaded on the portal	23.01.2023

It was submitted that as the order was uploaded on the portal only on 23rd of January 2023, the same was barred by limitation.

It was further submitted that Section 153(1) of the Act provides that no order of assessment shall be made under Section 143 at any time after the expiry of the period specified therein. It is well settled that an assessment order can be regarded as“made” when it is signed and despatched and isout of the control of the Assessing Officer. This is normally done,when the same order or decision is made public or notified in some form or when it can be said to have left the office of the Assessing Officer.Reference was made to *Collector of Central Excise, Madras vs. M.M. Rubber (1992) 1992 taxmann.com 555(SC)*andit was reiterated by the petitioner that since the orderwas not physically served and was uploaded in the portal on 23rd of January 2023, the assessment order was therefore barred by limitation. Reference was also made to State of *AP vs. M. Ramakishtaiah& Co. (1994) SCC Online SC 3.*

A further issue which was canvassed before this Court in respect of the assessment order being invalid and bad-in-law is thatit was passed without complying with the mandatory procedure provided under Section 144C of the Income Tax Act. According to the petitioner, the review of the assessment order purportedly dated 31st March, 2022 for the assessment year 2017-18, reflected that the orders were accompanied by a demand notice and a tax computation sheet and contained a direction for initiation of penalty under Section 270A of the Act, as such,the said order can be said to be final assessment order. It was contendedthat Section 144C(1) of the Act provides that the Assessing Officershall, at the first instance forward a draft of the proposed order of assessment to the eligible assessee if he proposes to make any variation which is prejudicial to the interest of such assessee. Again Section 144C(15)(b) defines "eligible assesse" to mean any person in whose case the variation referred to in sub-Section (1) arises as a consequence of the order of Transfer Pricing Officer passed under sub-Section (3) of Section 92CA of the Act.

A perusal of the assessment year 2017-18 shows that the variation to the income declared in the return arises as a consequence of the TPO's order passed under Section 92CA(3) of the Act. It was contended that petitioner being an eligible assessee, it was incumbent upon the Respondent No.1 to pass a draft order in terms of Section 144C (1) of the Act.

Reference was made to Section 144C of the Income Tax Act and attention was drawn to Sub-Section (2) which provides that, on receipt of the draft order, the eligible assesseewould forwardwithinthirty days of receipt of such draft order his acceptance of the variation to the Assessing Officer or file his objections with the Dispute Resolution Panel and the

Assessing Officer. Sub-Section(3) according to the learned advocate, provides that the Assessing Officer would complete the assessment on the basis of the draft order if the assessee intimates to the Assessing Officer the acceptance of the variation or no objections are received within the period specified in sub-Section(2). Also Sub-Section (4) provides that the order is to be passed within one month from the end of the month in which the acceptance is received or the period of filing of objections under sub-Section(2) expires. Learned advocate also referred to sub-Section (5) which provides that the Dispute Resolution Panel shall, where the objection is received under Sub-Section (2), issue directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment. Sub-Section (10) provides that every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer and Sub-Section (12) provides that no direction under Sub-Section (5)shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee. Sub-Section (13) provides that on receipt of the directions issued under sub-Section (5), the Assessing Officer shall in conformity with the directions, complete the assessment without providing any further opportunity of being heard to the assesse, within one month from the end of the month in which such direction is received. It was contended that the assessment order dated 31st March, 2022 for the assessment year 2017-2018 was not passed in conformity with the mandatory procedure laid down in Section 144C of the Act. As such it is invalid and bad-in-law. Reliance was placed upon the following judgments:-

a) *Vijay Television (P) Ltd. vs. DRP (2014) 46 taxmann.com 100 (Mad);*

(b) *International Air Transport Association vs. DCIT (2016) 68 taxmann.com 246 (Bom);*

(c)*Durr India (P) Ltd. vs. ACIT (2021) 130 taxmann.com 491 (Mad);*

(d) *Exxon Mobil Company (P) Ltd. vs. DCIT (2022) 138 taxmann.com 539 (Bom);*

(e) *Exxon Mobil Company (P) Ltd. vs. DCIT (2024) 162 taxmann.com 93 (Bom);*

(f)*Sinogas Management Pte. Ltd. vs. DCIT (2023) 155 taxmann.com 379 (Del);*

(g) *PCIT vs. Hyundai Motor India Engineering (P) Ltd. (2023) 156 taxmann.com 265 (Telangana);*

(h) *CWT India P. Ltd. vs. ACIT (2023) 155 taxmann.com 450 (Bom).*

It was submitted that in view of the findings of the different High Courts as also the provisions of the Income Tax Act, the assessment order passed for the assessment year 2017-18is in violation of the procedure laid down in Section 144C of the Act.

Mr. Chowdhury, learned advocate appearing on behalf of the respondent Income Tax Act authorities emphasized that as an alternative remedy is available under Section 246(A) of Income Tax Act, 1961, this Court should not exercise its jurisdiction under Article 226 of the Constitution of India. In order to fortify his argument, he relied upon *Anshul Jain –versus- P.C.I.T. (2022/44A/ITR/251/3).* Reference was also made to *Whirlpool Corporation -versus- Registrar of Trademarks, Mumbai (1998) 8*

*SCC 1*and attention of the Court was drawn to the relevant observations of the Hon'ble Apex Court which is as follows:

> *"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."*

Respondent also relied upon *HarbanstalSahnia-versus- Indian Oil Corpn. Ltd. (2003) 2 SCC 107*and attention of the Court was drawn to the observations of the Hon'ble Apex Court, which is as follows:

> *"In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in a least three contingencies (i) where the writ petition seeks enforcement of any of the fundamentalrights (ii) where there is failure of principles of natural justice or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged".*

Learned advocate for the Respondent by relying upon the aforesaid two judgments summarized the duties of the Hon'ble High Court under Article 226 of the Constitution of India and submitted as follows:

(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 High Court is where an effective alternate remedy is available to the aggrieved person;*

(iii) *Exceptions to the rule of alternative 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 regulation 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, 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 made 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.*

(vi) *In case 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 should not readily be interfered.*

Referring to *Radha Krishna Industries -versus- State of Himachal Pradesh 2021 SCC online SC 334,* it was submitted that the Hon'ble Apex Court was pleased to hold that while High Court can entertain application under Article 226 of the Constitution of India, it must not do so when the aggrieved person has an effective alternative remedy available in law. It was additionally submitted that the order passed by the Hon'ble Supreme Court in*RedChilli International Sales (2023/146/taxmen.com/224/SC)*is not applicable in the present case as it was observed by the Hon'ble Apex Court that the issue would be examined in depth by the High Court if and when it arises for consideration.

In respect of non-mentioning of DIN it was submitted on behalf of the respondent that the same is not an illegality but is merely an irregularity and that is why the Hon'ble Apex Court in *CIT -versus- BrandixManrities Holding Ltd.2024/158/Taxman.com/247/SC* granted stay upon the order of the Hon'ble Delhi High Court. It was also pointed out that the recent pronouncement in *PCIT -versus- Tata Medical Centre Trust* was stayed by the Hon'ble Supreme Court in*(SLP (C) D. No. 27852/24).*

It was emphasized that the writ petition has been filed to avoid payment of 20% of the outstanding tax demand .

Attention was also brought to the notice of the Court in respect of Section 153 of the Income Tax Act including explanations referred to therein, where the Central Government by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 extended the time limit for completion of Assessment under Section 143(3) of the Income Tax Act, 1961 to 30th September 2021. Explanation 1 of Section 153 according to the learned advocate states that the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to Section 90 or Section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less shall be excluded. As such as per explanation 1 of Section 153 of the Income Tax Act, due date for completion of Assessment got extended by one year from the due date i.e. 30th September, 2021 as prescribed under TOLA, 2020 read with notification No. 93/2020dated 31.12.2020, notification No.10/2021 dated 27.02.2021, notification No. 38/2021 dated 27.04.2021, notification No. 74/2021 dated 25.06.2021 to 30th September 2022.It was therefore, contended that the assessment order was passed on 31st March,2022 which is well within the limitation date as per the provisions of Section 153 of the Income Tax Act, 1961 read with Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. By referring *toUnion of India -versus- Rajeev Bansal &Ors.*, it was submitted that the Hon'ble Supreme Court has been pleased to clarify that after April 01, 2021, the reassessment provisions of the Income Tax Act must be read with the newly substituted provisions. TOLA continues to apply to extend the time limits for certain actions, but not beyond the new law's requirements. The directions in *Ashish Agarwal* case (regarding notice treated as show-cause-notices)apply to all reassessment notices issued between April01 and June 30, 2021.

Learned advocate also referred to the directions of the Hon'ble Supreme Court during the COVID-19 outbreakin Suo-MotuWrit petition(C) No. 3 of 2020 and submitted that the Hon'ble Apex Court was pleased to exclude the period of limitation as has been prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. It was further clarified that the limitation which would have expired during the period between 15.03.2020 till 28.02.2022 shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining with effect from 01.03.2022 is greater than 90 days, the longer period shall apply.As Income Tax proceedings are quasi-judicial proceedings, the time limit for completion of Assessment was extended to 30th May, 2022. The assessment order was passed on 31st March,2022 which is well within the limitation date as per the provisions of Section 153 of the Income Tax Act 1961. But the same was not visible in the Income Tax e-filing Portal due to certain technical glitch. It was finally submitted that the writ petition should be dismissed on the aforesaid grounds.

I have taken into account the submission advanced on behalf of the petitioner as well as that of the respondent authorities and on a consideration of the various issues canvassed, I am of the view that the same needs to be dealt with. Learned advocate on behalf of the petitioner stressed that the judgment relied upon in *Whirlpool Corporation (supra)*referred by the Respondent relate to the issue of jurisdiction.According to the learned advocate since limitation is a question of jurisdiction, the petitioner is entitled to invoke the powers vested in the

High Court under Article 226 of the Constitution of India without approaching the statutory authorities. I have consideredsuch submissions on the issue relating to limitationand is of the view that the question of limitationinvolves mixed question of facts and law. As such, summarily considering the same only on affidavits may not be appropriate in the background of the facts and circumstances of the case. Such proposition has been laid down by the Hon'ble Supreme Court in the following judgments:*Charminar Cooperative Urban Bank Ltd. v. Mohan Reddy, (2008) 17 SCC 743*;*Topline Shoes Ltd. v. Punjab National Bank, (2022) 17 SCC 416;Nusli Neville Wadia v. Ivory Properties, (2020) 6 SCC 557.*

The next issue which has been canvassed by the petitioner relates to DIN being absent in the assessment order which has rendered the order bad-in-law. To that effect a series of judgments have been placed by the learned advocate appearing for the petitioner, howeverthe issue is too technical and the judgment delivered in the *PCIT -versus- Tata Medical Center Trust*has been interfered by the Hon'ble Supreme Court and there has been stay of the order wherein the proceedings were quashed by the High Court because of absence of DIN.Needless to state that in *Tata Medical Center Trust* (Supra) the order was passed by the appellate authority and the Hon'ble High Court exercised its power under Section 260A of the Income Tax Act and not under Article 226of the Constitution of India vested in the High Court.

Another issue which requires consideration by this Court as has been canvassed by the private respondent is that when an alternative and efficacious remedy is available whether the High Court should exercise its jurisdiction under Article 226 of the Constitution of India. Needless to say that very recently in *Bank of Baroda -versus- Farooq Ali Khan, (2025) SCC Online SC 374*it has been observed that the statutory Tribunals are constituted to adjudicate and determine certain questions of law and fact, the High Court should not substitute themselves as the decision-making authority while exercising their powers of judicial review.

Further, in*PHR Invent Educational Society -versus- UCO Bank &Ors. (2024) 6 SCC 579*the Hon'ble Supreme Court has been pleased to hold inparagraphs 22, 23 and 37 as follows:

> ***"22.*** *The law with regard to entertaining a petition under Article 226 of the Constitution in case of availability of alternative remedy is well settled.*
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> *"43. Unfortunately, the High Court [SatyawatiTondon v. State of U.P., 2009 SCC OnLine All 2608] overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person.*

Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

23. *It could thus be seen that, this Court has clearly held that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person. It has been held that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. The Court clearly observed that, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and*

State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. It has been held that, though the powers of the High Court under Article 226 of the Constitution are of widest amplitude, still the courts cannot be oblivious of the rules of self-imposed restraint evolved by this Court. The Court further held that though the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, still it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution.

37. *It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:*

(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;

(ii) it has acted in defiance of the fundamental principles of judicial procedure;

(iii) it has resorted to invoke the provisions which are repealed; and

(iv) when an order has been passed in total violation of the principles of natural justice."

In the aforesaid judgment the Hon'ble Apex Court relied upona previous judgment of Hon'ble Supreme Court in*Commissioner of Income Tax &Ors. -versus- ChhabilDass Agarwal, (2014) 1 SCC 603,*wherein it was deprecated that where efficacious alternative remedy is available in the statutory forum for redressal of grievances, writ petition should not be entertained ignoring the said statutory dispensation. Paragraphs 15, 16 & 17 are relevant for the present case which is as follows:-

"15. *Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in ThansinghNathmal case [AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.*

16. *In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon 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 Commissioner of Income*

Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. v. State of Haryana [(1985) 3 SCC 267] this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility.

17. *In the instant case, neither has the writ petitioner assessee described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of the instant case. In light of the same, we are of the considered opinion that the writ court ought not to have entertained the writ petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the reassessment orders passed and the consequential demand notices issued thereon."*

Having considered that the petitioner has directly approached the jurisdiction of this Court under Article 226 of the Constitution of India and called upon this Court to adjudicate issues relating to facts and the application of law on the said set of facts, I am of the opinion that the present writ petition is not maintainable as an alternative and efficacious remedy is available to the petitioner.

Accordingly, W.P.O. No.500 of 2023 is dismissed.

Pending connected application(s), if any, are also disposed of.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)

Later: Learned Advocate appearing on behalf of the petitioner prays for stay of the operation of the order. As from the inception there was no interim order, I am not inclined to accede to the prayer advanced by the petitioner.

(Tirthankar Ghosh, J.)