IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15376 OF 2024

Khemchand Uttamchand Bhojwani .Petitioner

Vs.

The Assistant Commissioner of Income Tax, Central Circle 2(2), Pune & ors. .Respondents

Mr. Sanket Suhas Bora a/w. Ms. Vidhi Punmiya, Mr. Amiya R. Das & Ms. Unnatii Thakkar i/b. SPCM Legal, Advocates, for the Petitioner

Mr. Suresh Kumar i/b. Ms. Smita Thakur, Advocate, for the Respondents

CORAM : M. S. SONAK &
JITENDRA JAIN, JJ.

DATE : 21.04.2025

P. C.

1. Heard learned Counsel for the parties.

2. The challenge in this case is to the Assessment Order dated 29.05.2024. The Petitioner has also challenged the Show Cause Notices based upon which the Assessment Order was ultimately issued.

3. There are omnibus statements in the Petition stating that the Petitioner has no alternate or efficacious remedy except

approaching this Court. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***Godrej Sara Lee Limited vs. Excise and Taxation officer 2023 SCC OnLine SC 95*** without giving any indication about either similarity of facts or the applicability of this precedent.

4. The statement that the Petitioner has no alternate and efficacious remedy is false because the Petitioner is provided with a remedy of an Appeal and this was informed to the Petitioner in the notice of demand by which the Assessment Order was sought to be enforced. Therefore, based upon such an incorrect statement if not a false statement, the rule of exortion of alternate remedies cannot be bypassed.

5. Learned Counsel for the Petitioner states that Appellate Authorities take a long time to deal with the Appeals. He pointed out that the Appellate Authorities or the Authorities under the Act, by relying upon CBDT circulars normally require deposit of 20% of the tax demand as a pre-condition for interim relief pending the Appeal. This demand notice has also been suppressed by the Petitioner.

6. The above reasons are not justifiable reasons to bypass the statutory alternate remedy. Extra ordinary jurisdiction of this Court cannot be invoked to avoid any pre-deposit requirements or requirements for deposit of some amounts as a pre-condition for

interim relief. Besides, this Court, cannot be flooded with Petitions of this nature on the spacious plea that such Petitions are decided faster than the statutory Appeals provided under the law.

7. The Petitioner has alleged breach of natural justice. Since we propose to relegate the Petitioner to avail the alternate remedy, we do not wish to make any observations on the merits or de-merits of such a claim. However, record does not show that this was a case of no notice or no opportunity but instead, the allegations in the Petition concern no adequate notice or no sufficient opportunity. This would require investigation into factual aspects. No extra ordinary circumstances have been shown to deviate from the normal rule requiring exortion of alternate efficacious remedies.

8. In ***Oberoi Constructions Limited vs. Union of India***, ***W. P. No. 33260 of 2023*** decided on ***11.11.2024***, we have considered several decisions on the issue of exortion of alternate remedies. By applying the reasoning in the said decision and the decisions referred to therein, we decline to entertain this Petition but leave it open to the Petitioner to avail of alternate statutory remedy provided under the law.

9. All contentions of all parties are left open to be decided by the Appellate Authority should the Petitioner avail of such alternate remedy.

10. This Petition is dismissed with liberty in the above terms but without any costs.

(JITENDRA JAIN, J.) **(M. S. SONAK, J.)**