04
**17.11.2026**
**Court No. 10**
AGM

**In The High Court At Calcutta**
**Constitutional Writ Jurisdiction**
**Appellate Side**

**W.P.A 7689 of 2025**

**Kamelesh Bhattacharyya**
**-versus-**
**Union of India & Ors.**

**Mr. Abhratosh Majumder, Sr. Adv.**
**Mr. Avra Mazumder**
**Ms. Alisha Das**
**Ms. Elina Dey**
**Ms. Rupomita Ghosh**
**Ms. Vedika Agarwal**
**Ms. Saakshi Shaw**
**...For the Petitioner.**

**Mr. Amit Sharma**
**... For the respondent.**

1. In the present writ petition, the petitioner has inter alia, assailed the legality, validity and the sustainability of the ex parte order of assessment dated 29.12.2024 passed by the Assessing Officer under Section 144 read with Section 254 read with Section 144B of the Income Tax Authorities Act, 1961 (hereinafter referred to as the 'said Act') whereby an addition of Rs. 11,34,745/- has been made to the total income of the assessee as unexplained expenditure under Section 69C of the said Act.

2. Learned Senior Counsel, Mr. Abhratosh Majumder, appearing for the petitioner submits that the order of

assessment passed by the Assessing Officer is in pursuance of the order of remand dated 29.3.2023 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the 'said Tribunal').

3. Thereafter, the Assessing Officer issued notices on various dates, i.e., 25.09.2024 and 30.11.2024 much after the order passed by the Income Tax Appellate Tribunal.

4. It is further submitted that on 19.12.2024, the assessee received a show cause notice, requesting him to file the response electronically by 23.12.2024 at 11 hours.

5. Thereupon, on 24.12.2024, the assessee filed an adjournment petition electronically, seeking adjournment of the proceedings on the ground that preparation of its reply was underway, as the same could not be filed earlier, due to non receipt of the earlier notices.

6. Thereafter, the Assessing Officer without considering the adjournment petition submitted electronically by the assessee, proceeded to pass the assessment order ex parte.

7. Main grievance of the petitioner is that the adjournment petition was not considered before passing the assessment order ex parte.

8. It is further submitted that despite the order of remand directing, the Assessing Officer, inter alia, to

revisit the issue, the Assessing Officer took no steps in pursuance thereof for nearly one year. Thereafter, at a belated stage, he sought to comply with the directions of the Appellate Tribunal by issuing notices and calling for a reply thereto. Such arbitrary action of the Assessing Officer in passing the order ex parte violates the principles of natural justice, is impermissible in law and thus the ex parte assessment order is liable to be quashed and set aside.

9. Per contra, learned counsel appearing for the Income Tax Authorities vehemently opposes the contention of the petitioner and submits that ample opportunities were afforded to the assessee to reply to the notices, but the petitioner chose not to file thereto. It is also submitted that the assessment order passed ex parte is an appealable order and the petitioner has an alternative statutory efficacious remedy to assail the order and to produce the relevant documents to demonstrate the issue involved herein.

10. Learned counsel places reliance upon the judgment of the Hon'ble Supreme Court in the case of **Commissioner of Income-tax –v.- Chhanil Dass Agarwal** reported in **(2023) 36 taxmann. Com 36 (SC)** by relying upon paragraph no 20, which is reproduced below:

> ***"20.*** *In the instant case , the Act provides complete machinery for the assessment /re-assessment 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 & 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. In the instant case, neither has the assessee-writ petitioner described the available alternative 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 instant case."*

11. It is submitted by the Income Tax authorities that the said judgment lays down that where a statutory mechanism for redressal of grievance has been created by law, a writ petition should not be entertained, ignoring the statutory dispensation.

12. In this context learned Senior Counsel appearing for the petitioner also places reliance of the same judgment by relying upon paragraph nos. 5 and 19, which are reproduced below:

*" **5.** The facts in brief are ..... ..... ..... The assessee sought for an adjournment which was not granted and the assessments were completed ex-parte under Section 144 of the Act raising a tax demand of Rs. 2,45, 87, 625/- and Rs. 6,32,972/- for assessment Years 1995-96 and 1996-97, respectively by orders dated 09.07.2001 and 28.03.2001, respectively. Further, penalty proceedings under Section 271(1)( c ) of the Act were also initiated for both Assessment Years.*

***19.** Thus, while it can be said that this Court has recognized 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 Thansingh Nathmal v. Supdt. Of Taxes AIR 1964 SC 1419, Titaghur Paper Mills Co. Ltd. Case (supra ) 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."*

13. Having heard the parties at length and perusing the materials on record including the documents annexed to the writ petition as well as the supplementary affidavit filed by the petitioner, this Court finds that a prima facie case has been made out, warranting interference at this stage. For balancing the equities and for the ends of justice, this Court directs the petitioner to file a reply to the show cause notice dated 19.12.2024 within two weeks from date before the concerned Assessing Officer and the same shall be considered and disposed of within a period of four weeks from the receipt of the reply by passing a speaking and reasoned order in accordance with law, upon affording an opportunity of personal hearing to the petitioner. Such decision shall be communicated to the petitioner within a week thereafter.

14. However, it is made clear that upon receipt of a copy of this order from the petitioner, the Jurisdictional Assessing Officer shall forthwith open the ITBA portal to

enable the petitioner to file the response to the show cause notice for the assessment year 2017-18.

15. It is further made clear that the Assessing Officer shall take an independent decision uninfluenced by the observations made hereinabove. The petitioner shall not seek unnecessary adjournment.

16. The Assessing Officer is directed to conclude the entire proceeding peremptorily on or before 10.1.2027.

17. In view of the above, the assessment order passed for the assessment year 2017-18 is hereby quashed and set aside.

18. Since no affidavits have been called for, the allegations made in the writ petition are deemed to have been denied and not admitted.

19. With the above observations and directions that the Writ Petition being **WPA 7689 of 2025** is disposed of without going into the merits of the case.

20. Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

**( Smita Das De, J.)**