

SC slams HC for admitting writ - order set aside as assessee had an alternate remedy of filing appeal to CIT(A)

Summary – The Supreme Court of India in a recent case of Chhabil Dass Agarwal, (the Assessee) held that writ petitions cannot be entertained when alternative remedy of filing appeal before Commissioner (Appeals) is available.

Facts

- After, the assessee failed to comply with notices issued for reassessment under section 148 in respect of assessment years 1995-96 and 1996-97, *ex parte* assessment was completed against assessee.
- The assessee, instead of filing statutory appeal before the Commissioner (Appeals), filed a writ petition, wherein the assessment order passed by the Assessing Officer was quashed.
- On special leave petition filed by the revenue, it was contended that the High Court ought not to have entertained the writ petition when an equally efficacious alternate remedy was available to the assessee under the Act.

Held

- It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court, when an efficacious alternative remedy is available, is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law.
- Undoubtedly, it is within the discretion of the High Court to grant relief under article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an **adequate efficacious alternative remedy** available to the petitioner, and he approached the High Court without availing the same.
- Unless the assessee makes out an exceptional case warranting such interference or there exists sufficient grounds to invoke the extraordinary jurisdiction under article 226.
- While it can be said that the 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or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in some cases that the High Court will not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.

- 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 (Appeals).
- In the instant case, neither has the assessee-writ petitioner described the available alternate remedy 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.
- The Writ Court ought not to have entertained the writ petition filed by the assessee, wherein he only questioned the correctness or otherwise of the notices issued under section 148, the reassessment orders passed and the consequential demand notices issued thereon.
- Liberty is granted to the respondent to file an appropriate petition/appeal against the orders of re-assessment passed under Section 148 within four weeks' time. If the petition is filed before the appellate authority within the time granted by this Court, the appellate authority shall consider the petition only on merits without any reference to the period of limitation.
- However, it is clarified that the appellate authority shall not be influenced by any observation made by the High Court while disposing of the writ petition.