SUPREME COURT OF INDIA

Commissioner of Income Tax

Vs.

Chhabil Dass Agarwal

C.A.No.6704 of 2013

(H.L.Dattu and M.Y.Eqbal JJ.)

08.08.2013

ORDER

1. Application for impleadment is allowed.

2. Delay condoned.

3. Leave granted.

4. This appeal by special leave is directed against the judgment and order passed by the High Court of Sikkim at Gangtok in Writ Petition(C) No.44 of 2009, dated 05.10.2010. By the impugned judgment and order, the High Court has quashed the order of assessment passed by the Assistant CIT, Circle-I, Siliguri under Section 148 of the Income Tax Act, 1961 (for short 'the Act') dated 11.12.2009, whereby the assessing authority has confirmed the notices issued under Section 148 of the Act for the Assessment Years 1995-1996 and 1996-1997, respectively.

5. The facts in brief are: The assessee is a Sikkim based non-Sikkimese who had filed his first return of income for Assessment Year 1997-1998. Upon assessment, it was discovered that he had a net profit of Rs.5,78,832/- during the Assessment Year 1996-1997 relevant to the Assessment Year 1995- 1996. Since no return was filed by the assessee for the Assessment Year 1996-1997 despite capitalizing the aforesaid profit, proceedings under Section 147 of the Act were initiated against him for the said Assessment Year. Accordingly, on 26.05.1998 the notice was issued under Section 148 of the Act. Further, the Revenue has found out that as on 31.03.1996 the assessee had brought forward closing capital of Rs.1,73,90,397/- including the aforesaid net profit during the Assessment Year 1996-1997. The

same remained unexplained as the return of income for Assessment Year 1995-1996 was also not furnished by the assessee. Hence, another notice under Section 148 was issued to the assessee for the Assessment Year 1995-1996, dated 30.03.2000. It has come on record that the assessee did not comply with the aforesaid notices issued under Section 148 of the Act and thus, a letter dated 19.01.2001 came to be issued to the assessee as a reminder to file his return of income for the assessment years clearly mentioning that failure to do so would lead to an ex-parte assessment under Section 144 of the Act. Thereafter, upon filing of written submissions by the assessee, notice under Section 142(1) of the Act dated 25.06.2001 was issued for the Assessment Year 1995-1996 alongwith final show cause fixing compliance for hearing dated 09.07.2001. 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.

6. The assessee approached the Writ Court in Writ Petition(c) Nos. 31 and 38 of 2001 challenging the aforesaid notices issued under Section 148, dated 26.05.1998 and 30.03.2000 and the subsequent assessment orders, dated 09.07.2001 and 28.03.2001. The issue raised before the Writ Court was whether the income of the non-Sikkimese residing in Sikkim is taxable under the Act. The said question was referred to a Committee for its consideration and the Writ Petition was disposed of as withdrawn with the direction to maintain status quo in the matter till the declaration of final decision by the Committee, by order dated 21.07.2005. In the meanwhile, Section 10 (26AAA) of the Act was inserted by Section 4 of the Finance Act, 2008 whereby certain income accruing or arising to a Sikkimese individual was exempted from tax. Thereafter, Central Board of Direct Taxes (for short 'the Board') issued Instruction No. 8 dated 29.07.2008 in respect of tax liability of the income accruing or arising to a non- Sikkimese individual residing in Sikkim. In the light of the aforesaid amendment and instruction, the Writ Court by order dated 15.07.2009 reiterated the earlier order dated 21.07.2005 and granted liberty to parties to approach the Writ Court or any other competent authority/forum for redressal of their grievances arising out of the matter.

7. It is in the aforesaid backdrop that the assessing authority has passed the assessment order against the assessee confirming the earlier notices issued for Assessment Years 1995-1996 and 1996-1997 respectively and held that the assessee is liable to pay the income tax as demanded by demand notice dated 11.12.2009.

8. Aggrieved by the aforesaid, the assessee instead of exhausting the statutory remedy available under the Act, i.e., statutory appeal before the Statutory Appellate Authority (Commissioner of Income Tax (Appeals)) has approached the High Court under Article 226 of the Constitution of India. Suffice it is to notice here that the Writ Court has delved into the merits of the case and thought it fit to quash the order of the assessing authority dated 11.12.2009, by judgment and order dated 05.10.2010.

9. Being aggrieved by the aforesaid judgment and order of the Writ Court, the Revenue is before us in this appeal questioning the correctness or otherwise of the impugned judgment and order.

10. We have heard Shri Gaurab Banerjee, learned Additional Solicitor General appearing for the appellants and Shri Ganesh, learned Senior Counsel for the respondent.

11. Shri Gaurab Banerjee would submit that the Writ Court was not justified in entertaining the Writ Petition since the assessee has invoked its jurisdiction under Article 226 of the Constitution of India despite the availability of an equally efficacious alternate remedy under the Act and therefore, the Writ Court ought not to have interfered with the notices issued under Section 148 of the Act, the re-assessment order passed by the assessing authority and the consequential demand notices issued thereon.

12. Au contraire, Shri Ganesh would support the impugned judgment and order of the High Court.

13. We have considered the rival contentions made by the learned counsel for the parties to the lis.

14. In the instant case, the only question which arises for our consideration and decision is whether the High Court was justified in interfering with the order passed by the assessing authority under Section 148 of the Act in exercise of its jurisdiction under Article 226 when an equally efficacious alternate remedy was available to the assessee under the Act.

15. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. 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 has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See: State of U.P. vs. Mohammad Nooh, AIR 1958 SC 86; Titaghur Paper Mills Co. Ltd. vs. State of Orissa, (1983) 2 SCC 433; Harbanslal Sahnia vs. Indian Oil Corpn. Ltd., (2003) 2 SCC 107; State of H.P. vs. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499).

16. The Constitution Benches of this Court in K.S. Rashid and Sons vs. Income Tax Investigation Commission, AIR 1954 SC 207; Sangram Singh vs. Election Tribunal, Kotah, AIR 1955 SC 425;Union of India vs. T.R. Varma, AIR 1957 SC 882; State of U.P. vs. Mohd. Nooh, AIR 1958 SC 86 and K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras, AIR 1966 SC 1089 have held that though Article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

> (See: N.T. Veluswami Thevar vs. G. Raja Nainar, AIR 1959 SC 422; Municipal Council, Khurai vs. Kamal Kumar, (1965) 2 SCR 653; Siliguri Municipality vs. Amalendu Das, (1984) 2 SCC 436; S.T. Muthusami vs. K. Natarajan, (1988) 1 SCC 572; Rajasthan SRTC vs. Krishna Kant, (1995) 5 SCC 75;Kerala SEB vs. Kurien E. Kalathil, (2000) 6 SCC 293; A. Venkatasubbiah Naidu vs. S. Chellappan,(2000) 7 SCC 695; L.L. Sudhakar Reddy vs. State of A.P., (2001) 6 SCC 634; Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra,(2001) 8 SCC 509; Pratap Singh vs. State of Haryana, (2002) 7 SCC 484 and GKN Driveshafts (India) Ltd. vs. ITO, (2003) 1 SCC 72).

17. In Nivedita Sharma vs. Cellular Operators Assn. of India, (2011) 14 SCC 337, this Court has held that where hierarchy of appeals is provided by the statute, party

must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows:

> "12. In Thansingh Nathmal v. Supdt.of Taxes, AIR 1964 SC 1419 this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7).
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> "7. … The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."
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> 13. In Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 this Court observed: (SCC pp. 440-41, para 11)
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> "11. … It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford, 141 ER 486 in the following passage: (ER p. 495)
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> '… There are three classes of cases in which a liability may be established founded upon a statute. … But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. … The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.'
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> The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd., 1919 AC 368 and has been reaffirmed by the Privy Council in Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd., 1935 AC 532 (PC) and Secy. of State v. Mask and Co., AIR 1940 PC 105 It has also been held to be equally applicable to

enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

14. In Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

"77. … So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment."" (See: G. Veerappa Pillai v. Raman & Raman Ltd., AIR 1952 SC 192; CCE v. Dunlop India Ltd., (1985) 1 SCC 260; Ramendra Kishore Biswas v. State of Tripura, (1999) 1 SCC 472; Shivgonda Anna Patil v. State of Maharashtra, (1999) 3 SCC 5; C.A. Abraham v. ITO, (1961) 2 SCR 765; Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433; H.B. Gandhi v. Gopi Nath and Sons, 1992 Supp (2) SCC 312; Whirlpool Corpn. v. Registrar of Trade Marks,(1998) 8 SCC 1; Tin Plate Co. of India Ltd. v. State of Bihar, (1998) 8 SCC 272; Sheela Devi v. Jaspal Singh, (1999) 1 SCC 209 and Punjab National Bank v. O.C. Krishnan, (2001) 6 SCC 569)

18. In Union of India vs. Guwahati Carbon Ltd., (2012) 11 SCC 651, this Court has reiterated the aforesaid principle and observed: "8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram v. Municipal Committee, Chheharta, (1979) 3 SCC 83. In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23).

"23. … when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.""

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 case, Titagarh Paper Mills case 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.

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 and Shyam Co. vs. 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 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 instant case.

21. 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 re-assessment orders passed and the consequential demand notices issued thereon.

22. In view of the above, we allow this appeal and set aside the judgment and order passed by the High Court in Writ Petition (Civil) No.44 of 2009.

23. We grant liberty to the respondent, if he so desires, to file an appropriate petition/ appeal against the orders of re-assessment passed under Section 148 of the Act within four weeks' time from today. 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.

24. 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 (Civil) No.44 of 2009, in its judgment and order dated 05.10.2010.

25. All the contentions of the parties are left open.

Ordered accordingly.