

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.39 of 2022

Petitioner : Zydus Healthcare Ltd.
[Earlier M/s. Zydus Healthcare, Sikkim (Firm)]

versus

Respondent : Assistant Commissioner of Income Tax,
Circle 3(2), Gangtok

Application under Articles 226 and 227 of the Constitution of India

Appearance

Mr. Mukesh M. Patil, Senior Advocate with Mr. Anup Kumar Bhattacharjee and Ms. Babita Kumari, Advocates for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India for the Respondent.

Date of Hearing : 04-11-2025

Order reserved : 04-11-2025

Order pronounced & uploaded : 05-11-2025

ORDER

Meenakshi Madan Rai, J.

1. The Respondent has filed the instant petition raising preliminary objections on the maintainability of the Writ Petition. Learned Deputy Solicitor General of India (DSGI) appearing for the Objector-Respondent, submits that, the Writ Petitioner is debarred from invoking the writ jurisdiction of this High Court when an efficacious alternative remedy is available by way of statutory provisions, which the Writ Petitioner has failed to invoke, but has instead approached the High Court. It is contended that on receiving the information of income having escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961 (IT Act), based on the objections raised by the Revenue Audit, Notice under Section 148A(b) of the IT Act dated 19-03-2022 was issued to the Writ Petitioner on three issues, namely, (a) under charge of deemed

income under Section 115JC in relation to donation claimed under Section 80GC of the IT Act. (b) under determination of Book Profit and escapement of income in respect of Excise Duty refund of ₹ 22,99,92,702/-. (c) under charge of income of ₹ 22,99,92,702/- by claiming Excise Duty refund as Capital Receipt. The Writ Petitioner responded vide communication, dated 26-03-2022, after which the Order under Section 148A(d) was passed by the Respondent on 27-04-2022 discussing and summarising the findings on the above issues. That, as the Writ Petitioner sought redressal of its grievances against the Assessment Order, it was imperative that they approach the Commissioner of Income Tax (Appeals) under Section 246A(1)(b) in the first instance. Pursuant thereto, if further aggrieved by the Order of the Appellate Authority, Section 253 of the IT Act provides for redressal of grievances to the Income Tax Appellate Tribunal. The Writ Petitioner has however without exhausting the alternative remedies filed the instant Writ Petition which therefore is not maintainable in the eyes of law. To fortify her submissions, Learned DSGI drew strength from the decision of the Supreme Court in **Anshul Jain vs. Principal Commissioner of Income Tax and Another**¹.

2. Resisting the arguments advanced by the Learned DSGI, Learned Counsel for the Writ Petitioner contended that, the IT Act makes no provision for approaching the statutory machinery in an order under Section 148A(d) of the IT Act. It was next contended that, when the re-assessment was made, it was without jurisdiction, hence the Writ Petitioner is well within his rights to approach the High Court by invoking the provisions of Articles 226/227 of the Constitution of India instead of awaiting prolonged litigation and its completion before the statutory authorities. It was further canvassed

¹ [2022] 143 taxmann.com 38 (SC) : 2022 SCC OnLine SC 1756

that the Order of the Tax Authority dated 27-04-2022 is wholly without jurisdiction as the Notice was issued in violation of the period of limitation prescribed in Section 149 of the IT Act.

(i) Inviting the attention of this Court to the contents of Section 148 of the IT Act it was argued that several conditions have been prescribed therein for issuance of Notice. Notice to the Writ Petitioner could not be contemplated under the prescribed conditions.

(ii) The Explanation to Section 149 of the IT Act requires that for the purposes of Section 149(1)(b) "asset" shall include immovable property being land, building or both, shares and securities, loan and advances, deposits in Bank Account. The amount of ₹ 22,99,92,702/- reflected in the impugned Order, does not fall under any of the foregoing definitions of the Explanation, for the reason that, the said amount was the deposit made by the concerned authority in the Personal Ledger Account of the Writ Petitioner and is not a Bank Deposit, as erroneously interpreted by the Respondent, consequent upon which the assessment of the authority was then passed. That, no law prevents the Writ Petitioner from invoking the writ jurisdiction of this Court. That, the Punjab and Haryana High Court in both **Anshul Jain vs. Principal Commissioner of Income Tax and Another**² and **Red Chilli International Sales vs. Income-tax Officer and Another**³ vide Orders dated 02-06-2022 opined that, where the proceedings have not been concluded by the statutory authority, the writ Court should not interfere at such a premature stage. Learned Counsel for the Writ Petitioner sought to clarify that the decision of the Supreme Court in **Anshul Jain (supra)** relied on by the Respondent was superseded by the decision of a coordinate Bench of the Supreme Court in **Red Chilli**

² [2022] 143 taxmann.com 37 (Punjab & Haryana)

³ [2022] 140 taxmann.com 177 (Punjab & Haryana)

International Sales vs. Income-tax Officer and Another⁴ pronounced at a later point in time. That, in **Anshul Jain** (*supra*) the Supreme Court, vide Order dated 02-09-2022, noticed *inter alia* that the challenge before the High Court was the re-opening of Notice under Section 148A(d) of the IT Act. The Supreme Court observed that the High Court had rightly dismissed the Writ Petition by ordering that any grievance on merits has to be agitated before the Assessing Officer in the re-assessment proceedings. Contrary thereto, in **Red Chilli International Sales** (*supra*), the Supreme Court vide Order dated 03-01-2023, *inter alia* observed that the Court was with the Writ Petitioner as the impugned Judgment rejecting the Writ Petition on the ground of alternative remedy, does not take into consideration several Judgments of the Supreme Court on the jurisdiction of the High Court, as Writ Petitions have been entertained to examine whether the jurisdiction, pre-conditions, for issuance of Notice under Section 148 of the IT Act is satisfied.

(iii) Strength was also garnered from the decision in **Uttar Pradesh Power Transmission Corporation Limited and Another vs. CG Power and Industrial Solutions Limited and Another**⁵, where the Supreme Court considered the final Judgment and Order dated 24-02-2020 of the High Court of Judicature at Allahabad (Lucknow Bench) allowing the Writ Petition filed by the Respondent, setting aside two letters issued by the Executive Engineer, Unnao UPPTCL directing the Respondent No.1 to remit labour cess amounting to ₹ 2,60,68,814/- and other details as mentioned in the Petition. It was urged that the Supreme Court observed therein that availability of an alternative remedy does not prohibit the High Court from entertaining

⁴ [2023] 146 taxmann.com 224 (SC) : 2023 SCC OnLine SC 237

⁵ Special Leave Petition (C) No.8630 of 2020 dated 12-05-2021 : (2021) 6 SCC 15

a Writ Petition in an appropriate case. Reference in the aforesaid matter was made to ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others***⁶ and ***Pimpri Chinchwad Municipal Corporation and Others vs. Gayatri Construction Company and Another***⁷.

(iv) The submission of Learned Counsel for the Writ Petitioner was further buttressed by the decision of the Supreme Court in ***M/s Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority and Others***⁸ where the Supreme Court while referring to a plethora of precedents observed *inter alia* that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the High Court instead of dismissing the Writ Petition on the ground of an alternative remedy being available.

3. Due consideration has been given to the rival contentions advanced by Learned Counsel for the parties and the relevant pleadings perused. At the outset, I am not inclined to agree with the submission of the Learned Counsel for the Writ Petitioner that the IT Act makes no provision for appeals against an Order under Section 148A(d) of the IT Act as a reading of Section 246A(1)(b) makes such room. That having been said, it is now a settled position of law that the power to issue prerogative writs under Article 226 of the Constitution of India is plenary and discretionary in nature. Relevant reference is made to the observation of the Supreme Court in ***Uttar Pradesh Power Transmission Corporation Ltd. (supra)*** viz;

"67. It is well settled that availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case. The High Court may entertain a writ petition, notwithstanding the availability of an alternative remedy, particularly (1) where the writ petition seeks

⁶ AIR 1999 SC 22

⁷ (2008) 8 SCC 172

⁸ Civil Appeal No.5393 of 2020 dated 01-02-2023

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enforcement of a fundamental right; (ii) where there is failure of principles of natural justice or (iii) where the impugned orders or proceedings are wholly without jurisdiction or (iv) the vires of an Act is under challenge. Reference may be made to ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors.*** reported in AIR 1999 SC 22 and ***Pimpri Chinchwad Municipal Corporation and Ors. V. Gayatri Construction Company and Ors.*** reported in (2008) 8 SCC 172, cited on behalf of Respondent No.1.”

(i) The Supreme Court in ***Godrej Sara Lee Ltd.*** (*supra*) observed as follows;

“4. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law.”

4. In light of the settled position of law and the questions raised before this Court by the Writ Petitioner, in my considered view, nothing prevents this Court from exercising its discretion and plenary

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powers provided under Article 226 of the Constitution of India to consider the matter at hand.

5. On the anvil of the foregoing discussions, the preliminary objection stands rejected and the Petition disposed of.

(Meenakshi Madan Rai)
Judge
05-11-2025

Approved for reporting : **Yes**

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