IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.5584 of 2012.

Judgment reserved on: 27.09.2016.

Date of decision: October 6 , 2016.

M/S Dev Bhumi Industries .....Petitioner.

Versus

The Commissioner of Income Tax and others .....Respondents.

Coram

The Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice.

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting?[1] Yes

For the Petitioner :	**Mr.Pankaj Kumar Singh, Mr.Neeraj Gupta and Ms.Poonam Gehlot, Advocates.**
For the Respondents:	**Mr.Vinay Kuthiala, Senior Advocate with Ms.Vandana Kuthiala, Advocate.**

Tarlok Singh Chauhan, Judge.

By medium of this writ petition, the following reliefs have been prayed for:-

> *"(a) For a writ of certiorari or any other applicable writ or order or direction quashing the assessment order dated 26.12.2006 passed by the respondent No.2 w.r.t. the Petitioner Firm for the Assessment Year 2001-2002;*
> *(b) For a writ of certiorari or any other applicable writ or order or direction quashing the transfer order dated 18/19.01.2006 passed by the Respondent No.1 w.r.t. the Petitioner Firm for the Assessment Year 2001-2002."*

---

[1] Whether the reporters of the local papers may be allowed to see the Judgment?

High Court of H.P.

::: Downloaded on - 21/09/2020 21:30:15 :::HCHP

2. The pleaded case of the petitioner firm is that despite it having been closed down its business with effect from 30.11.2001, the respondent No.1 without following the procedure laid down under Section 127(1) & 4 of the Income Tax Act, 1961, (for short 'Act') has illegally vide order dated 18/19.01.2006 transferred the case of the petitioner firm from ITO, Parwanoo to ITO, Una and thereafter respondent No.2 has illegally passed the assessment order dated 26.12.2006 making an ex parte assessment of ` 4,82,565/-.

3. The respondents have filed their reply wherein they have raised the preliminary objection regarding the very maintainability of the petition on the ground that the petitioner firm has already questioned the impugned order of assessment by filing an appeal and, therefore, cannot be permitted to choose two forums in respect of the same subject matter for the same relief by filing the instant petition. It is not disputed that the notice under Section 148 of the Act was received back on 01.07.2005 with the remark "*addressee left the place hence returned*". However, it is claimed that the notice under Section 148 of the Act dated 22.06.2005 was infact received by Smt. Renu Aggarwal and Smt. Beena Mittal, partners of the petitioner firm, on 05.07.2005 and the photocopy of the registered A.D. has been annexed as Annexure R-2. Lastly, it is claimed that notices were infact issued to the petitioner firm calling upon it as to why the case be not transferred to ITO, Una, but the petitioner firm did not choose to file its reply

High Court of H.P.

::: Downloaded on - 21/09/2020 21:30:15 :::HCHP

and consequently the case was transferred and decided by the ITO, Una.

4. The petitioner firm has filed rejoinder wherein it has been specifically denied that the notice dated 22.06.2005 was ever received by any of the partners. It is further averred that purported notices were served at the address of the factory site which had been closed long back and secondly one Anita in the notice was never a partner in the petitioner firm. It is also averred that the address Bitana Road was never submitted in the office of the respondents and these notices infact appeared to have been sent continuously at wrong address, though the respondents were having the addresses of the partners as contained in partnership deed dated 01.04.2000. It is lastly averred that all the notices sent subsequently under Sections 142/143 of the Act were duly received by the partners of the petitioner firm as the same were sent at the addresses as given in the partnership deed dated 01.40.2000.

We have heard the learned counsel for the parties and gone through the material placed on record.

5. At the outset, it may be observed that there is no dispute that the petitioner firm prior to filing of the instant petition has already assailed the assessment order dated 26.12.2006 by filing statutory appeal under Section 246A (1) (b) of the Act before the appellate authority. Therefore, the moot question is whether the petitioner firm can maintain a petition under Article 226 of the

::: Downloaded on - 21/09/2020 21:30:15 :::HCHP

Constitution of India for the reliefs for which it has already availed the alternate remedy by filing the appeal, as the merits of the case can only be gone into by this Court after it holds the petition to be legally maintainable.

6. Ordinarily, where the parties have more than one remedy available, they have to elect or select one of the remedies. In case, if the party is allowed to select multiple remedies in multiple Forums and Courts, there will obviously be multiplicity of litigation and there is every chance and likelihood that the judgments and/or orders may also be conflicting with each other.

7. In ***K.S.Rashid and Sons*** *versus* ***Income-tax Investigation Commission and Ors***., ***AIR 1954 SC 207***, a Hon'ble Constitution Bench of the Hon'ble Supreme Court was considering an issue that when the remedy under Section 8(5) of the Taxation of Income (Investigation Commission) Act, 1947, had been pending, whether the High Court could entertain the writ petition. The Hon'ble Supreme Court held that a person may choose/effect whether it will proceed with the alternate remedy or with the writ petition, but both cannot be pursued simultaneously.

8. It is more than settled that when more than one remedy is available to a party in respect of the same grievance, it is open for that party to elect or to choose his remedy. But, once he chooses his remedy, all incidents attached to that remedy must follow. Reference may be made to ***Nagubai Ammal and others*** *versus* ***B. Shama Rao and others, AIR 1956 SC 593*** wherein

High Court of H.P.

::: Downloaded on - 21/09/2020 21:30:15 :::HCHP

relying on the observations of Lord Justice Scrutton, in Verschures Creameries Ltd. v. Hull and Netherland Streamship Company Limited (1921) 2 K.B. 608 (D), it was observed:-

> *"The ground of the decision is that when on the same facts, a person has the right to claim one of two reliefs and with full knowledge he elects to claim one and obtains it, it is not open to him thereafter to go back on his election and claim the alternative relief."*

9. In ***A.V. Venkateswaran, Collector of Customs, Bombay*** *versus* ***Ramchand Sobhraj Wadhwani and Anr., AIR 1961 SC 1506***, another Constitution Bench of the Hon'ble Supreme Court held that even where a party has approached the alternative Forum, the Court should entertain the writ petition or not, cannot be formulated in a straightjacket formula. The Court may examine the facts and circumstances of the case and decide as to whether it should entertain the petition or not. However, where the petitioner has already approached the alternative Forum for appropriate relief, it is not appropriate that the writ petition should be entertained. The rule is based on public policy and motivating factor is that of existing of parallel jurisdiction of another Court.

10. Similar view was reiterated by another Constitution Bench in ***M/s Trilokchand Motichand and others*** *versus* ***H.B. Munshi, AIR 1970 SC 898*** and the Hon'ble Supreme Court cautioned that a writ Court should not entertain the writ petition and it is only in rare cases where the ordinary process of law

High Court of H.P.

::: Downloaded on - 21/09/2020 21:30:15 :::HCHP

appears inefficacious that the writ Court may interfere even when other remedies are available.

11. In ***Jai Singh*** *versus* ***Union of India and others, (1977) 1 SCC 1***, the Hon'ble Supreme Court held that the appellant therein having filed a suit in which the same question as the subject matter in the writ petition was agitated could not be permitted to pursue to parallel remedies in respect of the same matter at the same time.

12. In ***Bombay Metropolitan Region Development Authority, Bombay*** *versus* ***Gokak Patel Volkart Ltd. and Ors., 1995 1 SCC 642***, the petitioner therein had filed a writ petition during the pendency of the appeal before the Statutory Authority. The Hon'ble Apex Court held that such a writ was not maintainable.

13. In ***S.J.S.Business Enterprises(P) Ltd.*** *versus* ***State of Bihar and Ors., 2004 Supp 2 JT 601,*** the Court held that mere availability of alternative forum for appropriate relief does not impinge upon the jurisdiction of the High Court to deal with the matter. Even if it is not a position to do so on the basis of the affidavits filed, however, if a party has already availed the alternative remedy while invoking the jurisdiction under Article 226 of the Constitution it will not be appropriate to the Court to entertain the writ petition.

14. In ***State of Punjab and others*** *versus* ***Punjab Fibres Ltd. and others, (2005) 1 SCC 604***, a Bench of Hon'ble three

High Court of H.P.

::: Downloaded on - 21/09/2020 21:30:15 :::HCHP

Judges' held that where the assessee challenges order of the Sales Tax Tribunal in an appeal as well as in writ petition simultaneously, in such circumstances, the writ petition would not be maintainable.

15. It is clear from the aforesaid exposition of law that public policy demands that a person has right to choose the forum for redressal of his grievance, but he cannot be permitted to choose two forums in respect of the same subject matter for the same relief.

16. It yet needs to be clarified that the writ Court may exercise its discretionary jurisdiction even if the parties approached other forum. There must be extraordinary situation or circumstance, which may warrant different approach, particularly, where the orders passed by the Court are sought to be violated or thwarted with impunity. The Court cannot be a silent spectator in such extraordinary situation. (Ref: ***Awadh Bihari Yadav and others*** *versus* ***State of Bihar and others, (1995) 6 SCC 31).*** However, this is not the fact situation obtaining in the instant case. What to talk of an extraordinary situation or circumstance, the petitioner firm has not even disclosed about the pendency of the appeal in its writ petition and the same only finds mention in the list of dates appended therewith. There being no extraordinary situation or circumstance warranting this Court to step-in to interfere, we are clearly of the view that the instant writ petition is not maintainable.

::: Downloaded on - 21/09/2020 21:30:15 :::HCHP

High Court of H.P.

17. The petitioner firm having chosen to avail of the remedy, as provided in the statute that too earlier to the filing of the instant petition, cannot maintain this petition and the same is accordingly dismissed, leaving the parties to bear their own costs. Pending application, if any, also stands disposed of.

18. However, before parting, it may be necessary to observe that anything stated in the judgment shall not be construed to be an expression of opinion on the merits of the case and the appellate authority shall proceed to decide the appeal uninfluenced by any observations that may be contained hereinabove.

(Mansoor Ahmad Mir),
Chief Justice.

(Tarlok Singh Chauhan),
Judge.

October 6, 2016.
(krt)

High Court of H.P.

::: Downloaded on - 21/09/2020 21:30:15 :::HCHP