

ORAL JUDGMENT

26/Dated 03rd March, 2020

1. These writ petitions are under Article 226 of the Constitution of India and since involving similar issues, as such, have been directed to be heard together and are being disposed of by this common order/judgment.
2. In both the writ petitions, notices issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the Act, 1961) by the respondent No.2 for the assessment year 2010-11 have been sought to be quashed with a declaration that the assumption of jurisdiction under Section 147 of the Act, 1961 by the respondent No.2 for the assessment year 2010-11 is *ab initio void* and further for quashing and setting aside the assessment order under Section 143(3)/147 of the Act, 1961 dated 24.03.2015.
3. Learned counsel for the revenue has submitted by raising the issue of maintainability on the ground of availability of alternative remedy of appeal.

According to him, since notices under Section 148 of the Act, 1961 have now been culminated into an order of assessment which can be assailed before the appellate authority and as such the writ petitions may not be entertained as because once the order of assessment has been passed in terms of the notice under Section 148/143(3)/147 of the Act, 1961, the factual aspect is to be determined which would properly be appreciated by the appellate authority and so far as the jurisdiction of High Court under Article

226 of the Constitution of India is concerned, the same may not be exercised by appreciating the factual aspect, moreover, since the forum of appeals are available, hence, these writ petitions under Article 226 of the Constitution of India are not maintainable.

4. In response to such submission, Mr. Biren Poddar, learned senior counsel for the petitioners has submitted that even if the order of assessment has been passed after the issuance of notice under Section 148 of the Act, 1961, the said notices can be looked into by the High Court under Article 226 of the Constitution of India since according to him, the said notices are not in terms of the instruction as contained in the judgment rendered in the case of ***GKN Driveshafts (India) Ltd. vs. Income Tax Officer & Ors., (2003) 1 SCC 72.***
5. In response to such submission, learned counsel for the revenue in furtherance of his argument which he has already advanced, has submitted by referring to the conduct of the petitioners that in the judgment of the Hon'ble Apex Court in the case of ***GKN Driveshafts (India) Ltd. vs. Income Tax Officer & Ors. (supra)***, the Hon'ble Apex Court has clarified that when a notice under Section 148 of the Act, 1961 is issued, proper course of action for the noticee is to file return and if he so desires, to seek reasons of issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order but herein the petitioners have not filed return and without filing it,

the reasons for issuance of notices have been sought for, as such, the petitioners itself have not complied with the instruction as has been observed in the judgment rendered in the case of ***GKN Driveshafts (India) Ltd. vs. Income Tax Officer & Ors. (supra)*** and hence the ground which has been agitated by the learned counsel for the petitioners about hearing the matter on merit under Article 226 of the Constitution of India is not fit to be allowed.

6. This Court, therefore, is of the view that so many factual aspects have been agitated by the petitioners basis upon which the notices under Section 148 of the Act, 1961, re-assessment orders passed and the consequential demand notices issued thereof, have been questioned.
7. It has already been held by Hon'ble Apex Court in the case of ***Commissioner of Income Tax & Ors. Vrs. Chhabil Dass Agarwal, (2014) 1 SCC 603*** at paragraph Nos. 16 and 17 which reads hereunder as:-

“16. In the instant case, the Act provides complete machinery for the assessment/reassessment 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. v. State of Haryana 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.

17. In the instant case, neither has the writ petitioner assessee 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 the instant case. 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 reassessment orders passed and the consequential demand notices issued thereon.”

8. In view of the decision of the Hon’ble Supreme Court rendered in the case of *Commissioner of Income Tax & Ors. Vrs. Chhabil Dass Agarwal (supra)*, as above, we are of the opinion that the petitioners have approached this Court without availing the alternative remedy available under the Income Tax Act and have not been able to put-forth any cogent and satisfactory reason to persuade us to exercise our extraordinary jurisdiction under Article 226 of the Constitution of India.
9. This Court, after applying the aforesaid principle as laid down by the Hon’ble Apex Court and considering the fact that the factual dispute has been agitated, is of the view that when alternative remedy of appeal is available under the statute, it would not be appropriate and proper for this Court to exercise extraordinary jurisdiction conferred to this Court.
10. In the result, both the writ petitions stand dismissed, however, with the liberty to the petitioners to avail the statutory remedy of appeal.
11. If the memorandum of appeal is preferred within a period of eight weeks from the date of receipt/production of a copy of this order

along with the limitation petition, then let the same be considered by the appellate authority in accordance with law also considering the delay that has been caused due to pendency of the writ petitions.

12. This goes without saying that the petitioners would be at liberty to raise all the issues before the appellate Forum which would be available to them in law.

(Dr. Ravi Ranjan, C.J.)

(Sujit Narayan Prasad, J.)

Saurabh

N.A.F.R.