

WP(MD) No.1120 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.11.2021

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD)No.1120 of 2017
and W.M.P.(MD)No.940 of 2017

Tvl.Sree Karumariamman Granites,
Rep. By its Partner M.Mahendran,
No.11, Koodal Alagar Perumal Kovil East Street,
Adhavan Chambers, IInd Floor,
Madurai-625 001.

(Petitioner substituted as per order dated 10.11.2021
made in W.M.P.(MD)No.7321 of 2021)

...Petitioner

-Vs-

1.The Assistant Commissioner of Income Tax,
Non-Corporate Circle – 3,
Office of the Assistant Commissioner of Income Tax,
No.2, V.P. Rathnasamy Nadar Road,
Bibikulam, Madurai – 625002.

2.The Tamilnadu Minerals Limited,
Rep. By its Chairman,
TWAD House, NO.31, Kamarajar Salai,
Chepauk, Cjhennai – 600004.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to
issue a Writ of Certiorarified Mandamus, calling for records in PAN/GIR



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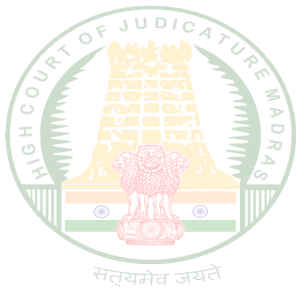
No. AAGFS7058E dated 30.12.2016 on the file of the 1st respondent and quash the same as contrary to law and premature one and direct the 1st respondent to pass order in accordance with the law after verifying the ledger account maintained by the 2nd respondent in the name of the petitioner and also a court order passed in O.S. No.7131 of 2008

For Petitioner : Dr.,A. Thiyagarajan,
Senior Counsel.

For Respondents : Mr.N.Dilip Kumar,
Senior Standing Counsel for R1
Mr.M.Lingadurai,
Government Advocate for R2

ORDER

Captioned writ petition has been filed assailing an assessment order dated 30.12.2016 made under Section 143(3) of the 'Income Tax Act, 1961' ('IT Act' for the sake of brevity) pertaining to 'assessment year 2014-2015' ('said AY') qua a partnership firm 'Sree Karumariamman Granites' (writ petitioner). This assessment order from hereon shall be referred to as 'impugned order' for the sake of convenience and clarity.



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2. Dr.A.Thiyagarajan, learned Senior Advocate appearing on behalf of the counsel on record for writ petitioner, Mr.N.Dilip Kumar, learned Senior Standing Counsel on behalf of the first respondent and Mr.M.Lingadurai, learned Government Advocate (Civil Side) on behalf of the second respondent are before this Court.

3. Captioned main writ petition was heard out.

4. Short facts shorn of elaboration will suffice owing to the nature of the matter and the grounds of challenge qua impugned order. Suffice to say that the writ petitioner, which is a registered partnership firm, is carrying on business in quarrying and marketing granites. The Tamil Nadu Minerals Limited (TAMIN), which is a Government company invited tenders for raising-cum-selling granites blocks for quarries situate at Sivanthipuram in Ambasamudram Taluk, Tirunelveli District, writ petitioner was the highest bidder, an agreement dated 30.11.2005 was entered into and the writ petitioner was awarded the contract by TAMIN. Thereafter, the writ petitioner quarried for the contractual period. Though the second respondent did not renew the contract, the writ petitioner filed a civil suit



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and on the basis of interim order, continued quarrying, to be noted, this is the admitted averment of the writ petitioner. However, it is not necessary to go into that aspect of the matter as it may be out side the four corners of the captioned main writ petition. As far as the captioned main writ petition is concerned, the writ petitioner filed return of income for said AY on 13.09.2015 admitting an income of Rs.14,79,470/- and claimed a sum of Rs. 2,58,67,698/- which according to the writ petitioner is 5% increased value of granite for the period from 01.12.2008 to 31.03.2014. Thereafter, the case of the writ petitioner was selected for limited scrutiny *inter alia* under Section 143(2) of IT Act by the first respondent. To be noted, this is to verify the genuineness of 'other expenses'.

5. Ultimately, assessment was made under Section 143(3) of the IT Act and the impugned order came to be made. Assailing the impugned order, captioned writ petition has been filed.

6. Notwithstanding very many averments in the writ affidavit and notwithstanding several grounds raised in the writ affidavit, learned Senior Advocate in his campaign against the impugned order drew the attention of

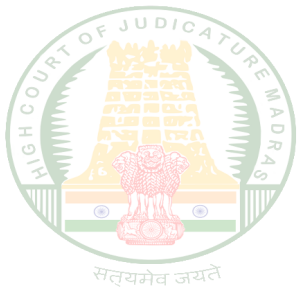


WEB COPY this Court to paragraph No.4 of the impugned order, wherein the first respondent has mentioned that a letter was sent to TAMIN asking them to furnish a copy of ledger account maintained in the name of the writ petitioner assessee and the reply is awaited. Learned Senior Counsel submitted that when the reply was awaited, the first respondent jumped the gun and made the impugned order. It was also pointed out that the aforementioned sum of Rs.2,58,67,698/- which was bifurcated qua six previous assessment years and the first respondent without reopening those assessment years has passed the impugned order.

7. In response to the aforementioned submission, learned Revenue counsel for the first respondent made two submissions and they are as follows:

a) The writ petitioner has an alternate remedy *inter alia* under Section 246(A) of IT Act. This alternate remedy is efficacious and therefore, interference in writ jurisdiction is not made out.

b) On a demurrer, i.e., without prejudice to the previous submission, it was pointed out that though the



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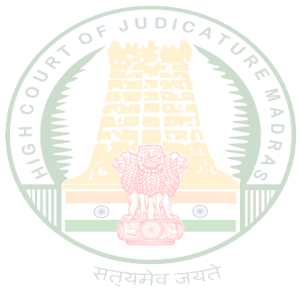


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reply from TAMIN was awaited, impugned order has considered the reply letter from the assessee's representative and has proceeded on the basis that the requirement to pay difference between selling price and raising rate to be paid for production of minerals with taxes, if any cannot be ignored. The selling price is only Ex-Quarry price.

8. Learned State Counsel for TAMIN submitted that as far as TAMIN is concerned, the agreement dated 30.11.2005, being a raising-cum-selling granite blocks agreement, was for three years, three years period elapsed but the writ petitioner has admitted in the writ affidavit that he has approached the civil court, obtained an interim order and continued quarrying on the basis of the interim order.

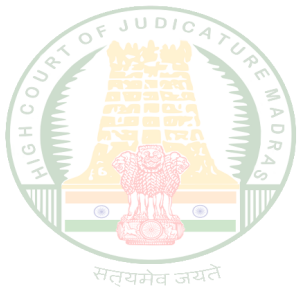
9. In terms of reply / rejoinder submissions, learned Senior Advocate reiterated the opening submissions and also submitted that the question of penalty will not arise in an assessment under Section 143 (3) of IT Act, as the issue of suppression does not come into play.



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10. This Court, having considered the rival submissions, now embarks upon the exercise of setting out the discussion and giving its dispositive reasoning qua captioned main writ petition for arriving at a conclusion.

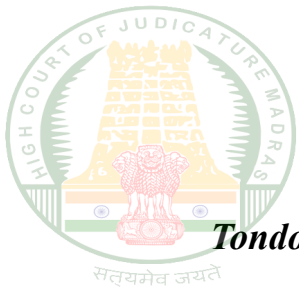
11. This Court finds that the impugned order i.e., impugned assessment order proceeds on the basis that the raising-cum-selling agreement i.e., aforementioned 30.11.2005 agreement between the petitioner and TAMIN requires the difference between the selling price and the raising rate to be paid for production of minerals with taxes, if any. In other words, the assessment order proceeds on the basis that the selling price is only Ex-Quarry price. This Court refrains itself from expressing any opinion on the correctness or otherwise of this aspect of the matter as this Court is convinced that this is a fit case to relegate the writ petitioner to alternate remedy and there shall be a discussion about the same elsewhere in this order. However, it will suffice to say that a perusal of the impugned order reveals that adequate opportunity has been given to the writ petitioner as the writ petitioner has appeared, made his submissions and also sent replies.



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12. This takes us to the arguments regarding penalty. As rightly pointed out by the learned Revenue counsel, the first respondent has only reserved its rights regarding said proceedings but no penalty has been levied. If there are proceedings, it is well open to the writ petitioner to assail the same in a manner known to law and therefore that would be outside the lis that falls for consideration in the captioned main writ petition.

13. This leads this Court to the alternate remedy Rule. There can be no disputation or disagreement that alternate remedy rule is not an absolute rule. In other words, it is a rule of discretion. To put it with greater clarity and specificity, it is not only a rule of discretion it is a self imposed restraint qua writ jurisdiction. On the teeth of this jurisprudential principle Hon'ble Supreme Court starting from ***Dunlop India*** case [***Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd., and others*** reported in (1985) 1 SCC 260] in a long line of case laws has repeatedly held that the alternate remedy rule has to be very strictly enforced with utmost rigour when it comes to fiscal Statute. The other authorities are ***Satyawati Tandon [United Bank of India Vs. Satyawati***



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Tondon and others reported in ***(2010) 8 SCC 110]*** and ***K.C.Mathew***

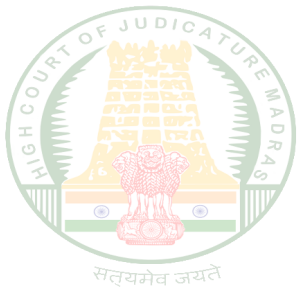
[Authorized Officer, State Bank of Travancore and another Vs. Mathew

K.C. reported in ***(2018) 3 SCC 85]***. Relevant paragraph in ***Dunlop*** case law

is paragraph No.3 and relevant portion of the same reads as follows:

'3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.'

(Underlining made by this Court to supply emphasis and highlight)

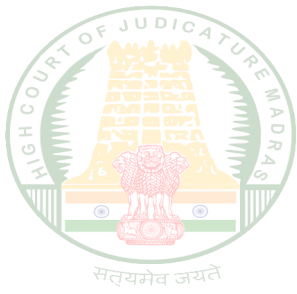


14. **Satyawati Tandon** principle was reiterated by Hon'ble Supreme

Court in **K.C.Mathew** case. Relevant paragraph in **K.C.Mathew** case is paragraph 10 and the same reads as follows:

*'10. In **Satyawati Tandon** the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)*

“43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves



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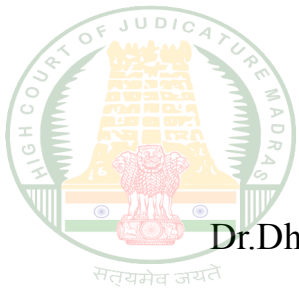
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inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'

(underlining made by this Court to supply emphasis and highlight)

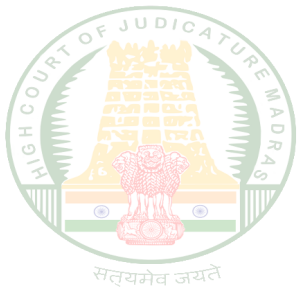
15. One other case law of significance is a recent judgment of a three member Bench of Hon'ble Supreme Court in ***Commercial Steel Limited*** case [***Civil Appeal No 5121 of 2021, The Assistant Commissioner of State Tax and Others Vs. M/s Commercial Steel Limited***]. The three member Bench of the Honble Supreme Court speaking through Hon'ble Justice



Dr.Dhananjaya Y Chandrachud, set out the exceptions to the rule of alternate remedy and made it clear that only in exceptional cases (where the exceptions are attracted), there would be interference in writ jurisdiction. Relevant paragraphs in Commercial Steel Limited case law are paragraph Nos 11 and 12, which read as follows:

'11 The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is: (i) a breach of fundamental rights; (ii) a violation of the principles of natural justice; (iii) an excess of jurisdiction; or (iv) a challenge to the vires of the statute or delegated legislation.

12 In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was CA 5121/2021 7 not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.'

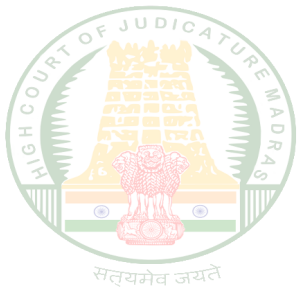


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16. A perusal of aforementioned exceptions make it clear that in the case on hand, none of the exceptions are attracted as would be evident from the narrative (narrative that includes capturing rival submissions) and discussion which has been set out supra. The arguments that there should have been reopening of six previous assessment orders, that the reply from TAMIN ought to have been considered and that the first respondent should not proceeded on the basis of the reply / response of the writ petitioner may well qualify as grounds of appeal but they do not warrant interference in writ jurisdiction as it is neither excess of jurisdiction or any other issue leading to a jurisdictional issue. It is nobody's case that there was any violation of 'principles of natural justice' ('NJP') in the case on hand. Case on hand is not challenge to a statute or subordinate legislation. There is nothing demonstrable qua breach of fundamental rights. To put in a nutshell, none of the ***Commercial Steel*** exceptions are attracted.

17. Furthering the discussion on alternate remedy, this Court notices that the writ petitioner has mentioned about the alternate remedy in paragraph 10 of the writ affidavit and the same reads as follows:

'10. I submit that though I have a statutory remedy of



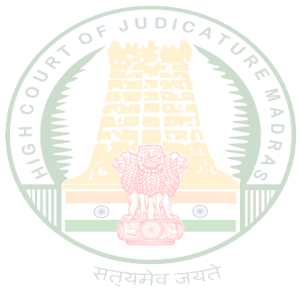
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filing an appeal against the order of the 1st respondent u/s 248 of Income Tax Act. As the assessment itself is an error of law and the disallowance was made contrary to law, the appeal remedy is inadequate and in the words of the Hon'ble Supreme Court of India, the same is an infringement of the right of assessee. The present writ petition is filed under Article 226 of the Constitution of India, as the alternative remedy is inadequate. I crave leave of this Hon'ble Court to raise the following among other grounds.'

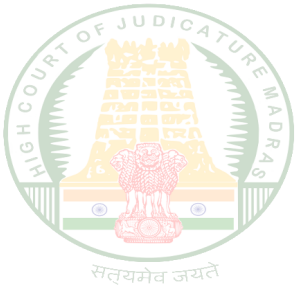
18. A careful perusal of paragraph No.10 of the writ affidavit makes it clear that the writ petitioner is under the impression that appeal remedy is available under Section 248 of the IT Act. Considering the impugned order, it may not be under Section 248 of the IT Act as that pertains to 'Tax Deduction at Source' (TDS). However, in the case on hand, the appeal remedy will be under 246-A of the IT Act. It is not necessary to dilate further on this and for the purposes of this case it will suffice to say that there is a appeal remedy and there is nothing to demonstrate that appeal remedy is not efficacious.



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19. When the appeal remedy is available and there is nothing to demonstrate that it is not efficacious, in the light of the discussion and dispositive reasoning thus far, this Court has no hesitation in holding that this is a fit case for relegating the writ petitioner to the alternate remedy under Section 246-A of IT Act.

20. The sequitur is captioned writ petition or in other words campaign against the impugned order in writ jurisdiction fails and the writ petition is dismissed, albeit, preserving the rights of the writ petitioner to prefer a statutory appeal *inter alia* under Section 246-A of IT Act subject of course to limitation and pre-deposit condition, if any. If the writ petitioner files an appeal, as already alluded to supra, subject to limitation and subject to pre-deposit condition if any, the said appeal shall be considered on its own merits and in accordance with law by the appellate authority. It is also made clear that it is open to the writ petitioner to seek exclusion of time spent in the captioned writ petition under Section 14 of the Limitation Act and if the writ petitioner chooses to do so, the Appellate Authority shall decide the same on its own merits and in accordance with law.



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21. In the light of the main writ petition being dismissed captioned

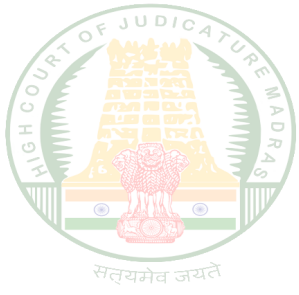
W.M.P.(MD)No.940 of 2017 is also dismissed. There shall be no order as to costs.

10.11.2021

Index : Yes/No
Internet : Yes /No
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Note :

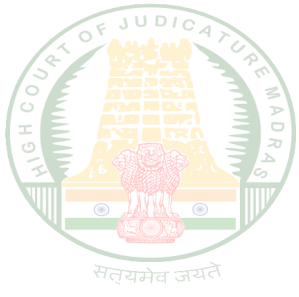
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



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To

1. The Assistant Commissioner of Income Tax,
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