

WP(MD) No.20928 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.11.2021

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD)No.20928 of 2021
and W.M.P.(MD)No.17533 of 2021

Arunachalam Nadar Muthuraj

... Petitioner

Vs.

The Income Tax Officer,
Non Corp, Ward 2(4),
Office of the Income Tax Officer,
Income Tax Department,
No.2, V.P.Rathinasamy Nadar Road,
C.R.Building, Bibikulam,
Madurai – 625 002.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the respondent herein in Order No.ITBA/AST/S/143(3)2019-20/1022866244(1), dated 22.12.2019 and quash the same.

For Petitioner : Mr.R.Krishnamoorthy

For Respondent : Mr.N.Dilipkumar,
Senior Standing Counsel for Income Tax



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ORDER

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In the captioned main writ petition an assessment order dated 22.12.2019 being an assessment order made under Section 143(3) of the 'Income Tax Act 1961' ('IT Act' for the sake of brevity) has been assailed and the same shall hereinafter be referred to as 'impugned order' for the sake of convenience and clarity.

2. Learned counsel for writ petitioner submits that the writ petitioner is a vegetable vendor, he collects cash from wholesale market and deposits the same in the bank account. Be that as it may, owing to the narrow compass on which captioned matter turns short facts will suffice to appreciate this order and those short facts are that a notice dated 21.09.2018 under Section 143(2) of the IT Act was issued followed by a notice under Section 142(1) dated 28.10.2019. The petitioner responded vide a reply dated 02.11.2019. To be noted, this reply was sent after a reminder was sent to the writ petitioner. Thereafter, a show cause notice was issued to the writ petitioner on 29.11.2019 and in response to the show cause notice, writ petitioner produced various documents such as balance sheet, P&L Account

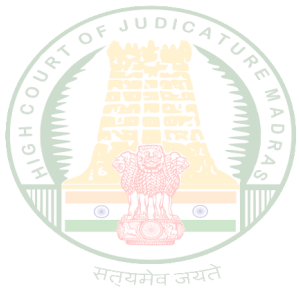


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for financial years 2015-16 and 2016-17, trial balance, details of bank accounts, details of cash deposited month-wise, sales ledger account, purchase ledger account, cash book etc., To be noted, impugned order pertains to the 'Assessment Year 2017-18' (hereinafter 'said AY' for the sake of convenience and clarity).

3. After verifying all the aforementioned documents and after considering the response of the writ petitioner, the impugned order came to be made. To be noted, writ petitioner assessee had explained that he deals mainly with wholesale vegetable sale in cash but vide the impugned order it is seen that the respondent noticed that the assessee has deposited cash in regular intervals and there has been a sudden spurt. After analysis of all these material, the respondent made the impugned order. The assessee pointed out that the cash deposits were transferred to the suppliers by way of any NEFT on the same day but this has been overlooked is learned petitioner counsel's say. All these turn heavily on facts.

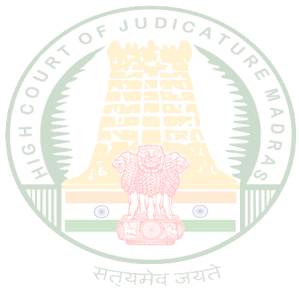
4. Assailing the aforementioned impugned order, writ petitioner has come to this Court.



5. Learned counsel for writ petitioner very fairly submits that the writ petitioner does have an appeal remedy under Sections 246/246(A) of the IT Act and the writ petitioner could not avail of the same owing to COVID-19 situation.

6. Mr.N.Dilipkumar, learned Senior Standing Counsel for Income Tax Department accepted notice on behalf of respondent and owing to the narrow compass on which the captioned writ petition turns (as already alluded to supra), main writ petition was taken up with the consent of both sides.

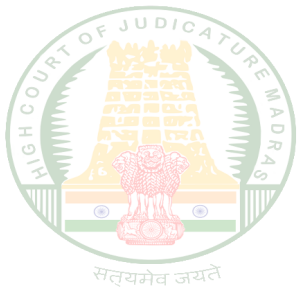
7. As already delineated supra, the matter turns heavily on facts. Learned Revenue Counsel highlighted that an appeal remedy is available and no convincing reason has been given for not availing the appeal remedy. Learned Revenue Counsel also pointed out that there is a provision for condonation of delay qua appeal remedy which is under Chapter XX of IT Act.



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8. I therefore consider the alternate remedy rule. Alternate remedy rule no doubt 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 Statutes. The other authorities are ***Satyawati Tandon [United Bank of India Vs. Satyawati Tandon 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



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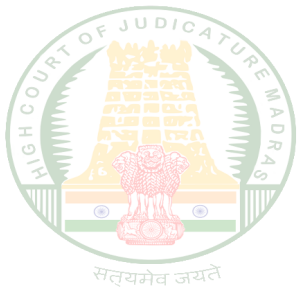
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inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative 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)

9. **Satyawati Tandon** principle was reiterated by Hon'ble Supreme Court in **K.C.Mathew** case. Relevant paragraph in **K.C.Mathew** case law 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 &*

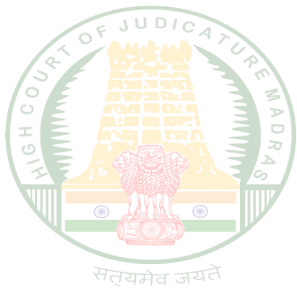


128, Paras 43 & 55)

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“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 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



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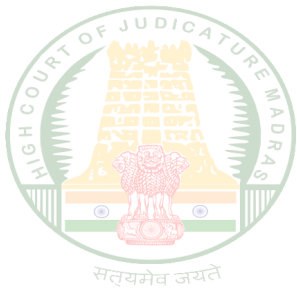
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financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'

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

10. 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***]. A 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



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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.'

11. A careful perusal of the aforementioned exceptions read in juxtaposition with narrative qua case on hand supra make it clear that none of the exceptions are attracted in the instant case and if at all and if that be so, on extreme demurer, a point which comes close to one of the exceptions is ground (b) in the writ affidavit which says that the impugned order has been passed without considering the reply of the writ petitioner. A bare perusal of the impugned order leaves me with the impression that this



ground falls flat on its face as the impugned order has extensively dealt with the reply of the writ petitioner. This is articulated in paragraphs 2 to 5 of the impugned order which read as follows:

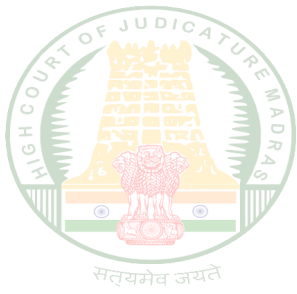
'2. Notice u/s 143(2) under IT Act 1961 was issued on 21.09.2018 and delivered through e-mail as well as hard copy through post was served on 28.09.2018. Notice u/s 142(1) of the IT Act, 1961, requesting details was issued on 09.10.2019 and served on 10.10.2019. Since there was no response, reminder was sent on 28.10.2019. In response, the assessee has filed through ITBA on 02.11.2019 with remarks that the assessee is a vegetable vendor and he collects cash from wholesale market and deposits in bank account. Further the assessee has not furnished any other details as requested in the 142(1) notice.

3. Meanwhile, copies of bank accounts pertaining to assessee was requested u/s 133(6) of the IT Act 1961 and obtained. It is seen from the Bank accounts, the assessee has deposited Rs.28,65,000/- in south Indian Bank A/c.No. 0625073000000060 and Rs.2,00,000/- in Tamil Nadu Mercantile bank A/c. no.093100050128844.

4. Since there was no further response from the assessee show cause notice was issued on 29.11.2019. In response the assessee has furnished the following details:

1. Balance Sheet, Profit & Loss Account for the FY 2015-16 and FY 2016-17

2. Trail balance for the FY 2015-16 and 2016-17



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3.Details of Bank accounts

4.Details of cash deposited month-wise

5.Sales Ledger Account

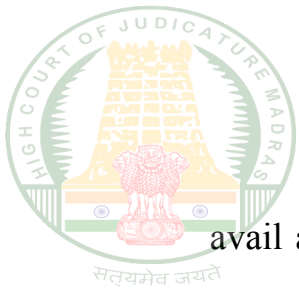
6.Purchase Ledger Account

7.Cash Book

5.The above details are verified. The assessee explained that the cash deposit during demonetization period is out of cash in hand as on 08.11.2016. The details are verified. Further the assessee explained that he deals with mainly wholesale vegetables sales in cash. Also it is seen from the Bank accounts that the assessee deposits cash in regular intervals and the same day transfers the amount through NEFT to suppliers.'

12. In the light of the aforementioned contents of the impugned order, I have no hesitation in coming to the conclusion that none of the exceptions warranting interference in writ jurisdiction in assessment order under IT Act i.e., impugned order has been made out.

13. The sequitur to the discussion and dispositive reasoning thus far is the campaign of the writ petitioner against the impugned order in the captioned main writ petition fails. It is well open to the writ petitioner to



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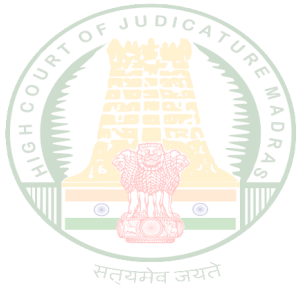
avail alternate remedy *inter alia* under Section 246 / 246A of IT Act. It is also open to the writ petitioner to seek 'condonation of delay' [COD] and if the writ petitioner chooses to take this legal route, the COD prayer of the writ petitioner (if made) will be considered on its own merits and in accordance with law by the appellate authority concerned depending on the provision that is invoked.

14. Ergo, captioned writ petition is dismissed making the aforementioned observations regarding the writ petitioner taking the alternate remedy route and COD therein. Though obvious, it is made clear that this Court has not expressed any view or opinion on the merits of the matter as it would be for the appellate authority to consider the same uninfluenced and untrammelled by any views that may have the trappings of expression of opinion on merits contained in this order. If the writ petitioner chooses to avail alternate remedy. Consequently, connected captioned writ miscellaneous petition is also dismissed. There shall be no order as to costs.

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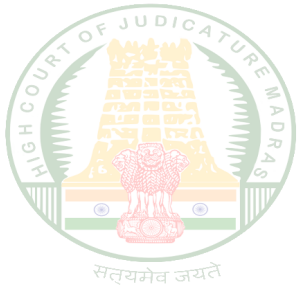
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Note :

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.

To

The Income Tax Officer,
Non Corp, Ward 2(4),
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M.SUNDAR, J.

vsm

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