



IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P. (C) No.15935 of 2024

Jalandhar Sharma

....

Petitioner

Mr. Basudev Panda, Senior Advocate
assisted by Mr. Bijay Panda, Advocate

-versus-

***The Income Tax Officer, Keonjhar
Ward, Jagannathpur, Keonjhar and
others***

....

Opposite Parties

Mr. Subash Chandra Mohanty,
Senior Standing Counsel
(for Income Tax Department)

CORAM:

HON'BLE THE CHIEF JUSTICE

AND

HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER
19.02.2026

Order No.

- 01.**
- 1.** Assailing the assessment order dated 29.02.2024 passed under Section 147 read with Section 144B of the Income Tax Act, 1961 for the Assessment Year 2019-20 by the Assessment Unit, Income Tax Department, National Faceless Assessment Centre, New Delhi (opposite party No.2), the petitioner filed this writ petition on the ground that there has been non-adherence of principles of natural justice.
 - 2.** Mr. Bijay Panda, learned Advocate submitted that the Assessing Officer has proceeded to assess the petitioner on the plea that purchases made by him from the suppliers who were alleged to be bogus. It is vehemently contended that



since the transactions of purchase effected from the suppliers cannot fall within the scope of Income Tax Act, the Assessing Authority lacks jurisdiction to assess the turnover.

3. Expanding his argument further, it was submitted that the petitioner though filed a detailed reply *vide* Annexure-3 series, the Assessing Officer ignored the same and raised huge demand under Section 147 read with Section 144B of the Income Tax Act to the tune of Rs.1,03,57,050/- and also initiated the proceeding under Section 271AAC(1) of the IT Act contemplating to impose penalty. He vehemently contended that such an arbitrary assessment order cannot withstand a judicial scrutiny.
4. Mr. Subash Chandra Mohanty, learned Senior Standing Counsel for the Income Tax Department raised objection that the petitioner has alternative remedy provided under the statute, circumventing which he ought not to have filed the present writ petition.
5. Heard Mr. Basudev Panda, learned Senior Advocate assisted by Mr. Bijay Panda, learned Advocate for the petitioner and Mr. Subash Chandra Mohatny, learned Senior Standing Counsel for the Income Tax Department.
6. Perusal of the record reveals that the papers at Annexure-3 series enclosed with the writ petition indicates that the petitioner has, in fact, furnished reply with certain documents/ evidence to substantiate his claim that the purchases from suppliers were not bogus transactions and are all accounted for.



7. During course of hearing, it is brought to our notice that at paragraph-3.5, the Assessing Authority has recorded the following:

“3.5. Synopsis of reply of the assessee to SCN and additional SCN:

In response to SCN dated 17.01.2024, the assessee request for adjournment which were duly granted twice. However, the assessee did not file any reply/documents. Sufficient time was allowed to the assessee to file his response.”

8. When this Court posed query as regards such recording of fact *vis-à-vis* documents at Annexure-3 series, Mr. Subash Chandra, Mohanty, learned Senior Standing Counsel conceded that said document(s) has not been considered by the Assessing Officer. Faced with such situation, this Court has no other option but to show indulgence in the matter.

The impugned assessment order itself depicts that the authority has not taken cognizance of response to the notice being filed by the Assessee as at Annexure-3 series enclosed to the writ petition. Admittedly, the said explanation claimed to have been offered by the petitioner were not separately dealt with by the Assessing Officer as mandatorily required by the judgment of Supreme Court in *GKN Driveshafts (India) Ltd. Vrs. Income Tax Officer, (2003) 259 ITR 19 (SC)*. On that short ground, the assessment order cannot be countenanced in law and the impugned reassessment order deserves to be set aside.



9. The view expressed by the Hon'ble Supreme Court expressed in the case of *Tin Box Company Vrs. CIT, (2001) 9 SCC 725*, may be apt to be quoted:

“1. *It is unnecessary to go into great detail in these matters for there is a statement in the order of the Tribunal, the fact-finding authority, that reads thus:*

‘We will straight away agree with the assessee’s submission that the ITO had not given to the assessee proper opportunity of being heard.’

2. *That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts. That order must be made after the assessee has been given a reasonable opportunity of setting out his case. We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard.”*

10. Though this Court is conscious about existence of alternative remedy to assail the assessment order before the appellate authority vested to appreciate the evidence, as the appeal is coterminous with the assessment proceeding, having regard to the material on record and taking note of undisputed factual position as emanated from the submissions advanced by the counsel for both the parties, finding that there is violation of basic tenets of natural justice, this Court entertains this writ petition as availability of alternative remedy is not an absolute bar for invocation of power of judicial review. In



Commissioner of Income Tax Vrs. Chhabil Dass Agrawal, (2014)1 SCC 603 it has been held:

- “11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. **It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law.** Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See *State of U.P. Vrs. Mohd. Nooh*, AIR 1958 SC 56; *Titaghur Paper Mills Co. Ltd. Vrs. State of Orissa*, (1983) 2 SCC 433; *Harbanslal Sahnia Vrs. Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107; and *State of H.P. Vrs. Gujarat Ambuja Cement Ltd.*, (2005) 6 SCC 499).
12. The Constitution Benches of this Court in *K.S. Rashid and Son Vrs. Income Tax Investigation Commission*, AIR 1954 SC 207, *Sangram Singh Vrs. Election Tribunal*, AIR 1955 SC 425, *Union of India Vrs. T.R. Varma*, AIR 1957 SC 882, *State of U.P. Vrs. Mohd. Nooh*, AIR 1958 SC 86 and *K.S. Venkataraman and Co. (P) Ltd. Vrs. State of Madras*, AIR 1966 SC 1089 have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. **If the**



High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted. [See N.T. Veluswami Thevar Vrs. G. Raja Nainar, AIR 1959 SC 422, Municipal Council, Khurai Vrs. Kamal Kumar, AIR 1965 SC 1321 = (1965) 2 SCR 653, Siliguri Municipality Vrs. Amalendu Das, (1984) 2 SCC 436, S.T. Muthusami Vrs. K. Natarajan, (1988) 1 SCC 572, Rajasthan SRTC Vrs. Krishna Kant, (1995) 5 SCC 75, Kerala SEB Vrs. Kurien E. Kalathil, (2000) 6 SCC 293, A. Venkatasubbiah Naidu Vrs. S. Chellappan, (2000) 7 SCC 695, L.L. Sudhakar Reddy Vrs. State of A.P., (2001) 6 SCC 634, Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha Vrs. State of Maharashtra, (2001) 8 SCC 509, Pratap Singh Vrs. State of Haryana, (2002) 7 SCC 484 and GKN Driveshafts (India) Ltd. Vrs. ITO, (2003) 1 SCC 72.]

- 11.** As it has already been seen that the petitioner was denied reasonable opportunity and reply submitted to the authority was not considered in its right earnest. In the spirit of the aforesaid decisions, this Court is of the view that the petitioner-assessee is entitled to get a chance to explain before the Assessing Officer by referring to the documents already submitted (*vide* Annexure-3 series). This Court, thus, entertains the writ petition, and sets aside the impugned order dated 29.02.2024 passed by the Assessment Unit, Income Tax Department. The matter is remitted to the assessing officer for passing fresh order and the petitioner in order to avail



opportunity of production of documents and have his say is directed to appear before the authority concerned within two weeks from date along with copy of this order and produce all the relevant material with him before the authority, who shall consider the same and pass fresh order within two months from date after affording opportunity of personal hearing.

12. It is clarified that this Court has not expressed any view or opinion on the merit of the matter. The facts narrated and the observations made hereinabove are for the purpose of appreciating the rival contentions and arguments. The Assessing Officer is not fettered to take independent decision in accordance with law. Needless to say that in the event of failure on the part of the petitioner to comply with the above direction, the impugned assessment order shall revive automatically and the Department shall be at liberty to act on the assessment order dated 29.02.2024 in accordance with law to enforce the demand as raised. As a consequence of above observations made and directions issued, the writ petition stands disposed of along with pending interlocutory applications, if any.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

Signature Not Verified

Digitally Signed
Signed by: BICHITRANANDA SAHOO
Designation: Secretary
Reason: Authentication
Location: Orissa High Court, Cuttack
Date: 24-Feb-2026 11:04:13

