



2025:UHC:7097-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE JUSTICE SRI MANOJ KUMAR TIWARI AND
HON'BLE JUSTICE SRI SUBHASH UPADHYAY

Special Appeal No. 285 of 2015

Director of Income Tax, and others --Appellants

Versus

Dolphin Drilling PTE Limited --Respondent

Advocates:-

Mr. Hari Mohan Bhatia, Advocate for the appellants

Mr. Pulak Raj Mullick, Advocate for the respondent

The Court made the following:

JUDGMENT: (per Hon'ble Justice Sri Manoj Kumar Tiwari)

1. This intra-Court appeal is filed by Director of Income Tax, International Taxation, challenging judgment dated 03.04.2015 rendered by learned Single Judge in Writ Petition (M/S) No. 200 of 2011. By the said judgment, notice issued to respondent under Section 147 read with Section 148 of Income Tax Act, 1961 was set aside. Operative portion of the impugned judgment is extracted below:

“The judgment of Appellate Authority dated 16.02.2010 was assailed before I.T.A.T., however, same was also decided in favour of the assessee. Since, question of ownership and depreciation thereon was accepted twice by the C.I.T. (A) in Assessment Year 2004-05 and 2005-06, therefore, same cannot be allowed to be reopened in the garb of reassessment. Likewise second ground of opinion was also subject matter of the appeal before C.I.T. (A), therefore, same is also not permitted to be reopened in the name of reassessment.

Consequently, writ petition succeeds and is hereby allowed. Impugned notices for re-assessment are hereby quashed.”

2. Appellant has challenged the impugned judgment on the ground that respondent, who filed writ petition, wrongly claimed depreciation to the tune of Rs.



3,05,73,40,212/- by claiming to be owner of a Drilling Ship/Rig, named 'Bellford Dolphin' and the Assessing Officer allowed depreciation amounting to Rs. 1,31,71,89,885/- to respondent under the belief that he is the owner of Drilling Ship/Rig, but it was later revealed that Drilling Ship/Rig named as 'Bellford Dolphin' belonged to another entity, which also claimed depreciation thereupon.

3. Learned counsel for the appellant submits that while passing assessment order in case of another entity, namely, M/s Dolphin Drilling Limited for the Assessment Year 2005-06, it was revealed that drilling ship 'Bellford Dolphin' is owned by Fred Olsen Drilling A.S., who had executed MOU with Dolphin Drilling Limited for making available the above mentioned drilling ship for the purpose of ONGC's deep water tender. Learned counsel for the appellant submits that respondent never disclosed this vital information that drilling ship belongs to some other entity to Income Tax authorities.

4. He further submits that Fred Olsen Drilling A.S. had also written a letter to ONGC that in case Dolphin Drilling Limited gets the contract, Fred Olsen Drilling A.S. will make the vessel available to Dolphin Drilling Limited for use in deep sea prospecting /extraction. He submits that these evidences were received by Income Tax Department from ONGC.

5. Learned counsel for the appellant submits that respondent filed objection to the notice issued to him under Section 148 of Income Tax Act and the Assistant



Director of Income Tax rejected the objection by giving valid reasons vide order dated 20.12.2010. He thus submits that interference with the notice and the order dated 20.12.2010 is unwarranted.

6. It is contended on behalf of the appellant that bar of proviso to Section 147 of Income Tax Act, 1961 is not attracted to the case in hand as before the Appellate Forum, only quantum of depreciation allowable to the assessee was in issue and his eligibility to claim depreciation was not in issue at all. Thus it is contended that the reason given in the impugned judgment for setting aside the notice under Section 148 of Income Tax Act and order dated 20.12.2010 is unsustainable.

7. Learned counsel for the appellant submits that the question of ownership of drilling ship/rig came to be examined in assessment proceedings under Section 143(3)/254 in the case of respondent's related entity namely M/s Dolphin Drilling Limited, where it was found that series of transactions purporting to transfer of ownership of the Rig amongst various closely related entities were supported by proper documentation.

8. Learned counsel for the appellant further submits that respondent wrongly received the benefit of depreciation by making false claim that he was owner of the asset/drillship and when this fact came to the notice of the competent authority, he was justified in forming a belief regarding escapement of income and in issuing notice to the respondent. Thus he submits that interference with the notice made by learned Single



Judge was uncalled for.

9. Per contra, learned counsel for the respondent supported the judgment rendered by learned Single Judge by contending that the notice issued to respondent was barred by second proviso to Section 147 of Income Tax Act, as inserted by Finance Act, 2008, therefore learned Single Judge was justified in interfering with the notice issued to the respondent.

10. The interference by learned Single Judge with the notice issued to respondent under Section 148 of Income Tax Act is based on the premise that question of ownership of Drilling Ship/Rig was accepted twice by C.I.T. (Appeal) in Assessment Year 2004-05 and 2005-2006, therefore, the same issue cannot be allowed to be reopened under the garb of reassessment.

11. We asked learned counsel for the respondent to place the relevant portion of the order passed by C.I.T. (Appeals) or I.T.A.T which indicates that question of ownership of the Drilling Ship/Rig was also in issue before the C.I.T. (Appeals) or I.T.A.T. Learned counsel for the respondent, however, was not able to show anything in the judgment rendered by C.I.T. (Appeals) or Income Tax Appellate Tribunal (I.T.A.T.) which may support the observation made in the impugned judgment that the question of ownership of Drilling Ship/Rig was also decided by C.I.T. (Appeals) or I.T.A.T.

12. Thus, we find substance in the submission made by learned counsel for the appellant that in the Appeal decided by C.I.T. (Appeal) and I.T.A.T., only quantum of



depreciation allowable to the respondent was in issue and the question of his eligibility to claim depreciation or question of ownership of drilling ship, was not in issue at all.

13. The allegation against the respondent is that he wrongly claimed benefit of depreciation, although he knew that he is not eligible for such benefit which can be claimed only by owner of an asset. Since benefit of depreciation was given to respondent and when subsequently it was found that depreciation was wrongly given to him, in such circumstances, notice issued to respondent under Section 148 of Income Tax Act cannot be said to be illegal.

14. This Court finds substance in the submission made by learned counsel for the appellant that respondent should have waited for the assessment proceedings to conclude and he should not have rushed to file a petition under Article 226 of the Constitution, challenging a notice when he had full opportunity to come clean of the allegation by giving reply to the notice, issued to him.

15. Whether respondent is owner of the drilling ship 'Bellford Dolphin' or not, cannot be decided in a writ petition and such disputed question of fact can best be decided by the authorities under Income Tax Act. Despite having statutory remedy, which was more effective, filing of writ petition by respondent cannot be approved of.



16. Hon'ble Supreme Court in the case Commissioner of Income Tax and others v. Chhabil Dass Agarwal, reported in (2014) 1 SCC 603 has held as under:

“14. In *Union of India v. Guwahati Carbon Ltd.* [(2012) 11 SCC 651] this Court has reiterated the aforesaid principle and observed : (SCC p. 653, para 8)

“8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in *Munshi Ram v. Municipal Committee, Chheharta* [(1979) 3 SCC 83 : 1979 SCC (Tax) 205] . In the said decision, this Court was pleased to observe that : (SCC p. 88, para 23)

‘23. ... [when] a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.’”

15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal case* [AIR 1964 SC 1419] , *Titaghur Paper Mills case* [*Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

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* [(1985) 3 SCC 267] 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-eficacious 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.”

17. Similar view was taken by Hon’ble Supreme Court in the case of *Commissioner of Income Tax, Gujarat Vs. Vijaybhai Chandrani*, reported in (2013) 14 SCC 661. Para 11, 12, 13 and 14 of the said judgment are extracted below:-

“11. In the instant case, it transpires from the record that the jurisdictional assessing authority, upon having a reason to believe that the documents seized indicate escapement of income, has issued show-cause notices under Section 153-C to the assessee for reassessment of his income during Assessment Years 2001-2002 to 2006-2007. Thereafter, upon request of the assessee, the assessing authority has furnished him with the copies of documents seized under Section 132-A. The assessee being dissatisfied with the said documents instead of filing his explanation/reply to the show-cause notices, has filed a writ petition before the High Court impugning the said notices.

12. In our considered view, at the said stage of issuance of the notices under Section 153-C, the assessee could have addressed his grievances and explained his stand to the assessing authority by filing an appropriate reply to the said notices instead of filing the writ petition impugning the said notices. It is settled law that when an alternate remedy is available to the aggrieved party, it must exhaust the same before approaching the writ court. In *Bellary Steels & Alloys Ltd. v. CCT* [(2009) 17 SCC 547] , this Court had allowed the assessee therein to withdraw the original writ petition filed before the High Court as the said



proceedings came to be filed against the show-cause notice and observed that the High Court should not have interfered in the matter as the writ petition was filed without even reply to the show-cause notice. This Court further observed as follows: (SCC p. 548, para 3)

“3. ... In the circumstances, we could have dismissed these civil appeals only on the ground of failure to exhaust statutory remedy, but for the fact that huge investments involving the large number of industries is in issue.”

13. We are fortified by the decision of this Court in *Indo Asahi Glass Co. Ltd. v. ITO* [(2002) 10 SCC 444] wherein the assessee had approached this Court against the judgment and order of the High Court which had dismissed the writ petition filed by the assessee wherein challenge was made to the show-cause notice issued by the assessing authority on the ground that alternative remedy was available to the assessee. This Court concurred with the findings and conclusions reached by the High Court and dismissed the said appeal with the following observations: (SCC p. 445, para 5)

“5. This and the other facts cannot be taken up for consideration by this Court for the first time. In our opinion, the High Court was right in coming to the conclusion that it is appropriate for the appellants to file a reply to the show-cause notice and take whatever defence is open to them.”

14. In the present case, the assessee has invoked the writ jurisdiction of the High Court at the first instance without first exhausting the alternate remedies provided under the Act. In our considered opinion, at the said stage of proceedings, the High Court ought not have entertained the writ petition and instead should have directed the assessee to file reply to the said notices and upon receipt of a decision from the assessing authority, if for any reason it is aggrieved by the said decision, to question the same before the forum provided under the Act.”

18. In the present case, the dispute is whether respondent has wrongly claimed depreciation in respect of an asset, which was owned by some other entity. The notice under Section 148 was also issued to respondent to ascertain the fact, whether respondent is owner of drilling ship ‘Bellford Dolphin’. Although C.I.T. (Appeals) and I.T.A.T. had decided the appeals in which quantum of depreciation allowable to the respondent was in issue, however, the question whether



respondent is entitled for depreciation or whether he is owner of the drilling ship, was not considered at all. The question of ownership of drilling ship is a question of fact which could best have been decided by the authorities under Income Tax Act, therefore, we are of the considered opinion that interference made by learned Single Judge in the matter was uncalled for.

19. For the aforesaid reasons, the impugned judgment cannot be sustained in the eyes of law. We allow the appeal and set aside the impugned judgment rendered by learned Single Judge in Writ Petition (M/S) 200 of 2011.

MANOJ KUMAR TIWARI, J.

SUBHASH UPADHYAY, J.

Dt: 12th August, 2025
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Digitally signed by MAHINDER SINGH
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