

Madras High Court

Unknown vs Assistant Commissioner Of Income ... on 15 June, 2021

W.P.Nos.1103 and 1104 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-06-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.1103 and 1104 of 2011

And

W.M.P.Nos.36297 and 36299 of 2018

And

M.P.Nos.1 & 1 of 2011

M/s.Vishwataj Developers Pvt Ltd
Rep.by its Director, Mr.Muralikrishna
Trimex Towers, No.1, Subbaraya Avenue,
C.P.Ramaswamy Road, Alwarpet,
Chennai-018.

(Cause title amended vide order dated
12.07.2019 made in W.M.P.No.19753 of 2019
in W.P.No.1103 of 2011)

.. Petitioner in W.P.No.1103 of 2011

M/s.Rakindo Kovai Township Limited,
Rep.by its Company Secretary,
Mr.S.Sudhakaram,
No.1, Trimex Towers, Subbaraya Avenue
CP Ramasamy Road,
Alwarpet, Chennai-600 018.

.. Petitioner in W.P.No.1104 of 2011

vs.

1/38

W.P.Nos.1103 and 1104 of 2011

1.Assistant Commissioner of Income Tax,
Company Circle V(2),
121, Nungambakkam High Road,
Chennai-34.

2.Assistant Commissioner of Income Tax,
Company Circle V(3),

121, Nungambakkam High Road,
Chennai-34.

3. Deputy Commissioner of Income Tax,
Company Circle V(3),
121, Nungambakkam High Road,
Chennai-34.

.. Respondents in both W.P's

COMMON PRAYER : Writ Petitions filed under Article 226 of the Constitution of India, praying for the issue of Writs of Certiorari, to call for the records in the proceedings Nos.AADCR8015N & AADCR5365H dated 30.12.2010 relating to the Assessment Year 2008-09 on the file of the 1st respondent and quash the same.

In both W.Ps For petitioner : Mr.P.H.Aravind Pandian, Senior Counsel for Mr.G.Baskar.

For Respondents : M/s.Hema Muralikrishnan, Senior Standing Counsel for Income Tax.

W.P.Nos.1103 and 1104 of 2011 COMMONORDER The assessment orders dated 30.12.2010 passed under Section 143(3) of the Income Tax Act, 1961, are under challenge in these writ petitions.

2. It is admitted that the petitioners-Assessees have not preferred any appeal and moved these writ petitions.

3. The learned Senior Counsel, appearing on behalf of the writ petitioners, strenuously contended that it is the case where the respondents themselves admitted certain vital facts and those admitted facts were not considered by the Assessing Authority and therefore, the order impugned is liable to be set aside.

4. The petitioners-Company are registered under the Companies Act and involved in the business to acquire, purchase, hire or obtain by exchange of any land, buildings or other structures, for the purpose of development and for carrying on developmental activities on such lands, W.P.Nos.1103 and 1104 of 2011 buildings or other structures and to rent, transfer, sell or otherwise dispose of such land, buildings, structures, before or after development.

5. It is contended on behalf of petitioners that the share capital made is in accordance with law and the Ministry of Finance in letter dated 19.05.2008 approved the capital share of the petitioners-Company. Clauses 4 and 22 of the said order reads as under:-

4. Foreign Equity Participation (in Foreign Exchange) : 100.00% (One Hundred Percent) amounting to US \$ 250 million in the paid-up capital of M/s.Rakindo Developer Pvt. Ltd., Chennai.

22. In case of any problem encountered during implementation of this foreign collaboration approval, you are advised to contact Foreign Investment Implementation Authority (FIIA) at email address fiia@ub.nic.in or write to Foreign Investment Implementation Authority, Department of

Industrial Policy and Promotion, Ministry of Commerce and Industrial, Udyog Bhawan, New Delhi-110 011. W.P.Nos.1103 and 1104 of 2011

6. Relying on the said order passed by the Government of India, petitioners state that there was no illegal flow of money nor the investment is made in an inappropriate manner. When the share capital was made the approval of the Competent Authorities of the Government of India, there is no reason whatsoever to pass the impugned order of assessment contrary to the legality of investments made by petitioners-

Company.

7. The learned Senior Counsel, appearing on behalf of the petitioners, relied on the averments made in the counter-affidavit filed on behalf of the respondents on 28.10.2018 and paragraph-3 of the said counter-affidavit reads as under:-

3. The averments in paragraphs 1 to 3 need not be traversed upon. The petitioner has in paragraph 4 stated that during the period March 2007 to April 2008, Rakeen (P) Ltd., Mauritius had received a remittance of 30.95 US\$ (Rs.12.75 crores) from its parent company in the UAE viz., Rak Properties PJK UAE and that out of this W.P.Nos.1103 and 1104 of 2011 amount, the Mauritius Company invested in the Share Capital of the Assessee Company.

However, a cursory glance of the financial statement of the UAE Company for the period ending 31.12.2008 indicates that the UAE Company had only invested in the Assessee Company. This shows that the Mauritius Company had simply been used by the UAE Company to hoodwink the taxing authorities in India, whereas actually, it is the UAE Company which has made the investment in the Assessee Company. The averments in paragraph 5 are not traversed upon.

8. In the abovesaid counter, it is stated that during the period March 2007 to April 2008, Rakeen (P) Ltd., Mauritius had received a remittance of 30.95 US\$ (Rs.12.75 crores) from its parent company in the UAE viz., Rak Properties PJK UAE and that out of this amount, the Mauritius Company invested in the Share Capital of the Assessee-

Company. However, a cursory glance of the financial statement of the UAE Company for the period ending 31.12.2008 indicates that the UAE W.P.Nos.1103 and 1104 of 2011 Company had only invested in the Assessee-Company.

9. Relying on the abovesaid statement, it is contended on behalf of petitioners that the legality of investments has been approved by the Competent Authority and admitted by the respondents in the counter-

affidavit. Thus, there is no reason whatsoever to take a contra view in the impugned assessment order.

10. Interestingly, the said averment is nothing but the averment stated by petitioners in paragraph 4 of the affidavit filed in support of the writ petitions and therefore, the said statement cannot be held as admitted by the respondents in the counter-affidavit.

11. When the contentions of petitioners are extracted in the counter-affidavit, that cannot be construed as an admission. By extracting the abovesaid statement in the very same paragraph, the respondents have stated that the Mauritius Company had simply been used by the UAE Company to hoodwink the taxing authorities in India, whereas actually, it is W.P.Nos.1103 and 1104 of 2011 the UAE Company which has made the investment in the Assessees-

Company. Therefore, the mere contention raised by petitioners regarding the alleged admission by the respondents, is incorrect and it is mere extraction of the averments of petitioners in their affidavit.

12. This Court is of the considered opinion that all these mixed question of facts and law are to be adjudicated by the Appellate Authority in the present case with reference to the original documents and evidences.

Such an exercise cannot be done by the High Court in writ proceedings.

13. The transactions made, if any, in a calculated manner, are to be culled out by examining the evidences by the Experts in the field. That is the reason why the Appellate Authorities are vested with the power to adjudicate the facts and law, so as to provide findings in respect of those mixed question of facts and law.

14. The High Court cannot proceed with these complicated facts merely based on the affidavits and counter-affidavits filed by the W.P.Nos.1103 and 1104 of 2011 respective parties. It requires some deliberation and exhaustive enquiry, which is to be done by the Appellate Authority by examining the original documents and evidences. Thus, interference, in such circumstances, in a writ jurisdiction, is not preferable and the High Court may allow Assessees to prefer an appeal, so as to adjudicate the disputed question of facts as well as other legal grounds raised, including the violation of principles of natural justice. The Appellate Authorities are empowered to set aside, modify or to remand the matter back to the Original Authority, as the case may be. When such a power has been conferred on the Appellate Authorities, interference by the High Court in a writ jurisdiction may not be preferable.

15. The learned Senior Counsel, appearing on behalf of writ petitioners, relied on the judgment of the Hon'ble Supreme Court of India in the case of Principal Commissioner of Income Tax 14 vs. Aditya Birla Telecom Ltd [(2021) 125 taxmann.com 85 (SC)].

16. It is contended that the said case relates to Section 68 of the Income Tax Act is also similar and the SLP filed by the Income Tax W.P.Nos.1103 and 1104 of 2011 Department was dismissed.

17. In reply, the learned Senior Standing Counsel, appearing on behalf of respondents, objected the said contention of the learned Senior Counsel for petitioners, by stating that the judgment of the Bombay High Court was challenged before the Supreme Court of India in the said case and perusal of the judgment of the Bombay High Court, there was a categorical finding that investments made by the Assessees are genuine.

Thus, based on the said fact finding made in the judgment of the High Court of Bombay, the Supreme Court dismissed the appeal filed by the Income Tax Department.

18. The leaned Senior Standing Counsel, appearing on behalf of respondents, with reference to the writs on hand, contended that the Assessing Officer himself has made a categorical finding with reference to the nature of transactions and certain discrepancies. More specifically, the order of assessment reveals that the value of US Dollar 12,35,00,000/- is more than dharams for which Rakeen Developers PJSC (FZC), Dubai do not W.P.Nos.1103 and 1104 of 2011 have the source to fund it. In a nutshell, by taking into consideration, the change in shareholding pattern as discussed in pre-para, it is concluded that transfer of amount from Rakeen Developers PJSC (FZC), Dubai to Rakeen (P) Ltd., Mauritius have not been proved.

19. It is further observed in the impugned order that it is seen from the Balance Sheet of the Assessees-Company that the Indian Promoters who had subscribed in the Share Capital are Ms.Vimala Devi for Rs.50,000/- and 9 others for Rs.4,50,000/-. As per Joint Venture Agreement, the Indian Promoters should also bring in equivalent contribution with the Foreign Promoters. From the perusal of the Balance Sheet, it is found that the foreign promoter had brought in 127.52 crores as Share Application Money. Therefore, the Indian Promoters/Share Holders should have made an equivalent contribution. However, only one lakh rupees was shown to have been brought in the form of share capital by the Indian promoters.

20. Relying on the findings in the impugned assessment order, the learned Senior Standing Counsel, appearing on behalf of respondents, W.P.Nos.1103 and 1104 of 2011 reiterated that if at all petitioners possess sufficient evidence to disprove the findings of the Assessing Officer, they have to prefer an appeal under the provisions of the Income Tax Act.

21. This Court is of the considered opinion that when the facts are disputed by the parties to the writs on hand, then the appeal alone would be a proper remedy and in these cases, the Assessees state that there are certain admissions and discrepancies.

22. However, such admissions are denied by the respondents.

Thus, an elaborate adjudication with reference to the original records are certainly imminent. Such an exercise cannot be done by the High Court in writ proceedings. In the event of preferring an appeal, the Assessees are also benefited and more-so adjudication of issues with reference to documents shall be done and thus, petitioners are bound to approach the Appellate Authority as contemplated under the provisions of the Act.

23. Regarding the statutory appellate remedy provided, the W.P.Nos.1103 and 1104 of 2011 principles to be followed are elaborately considered by this Court in W.P.No.3144 of 2016 etc., dated 15.04.2021, wherein the following principles are considered:-

11. This Court is of the considered opinion that all such grounds raised on merits are to be adjudicated with reference to the documents and evidences to be produced and the scope of the writ petition under Article 226 of the Constitution of India cannot be expanded so as to exercise the powers of the appellate authority in the matter of examination or scrutiny of original documents and evidences produced by the respective parties. The very purpose of the statutory appeal is to scrutinize the orders passed by the original authorities, and therefore, the legislative intention in this regard is to be scrupulously followed in the matter of adjudication of merits with reference to the documents and evidences.

12. In common parlance, Statutes contain appeal provisions. In some of the

Statutes, there are two-tier appeal provisions in order to ensure that the facts, grounds, W.P.Nos.1103 and 1104 of 2011 evidences are appreciated and the grievances are redressed in the manner known to law. Such appeal provisions are provided with the legislative intention to provide remedy to the aggrieved persons. The High Court, in normal circumstances, would not interfere nor dispense with the appellate remedy.

13. The High Court cannot adjudicate the facts and merits with reference to documents and evidences. Trial is not entertainable under Article 226 of the Constitution of India. All such procedural aspects are to be followed by complete adjudication/trial by the original authorities as well as by the appellate authorities under the provisions of the Statute and the powers under Article 226 of the Constitution of India is limited to find out whether the processes contemplated under the Statutes and the procedural aspects are followed by the competent authorities as well as the appellate authorities or not. The High Court, under Article 226 of the Constitution of India, is not expected to usurp the powers of the appellate authorities by adjudicating the W.P.Nos.1103 and 1104 of 2011 merits of the matter on certain documents and evidences. In the event of adjudication of merits under Article 226 of the Constitution of India in the absence of complete trial with reference to the documents and evidences, there is a possibility of miscarriage of justice, and therefore, the High Court is expected to be cautious, while entering into the venture of adjudication of certain merits with reference to the original documents and evidences produced by the respective parties to the lis. This being the legislative intention, High Court is expected to trust the institutional authorities as well as the hierarchy of institutions contemplated under the Statutes. Institutional respects are of paramount importance for providing complete justice to the parties and the various stages of adjudication are important for the purpose of correcting omissions, commissions, errors in appreciation of evidence, etc. Powers of the High Court under Article 226 of the Constitution of India cannot be extended nor widened so as to allow lay hands on the facts and circumstances by conducting the trial, nor W.P.Nos.1103 and 1104 of 2011 certain facts and circumstances with reference to documents and evidences can be assumed or presumed or inference can be drawn,

which is not preferable.

14. This Court elaborately discussed the importance of exhausting the appellate remedy in the case of *M/s. Hyundai Motor India Limited v. The Deputy Commissioner of Income Tax, Chennai* and another [W.P.No.22508 of 2017 dated 16.07.2018], from which, the following paragraphs are extracted :

19. Unnecessary or routine invasion into the statutory powers of the competent authorities under a statute should be restrained by the Constitutional Courts. Frequent or unnecessary invasions in the executive power will defeat the constitutional perspectives enshrined under the Constitution of India. Undoubtedly, the separation of powers under the Indian Constitution has been narrated and settled in umpteen number of judgments. Separation of powers demarcated in the Constitution of India is also to be considered, W.P.Nos.1103 and 1104 of 2011 while exercising the powers of judicial review in the matter of dispensing with the appeal remedy provided for an aggrieved person under a statute. If the High Courts started interfering with such Appellate powers without any valid and substantiated reasons, then the very purpose and object of the statute and provision of appeal under the statute became an empty formality and the High Courts also should see that the provisions of appeal contemplated under the statutes are implemented in its real spirit and in accordance with the procedures contemplated under the rules constituted thereon. While entertaining a writ petition as narrated by the Apex Court, the provision of efficacious alternative remedy under the statute also to be considered. If the writ petitions are entertained in a routine manner, by not allowing the competent Appellate authority to exercise their powers under the provisions of the statute, then this Court is of an opinion that the power of judicial review has not exercised in a proper manner. Thus, it is necessary for this Court to W.P.Nos.1103 and 1104 of 2011 elaborate the legal principle settled in respect of the separation of powers under the Constitution of India.

1. *Madras Bar Association vs. Union of India (UOI) (25.09.2014 - SC) :*

MANU/SC/0875/2014

If the historical background, the preamble, the entire scheme of the Constitution, relevant provisions thereof

including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure. (These cannot be catalogued but can only be illustrated):

(1) The supremacy of the Constitution. (2) Republican and Democratic form of government and sovereignty of the country. (3) Secular and federal character of the Constitution.

(4) Demarcation of power between the Legislature, the executive and the judiciary. (5) The dignity of the individual secured by the various freedoms and basic rights in Part W.P.Nos.1103 and 1104 of 2011 III and the mandate to build a welfare State contained in Part IV.

(6) The unity and the integrity of the Nation.

2. Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr. [MANU/SC/0445/1973 : (1973) 4 SCC 225].

That separation of powers between the legislature, the executive and the judiciary is the basic structure of the Constitution is expressly stated by Sikri, C.J.

3. P. Kannadasan and Ors. v. State of T.N. and Ors. [MANU/SC/0650/1996 : (1996) 5 SCC 670] the Supreme Court noted that the Constitution of India recognised the doctrine of separation of powers between the three organs of the State, namely, the legislature, the executive and the judiciary. The Court said:

It must be remembered that our Constitution recognises and incorporates the doctrine of separation of powers between the three organs of the State, viz., the Legislature, the Executive and the Judiciary. Even though the Constitution has adopted the parliamentary W.P.Nos.1103 and 1104 of 2011 form of government where the dividing line between the legislature and the executive becomes thin, the theory of separation of powers is still valid.

4. State of Tamil Nadu and Ors. vs. State of Kerala and Ors. (07.05.2014 - SC) :

MANU/SC/0425/2014

121. On deep reflection of the above discussion, in our opinion, the constitutional principles in the context of Indian Constitution relating to separation of powers between legislature, executive and judiciary may, in brief, be summarized thus:

(i) Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India.

The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law.

In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility W.P.Nos.1103 and 1104 of 2011 are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs- legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of power, the separation of power between legislature, executive and judiciary is not different from the constitutions of the countries which contain express provision for separation of powers.

(ii) Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution.

Separation of judicial power is a significant constitutional principle under the Constitution of India.

(iii) Separation of powers between three organs--legislature, executive and judiciary-- is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may W.P.Nos.1103 and 1104 of 2011 amount to negation of equality Under Article

14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality Under Article 14 of the Constitution.

(iv) The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature (Parliament and State legislatures) void if it is found to have transgressed the constitutional limitations or if it infringed the rights enshrined in Part III of the Constitution.

(v) The doctrine of separation of powers applies to the final judgments of the courts. Legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aligned.

In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

W.P.Nos.1103 and 1104 of 2011

(vi) If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject- matter and whether in making the validation law it removes the defect which the courts had found in the existing law.

20. This Court is of a strong opinion that institutional respects are to be maintained by the constitutional Courts. Whenever there is a provision for an appeal under the statute, without exhausting the remedies available under the statute, no writ petition can be entertained in a routine manner. Only on exceptional circumstances, the remedy of appeal can be waived, if there is a gross injustice or if there is a violation of fundamental rights ensured under the Constitution of India. Otherwise, all the aggrieved persons from and out of the order passed by the original authority is bound to W.P.Nos.1103 and 1104 of 2011 approach the Appellate Authority. The Constitutional Courts cannot make an appeal provision as an empty formality. Every Appellate Authority created under the statute to be trusted in normal circumstances unless there is a specific allegation, which is substantiated in a writ proceedings. Thus, the institutional functions and exhausting the appeal remedies by the aggrieved persons, are to be enforced in all circumstances and writ proceedings can be entertained only on exceptional circumstances. Rule is to prefer an appeal and entertaining a writ is only an exception. This being the legal principles to be followed, this Court cannot entertain the writ petitions in a routine manner by waiving the remedy of appeal provided under the statute.

21. Now, let us look into the legal principles settled by the Apex Court for exhausting the efficacious alternative remedy provided under the statute.

22. When an effective alternative remedy is available, a writ petition cannot be maintained

1. In *City and Industrial Development W.P.Nos.1103 and 1104 of 2011 Corporation v. DosuAardeshirBhiwandiwalla and Ors.* MANU/SC/8250/2008 : (2009) 1 SCC 168, this Court had observed that:

The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

2. *KanaiyalalLalchand Sachdev and Ors. vs. State of Maharashtra and Ors.* (07.02.2011

- SC) : MANU/SC/0103/2011 It is well settled that ordinarily relief Under Articles 226/227 of the Constitution of W.P.Nos.1103 and 1104 of 2011 India is not available if an efficacious alternative remedy is available to any aggrieved person. (See *Sadhana Lodh v. National Insurance Co. Ltd.*; *Surya Dev Rai v. Ram Chander Rai* and *SBI v. Allied Chemical Laboratories.*)

3. *Commissioner of Income Tax and Ors. v. Chhabildass Agarwal*, MANU/SC/0802/2013 : 2014 (1) SCC 603, as follows:

Para 15. 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 *ThansinghNathmal case*, *Titaghur Paper Mills case* 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 W.P.Nos.1103 and 1104 of 2011 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.

4. Authorized Officer, State Bank of Travancore and Ors. vs. Mathew K.C.

(30.01.2018 - SC) : MANU/SC/0054/2018 The petitioner argued that the SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to W.P.Nos.1103 and 1104 of 2011 file a reply. Reliance was placed on United Bank of India vs. Satyawati Tandon and others, 2010 (8) SCC 110, and General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Iqbal and others, 2013 (10) SCC

83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same. The Supreme Court agreed to the arguments and held the same also noted that the writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum.

5. State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd. reported at AIR 2005 SC 3856, the Supreme Court explained the rule of 'alternate remedy' in the following terms: Considering the plea regarding alternative remedy as raised by the appellant-State. Except W.P.Nos.1103 and 1104 of 2011 for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

6. K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors., AIR (1954) SC 207; Sangram Singh v. Election Tribunal, Kotah and Ors., AIR (1955) SC 425;

W.P.Nos.1103 and 1104 of 2011 Union of India v. T.R. Varma, AIR (1957) SC 882; State of U.P. and Ors. v. Mohammad Nooh, AIR (1958) SC 86 and M/s K.S.

Venkataraman and Co. (P) Ltd. v. State of Madras, AIR (1966) SC 1089, Constitution Benches of the Supreme Court held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

7. First Income-Tax Officer, Salem v. M/s. Short Brothers (P) Ltd., [1966] 3 SCR 84 and State of U.P. and Ors. v. M/s. Indian Hume Pipe Co. Ltd., [1977] 2 SCC 724.

W.P.Nos.1103 and 1104 of 2011 There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

15.As far as the judgment of the Hon'ble Supreme Court of India in the case of M/s.Canon India Private Limited (supra) is concerned, as rightly pointed out by the learned Senior Standing Counsels appearing on behalf of the respondents that the matter went to the Hon'ble Apex Court by way of regular appeal and the Hon'ble Supreme Court W.P.Nos.1103 and 1104 of 2011 of India, while adjudicating the final orders passed by the Appellate Tribunal, formed an opinion that the issuance of show cause notice itself was by an improper authority. Thus, by citing the said finding, the appellate remedy otherwise provided under the Statute cannot be dispensed with, and in the event of accepting the said contention, in all such cases, every litigant will approach the High Court by way of writ petition bypassing the appellate remedy, which is not desirable and cannot be accepted. As observed earlier, Institutional respect is of paramount importance. Even the point of jurisdiction, limitation, error apparent on the face of the record, are on merits and all are to be adjudicated before the appellate authority and the appellate authority, more specifically, the Appellate Tribunal or the Commissioner (Appeals), as the case may be, is empowered to adjudicate all such legal grounds raised by the respective parties and make a finding on merits. Thus, usurping the powers of the appellate authorities by the High Court by invoking its powers under Article 226 of the W.P.Nos.1103 and 1104 of 2011 Constitution of India is certainly unwarranted. The parties must be provided an opportunity to approach the appropriate authorities for redressal of their grievances in the manner known to law. In the event of entertaining all such writ petitions, the High Court will not only be over-burdened, but usurping the powers of the appellate authority is certainly not desirable.

16.Jurisdictional error should not result in exoneration of liability. Jurisdictional error, if any committed, is technical, and thus, rectifiable. In such circumstances, the Courts are expected to quash the order passed by an incompetent authority and remand the matter back for fresh adjudication. Contrarily, if an assessee is exonerated from liability, undoubtedly, the purpose and

object of the Act is defeated.

17. The growing practice in the High Court is to file writ petitions under Article 226 of the Constitution of India without exhausting the statutory remedies provided under the Act. The point raised in this regard are statutory W.P.Nos.1103 and 1104 of 2011 violations. However, even such statutory violations can be dealt with by the Appellate authorities or the Appellate Tribunals. This apart, in a writ petition, if such orders passed with jurisdictional errors and quashed without any remand, then an injustice would be caused to the very spirit of the Statute enacted for the benefit of the public at large. Thus, Courts are expected to be cautious, while granting exoneration of liability merely on the ground of jurisdictional errors, if any committed by the authorities competent. On some occasions, jurisdictional errors are committed wantonly or in collusion with the assessee, knowingly that there is a possibility of escaping from the clutches of law. Thus, the higher authorities of the Department are expected to be watchful and review the orders passed by the Subordinate authorities and in the event of any negligence, dereliction of duty, collusion or corrupt activities, then such officials are liable to be prosecuted apart from initiation of departmental disciplinary proceedings. The procedures to be followed in the department for W.P.Nos.1103 and 1104 of 2011 assessment is well settled. Thus, the authorities competent are not expected to commit such jurisdictional errors in a routine manner. In these circumstances, review of such orders by the higher authorities are imminent to form an opinion that there is any willful or intentional act for commission of such jurisdictional errors, enabling the assessee to get exonerated from the liability. Liability and jurisdictional errors are distinct factors, and therefore, Courts are expected to provide an opportunity to the Department to decide the liability on merits and in accordance with law with reference to the provisions of the Act and Rules and guidelines issued by the Department.

18. Large number of writ petitions are filed without exhausting the statutory appeal remedies and High Court is also entertaining such writ petitions in a routine manner. Keeping such writ petitions pending for long time would cause prejudice to the interest of the assessee also. Thus, such statutory provisions regarding the appeal are to be decided at the first instance, enabling the W.P.Nos.1103 and 1104 of 2011 litigants to avail the remedy by following the procedures as contemplated under law. Such writ petitions are filed may be on the ground of jurisdiction or otherwise. However, the Courts are expected to ensure that all such legal grounds available to the parties are adjudicated before the proper Forum and only after exhausting the statutory remedies, writ petitions are to be entertained. In the absence of exhausting such remedies, High Court is losing the benefit of deciding the matter on merits as the High Court cannot conduct a trial or examine the original records in the writ proceedings under Article 226 of the Constitution of India. Thus, the Courts shall not provide an unnecessary opportunity to the assessee to escape from the liability merely on the ground on jurisdictional error, which is rectifiable.

24. This being the facts established, this Court has no hesitation in arriving a conclusion that petitioners have not exhausted the appellate remedy provided under Section 246A of the Income Tax Act. Thus, W.P.Nos.1103 and 1104 of 2011 petitioners are at liberty to prefer an appeal by following the procedures contemplated. In the event of filing any appeal, the Appellate Authority is bound to consider the same and pass orders on merits and in accordance with law and by affording an opportunity to the parties concerned.

25. With the above observations, the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

15-06-2021 Index: Yes/No Internet:Yes/No Speaking order/Non-Speaking Order ssb/Svn To

1.Assistant Commissioner of Income Tax, Company Circle V(2), 121, Nungambakkam High Road, Chennai-34.

2.Assistant Commissioner of Income Tax, Company Circle V(3), 121, Nungambakkam High Road, Chennai-34.

W.P.Nos.1103 and 1104 of 2011 S.M.SUBRAMANIAM, J.

ssb/Svn

3.Deputy Commissioner of Income Tax, Company Circle V(3), 121, Nungambakkam High Road, Chennai-34.

W.P.Nos.1103 and 1104 of 2011 15-06-2021