2024:DHC:3723-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Judgment reserved on: 10 April 2024**
Judgment pronounced on: 08 May 2024

W.P.(C) 5132/2021

SUNITA GOEL ..... Petitioner

Through: Mr. Kapil Goel and Mr. Sandeep Goel, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX CENTRAL, CIRCLE 1, DELHI ..... Respondent

Through: Mr.Sunil Agarwal, Sr.SC with Mr.Shivansh B.Pandya, Jr.SC and Mr.Utkarsh Tiwari, Adv for I.T.Dept.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. The present writ petition, at the instance of the assessee, seeks to assail the order dated 22.04.2021 passed under Section 153C of the Income Tax Act, 1961 [“**Act**”], wherein, an amount of ₹1,62,20,000/- was added to the total income of the assessee for Assessment Year [“**AY**”] 2014-15.

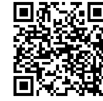
2. The brief facts which are relevant to decide the present controversy are that on 07.11.2014, the assessee filed her Income Tax

Return ["**ITR**"], declaring a total income amounting to ₹39,76,435 for AY 2014-15. Thereafter, on 15.12.2016, a search operation under Section 132 of the Act was conducted at 157, Harsh Vihar, Pitampura, New Delhi against Mr. Hemant Kumar Sharma, Director of M/s. Almina Textiles Pvt Ltd.

3. Consequent to that search, it was revealed that property bearing No. 153, Harsh Vihar, Pitampura, New Delhi was sold by Mr. Hemant Kumar Sharma to the assessee for a total consideration amounting to ₹2,61,70,000/-. It was also revealed during the search proceedings that out of the total consideration received, an amount of ₹99,50,000/- was received through cheque and a balance amount of ₹1,62,20,000/- was received in cash.

4. Thereafter, an assessment order dated 30.12.2018 was passed under Section 153A read with Section 144 of the Act in the case of Mr. Hemant Sharma, wherein, an amount of ₹1,62,20,000/- on account of unexplained money under Section 69A of the Act and ₹21,12,141/- on account of Long Term Capital Gains was added to the total income.

5. Consequently, assessment proceedings under Section 153C of the Act were initiated against the assessee and the assessee was served a notice on 22.12.2020. In response to the aforenoted notice, an ITR was filed on 26.02.2021 declaring total income at ₹39,76,440/-. Pursuant thereto, notice under Section 143(2) of the Act was issued to the assessee on 02.03.2021. Thereafter, on 04.03.2021, questionnaires under Section 142(1) of the Act were issued and details regarding the sale of the property in question were sought.



6. Pursuant thereto, a show cause notice under Section 142(1) of the Act was issued on 06.04.2021, wherein, the assessee was called upon to explain the cash transaction amounting to ₹1,62,20,000/- *qua* the property in question.

7. Thereafter, *vide* notice dated 19.04.2021, the assessee was provided with the satisfaction note and was asked to furnish her objections, if any, by 20.04.2021. Subsequently, on 21.04.2021, the assessee filed her objections in response to the notice dated 19.04.2021. Thereafter, on 22.04.2021, the impugned order under Section 153C of the Act was passed, wherein, an amount of ₹1,62,20,000/- was added to the total income of the assessee. Aggrieved by the said order, the assessee has approached this Court in the instant petition.

8. Mr. Kapil Goel, learned counsel appearing on behalf of the assessee, primarily assailed the impugned order on the ground of violation of principles of natural justice. He submitted that ample opportunity of hearing was not given to the assessee to file her response in the assessment proceedings. He further points out the conduct of the Revenue to substantiate the prejudice caused to the assessee on account of the belated furnishing of satisfaction note to her, only on 19.04.2021 and the assessment order which came to be passed arbitrarily and without due application of mind on 22.04.2021. He further submitted that there was an inordinate delay in initiating the Section 153C proceedings after a gap of four years from the date of search i.e., 15.12.2016 and he placed reliance on the decisions of ***CIT v. Calcutta Knitwears***,[1] ***New Delhi Auto Finance P. Ltd. v. Joint***

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[1] (2014) 6 SCC 444 1977.

CIT,[2] ***Manish Maheshwari v. CIT,***[3] ***Kamal Nath v. CIT***[4]***.*** Furthermore, on the aspect of maintainability of the writ petition, he placed reliance on the decisions of ***Godrej Sara Lee Ltd. v. Excise & Taxation Officer,***[5] ***Tata Steel Ltd v. CIT***[6] and ***Micro Marbles Pvt Ltd v. ITO***[7]***.***

9. Mr. Sunil Agarwal, learned senior standing counsel, appearing on behalf of the Revenue, vehemently opposed the submissions. He submitted that this Court ought not to invoke its writ jurisdiction as the assessee has an alternate efficacious remedy available as per law. He further submitted that right from 22.12.2020, the assessee was provided with the opportunity to file her response and participate in the assessment proceedings but the assessee continued to drag the matter to the fag end of limitation. He further argued that the assessment order nowhere suffers from any infirmity as the Assessing Officer ["**AO**"] has duly applied his mind and passed the assessment order after duly considering the reply filed by the assessee on 21.04.2021. In order to substantiate his arguments, he placed reliance on the decisions of ***Champalal Binani v. CIT,***[8] ***Titaghur Paper Mills Co Ltd v. State of Orissa,***[9] and ***Shrikrishnadas Tikara v. State Govt. of M.P.***[10].

10. We have heard the learned counsel appearing on behalf of the parties and perused the record.

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[2] 2008 SCC OnLine Del 1450.
[3] (2007) 3 SCC 794.
[4] 2023 SCC OnLine Del 1912.
[5] 2023 SCC OnLine SC 95.
[6] 2023 SCC OnLine Del 6987.
[7] 2023 SCC OnLine Raj 58.
[8] (1971) 3 SCC 20.
[9] (1983) 2 SCC 433.
[10] (1977) 2 SCC 741.

11. The solitary issue which stands raised before us is whether before passing the impugned order, an opportunity of hearing was given to the assessee and if the answer is in the affirmative, then whether the AO has duly considered the assessee's reply.

12. The factual matrix of the case would reflect that *vide* notice dated 04.03.2021, the assessee was asked to furnish details of the sale transactions *qua* the property in question, however, the assessee chose not to file her reply. Pursuant thereto, on 06.04.2021 a show cause notice under Section 142(1) of the Act was issued, wherein, the assessee was called upon to explain the cash transaction amounting to ₹1,62,20,000/- *qua* the property in question. For the sake of clarity, the relevant extracts of which are reproduced herein:-

> " **SHOW CAUSE NOTICE**
>
> You have been asked to explain vide notice u/s 142(1) dated 04.03.2021 the issue of cash payment over and above the value of purchase deed for purchasing the property bearing No. 153, measuring 200 SQ Yards situated as Harsh Vihar, Pitampura, Delhi-110034. No reply has been received so far.
>
> You are here by show-caused as to why the cash payment of Rs. 1,62,20,000/- should not be added back to your income during the year under consideration."

13. Thereafter, on 19.04.2021, the assessee was provided with the satisfaction note, which also included the details of the incriminating material and asked to furnish her objections, if any, by 20.04.2021. For the sake of clarity, the relevant extracts of which are reproduced herein:-

PAN: AALPG4093L	Assessment Year:	Dated:	DIN & Letter No. : ITBA/AST/F/17/2021-22/1032522993(1)

Sir/ Madam/ M/s,

Subject: Supply of satisfaction note for your kind perusal and comment and respect of A.Y. 2011-12 to 2017-18

In response to your reply dated 14.04.2021, 15.04.2021 and 16.04.2021 you are hereby given opportunity to comment satisfaction note enclosed with this letter. You are reply should be reach this office positively by 20.04.2021

xxxx xxxx xxx

Sub: - Satisfaction note in the case of Smt. Sunita Gupta for initiation of case u/s 153C of the I.T. Act, 1961 for A.Y. 2014-15, (PAN:AALPG4093L)- Reg.

Kindly refer to the subject mentioned above.

2. In this regard, it is submitted that a search u/s 132 of the I.T. Act, 1961 was conducted on 15.12.2016 in the case of M/s Almina Textiles Pvt. Ltd. formerly known as M/s Gulab Chand Hemant Kumar Textiles Pvt. Ltd. at 153, Harsh Vihar, Pitampura, New Delhi. During search, some incriminating documents were found which were annexed as annexure-A, page no. 1 to 63 at 153, Harsh Vihar, Pitampura, New Delhi and related to Smt. Sunita Gupta, which are enclosed herewith.

3. Further, on the same date search was conducted in the case of Sh. Hemant Kumar Sharma director of M/s Almina Textiles Pvt. Ltd. formerly known as M/s Gulab Chand Hemant Kumar Textiles Pvt. Ltd. situated at 157 Harsh Vihar, Pitampura, New Delhi. During assessment, it is found that Sh. Hemant Kumar Sharma is a brother of Sh. Chandra Mohan Sharma and both have sold a jointly owned property situated at 153, Harsh Vihar. Pitampura, New Delhi in A.Y. 2014-15 to **Smt. Sunita Gupta & M/s Kirtiman Buildtech Pvt. Ltd.** During assessment of Sh. Hemant Kumar Sharma u/s 153A of the 1.T. Act, 1961, it was established that unaccounted amount of Rs. 1,62,20,000/- was received by Sh. Hemant Kumar Sharma and the same fact was duly accepted by Sh. Aditya Sharma S/o Sh. Hemant Kumar Sharma. All the facts which were utilized to draw conclusion in the case of Sh. Hemant Kumar Sharma have been incorporated in the satisfaction drawn in the case of M/s Almina Textiles Pvt. Ltd. formerly known as M/s Gulab Chand Hemant Kumar Textiles Pvt. Ltd. for A.Y. 2014-15

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u/s 153A of I.T. Act. 1961 for the initiation of case of Smt. Sunita Gupta u/s 153C of the I.T. Act, 1961 for A.Y. 2014-15.

4. Perusal of the annexure-A page no. 1 to 63, statement of Sh. Chandra Mohan Sharma recorded us 132(4) of the I.T. Act, 1961 and the facts established during assessment of Sh. Hemant Kumar Sharma show that in A.Y. 2014-15 assessee namely Smt. Sunita Gupta was owner of some unaccounted cash (Rs. 1,62,20,000/- paid in cash for the purchase of residential property 153, Harsh Vihar, Pitampur, New Delhi. Sh. Hemant Kumar Sharma who was the owner of 50% of property confirmed that he received Rs. 1,62,20,000/- in cash in addition to Rs. 99,50,000 in cheque as sale consideration of his property. Since, total cash amount of Rs. 3,24,40,000/- was paid to Sh. Hemant Kumar Sharma & Sh. Chandra Mohan Sharma and the property was jointly purchased by Smt. Sunita Gupta & M/s Kirtiman Buildtech Pvt. Ltd. therefore the portion of cash paid by the assessee is Rs. 1,62,20,000/-) which needs further verification. Being the assessee officer of Smt. Sunita Gupta you are requested to draw your satisfaction and if on the basis of above documents (annexure-A page no. 1 to 63 seized during search in the case of M/s Almina Textiles Pvt. Ltd. formerly known as M/s Gulab Chand Hemant Kumar Textiles Pvt. Ltd. at 153, Harsh Vihar, Pitampura, New Delhi), page 38 & 39 of register-1 seized at the premise of 157, Harsh Vihar, Pitampura, New Delhi in the case of Sh. Hemant Kumar Sharma if you are satisfied to initiate the proceedings u/s 153C of the 1.T. Act, 1961 in the case of Smt. Sunita Gupta (PAN: AALPG4093L) then after recording your satisfaction the same may be initiated."

[Emphasis supplied]

14. On 21.04.2021, the assessee filed her reply and thereafter, on 22.04.2021, the impugned order was passed. The relevant extracts of which are reproduced herein below:-

"7. On the basis of the statement of Sh. Hemant Kumar Sharma recorded on 06.12.2018 u/s 131(1) of the I.T. Act, 1961 and incriminating material Register-1 (page no. 39) as discussed above, it is clear that assessee has made payment of Rs. 1,62,20,000/- in cash for property. Therefore, the assessee has been asked vide notice u/s 142(1) of the I.T. Act, 1961 dated 04.03.2021, to furnish detail of immovable properties owned, acquired/ constructed or sold by him whether in individual name or in the join name with any other person, or in the name of his family members during the year F.Y. 2013-14 (A.Y. 2014-15) wherein property jointly

purchased by Smt. Sunita Goel and payment in cash amounting to Rs. 1,62,20,000/- (as per annexure-register-1, page no. 39) was categorically mentioned.

7.1 In response to notice dated 04.03.2021, no reply has been filed by the assessee. Again, a show-cause notice dated 06.04.2021 has been issued to assessee for explaining as to why cash payment of Rs. 1,62,20,000/- should not be added back to her income for A.Y. 2014-15 on or before 08.04.2021. Copy of satisfaction note has been provided to assessee vide email.

7.2 Assessee filed her submission on 14.04.2021 and 21.04.2021 raising the following objections :-

> 1.Notice u/s 153C has been issued to the assesse on the basis of documents found during search at the place of a third party which at best only showed the tentative/projected purchase consideration without any conclusive evidence of making of any cash payment. In terms of the attached notice, the Assessing Officer has not brought or mentioned even a single word/ satisfaction note to be recorded at the time of issuance of notice u/s 153C by the relevant authorities and relevant permissions obtained for the same. Kindly provide the proof of obtaining of such permission and the copy of satisfaction note.
>
> 2. Assessing officer has simply made presumptions and reasons have been recorded in the satisfaction note on the basis of a piece of paper on presumptions and hear say and that no inquiry or investigation has been made and assessing officer has only relied on his surmises, conjectures and beliefs. As far as the assesse is concerned, the piece of paper relied on by the assessing officer for recording his satisfaction is neither any money, bullion, jewellery or other valuable articles or things or any books of accounts as per the provisions of section 153C.

3. Each state government has a pre-decided valuation of property at a certain area which is the price of the property in that particular area. Further, section 50C and 43CA of the Act have been enacted making circle rate as the guiding principles for valuation of property. In the case of the assessee, the assessee may provide your office with a registered valuation report by an approved valuer for the said property as on the date of the transaction certifying that the valuation of the property on that date is genuine. The same would further corroborate the claim of the assessee in relation to valuation of the property.

7.3 The reply filed by assessee perused but not found tenable and hereby rejected on the following grounds:-

1. There was availability of incriminating material well within the meaning of "incriminating material" in the form of document seized (Regisgter-1, page no. 39) for recording satisfaction note before issuing notice u/s 153C.

The provisions of section 153C of the I.T. Act, 1961 is reproduced as under :-

"person where the assessing officer is satisfied that any money, bullion, jewellery or other valuable articles or ***things seized*** *or requisitioned belongs to or any books of accounts or documents seized or requisitioned pertain to or any information contained therein relates to a person other than person referred to in section 153A, then, the books of accounts or documents or assets seized or requisitioned shall be handed over to the assessing officer having jurisdiction over such other person and that assessing officer shall proceed against each other person and issue such other person notice to assess such person"...." any money, bullion, jewellery or other valuable article documents seized belongs to a person other than the person referred to u/s 153A, the same shall be handed over to the AO having jurisdiction over such other person; and § that AO shall proceed against each such other person, issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that AO is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person (for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and*) for the relevant assessment year or years referred to in sub-section (1) of section 153A.*

2. The satisfaction note is valid as per provisions u/s 153C r.w.s. 153A of the I.T. Act, 1961 through ITBA as well as through email wherein copy/image of incriminating material was available. Further, during assessment proceedings of Sh. Hemant Kumar Sharma for AY 2014-15 u/s 153A Sh. Aditya Sharma S/o Sh.

Hemant Sharma has categorically admitted vide his statement recorded u/s 131(1A) of the I.T. Act, 1961 on 06.12.2018 that the property bearing house no. 153, Harsh Vihar, Pitampura was sold to M/s. Kritiman Buildtech Pvt. Ltd. and Smt. Sunita Goel and total sale consideration received by Sh. Hemant Sharma was Rs. 2,61,70,000/- out of which Rs. 99.5 lakh was received through cheque and Rs. 1,62,20,000/- was received in cash. Department has made proper enquiry and recorded the statement of Sh. Aditya Sharma

3. This type of practice is generalized in nature in the area of Pitampura, where cash payment are being made by the purchaser over and above the value of circle rate as well as sale consideration mentioned in the sale deed. There is no co-relation of circle rate/valuation of the property in presence of valid evidence in the form of incriminating material which clearly tells the story of cash payment by the assessee.

4. All the questions raised by the assessee in its submission is stand invalid in presence of valid and cogent proof in the form of incriminating material which goes against the assessee.

5. The case was centralized to this charge on 09.02.2021. However, ample opportunity has been given to assessee for filing its reply by the department. Further copy of satisfaction note has also been provided to assessee. Assessee remains silent during assessment proceedings and finally filed its reply 14.04.2021 and 21.04.2021. It is pertinent to mention here that the case under consideration is time-barred by 30.04.2021.

6. In the seized document page no. 39 of register-1 is clearly mentioned that there is cash transaction of Rs. 1,62,20,000/- in the same row where the name of the assessee is mentioned.

7. This type of practice is generalized in nature in the area Pitampura, where cash payment are being made by the purchaser over and above the value of circle rate as well as sale consideration mentioned in the sale deed.

In view of the above, it is evident that explanation filed by assessee has no substance and not satisfactory for the purpose of provisions of Section 69A of the Act. Therefore, amount of Rs. 1,62,20,000/- is treated as deemed income of assessee as unexplained money u/s 69A and hereby added to the income. The tax will be calculated as per the provisions of section 115BBE @ 30% of the I.T. Act, 1961.

(Addition-Rs. 1,62,20,000/-) ”

[Emphasis supplied]

15. As it is *ex-facie* evident from the perusal of the impugned order that right from 04.03.2021, the assessee was provided with an opportunity of hearing. Furthermore, a satisfaction note that alludes to the incriminating material, on the basis of which assessment proceeding under Section 153C was initiated, was also duly provided to the assessee. The recitals of the impugned order would also reflect that the AO has appropriately considered the reply of the assessee filed on 21.04.2021 and then passed the impugned order.

16. Moreover, the reliance placed upon decisions of ***New Delhi Auto Finance Pvt. Ltd. (supra), Manish Maheshwari (supra)*** and ***Kamal Nath (supra)*** is entirely misplaced and is not beneficial for the case of assessee on the score that present is not a case, wherein, the AO has not recorded his satisfaction before initiating the Section 153C proceedings or the satisfaction note was not provided to the assessee. It is evident from the recitals of the notice dated 04.03.2021 and show cause notice dated 22.12.2020 that the AO has recorded his satisfaction before initiating the Section 153C proceedings and furthermore, on 19.04.2021, the assessee has been duly provided with the satisfaction note.

17. Furthermore, it is relevant to point out that the assessee chose not to reply to the notice in the initial stage despite having being given ample opportunities of hearing and now after the passing of the assessment order under Section 153C of the Act, the assessee is assailing it on the fulcrum of inordinate delay. Dealing with a similar question, this Court in W.P.(C) 4264/2024 titled ***Indian National Congress v. DCIT*** *vide* order dated 22.03.2024 has noticed the dictum

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laid down by the Supreme Court in the case of ***Calcutta Knitwears (supra),*** which was also relied upon by the assessee in the present case and had ultimately held as follows:-

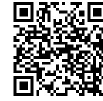
> "30. The question which, however, stands posited for our consideration is whether the Supreme Court when it used the expression "*immediately after*" intended it to be taken in its literal sense and assessments being liable to be annulled on this score alone. We note that an identical question fell for consideration of a Division Bench of our Court in **Commissioner of Income Tax vs Sudhir Dhingra.** The Court in *Sudhir Dhingra* observed as under:-
>
> > "**17.** The application of Calcutta Knitwears was the subject matter of a recently decided case, i.e., CIT v. V. K. Narang HUF (I. T. A. No. 1064 of 2009, decided on January 8, 2015) (2015) 372 ITR 333 (Delhi) where it was observed that (page 336):
> >
> > > "Having regard to the decision in Manish Maheshwari v. Asst. CIT (2007) 289 ITR 341 (SC) this court is of the opinion that the satisfaction note in the present case meets with the requirements of law. <u>So far as the question of delay is concerned, the court is of the opinion that in the facts and circumstances of the present case, it cannot be held that there was any delay in recording the satisfaction note. The assessment of the searched person was completed on December 31, 2001. The satisfaction note was recorded on May 30, 2002, i.e., just about five months after the date of completion of the searched person. Notice was issued on June 3, 2002, immediately after the satisfaction note was recorded to the present assessee.</u>
> > >
> > > <u>Having regard to the declaration of law made by the Supreme Court which specified three possible points in time when notice under section 158BD can be issued to third party/assessee, on the basis of material found on the premises of the searched person, the period of five months spent by the Assessing Officer of the searched person in finalizing the satisfaction note, can be said to have been proximate to the assessment proceedings</u>. We also recollect the decision of this court in CIT v. Raghubir Singh Garg (I. T. A.

No. 1420 of 2010, decided on August 27, 2014) (2015) 4 ITR-OL 256 (Delhi). In that case, the search took place on August 29, 2002, and the satisfaction note was recorded on January 16, 2003, i.e., within a period of four-and-half months. The court was of the opinion that the satisfaction note could be upheld. Following the said decision it is held that there was no delay in issuance of notice under section 158BD in the facts of the case."

18. In light of the aforementioned position of law this court finds that the delay of 5 months in the issuing of notice by the Assessing Officer in the present appeals cannot be unreasonable. Accordingly, the impugned orders of the Income-tax Appellate Tribunal dated April 4, 2008, and April 17, 2009, is set aside on this aspect. The satisfaction note is held to be validly issued and within a reasonable time. In the light of the above observations of the Supreme Court in Calcutta Knitwears, particularly the contextual facts discussed (i.e., completion of the searched party's assessment on March 31, 2005, satisfaction note under section 158BD issued on July 15, 2005, and notice issued on February 10, 2006) it cannot be said that the delay in issuing the notice (although the satisfaction note was recorded within reasonable time) was fatal to the block assessment against the present assessee."

31. As would be evident from the aforesaid passages, the Court chose to adopt the principle of unreasonable delay in initiation of proceedings. It thus appears to have taken the position that as a long as proceedings are initiated within a reasonable period from the closure of assessment of the searched person, a failure to take "immediate" action would not be fatal to the assessment. It is thus evident that *Calcutta Knitwears* and the expression "*immediately after*" as appearing therein has not been construed or understood as being an expression of inflexible hues. What appears to have been frowned upon is inordinate delay. The question of whether delay is inordinate and consequently warranting quashing of the assessment proceedings itself, would inevitably be a question of fact which would have to be answered in the facts and circumstances of each case. We would also and necessarily have to bear in consideration the scope, extent and complexity of the investigation and enquiry which may have preceded the initiation of proceedings under Section 153C. However, we find ourselves unconvinced to hold in favour of the petitioner on this score for reasons which follow. "

[Emphasis supplied]



18. Additionally, on the question of maintainibility of the writ petition, wherein, the alternate efficacious remedy exists, the assessee placed reliance on the decisions of ***Godrej Sara Lee Ltd. (supra), Tata Steel Ltd (supra)*** and ***Micro Marbles Pvt Ltd (supra).*** There is no doubt over the principles that emerged in the abovenoted decisions as well as the principles crystallized in the decisions of the Supreme Court in the cases of ***Whirpool Corporation v. Registrar of Trademarks, Mumbai***[11] and ***Harbanslal Sahni v. Indian Oil Corporation Ltd***[12]. Furthermore, in the case of ***Radha Krishan Industries v. State of Himachal Pradesh & Ors,***[13] wherein, the Supreme Court has summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy and observed as follows:-

> "27. The principles of law which emerge are that:
>
> 27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.
>
> 27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.
>
> **27.3. Exceptions to the rule of alternate remedy arise where : (*a*) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (*b*) there has been a violation of the principles of natural justice; (*c*) the order or proceedings are wholly without jurisdiction; or (*d*) the vires of a legislation is challenged.**

[11] (1998) 8 SCC 1.
[12] (2003) 2 SCC 107.
[13] 2021 SCC OnLine SC 334.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

[Emphasis supplied]

19. Taking a cue from the principles emerging from the judicial pronouncements noted above, this Court can exercise the writ jurisdiction, in the presence of an alternate efficacious remedy, on the quartet of exigencies namely where; (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of legislation is challenged. However, it is crystal clear that the present is not the case where the principles of natural justice have not been met or the AO has not duly applied his mind before passing the impugned order. Therefore, there is no occasion for this Court to exercise the extraordinary powers enshrined under Article 226 of the Constitution as none of the exigencies noted above have been met in the instant case.

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20. Therefore, on the touchstone of the abovenoted discussion, we find ourselves unable to invoke writ jurisdiction to set aside the impugned order.

21. In view of the foregoing reasons, the writ petition is dismissed and disposed of, along with pending applications, if any. Needless to state the assessee is at liberty to avail any other alternate remedy as may be available to her, in accordance with the law.

22. We make it clear that the observations made hereinabove should not be construed to be an expression on the merits of the case or otherwise. The parties are at liberty to take all pleas and contentions in accordance with the law. The same be dealt with in accordance with law.

PURUSHAINDRA KUMAR KAURAV, J.

YASHWANT VARMA, J.

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