

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) No.7792/2008**

Reserved on: 8th December, 2009

Date of Decision: 23rd December, 2009

RAHULIJEE & COMPANY PVT. LTD. Petitioner

Through: Mr. P.L. Juneja, Adv.

versus

INCOME TAX APPELLATE TRIBUNAL & ORS.

..... Respondents

Through: Mr. Subhash Bansal, Adv.

% **CORAM:**

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. At the very outset it is relevant to observe that the main body of the instant petition is totally bereft of material and necessary facts and particulars. The only reference to the facts is by way of list of dates and events annexed to the writ petition which is reproduced as under:-

"LIST OF DATES & EVENTS

List of dated in chronological order is hereunder.

This writ is directed against order dated 24.02.06 of the Income Tax Appellate Tribunal passed in the appeal dismissing the rectification application of the petitioner.

- 1989 The Petitioner has filed the appeal before Income Tax Appellate Tribunal mainly on following points:
1. Claim for damages by the – Rs.14,04,483/- customer
 2. Payment made to Mr. Sunil Kumar – Rs.2,00,000/-
 3. Expenses estimated to have been – Rs.80,000/- incurred
 4. Foreign Travel of Sh. Pawan Goel – Rs.17,122/-
 5. Disallowance of Rs.16,088/- u/s 40A (3)
 6. Interest u/s 217 be consequently reduced
- 17.09.90 The Appeal was partly allowed by allowing claim of Rs.80,000/- only i.e. item No.3 above.
- 28.07.92 The Appellant moved rectification application for rectification of order dt. 17.09.90 before Income Tax Appellate Tribunal.
- 24.02.06 The Income Tax Appellate Tribunal dismissed the rectification application of the Appellant.
- 10.03.06 The Appellant has moved second rectification application before ITAT, Delhi.
- 15.09.06 The Income Tax Appellate Tribunal, Delhi, dismissed the second rectification application of appellant as not maintainable.
- March 2007 Writ directed against orders dated 17.9.90 and 24.02.06 “

2. It is trite to state that a petition under Article 226 of the Constitution of India must necessarily state clearly all the material facts, right which has been infringed, ground or grounds on which the relief is claimed and the nature of relief sought. A petition challenging an action of an authority as arbitrary, discretionary or unreasonable must clearly indicate how and in what manner it is

violative of Article 14,16 or 19 of the Constitution. The necessary facts and particulars have to be expressly furnished in the petition. No particulars have been stated in the instant petition and the petition deserves to be dismissed on this ground alone.

3. We also observe from the list of dates and events and the prayer clause in the writ petition that the challenge in the writ petition is to the order of the Income Tax Appellate Tribunal dated 17th September, 1990 and the two rectification orders dated 24th February, 2006 and 15th September, 2006 passed by the said Tribunal in the rectification applications filed on behalf of the Petitioner.

4. From the submissions of the counsel appearing on behalf of the Petitioner, it is noticed that the questions sought to be raised under Articles 265 and 300A of the Constitution of India, relate to the right of the Petitioner to be taxed on net income and not on the gross income, as has purportedly been done by the tax authorities below including the Tribunal, according to the Petitioner.

5. In taxing matters the Hon'ble Supreme Court has taken a view that High Court should not convert itself into an original authority or an appellate authority in such matters while exercising its jurisdiction under Article 226 of the Constitution of India and the aggrieved party must be relegated to avail the alternative remedy provided under the statute. It is observed that the taxing statute namely, the Income Tax Act, provides a complete machinery for assessment of tax and for obtaining relief in respect of any improper orders passed by the authority. The Petitioner must, therefore, resort to the statutory remedies and cannot be permitted to invoke the jurisdiction of the High Court under Article 226 of the Constitution. The High Court in

exercise of its extraordinary jurisdiction in matters relating to assessment, levy and collection of tax, may exercise jurisdiction only when question of infringement of fundamental rights arise, or where on undisputed facts the taxing authorities are shown to have assumed jurisdiction, which they do not possess. However, with regards to the rights other than fundamental rights, such as right sought to be raised in the instant petition, the High Court ought not to exercise its jurisdiction under Article 226 of the Constitution, when an alternative, adequate and equally efficacious remedy is available to the Petitioner.

6. In the present case the Petitioner seeks to assail the order passed by the Tribunal, partly allowing the appeal of the Petitioner against the order of the Commissioner of Income Tax (Appeals) in respect of the assessment year 1988-89. The impugned order is evidently appealable under Section 260A of the Income Tax Act, 1961. Consequently, an action lies under the Income Tax Act, 1961. Therefore, in our view where a statute creates a right or liability and also prescribes the remedy or procedure for the enforcement of that right or liability, resort must be had to the said statutory remedy rather than invoking the extraordinary and prerogative writ jurisdiction of this Court under Article 226 of the Constitution of India. This principle is applied with greater force to matters arising out of the taxing statute.

7. In *Titaghur Dhar Paper Mills Company Limited vs. State of Orissa & Ors.-AIR 1983 SC 603* the Supreme Court observed that:

“The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the

Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.”

8. We are thus constrained to dismiss the petition on the short ground that the Petitioners have an equally efficacious alternative remedy by way of an appeal.

SIDDHARTH MRIDUL, J.

A.K. SIKRI, J.

DECEMBER 23, 2009

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