

IN THE HIGH COURT OF MADRAS

W.P.No.851 of 2009

N MEENAKSHI

Vs

THE ASSTT COMMISSIONER OF INCOME TAX, CHENNAI

P Jyothimani, J

Dated : September 11, 2009

Appellant Rep. by : Mr.V.Ramachandran, Sr.Counsel

Respondent Rep. by : Mr. Patti B. Jaganathan SCGSC

Income Tax – Property sold to IOCL for Rs. 99 Lakhs – Registration value Rs. 3.92 Crores – AO passes order before getting Valuation Officer's Report - the right of an assessee conferred under Section 50C of the Act is a valuable statutory right: Alternative remedy cannot be a bar for writ where fundamental right is breached or there is violation of the statutory provisions

JUDGEMENT

The writ petition is directed against the assessment order of the respondent dated 31.12.2008 by which the respondent, having referred the matter to the Valuation Cell on 17.12.2008 as per Section 50C(2) of the Income Tax Act, 1961 (for brevity, "the Act"), completed the assessment by invoking Section 50C of the Act by taking the value of land as determined for stamp duty purpose as the sale value, as no valuation report was received from the Valuation Cell till the said date.

2.1. The petitioner was the owner of a plot of land comprised in R.S.No.3123/2, Block No.51, Old No.258 (New No.849), Poonamallee High Road, Purasawalkam, Chennai. She leased out the said portion of land to the Indian Oil Corporation for more than 40 years in which the Corporation was operating a

petrol bunk. The petitioner, having decided to sell the property to the Indian Oil Corporation, after negotiation, fixed the sale consideration at Rs.99 Lakhs. Pursuant to the agreement, a sale deed was executed in favour of the Indian Oil Corporation. Since there was a capital gain on the sale, the petitioner offered the capital gains for assessment based on the actual consideration received by her, namely Rs.99 Lakhs and paid capital gains tax. However, the Registering Authority adopted the guideline value of the property which comes to Rs.3,92,68,800/- and levied stamp duty and the Indian Oil Corporation which is the purchaser has also paid stamp duty on the said amount.

2.2. According to the petitioner, in these circumstances, the Assessing Authority proposed to assess the capital gains on the basis of the value adopted by the Stamp Authorities which was in excess of actual consideration received by the petitioner and the petitioner filed a writ petition challenging the vires of Section 50C of the Act, which was dismissed. The matter was also ultimately decided by the Supreme Court by rejecting the SLP and directing the petitioner to approach the authorities by keeping open the question of vires of the provision.

2.3. Thereafter, the Assessing Authority proposed to assess the capital gain on the value fixed by the Stamp Authorities. The petitioner made a request to the Assessing Authority to refer the matter to the Valuation Officer for determining the market value of the property and the reference was made to the Valuation Officer in the course of the assessment proceedings. However, even before the Valuation Officer filed a report, the Assessing Authority passed the assessment order taking the value of the land as determined by the Registering Authority, which according to the petitioner is against Section 50C(2) of the Act.

2.4. The assessment is challenged on the grounds that it is opposed to Section 50C of the Act; that it is opposed to principles of natural justice; that, admittedly, the Valuation Officer's report has not been received before 31.12.2008 and the Assessing Authority has passed the assessment order urgently; and that even though there is a right of appeal available against the assessment order inasmuch as the order is said to be without jurisdiction the present writ petition is maintainable.

3.1. Mr.V.Ramachandran, learned Senior Counsel appearing for the petitioner would submit that the Supreme Court while upholding Section 50C(2) of the Act has kept open the issue relating to its validity. He would rely upon an order of this Court dated 22.4.2009 made in W.P.No.2092 of 2009 in an identical situation. It is his contention that there was no opportunity given before passing such order and the order itself is without jurisdiction since at the request of the petitioner the matter has been referred for the purpose of valuation and the assessment has been passed without the valuation report.

3.2. It is his submission that Section 55A of the Act cannot be invoked as that provision empowers the Assessing Authority to refer for valuation, while Section 50C(2) of the Act is the right of the assessee.

3.3. It is his submission that the valuation for the purpose of stamp duty and the dispute therein under Section 47A of the Indian Stamp Act is by the purchaser in the present case. Even though either of the parties, namely the vendor or the purchaser can raise such objection, in the present case, the petitioner being the vendor can raise his objection under Section 50C(2) of the Act.

3.4. He would also refer to Section 153(1) and 153(3) of the Act, especially with reference to the term "any time" and contend that any time which may be given by the Court will come within the meaning of the same saving the period of limitation, as it was held in the the order dated 22.4.2009 made in W.P.No.2092 of 2009.

4.1. On the other hand, it is the contention of Mr.Patti B.Jaganathan, learned counsel appearing for the respondent that when the assessment was made as per the value determined under Section 47A of the Indian Stamp Act, the petitioner has not raised any objection and therefore, there is no bar on the part of the Department from passing the impugned assessment order.

4.2. It is his submission that the Assessing Authority has to pass orders within one year and that time cannot be extended by any one and therefore, the order passed without waiting for the report from the Valuation Officer is perfectly valid.

4.3. He would distinguish between Section 50C and Section 55A of the Act by referring to the judgment of the Bombay High Court in Rallis India Ltd. v. Deputy Commissioner of Income Tax and others, [2006] 284 ITR 159 (Bom). He would also rely upon the

judgments in Bombay Metropolitan Regional Development Authority, Bombay v. Gokak Patel Volkart Ltd. and others, [1995] 1 SCC 642 and Auto & Metal Engineers v. Union of India, [1998] 229 ITR 399 (SC).

4.4. That apart, he would submit that an effective alternative remedy of appeal is available under Section 246A of the Act and rely upon the judgment in M/s.Nivaram Pharma Private Limited v. The Customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench, Madras and others, [2005] 2 MLJ 246. He would submit that the writ petition is not maintainable.

5. I have heard the learned Senior Counsel for the petitioner and the learned counsel for the respondent and given my anxious thought to the issue involved in this case.

6. The fact that petitioner has sold the property in favour of the Indian Oil Corporation for Rs.99 Lakhs is not in dispute and the same is borne out by records. The further fact that for the purpose of assessment of stamp duty under the Indian Stamp Act, the Registering Authority has assessed the actual value of the property at Rs.3,92,68,800/- is also not in dispute. But, the fact is that the purchaser Indian Oil Corporation, which is a Government concern, having paid Rs.99 Lakhs as sale consideration to the petitioner has accepted the stamp duty on the valuation of Rs.3,92,68,800/- and paid the stamp duty accordingly. It is also true that the purchaser having paid the stamp duty, has not raised any dispute or filed any appeal and the matter has come to an end at that stage. Thus, when the Assessing Authority is well within his right to assess the capital gain on the basis of the registration value of the property, it was objected to by the petitioner by her letter dated 17.12.2008 requesting the matter to be referred to the valuation cell as per Section 50C(2) of the Act. It is also true that the Valuation Officer has not submitted his valuation report and in those circumstances, taking note of the fact that the assessment has to be completed within a period of one year as per Section 143(3) of the Act, the impugned assessment order came to be passed without waiting for the valuation report.

7. Section 153 of the Act which prescribes time limit for completion of assessments and reassessments which may be either under Sections 143 or 144 of the Act, no doubt contemplates that the assessment order should be passed within a period of two years from the end of the assessment year in which the income was first assessable; or one

year from the end of the financial year in which a return or a revised return relating to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, is filed under sub-section (4) or sub-section (5) of Section 139, whichever is later and the periods of limitation are varied by insertion through Finance Act, 2006 with effect from 1.6.2006 and Finance Act, 2007 with effect from 1.6.2007. However, Section 153(3) of the Act exempts the said period of limitation in certain cases where the assessment, reassessment or recomputation is made as per the direction "in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act." That apart, there are many other instances like the period of stay or injunction granted by this Court which are exempted. Further, where, after the exclusion of the said period prescribed under Section 153(3)(ii) of the Act, the period of limitation available to the Assessing Officer to make an order of assessment is less than sixty days, such period can be extended by another sixty days. Section 153(3) of the Act is as follows:

"Section:153. Time limit for completion of assessments and reassessments.

(1) & (2) *****

(3) The provisions of sub-sections (1), (1A), (1B) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may, subject to the provisions of sub-section (2A), be completed at any time

(i) [***]

(ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, 254, 260, 262, 263 or 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act ;

(iii) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147.

Explanation 1. In computing the period of limitation for the purposes of this section -

(i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to section 129, or

(ii) the period during which the assessment proceeding is stayed by an order or injunction of any court, or

(iia) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of clause (21) or clause (22B) or clause (23A) or clause (23B) or sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, under clause (i) of the proviso to sub-section (3) of section 143 and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, under those clauses is received by the Assessing Officer;

(iii) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section, or

(iv) * * *

(iva) the period (not exceeding sixty days) commencing from the date on which the Assessing Officer received the declaration under sub-section (1) of section 158A and ending with the date on which the order under sub-section (3) of that section is made by him, or

(v) in a case where an application made before the Income-tax Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is received by the Commissioner under sub-section (2) of that section, or

(vi) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Commissioner under sub-section (3) of section 245R, or

(vii) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the

date on which the advance ruling pronounced by it is received by the Commissioner under sub-section (7) of section 245R,

shall be excluded :

Provided that where immediately after the exclusion of the aforesaid time or period, the period of limitation referred to in sub-sections (1), (1A), (1B), (2), (2A) and (4) available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly."

8. Therefore, as per the reading of Section 153(3) of the Act, it is clear that even though the assessment has to be made by the Assessing Authority within the period stipulated under the Act, such period of stipulation would not apply in cases where the assessment is made on a direction as per an order of an Appellate Authority or the Appellate Tribunal as per Section 250 or Section 254 of the Act, or the Supreme Court and the National Tax Tribunal as per Section 260 or Section 262 of the Act, or by the Revisional Authority in respect of orders prejudicial to the revenue under Section 263 of the Act, or other revision orders under Section 264 of the Act, apart from an order of any court in a proceeding other than the appeal or reference which saves the time limit which may be either given by any court which includes High Court exercising writ jurisdiction under Article 226 of the Constitution of India or otherwise.

9. The order dated 22.4.2009 made in W.P.No.2092 of 2009 by S.Nagamuthu,J. is under similar circumstances as that of the present facts of the case, wherein irrespective of the Valuation Officer's report assessment has been made. The learned Judge while setting aside the assessment has directed the Assessing Authority to pass fresh order of assessment after obtaining valuation certificate and by such direction, the period of assessment certainly stands extended by virtue of Section 153(3)(ii) of the Act.

10. As far as reference for estimation by Valuation Officer is concerned, under the Act there are three circumstances:

(i) In cases of amounts of investments, etc., not fully disclosed in the books of accounts or unexplained expenditure as it is seen under Sections 69B and 69C of the Act, which are as follows:

"Section:69B. Amount of investments, etc., not fully disclosed in books of account.-

Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.

Section:69C.Unexplained expenditure, etc.-

Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year :

Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.",

the Assessing Officer has a discretion to require the Valuation Officer to make an estimate of such value and report under Section 142A of the Act, which is as follows:

"Section:142A. Estimate by Valuation Officer in certain cases.

(1) For the purposes of making an assessment or reassessment under this Act, where an estimate of the value of any investment referred to in section 69 or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or

section 69B is required to be made, the Assessing Officer may require the Valuation Officer to make an estimate of such value and report the same to him.

(2) The Valuation Officer to whom a reference is made under sub-section (1) shall, for the purposes of dealing with such reference, have all the powers that he has under section 38A of the Wealth-tax Act, 1957 (27 of 1957).

(3) On receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in making such assessment or reassessment:

Provided that nothing contained in this section shall apply in respect of an assessment made on or before the 30th day of September, 2004, and where such assessment has become final and conclusive on or before that date, except in cases where a reassessment is required to be made in accordance with the provisions of section 153A.

Explanation. In this section, Valuation Officer has the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957)."

(ii) Cases covered under Section 55A of the Act, where, for the purpose of ascertaining the fair market value of the capital asset, the Assessing Officer is empowered to refer the valuation of the capital asset to the Valuation Officer. Section 55A of the Act is as follows:

"Section:55A. Reference to Valuation Officer.-

With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the Assessing Officer may refer the valuation of capital asset to a Valuation Officer

(a) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the Assessing Officer is of opinion that the value so claimed is less than its fair market value;

(b) in any other case, if the Assessing Officer is of opinion

(i) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage of the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf ; or

(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do,

and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clauses (ha) and (i) of sub-section (1) and sub-sections (3A) and (4) of section 23, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall with the necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation. In this section, Valuation Officer has the same meaning, as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957)."

Either Section 50C or Section 55A of the Act, they all relate to capital gains. Section 55A of the Act deals with the ascertainment of the fair market value, conferring such power to the Assessing Officer. While construing the said Section 55A of the Act, the Bombay High Court in *Rallis India Ltd. v. Deputy Commissioner of Income Tax and others*, [2006] 284 ITR 159 (Bom), observing that Section 55A of the Act does not prohibit ascertainment of the fair market value after the assessment order is passed by the Assessing Officer, held that the very purpose of ascertainment of the fair market value of the capital asset under Section 55A of the Act is for the purpose of computing total income of the assessee which would enable him to pass assessment order and therefore, after the assessment order is passed there is no jurisdiction on the part of the Assessing Officer to refer to the Valuation Officer. The relevant portion of the said judgment is as follows:

"Mr.D.S.Chopra, counsel for the Revenue submitted that section 55A did not prohibit the ascertainment of the fair market value of the capital asset of the assessee for the purposes of capital gains after the assessment order has been passed by the Assessing Officer. He is right that section 55A does not specifically prohibit so but it was not required to be prohibited specifically in section 55A as the very purpose of ascertaining

the fair market value of the capital assets of an assessee for capital gains by the Assessing Officer is for the purposes of computing the total income of the assessee which may enable him to pass the assessment order. If counsel for the Revenue wants to suggest that even after the assessment order has been passed by the Assessing Officer, by way of an academic exercise or to satisfy himself that he correctly determined the value of the property while computing the total income, he referred the matter for valuation, we are afraid, he is wrong. The entire exercise of reference to the Valuation Officer for ascertaining the fair market value of the capital assets of an assessee is for the purposes of computation of income from capital gains and for completion of the assessment order and once that has been done, the Assessing Officer has no competence to refer to the Valuation Officer."

The fact remains that the said power of the Assessing Officer under Section 55A of the Act is with reference to the capital gain.

(iii) The other aspect is covered under Section 50C of the Act which is a special provision relating to the value of consideration inserted by the Finance Act, 2002 with effect from 1.4.2003. Section 50C of the Act is as follows:

"Section:50C. Special provision for full value of consideration in certain cases.

(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) Without prejudice to the provisions of sub-section (1), where-

(a) the assessee claims before any Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1. For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer."

A reading of the said Section makes it abundantly clear that this is the section which is available to the assessee as a matter of right.

11. Section 50C of the Act was held valid by a Division Bench of this Court in K.R.Palanisamy v. Union of India, [2008] 306 ITR 61 (Madras) holding that the purpose of Section 50C of the Act is to prevent undervaluation of the real value of the property in the sale deeds. K.Raviraja Pandian and P.P.S.Janarthana Raja, JJ., after analyzing the entire case law on the issue, while deciding about the constitutional validity of the said provision, have held as follows:

"Sub-sections (2) and (3) of Section 50C provides further safeguard to the assessee, in the sense that if the assessee claims before the assessing officer that the value adopted by the stamp duty authorities exceeds the fair market value and the value so adopted or assessed for the purpose of stamp duty has not been disputed in any appeal or revision before any authority, the Assessing Officer could refer the valuation of the capital asset

to the Departmental Valuation Officer. On such reference, if the value determined by the Valuation Officer is more than the value adopted or assessed by the stamp duty authority, the Assessing Officer shall adopt the market value as determined by the Stamp duty authority. Thus, a complete foolproof safeguard has been given to the assessee to establish before the authorities concerned the real value. Thus, what is stated in Section 50C as a real value cannot be regarded as a notional or artificial value and such real value is determinable only after hearing the assessee as per the statutory provisions stated supra. There is no indication either in the provisions of Section 50C of Income-tax Act or Section 47A of the Stamp Act or rules made thereunder about the adoption of the guideline value. Hence, the contention that the Section 50C is arbitrary and violative of Article 14 cannot be accepted."

Therefore, the right of an assessee conferred under Section 50C of the Act is a valuable statutory right available to protect his interest against any arbitrariness which may creep in while fixing the value of the capital gain and that is the safeguard given to the assessee. The said right is more effective in cases where the parties to the document have not taken any steps to defend or to initiate proceedings under Section 47A of the Indian Stamp Act.

12. A combined reading of the entire provisions show that in respect of the valuation of the registered property, the assessee can either use the valuation which has been finally decided, including the appeal under section 47A of the Indian Stamp Act or the valuation which has been ascertained by the Departmental Valuer as per Section 50C of the Act. On the facts and circumstances of the present case, inasmuch as the purchaser, which is a Government concern, has not taken any steps under the Indian Stamp Act as per Section 47A, it is really the valuable right of the petitioner, who is stated to have sold the property for a sum of Rs.99 Lakhs while the stamp duty paid by the purchaser under the sale deed was on the valuation of Rs.3,92,68,800/-, which is involved. It was at the request of the petitioner, the matter has been referred for valuation. Therefore, the only available remedy to the petitioner in respect of her capital gain is under Section 50C of the Act, which cannot be dispensed with merely due to the reason that the Valuation Officer has not chosen to pass orders regarding the valuation in time.

13. In such circumstances, the impugned order of assessment passed without waiting for the valuation report from the authority concerned and deciding the amount of capital

gain on the basis of the stamp duty paid by the purchaser under the document on the valuation of Rs.3,92,68,800/- without making any reference under Section 47A of the Indian Stamp Act is opposed to the very guarantee granted to the assessee under Section 50C of the Act. That being the only safeguard available to the assessee in respect of the capital gain under the provisions of the Act, I am of the considered view that the impugned order of assessment is to be set aside. At the same time, since the Assessing Authority himself has no right to have extension of the period of assessment, by virtue of the powers under Section 153(3)(ii) of the Act, as explained above, which relates to "in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act", the Assessing Authority should be directed to proceed with the assessment of capital gain immediately after the valuation report is filed by the authority to whom the matter was referred by the respondent at the instance of the petitioner.

14. The contention raised by Mr.Patti B.Jaganathan, learned counsel appearing for the respondent about the availability of alternative remedy also deserves to be considered.

15. In *M/s.Nivaram Pharma Private Limited v. The Customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench, Madras and others*, [2005] 2 MLJ 246, it was held by the Division Bench of this Court that in tax matters there should not be a short circuiting of statutory remedies as follows:

"15. There are well settled principles of writ jurisdiction and Judges also must exercise self-discipline. It has been repeatedly held by the Supreme Court that in tax matters there should be no short circuiting the statutory remedies of appeal, revision, etc. We are therefore surprised that in this case the learned single Judge did not observe this well settled principle of self-discipline and entertained the writ petition despite existence of statutory remedies."

16. It is true and also not in dispute that as against the impugned order of assessment, an appeal lies under Section 246A of the Act. But, on the undisputed facts and circumstances of the case on hand that while the matter is pending before the Valuation Officer, which has been referred by the respondent at the instance of the petitioner, the impugned order of assessment came to be passed, it is a question of the valuable right

of the petitioner as conferred under Section 50C of the Act, in the sense that it is a statutory protection.

17. In respect of a similar situation under the Central Sales Tax Act, when a question about the appellate remedy was raised to contend that when alternative remedy is available Article 226 of the Constitution of India cannot be pressed into service, the Supreme Court in *State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd. and another*, JT 2005 (6) SC 298 held as follows:

"10. We shall first deal with the plea regarding alternative remedy as raised by the appellant-State. Except 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.

15. If, as was noted in *Ram and Shyam Co. v. State of Haryana and Ors.* AIR 1985 SC 1147 the appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case the writ petitioners had indicated the reasons as to why they thought that the alternative remedy would not be efficacious. Though the High Court did not go into that plea relating to bias in detail, yet it felt that alternative remedy would not be a bar to entertain the writ petition. Since the High Court has elaborately dealt with the question as to why the statutory remedy available was not efficacious, it would not be proper for this Court to consider the question again. When the High Court had entertained a writ petition notwithstanding existence of an alternative remedy this Court while dealing with the matter in an appeal should not permit the question to be raised unless the High Court's reasoning for

entertaining the writ petition is found to be palpably unsound and irrational. Similar view was expressed by this Court in *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. That being the position, we do not consider the High Court's judgment to be vulnerable on the ground that alternative remedy was not availed. 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.",

thereby holding that alternative remedy cannot be a bar for exercise of extraordinary jurisdiction under Article 226 of the Constitution of India in cases where fundamental right is breached or there is violation of the statutory provisions.

18. The Supreme Court in *Rajasthan State Electricity Board v. Union of India and others*, [2008] 5 SCC 632 held that in admitted facts and circumstances of the case alternative remedy need not be a bar for exercising jurisdiction under Article 226 of the Constitution of India. The Supreme held as follows:

"5. We are clearly of the view that as the respondent Union of India has clearly admitted the liability, the High Court ought not to have relegated the appellant to his alternative remedy and should not have dismissed the writ petition on that count. There is no disputed question of fact in this case. As already noted, in the present case the respondent had admitted its liability and, therefore, the question raised before the High Court being an admitted fact the High Court ought not to have directed the appellant to resort to its alternative remedy under the Act."

19. Considering the facts that the petitioner is 96 years old and the matter has been referred by the respondent for valuation, I am of the considered view that the petitioner must be given an opportunity to take advantage of the valuation report that may be filed

by the statutory authority and therefore, the contention of the learned counsel for the respondent that the appellate remedy is available cannot be countenanced.

In such view of the matter, this writ petition is allowed and the impugned assessment order passed by the respondent is set aside and the matter is remitted to the file of the respondent for fresh disposal after obtaining the valuation certificate from the District Valuation Officer. No costs. Consequently, M.P.No.1 of 2009 is closed