

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 13.12.2022
Pronounced on: 20 .12.2022

OWP No. 1019/2016

M/S Construction Engineers

...Petitioner(s)

Through:- Mr. R.A Jan, Sr. Adv. With,
Mr. Aswad Atar, Adv.

V/s

Union of India and Ors.

...Respondent(s)

Through:- Mr. T.M. Shamsi, DSGI for 1.
Mr. Aatir Javed Kawoosa, Adv. For 2 & 3.
Mr. A Hanan, Adv. For 4 to 7.
None for 8 & 9.

Coram:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

Per Sanjeev Kumar-J:

1. The petitioner is a partnership concern engaged in the business of construction of major projects including Bridges, Flyovers, Office Complexes and other Roads and Buildings. The petitioner concerned is an Assessee under the Income Tax Act, 1961 [“the Income Tax Act”]. The petitioner is aggrieved and has challenged notices/orders dated 5th April, 2016, and 28th April 2016 issued by respondent no. 3 to the respondents no. 4 to 9, directing the latter to pay an amount of rupees 32,32,100/- (Thirty-two lac, Thirty-two thousand and One hundred) payable by their

account holder namely M/S Construction Engineers Srinagar (the petitioner) . The petitioner, as is apparent from reading of the writ petition and prayer clause, has not challenged any demand notice issued by the respondent no. 3 for payment of arrears of the Income Tax dues.

2. With a view to appreciate the controversy in proper perspective, it is necessary to advert to factual antecedents leading to the filing of this petition. The petitioner is a business concern and has been filing, *inter alia* TDS returns in form 26Q regularly. The respondents, while processing the TDS returns filed by the petitioner, found that TDS statements/returns filed by the petitioner for the financial years 2007-2008 to 2015-2016 had not reported any tax deductions in respect of salary payments made by the petitioner. On the basis of figures and details given by the petitioner in the TDS statements/returns voluntarily filed, the unpaid tax, interest etc was worked out and the demand in this regard was raised under Section 201 (A) of the Income Tax Act. The petitioner was thus intimated to deposit a sum of Rs 32, 32,100 (Thirty-two lac. Thirty-two thousand and One hundred) or take corrective action without any further delay. The intimation of outstanding demand issued on 3rd March, 2016, was served upon the petitioner on 31st March, 2016. The respondent no. 3 also issued a show cause notice to the petitioner under Section 221(1) of the Income Tax Act, on 22nd March, 2016, calling upon the petitioner to appear either personally or through his authorized representative to show cause as to why the penalty should not be levied. This show cause notice, too, was received by the petitioner on 24th March, 2016. The petitioner, as it appears from the

record as also from the pleadings, did not respond to either the demand notice dated 3rd March, 2016, or show cause notice issued by respondent no. 3 on 22nd March, 2016. Since the demand was not contested by the petitioner, respondent no. 3 took the intimation issued on 3rd March, 2016, as a formal demand for deposit of Income Tax dues under Section 200A, and proceeded to recover the outstanding amount under section 226(3) of the Income Tax Act. It is in the exercise of powers vested in the Assessing Officer/ Tax Recovery Officer under Section 226 (3) a notice was issued to the J&K Bank, who holds money for and on account of the petitioner-Assessee. The petitioner is aggrieved of the notices issued by the Income Tax Officer (TDS) Srinagar, to the banker of the petitioner for deposit of outstanding liability against the petitioner and is before us in this petition filed under Article 226 of the Constitution of India.

3. Respondents have filed their reply and have taken the preliminary objections of maintainability of this petition in the face of availability of remedy of appeal under Section 246A of the Income Tax Act. It is submitted that the Income Tax Act, 1961 is a complete code in itself and provides elaborate mechanism for redressal of grievances of the aggrieved Assesseees as well as the department and, therefore, a person aggrieved by the orders passed by the Assessing authorities cannot be permitted to invoke the extraordinary writ jurisdiction of this Court instead of availing the remedies provided under the Income Tax Act.

4. We have heard learned counsel for the parties and perused the material on record. The challenge to the notices issued by the Assessing

authority under Section 226 (3) issued by respondent No. 3 without challenging the intimation of demand made by the Assessing authority under Section 200A of the Income Tax Act is not maintainable. From reading of the petition and the prayers made therein, it clearly transpires that petitioner is not aggrieved of the demand raised by the respondent No. 3 for deposit of outstanding tax/ interest/ penalty for which intimation under Section 200A has been given to the petitioner. The petitioner is only aggrieved of the notices issued by the respondent No. 3 under Section 226 (3) of the Income Tax Act calling upon the Jammu and Kashmir Bank, who holds money for and on account of the Assessee, to make the deposit of the outstanding liability standing against the petitioner.

5. The impugned notices issued by the respondent No. 3 to the Jammu and Kashmir Bank, have been assailed by the petitioner primarily on the ground that no recovery proceedings in terms of Section 226 can be initiated unless the petitioner is declared as 'Assessee in default' under Section 201 of the Income Tax Act. We have given our thoughtful consideration to the argument of Mr. R.A. Jan, learned senior counsel, however, we find little substance in it. In the instant case Section 201 is prima facie not attracted. It is a case where during processing the Income Tax returns of the petitioner, the respondents found discrepancy in the matter of deduction of tax at source on the salary component and, accordingly, on the basis of voluntary Income Tax return filed by the petitioner along with statement of tax deduction at source, and gave

intimation in terms of Sub-Section (1) of Section 200A, to the petitioner to make good shortfall of Income Tax dues.

6. Since no response was given by the petitioner to the intimation of demand given by respondent no. 3, the intimation under Section 200A was treated as a notice of demand. There was failure on the part of the petitioner to meet the demand and deposit the outstanding tax. Accordingly, Section 226(3) of the Income Tax Act was pressed into service, and a direction was issued to the banker of the petitioner to pay out of the accounts of the petitioner, a sum equivalent to the Income Tax liability standing against the petitioner. The petitioner in this petition is seeking to contest the demand on merits, in that, it is argued on behalf of the petitioner that the entire Tax deducted at source stood deposited, and, therefore, the demand raised by the respondent no. 3 was *non-est* in the eye of law. Without going into the merits of the demand and adjudicating the disputed question of facts, we are of the view that the petitioner, if aggrieved by the intimation of demand issued by respondent no. 3 under Sub-Section 1 of Section 200A is well within its rights to file an appeal before the jurisdictional Commissioner (Appeals), and cannot straightway approach this Court by invoking its extraordinary writ jurisdiction under Article 226 of the constitution of India. The notices issued by the respondent, no. 3 under Section 226(3) of the Income Tax Act, are dependent on the sustainability of the demand.

7. Needless to say that when a statute provides a mechanism for redressal of grievances, the person aggrieved must go through the

mechanism so provided. He cannot be permitted to rush to invoke the extraordinary writ jurisdiction of the High Court under Article 226 of the Constitution of India, more so when the statutory mechanism itself provides for filing of statutory appeals and revisions. The legal position in this regard is well settled and does not call for any reiteration. Hon'ble Supreme Court in case titled as "*Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal*" (2014)1 SCC 603, has in Para 15 and 16 held thus:

15. *"Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh 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 aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.*

16. *In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the Assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. vs. State of Haryana, (1985) 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility."*

8. That apart, we find this petition which is directed against the notices issued by respondent no. 3 under Section 266 (3) of Income Tax Act, not maintainable in the absence of challenge to the intimation of demand issued under Sub-Section 1 of Section 200A. There is inseparable causal connection between intimation of demand under Sub-Section 1 of Section 200A and recovery proceedings under Section 226 of the Income Tax Act. In the presence of subsistence of cause, the effect cannot be effaced or avoided. As observed above, any order passed by the Income Tax Authority under Sub-section 1 of Section 200A is appealable before the Commissioner (Appeals) and, therefore, it is up to the petitioner to work out his remedy or accept the demand.

9. For the foregoing reasons, we find no merit in this petition, and the same is accordingly dismissed. We, however, leave it open to the petitioner to work out alternative remedy of filing statutory appeal under the Income Tax Act, 1961, if the petitioner is aggrieved and intends to challenge the intimation of demand made by the respondent no. 3 purportedly under Sub-Section 1 of Section 200A.

(Moksha Khajuria Kazmi)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR:
20.12.2022
Mir Arif

Whether the order is reportable : Yes
Whether the order is speaking : Yes