

No writ against CIT's revisional order if alternate remedy of filing an appeal before ITAT was available to assessee

Summary – The High Court of Punjab & Haryana in a recent case of Jindal Steel & Power Ltd., (the Assessee) held that where pending appeal before Commissioner (Appeals) against reassessment in respect of section 80-IB deduction setting off loss of earlier year against income of current year, Commissioner initiated revisionary proceeding to deny section 80-IB deductions totally on ground of non-maintenance of books of account, writ petition thereagainst could not be entertained as statutory alternative remedy of filing an appeal before Tribunal was available

Facts

- The petitioner-assessee was a public limited company. It was engaged, *inter alia*, in the business of manufacture/generation of steel, power, iron, pig iron, sponge iron, *etc.*, at various separate and independent units/undertakings located at Raigarh and other locations.
- In original assessment under section 80-IB deduction was allowed on MBF unit as whole.
- The reassessment proceedings were initiated. In reassessment, earlier year's loss of MBF unit was set-off before granting these units deduction u/s 80-IB.
- Appeal was filed before the Commissioner (Appeals) and legal objections were raised.
- Pending appeal before the Commissioner (Appeals), the Commissioner sought to revise the reassessment on the ground that for MBF unit there were no separate books of account. Therefore, no deduction under section 80-IB could be allowed.
- The petitioner again requested department to dispose of legal objections. The Commissioner without disposing of legal objections raised by petitioner passed impugned order under section 263.
- The department raised a preliminary objection that the petitioner had a statutory efficacious/alternative remedy of appeal before Tribunal under section 253.
- On writ.

Held

- The preliminary objection raised by the respondent is to be enforced. In *Titagur Paper Mills Co. Ltd. v. State of Orissa* [1983] 2 SCC 433, the Apex Court held that under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redressal against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of section 23. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal, and then ask for a case to be stated upon a question of law for the opinion of the High Court. 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 not well recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by the statute only must be availed of.

- Further the Apex Court in *CIT v. Chhabil Dass Agarwal* [[2013](#)] 357 ITR 357/36 [taxmann.com](#) 36/217 [Taxman](#) 143, considered the question of entertaining writ petition where alternative statutory remedy was available. After examining the relevant case law it was held that the Act provides complete machinery or the assessment/reassessment of tax, imposition of penalty and that for obtaining relief in respect of any improper orders passed by the revenue authorities, 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 (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In the case of *Chhabil Dass Agarwal (supra)* neither has the assessee-writ petitioner described the available alternative remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of the case of *Chhabil Dass Agarwal (supra)*.
- In view of the above, relegating the petitioner to avail of alternative remedy under the Act, this petition in writ jurisdiction under article 226 of the Constitution of India cannot be entertained. Consequently, the petition stands dismissed.