

## HC dismissed writ as assessee had already filed appeal against transfer order under sec. 127

**Summary – The High Court of Himachal Pradesh in a recent case of Dev Bhumi Industries., (the Assessee) held that Where in respect of transfer of assessee's case to another place and assessment there, assessee had already filed a statutory appeal before Commissioner (Appeals), simultaneous writ petition should not be entertained**

### Facts

- In the instant writ petition, the assessee firm pleaded that despite it had closed down its business, the Commissioner had illegally transferred its case from ITO, Parwanoo to ITO, Una, and, thereafter, assessment order was illegally passed making an *ex parte* assessment.
- The revenue authorities raised the preliminary objection regarding the maintainability of the petition on the ground that the petitioner-firm had already questioned the impugned order of assessment by filing an appeal and, therefore, it could not be permitted to choose two forums in respect of the same subject matter for the same relief by filing the instant writ petition.
- The respondent claimed that notices were infact issued to the petitioner firm calling upon it as to why the case be not transferred to ITO, Una, but the petitioner firm did not choose to file its reply and consequently the case was transferred and decided by the ITO, Una.
- The petitioner denied that any such notice was ever received by any of the partners. It was averred that the notices might have been served at the address of the factory site which had been closed long back and that these notices appeared to have been sent continuously at wrong address.
- The revenue averred that all the notices sent subsequently were duly received by the partners of petitioner firm as the same were sent to the addresses given in the partnership deed.
- On writ petition to the High Court:

### Held

- At the outset, it may be observed that there is no dispute that the petitioner firm prior to filing of the instant petition has already assailed the assessment order dated 26-12-2006 by filing statutory appeal under section 246A(1)(b) before the appellate authority. Therefore, the moot question is whether the petitioner firm can maintain a petition under article 226 of the Constitution of India for the reliefs for which it has already availed the alternate remedy by filing the appeal, as the merits of the case can only be gone into by this Court after it holds the petition to be legally maintainable.
- Ordinarily, where the parties have more than one remedy available, they have to elect or select one of the remedies. In case, if the party is allowed to select multiple remedies in multiple forums and courts, there will obviously be multiplicity of litigation and there is every chance and likelihood that the judgments and/or orders may also be conflicting with each other.

- It is more than settled that when more than one remedy is available to a party in respect of the same grievance, it is open for that party to elect or to choose his remedy. But, once he chooses his remedy, all incidents attached to that remedy must follow.
- The public policy demands that a person has right to choose the forum for redressal of his grievance, but he cannot be permitted to choose two forums in respect of the same subject matter for the same relief.
- It yet needs to be clarified that the writ Court may exercise its discretionary jurisdiction even if the parties approached other forum. There must be extraordinary situation or circumstance, which may warrant different approach, particularly, where the orders passed by the Court are sought to be violated or thwarted with impunity. The Court cannot be a silent spectator in such extraordinary situation. However, this is not the fact situation obtaining in the instant case. What to talk of an extraordinary situation or circumstance, the petitioner firm has not even disclosed about the pendency of the appeal in its writ petition and the same only finds mention in the list of dates appended therewith. There being no extraordinary situation or circumstance warranting this Court to step-in to interfere, the Court clearly is of the view that the instant writ petition is not maintainable.