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Writ petition couldn't be filed if assessee had the remedy to go in for appeal

Summary – The High Court of Madras in a recent case of Hanon Automotive Systems India (P.) Ltd., (the Assessee) held that where assessee claimed development and testing charges as revenue expenditure, while in reassessment, said charges were treated as capital expenditure, assessee ought to have filed an appeal before Appellate Forum; writ jurisdiction of High Court could not be invoked

Facts

- The assessee-company claimed development and testing charges of Rs. 22.53 crores as revenue expenditure, on which the assessment order was passed.
- Later on, the Assessing Authority passed the reassessment order adding back the said charges holding it to be a capital expenditure.
- On writ petition being filed by the assessee-company before the Single Judge, it was held that the assessee-company was not entitled to question the jurisdiction of the Assessing Authority as it did not file any objection before the same against the initiation of reassessment proceedings for the reasons for reopening the assessment.
- In the instant appeal before the Division Bench, the assessee-company submitted that the impugned charges were duly considered by the Assessing Authority in the earlier assessment years. Therefore, on a change of opinion, he could not have reopened the assessment to disallow the same as capital expenditure.

Held

- The Single Judge was absolutely right in holding that the assessee, having not raised an objection before the Assessing Authority to the re-opening of the assessment under section 147/148, should be deemed to have acquiesced to the same. Nothing prevented the assessee from raising the objection, which could have been dealt with by the Assessing Authority in accordance with law.
- Having not raised any such objection before the Assessing Authority that the expenditure claimed as revenue expenditure was already considered and allowed as revenue expenditure and, therefore, for treating the same now as capital expenditure is a change of opinion is not a tenable contention and, therefore, it cannot be a ground to be raised in writ jurisdiction. Further, when a specific and adequate alternative remedy is available to the assessee for taking such a plea to find as to whether the expenditure claimed by the assessee is to be treated as revenue expenditure or capital expenditure, if the High Court was to entertain such controversy on merits, the entire litigation in this respect can be just brought on the Board of the High Court instead of availing the regular Appellate Forum provided under the Act.
- The Income-tax Act is a self contained Act and the High Court, under section 260A, in its Appellate jurisdiction, is not the proper forum for deciding such a mixed question of facts and law.

- In the instant case, there was no change of opinion on the part of the Assessing Authority and therefore, the re-opening of the assessment order was initiated on valid and reasonable grounds. Even the difference between 'change of opinion' and 'reasons to believe' - the condition precedent for invoking sections 147 and 148 is very thin. Even if there is a correct disclosure of the expenditure, it may be, in the opinion of the assessee, a revenue expenditure but, in the opinion of the Assessing Authority, it can be a capital expenditure. But, that deserves to be decided on the basis of facts by the higher Appellate Forums and that cannot become the ground to straightaway invoke the writ jurisdiction under Article 226 of the Constitution of India. Therefore, the order of the Single Judge does not suffer from infirmity so as to call for any interference.
- The appeals are, accordingly, dismissed.