

## Order passed by AO during pendency of writ petition - assessee should file appeal as remedy: HC

**Summary – The High Court of Bombay in a recent case of Gemini Engi-Fab Ltd., (the Assessee) held that where an order has been passed by the AO during pendency of writ petition, the assessee should file appeal as remedy**

### Facts

- The Assessing Officer carried out a search against the person other than the assessee and thereafter issued on the assessee a notice under section 153C on the ground that incriminating material was found during such search against the person other than the searched person.
- The assessee filed a writ petition challenging the impugned notice.
- During the pendency of the writ petition, the Assessing Officer passed assessment orders pursuant to notice issued under section 153C.

### Held

- The HC held that in a writ petition the Court does not carry out thread bare inquiry by going into the factual aspects of sufficiency of material in order to initiate proceedings under section 153C or of co-relating the incriminating material found during search on the basis of which additions are made in the assessment orders. The assessment orders *prima facie* would suggest that the Assessing Officer is silent on this issue of co-relation between addition made and the material found during such search.
- In view of the fact that the assessment orders are already passed the assessee was to be advised to adopt the appeal remedy against the orders of assessment passed by the Assessing Officer pursuant to the notice issued under section 153C.