IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 626 of 2007

1. ***Smt. Mema Paul,*** aged about 65 years, W/o (L) Brajabihari Paul, Keishamthong Top Leirak , P.O. & P.S. , Imphal, Imphal West District, Manipur ***(expired)***

   By her Legal Representatives

2. Sujata Paul, aged about 55 years, D/o late Brajabihari Paul of Keishamthong Top Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
3. Shri Krishnadas Paul, aged about 52 years, S/o late Brajabihari Paul of keishamthong Top Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.

... Petitioners

-Versus-

1. Income Tax Officer, Ward-2, Imphal.
2. Commissioner of Income Tax, NER, Shillong, Meghalaya.
3. Union of India through the Secretary (Finance/ Taxation), Government of India, New Delhi

… Respondents

B E F O R E
HON'BLE MR. JUSTICE AHANTHEMBIMOL SINGH

For the petitioners	::	Mr. H.S. Paonam, Sr. Advocate asstd. by Mr. Sushruta Yumnam, Advocate
For the respondents	::	Mr. Kh. Samarjit, DSGI asstd. by Mr. Armananda, Advocate
Date of hearing	::	**21-05-2024**
Date of judgment & order	::	**18-07-2024**

JUDGMENT & ORDER

[1] Heard Mr. H.S. Paonam learned senior counsel assisted by Mr Sushruta Yumnan, learned counsel appearing for the petitioners and

Mr. Kh. Samarjit, learned DSGI assisted by Mr. Armananda, learned counsel appearing for the respondents.

[2] The writ petition has been filed with the prayer for quashing and setting aside the order dated 28-12-2006 passed by the Assessing Officer, i.e., Income Tax Officer, Ward-2, Imphal and the consequential order passed in penalty proceeding as illegal being violative of the provisions of section 153(1)(2) of the Income Tax Act, 1961.

[3] The facts of the present case are not in dispute. The original petitioner was an assessee under the Income Tax Act, 1961 (**"the Act"**, for short) and for the Assessment Year, 2003-2004, the said petitioner filed Return of her income on 04-06-2004 disclosing the total income of Rs. 1,00,240/-. The Return filed by the said petitioner was processed under section 143(1) of the Act on 14-12-2004 and thereafter, intimation was issued on the same date. After about one year from the date of filing the aforesaid Return, the Income Tax Officer, Ward-2, Imphal (hereinafter referred to as **"the Assessing Officer",** for short), by holding that he had reasons to believe that the income chargeable to tax had escaped assessment within the meaning of section 147 of the Act, issued notice under section 148 of the Act dated 28-07-2005 to the original petitioner requiring her to submit a Return of her income in the prescribed form within 30 days from the date of service of the said notice. There is nothing on record to indicate as to when the said notice was received by the original petitioner, however, it has been submitted on behalf of the petitioner that

the said notice under section 148 was received on 06-12-2005 and the respondents have not denied such contention.

[4] On receiving the said notice, the original petitioner through her counsel submitted an application dated 06-12-2005 to the Assessing Officer with the request to make available information/ documents collected from different sources for taking up proceedings of escaped income so as to enable her to furnish details of the same for early settlement of the issue. As there was non-compliance to the notice issued under section 148 of the Act dated 28-07-2005, the Assessing Officer again issued another notice dated 03-03-2006 under section 148 of the Act requiring the original petitioner to submit her income for the said financial year in the prescribed form within 30 days from the date of receipt of the said notice. On receiving the said notice, the petitioner again wrote a letter to the Assessing Officer requesting to furnish the reason and under what circumstances she had been escaping taxable income so as to enable her to furnish the necessary reply. As there was again non-compliance by the original petitioner to the notice dated 03-03-2006, the Assessing Officer wrote a letter dated 12-04-2006 intimating to the petitioner that an opportunity was being given to her to file the Return within 15 days from the date of receipt of the said letter and that failure to comply will follow ex-parte assessment under section 144 without further information.

[5] When the petitioner again failed to submit her Return and instead requested to make available or intimate the reasons and materials for reassessment of her income, the Assessing Officer wrote another letter

dated 19-05-2006 requiring the original petitioner to show cause as to why her case should not be completed ex-parte under section 144 of the said Act and also requested her to attend the office on 02-06-2006 at 12:00 noon. The original petitioner was further informed that failure on her part to do so will compel the authorities to complete her case ex-parte without any further communication and penalty provisions under section 271(1) will be attracted. Thereafter, the original petitioner filed her Return on 19-06-2006 in response to the notice issued under section 148 of the Act, disclosing the same total income. In view thereof, the Assessing Officer dropped the proceeding under section 144 of the Act and issued notice to the petitioner under section 142(1) and 143(2) of the Act, both dated 22-06-2006. By another letter, dated 22-06-2006, the Assessing Officer informed the petitioner the reasons for initiation of proceeding under section 147 of the Act by stating that the original petitioner did not disclosed her rental income fully including arrear in her Return for Assessment Year, 2003-2004.

[6] When the original petitioner (hereinafter referred to as **"the Assessee"**) complied with all the subsequent notices, the case was discussed with the authorised representative of the Assessee, who appeared before the Assessing Officer from time to time and thereafter, on completion of the reassessment proceeding, the Assessing Officer passed the assessment order dated 28-12-2006 under section 143(3)/ 147 of the Act. By the said order, the Assessing Officer assessed the total income of the assessee at Rs. 3,17,508/- and raised a demand of Rs. 1,07,969/-. Following the same, notice of demand dated 28-12-2006 under section 156 of the Act was issued by the Assessing Officer raising a demand

of Rs. 1,07,969/- for the said assessment year and copies of the said assessment order/ demand notice and challan were served on the authorized representative of the assessee on 05-01-2007.

[7] In terms of the direction contained in the assessment order dated 28-12-2006, the Assessing Officer issued a Show Cause notice dated 25-05-2007 asking the assessee to show cause as to why penalty proceeding should not be initiated against her and also asking her to appear in the Office of the Assessing Officer. When the assessee failed to respond to the said show cause notice, the Assessing Officer passed the order dated 29-06-2007 imposing a penalty of Rs. 1,03,340/- on the assessee and the consequential notice of demand was issued and served to her. Having been aggrieved, the assessee filed the present writ petition for redressing her grievances.

[8] Mr. H S. Paonam, learned senior counsel appearing for the petitioners raised only one ground in challenging the assessment order dated 28-12-2006 passed by the Assessing Officer as well as the subsequent order dated 29-06-2007 passed in the penalty proceeding. It has been submitted by the learned senior counsel that the proceeding of the reassessment and passing of the impugned assessment order dated 28-12-2006 as well as communication of the order was not completed within the period prescribed under section 153(2) of the Act and as such, the impugned assessment order and the consequential order passed in the penalty proceeding are illegal being violative of the provisions of section 153(2) of the Act and accordingly, liable to be quash and set aside.

Elaborating the point, it has been submitted by the learned senior counsel that under section 153(2) of the Act, it is, inter alia, provided that no order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of one year from the end of the financial year in which the notice under section 148 was served and that under the second proviso to section 153(2) of the Act, it is provided that where the notice under section 148 was served on or after the 1st day of April, 2005 but before the 1st day of April, 2011, the provisions of this sub-section shall have effect as if for the words " one year", the words "nine months" had been substituted. For ready reference, the provisions of section 153(2) of the Act are reproduced hereunder:-

> ***"Time limit for completion of assessments and reassessments***
>
> ***153. ******
>
> ***(2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of one year from the end of the financial year in which the notice under section 148 was served:***
>
> ***[Provided that where the notice under section 148 was served on or after the 1st day of April, 1999 but before the 1st day of April, 2000, such assessment, reassessment or recomputation may be made at any time up to the 31st day of March, 2002]***
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> ***[Provided further that where the notice under section 148 was served on or after the 1st day of April, 2005 but before the 1st day of April, 2011, the provisions of this sub-section shall have effect as if for the words "one year", the words "nine months" had been substituted]"***

[9] It has further been submitted by the learned senior counsel that the first notice under section 148 dated 28-07-2005 was served to the assessee on 06-12-2005 and the second notice under section 148 dated 03-03-2006 was served on the assessee in the month of March, 2006 and as such, the period of nine months shall start from 01-04-2006 and will end

on 31-12-2006 as per the second proviso to section 153(2) of the Act. It has been strenuously submitted that the impugned assessment order dated 28-12-2006 is a back dated one and a copy of the same was served to the authorised representative of the assessee only on 05-01-2007, beyond the prescribed period of nine months. The learned senior counsel submitted that the impugned assessment order will take effect only from 05-01-2007, on which date it was served to the representative of the assessee and not from 28-12-2006, on which date it was allegedly passed. The learned senior counsel, accordingly, submitted that since the impugned assessment order shall deem to take effect only from 05-01-2007, beyond the period of limitation prescribed under the second proviso to section 153(2) of the Act., the whole proceeding of the reassessment as well as the impugned order are rendered illegal being violative of the provisions of section 153(2) of the Act and are liable to be quashed and set aside.

In support of his contentions, the learned senior counsel cited the following case laws:-

(1) **"Bachhittar Singh Vs. State of Punjab & anr."** reported in **AIR 1963 SC 395,** wherein it has been held as under:-

> "***10. The business of State is a complicated one and has necessarily to be "conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of PEPSU provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh, is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be***

accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the "order" of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned. In this connection we may quote the following from the judgment of this Court in the State of Punjab v. Sodhi Sukhdev Singh:

> ***"Mr Gopal Singh attempted to argue that before the final order was passed the Council of Ministers had decided to accept the respondent's representation and to reinstate him, and that, according to him, the respondent seeks to prove by calling the two original orders. We are unable to understand this argument. Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent."***

Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character."

(2) "**State of Punjab Vs. Amar Singh Harika"** reported in **AIR 1966 SC 1313,** wherein it has been held as under:-

"11. The first question which has been raised before us by Mr. Bishan Narain is that though the respondent came to know about the order of his dismissal for the first time on the 28th May 1951, the said order must be deemed to have taken effect as from the 3rd June 1949 when it was actually passed. The High Court has rejected this contention; but Mr. Bishan Narain contends that the view taken by the High Court is erroneous in law. We are not impressed by Mr. Bishan Narain's argument. It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passed an order of dismissal, but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to modify its order. It may be that in some cases, the authority may fell that the ends of justice would be met by demoting the officer concerned rather than dismissing him. An order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the

officer concerned knows about the said order and it is otherwise communicated to all the parties concerned. If it is held that the mere passing of the order of dismissal has the effect of terminating the services of the officer concerned, various complications may arise. If before receiving the order of dismissal, the officer has exercised his power and jurisdiction to take decisions or do acts within his authority and power, would those acts and decisions be rendered invalid after it is known that an order of dismissal had already been passed against him? Would the officer concerned be entitled to his salary for the period between the date when the order was passed and the date when it was communicated to him? These and other complications would inevitably arise if it is held that the order of dismissal takes effect as soon as it is passed, though it may be communicated to the officer concerned several days thereafter. It is true that in the present case, the respondent had been suspended during the material period; but that does not change the position that if the officer concerned is not suspended during the period of enquiry, complications of the kind already indicated would definitely arise. We are therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published. When a public officer is removed from service, his successor would have to take charge of the said office; and except in cases where the officer concerned has already been suspended, difficulties would arise if it is held that an officer who is actually working and holding charge of his office, can be said to be effectively removed from his office by the mere passing of an order by the appropriate authority. In our opinion, therefore, the High Court was plainly right in holding that the order of dismissal passed against the respondent on the 3rd June 1949 could not be said to have taken effect until the respondent came to know about it on the 28th May 1951."

(3) "Bipromasz Bipron Trading SA Vs. Bharat Electronics Limited (BEL)" reported in **(2012) 6 SCC 384**, wherein it has been held as under:-

"31. Apart from the aforesaid statutory provision, it is also settled that an official order takes effect only when it is served on the person affected. In Bachhittar Singh v. State of Punjab this Court has clearly enunciated the principle of law in the following words: (AIR p. 398, para 10)

"10. … Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that

order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character."

Similarly, in this case until the order was communicated to the petitioner, the Chairman-cum-Managing Director would have been at liberty to reconsider the matter and thus rendering the order only provisional in character."

"32. A similar question arose before this Court in BSNL v. Subash Chandra Kanchan wherein it has been clearly observed as under: (SCC p. 283, para 12)

"12. Evidently, the Managing Director of the appellant was served with a notice on 7-1-2002. The letter appointing the arbitrator was communicated to the respondent on 7-2-2002. By that time, 30 days' period contemplated under the Act lapsed. The Managing Director of the appellant was required to communicate his decision in terms of Clause 25 of the contract."

In reaching the aforesaid conclusion, this Court relied on the earlier judgment rendered in State of Punjab v. Amar Singh Harika wherein this Court has held as follows: (AIR p. 1316, para 11)

"11. The first question which has been raised before us by Mr Bishan Narain is that though the respondent came to know about the order of his dismissal for the first time on 28-5-1951, the said order must be deemed to have taken effect as from 3-6-1949 when it was actually passed. The High Court has rejected this contention; but Mr Bishan Narain contends that the view taken by the High Court is erroneous in law. We are not impressed by Mr Bishan Narain's argument. It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passed an order of dismissal, but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in court, the authority may change its mind and decide to modify its order."

"33. The aforesaid observations make it clear that an order passed by an authority cannot be said to take effect unless the same is communicated to the party affected. The order passed by a competent authority or by an appropriate authority and kept with itself, could be changed, modified, cancelled and thus denuding such an order of the characteristics of a final order. Such an uncommunicated order can neither create any rights in favour of a party, nor take away the rights of any affected party, till it is communicated."

"34. The aforesaid proposition has been reiterated in Laxminarayan R. Bhattad v. State of Maharashtra, wherein it has been held that: (SCC p. 431, para 52)

"52. … It is now well known that a right created under an order of a statutory authority must be communicated so as to confer an enforceable right."

Similar view has been reiterated in Greater Mohali Area Development Authority v. Manju Jain wherein it is observed as follows: (SCC p. 164, para 24)

"24. Thus, in view of the above, it can be held that if an order is passed but not communicated to the party concerned, it does not create any legal right which can be enforced through the court of law, as it does not become effective till it is communicated."

(4) "Cochin Plantations Ltd. Vs. State of Kerala" reported in **(1997) 227 ITR 38 (KER),** wherein it has been held as under:-

"4. From the averments contained in the petition filed by the assessee under section 19 it is seen that the managing director of the petitioner-assessee-company was unwell and he was admitted in Medical College Hospital for treatment during the relevant period. These were the circumstance under which, according to the assessee, it could not comply with the directions contained in the earlier notice in time. But it is a fact that the assessee had filed its returns on November 5, 1976, i.e., about a month before the assessment order was served on it. Taking into consideration all the facts and circumstances of the case, we are of the view that the assessee had made out a case under section 19, which would justify an order in its favour. Apart from the above, as mentioned earlier, the assessee had filed its returns much before the assessment order was served on it. This court had occasion to consider the validity of such assessment order in a series of decisions. It has been uniformly held that the assessment order becomes effective only when it is issued from the office of the assessing authority. In T.R.C. No. 6 of 1981, a Division Bench of this court has taken the view that assessment will not be over until the assessment is communicated to the assessee. The assessment order becomes operative only on service on the party intended to be affected thereby. In Govt. Wood Workshop v. State of Kerala [1987] 1 KLT 804, another Division Bench had occasion to consider a similar question and following the view taken by a Bench of this court in T.R.C.S. Nos. 15 and 16 of 1981, it was held that the order of any authority cannot be said to be passed unless it is in some way pronounced or published or the party affected has the means of knowing it. It is not enough if the order is made, signed, and kept in the file, because such order may be liable to change at the hands of the authority who may modify it, or even destroy it, before it is made known, based on subsequent information, thinking or change of

> ***opinion. To make the order complete and effective, it should be issued, so as to be beyond the control of the authority concerned, for any possible change or modification therein. By applying the above principle it has to be taken that before the assessment order has become effective by issuing the same by the office of the assessing authority, the assessee has filed its returns. Taking into consideration all these aspects, we are of the view that the application filed under section 19 by the assessee is to be allowed and fresh opportunity should be given to the assessee on the basis of the returns filed by it on November 5, 1976."***

[10] Mr. Kh. Samarjit, learned DSGI appearing for the respondents submitted that there is provision for filing a statutory appeal under section 246 of the Income Tax Act, 1961, however, without availing such an opportunity of filing a statutory appeal, the assessee approached this court directly by filing the present writ petition for redressing her grievances. It has been submitted that since there is an alternative and effective remedy of filing an appeal, the present writ petition is not maintainable and liable to be rejected outright. The learned DSGI further submitted that there is no requirement under law for communicating the impugned assessment order within the prescribed period of limitation stipulated under section 153(2) of the Act. In support of his contentions, the learned DSGI cited the judgment rendered by the Hon'ble Apex Court in the case of **"South Indian Bank Limited & ors. Vs. Naveen Mathew Philip & anr."** reported in **2023 SCC Online SCC 435**, wherein it has been held as under:-

> ***"17. We shall reiterate the position of law regarding the interference of the High Courts in matters pertaining to the SARFAESI Act by quoting a few of the earlier decisions of this Court wherein the said practice has been deprecated while requesting the High Courts not to entertain such cases.***
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> ***• Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733,***
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> ***"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or***

agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function."

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"26. A company registered under the Companies Act for the purposes of carrying on any trade or business is a private enterprise to earn livelihood and to make profits out of such activities. Banking is also a kind of profession and a commercial activity, the primary motive behind it can well be said to earn returns and profits. Since time immemorial, such activities have been carried on by individuals generally. It is a private affair of the company though the case of nationalized banks stands on a different footing. There may well be companies, in which majority of the share capital may be contributed out of the State funds and in that view of the matter there may be more participation or dominant participation of the State in managing the affairs of the company. But in the present case we are concerned with a banking company which has its own resources to raise its funds without any contribution or shareholding by the State. It has its own Board of Directors elected by its shareholders. It works like any other private company in the banking business having no monopoly status at all. Any company carrying on banking business with a capital of five lakhs will become a scheduled bank. All the same, banking activity as a whole carried on by various banks undoubtedly has an impact and effect on the economy of the country in general. Money of the shareholders and the depositors is with such companies, carrying on banking activity. The banks finance the borrowers on any given rate of interest at a particular time. They advance loans as against securities. Therefore, it is obviously necessary to have regulatory check over such activities in the interest of the company itself, the shareholders, the depositors as well as to maintain the proper financial equilibrium of the national economy. The banking companies have not been set up for the purposes of building the economy of the State; on the other hand such private companies have been voluntarily established for their own purposes and interest but their activities are kept under check so that their activities may not go wayward and harm the economy in general. A private banking company with all freedom that it has, has to act in a manner that it may not be in conflict with or against the fiscal policies of the State and for such purposes, guidelines are provided by Reserve Bank so that a proper fiscal discipline, to conduct its affairs in carrying on its business, is maintained. So as to ensure adherence to such fiscal discipline, if need be, at times even the management of the company can be taken over. Nonetheless, as observed earlier, these are all regulatory measures to keep a check and provide guidelines and not a participatory dominance or control over the affairs of the company. For other companies in general carrying on other

business activities, maybe manufacturing, other industries or any business, such checks are provided under the provisions of the Companies Act, as indicated earlier. There also, the main consideration is that the company itself may not sink because of its own mismanagement or the interest of the shareholders or people generally may not be jeopardized for that reason. Besides taking care of such interest as indicated above, there is no other interest of the State, to control the affairs and management of the private companies. Care is taken in regard to the industries covered under the Industries (Development and Regulation) Act, 1951 that their production, which is important for the economy, may not go down, yet the business activity is carried on by such companies or corporations which only remains a private activity of the entrepreneurs/companies."

"27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to."

• United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110,

"42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective."

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute."

"44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution."

"45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

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"55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

• State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85,

"5. We have considered the submissions on behalf of the parties. Normally this Court in exercise of jurisdiction under Article 136 of the Constitution is loath to interfere with an interim order passed in a pending proceeding before the High Court, except in special circumstances, to prevent manifest injustice or abuse of the process of the court. In the present case, the facts are not in dispute. The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well-defined exceptions as observed in CIT v. Chhabil Dass Agarwal [(2014) 1 SCC 603], as follows: (SCC p. 611, para 15)

"15. Thus, while it can be said that this Court has recognised 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 v. Supt. of Taxes [AIR 1964 SC 1419], Titaghur Paper Mills Co. Ltd. v. State of Orissa [(1983) 2 SCC 433 : 1983 SCC (Tax) 131] 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."

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"8. The Statement of Objects and Reasons of the SARFAESI Act states that the banking and financial sector in the country was felt not to have a level playing field in comparison to other participants in the financial markets in the world. The financial institutions in India did not have the power to take possession of securities and sell them. The existing legal framework relating to commercial transactions had not kept pace with changing commercial practices and financial sector reforms resulting in tardy recovery of defaulting loans and mounting non-performing assets of banks and financial institutions. Narasimhan Committee I and II as also the Andhyarujina Committee constituted by the Central Government Act had suggested enactment of new legislation for securitisation and empowering banks and financial institutions to take possession of securities and sell them without court intervention which would enable them to realise long-term assets, manage problems of liquidity, asset liability mismatches

and improve recovery. The proceedings under the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as "the DRT Act") with passage of time, had become synonymous with those before regular courts affecting expeditious adjudication. All these aspects have not been kept in mind and considered before passing the impugned order."

"9. Even prior to the SARFAESI Act, considering the alternate remedy available under the DRT Act it was held in Punjab National Bank v. O.C. Krishnan [(2001) 6 SCC 569] that : (SCC p. 570, para 6)

"6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."

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"15. It is the solemn duty of the court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the taxpayer's expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in United Bank of India v. Satyawati Tondon [(2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260], has also not been kept in mind before passing the impugned interim order : (SCC pp. 123-24, para 46)

"46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of

taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad [AIR 1969 SC 556], Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107] and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."

- *Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir, (2022) 5 SCC 345,*

"18. Even otherwise, it is required to be noted that a writ petition against the private financial institution - ARC - the appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in Praga Tools Corpn. v. C.A. Imanual, [(1969) 1 SCC 585] and Ramesh Ahluwalia v. State of Punjab, [(2012) 12 SCC 331 : (2013) 3 SCC (L&S) 45 : 4 SCEC 715] relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers.

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"21. Applying the law laid down by this Court in State Bank of Travancore v. Mathew K.C., [(2018) 3 SCC 85: (2018) 2 SCC (Civ) 41] to the facts on hand, we are of the opinion that filing of the

writ petitions by the borrowers before the High Court under Article 226 of the Constitution of India is an abuse of process of the court. The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed hereinabove, even assuming that the communication dated 13-8-2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with respect to the possession of the secured properties on payment of Rs. 1 crore only (in all Rs. 3 crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs. 117 crores. The ad interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the SARFAESI Act. Filing of the writ petition by the borrowers before the High Court is nothing but an abuse of process of court. It appears that the High Court has initially granted an ex parte ad interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable have been seriously prejudiced. The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted by the High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed."

- ***Varimadugu Obi Reddy v. B. Sreenivasulu, (2023) 2 SCC 168,***

"36. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the SARFAESI Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of pre-deposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of pre-deposit contemplated under 2nd proviso to Section 18 of the 2002 Act."

"18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a

statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal."

[11] I have heard the learned counsel appearing for the parties at length and the submissions advanced by them have been duly considered. The only issue that needs to be considered and decided in the present writ petition is whether the reassessment made by the Income Tax Officer without communicating the order of reassessment and the demand notice of the said reassessment within time can be treated as a valid assessment made within the period of limitation prescribed under section 153(2) of the Income Tax Act, 1961?

In the present case, as the two notices under section 148 of the Act were served in the month of December, 2005 and March, 2006, the period of limitation for completing the proceeding of the reassessment will be nine months starting from 01-04-2006 and ending on 31-12-2006 as provided under section 153 sub-section 2 of the said Act. The admitted position in the present case is that even though the assessment order was passed on 28-12-2006, the same was communicated to the authorized representative of the assessee only on 05-01-2007. Therefore, the question that arose for consideration is whether the said reassessment proceeding shall be deemed to be completed when the impugned order of assessment was passed on 28-12-2006 or whether such proceeding shall be deemed to be completed only after communication of the impugned assessment order to the assessee on 05-01-2007. In my considered view, this issue is no longer res-integra and the same has been decided by the Hon'ble Apex Court and various High Courts of the country in a catena of its decisions

that the order of any authority cannot be said to be passed unless it is in some way pronounced or published or the party affected has the means of knowing it and that it is not enough if the order is made, signed, and kept in the file, because such order may be liable to change at the hands of the authority who may modify it, or even destroy it, before it is made known, based on subsequent information, thinking or change of opinion. This court is also in complete agreement and bound by the principle of law laid down by the Hon'ble Apex Court and other High Courts in the judgments cited by the learned senior counsel appearing for the petitioners. Accordingly, it is hereby held that the proceeding of the reassessment of the Return submitted by the assesse for the Assessment Year, 2003-2004 shall be deemed to be completed only on 05-04-2007 when the assessment order was served/ communicated to the representative of the assesse and the same was not completed within the period prescribed under section 153(2) of the Act.

[12] With regard to the objection raised by the learned DSGI about the maintainability of the present writ petition on ground of availability of filing a statutory appeal under section 246 of the Act, it is to be pointed out that it is a settled principle of law that availability of an alternative and effective remedy does not exclude or completely barred the High Court from entertaining a writ petition under Article 226 of the Constitution of India. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, however, there are certain exceptions to this rule. Some of the exceptions are where the statutory authority has not acted in accordance with the provisions of

the enactment in question, or in defiance of the fundamental principle 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, or where the writ petition seeks enforcement of any of the fundamental rights, or where the order or proceeding are wholly without jurisdiction, or where the vires of an act is challenged or where the controversy is purely a legal one and it does not involve disputed question of facts but only question of law then such writ petition should be decided by the High Court instead of dismissing the petition on ground of an alternative remedy being available. In this connection, we can gainfully relied on the following judgments rendered by the Hon'ble Apex Court:-

(1) **"Commissioner of Income Tax & ors Vs. Chhabil Dass Agarwal"** reported in **(2014) 1 SCC 603,** wherein it has been held as under:-

> ***"15. Thus, while it can be said that this Court has recognised 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, Titaghur 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."***

(2) **"Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority & ors."** reported in **2023 SCC Online SC 95,** wherein it has been held as under:-

"**4.** ***Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without,***

however, examining whether an exceptional case has been made out for such entertainment would not be proper.

"5. A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in 1958 SCR 595 (State of Uttar Pradesh v. Mohd. Nooh) had the occasion to observe as follows:

> *"10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. ***"*

"6. At the end of the last century, this Court in paragraph 15 of the its decision reported in (1998) 8 SCC 1 (Whirlpool Corporation v. Registrar of Trade Marks, Mumbai) carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:

(i) where the writ petition seeks enforcement of any of the fundamental rights;

(ii) where there is violation of principles of natural justice;

(iii) where the order or the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged."

"7. Not too long ago, this Court in its decision reported in 2021 SCC OnLine SC 884 (Assistant Commissioner of State Tax v. Commercial Steel Limited) has reiterated the same principles in paragraph 11."

"8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of Uttar Pradesh v. Indian Hume Pipe Co. Ltd.) and (2000) 10 SCC 482 (Union of India v. State of Haryana). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if

> ***investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available."***

[13] That apart, as the present proceeding having remained pending in this court since 2007, this court do not consider it proper to require the writ petitioners to go back to the departmental forum by filing an appeal at this belated stage. Instead, it would be more appropriate to consider and decide the merits of the controversy raised in the present writ petition, particularly when there is no dispute with regard to the facts of the case and the controversy is purely a legal one. Accordingly, this court declines to reject the present writ petition on ground of availability of an alternative remedy of filing a statutory appeal.

In the result, the writ petition is allowed by quashing and setting aside the impugned assessment orders dated 28-12-2006 and 29-06-2007 passed by the Assessing Officer as being illegal and violative of the provisions of section 153(2) of the Income Tax Act, 1961. With the aforesaid directions, the present writ petition is disposed of. Parties are to bear their own cost.

JUDGE

FR / NFR

Devananda