Gee Vee Enterprise Vs Additional Commissioner of Income Tax

Court: Delhi High Court

Date of Decision: Oct. 7, 1974

Citation: (1975) 1 ILR Delhi 53 : (1975) ILR Delhi 53 : (1975) 99 ITR 375

Hon'ble Judges: V.S. Deshpande, J; B.C. Misra, J

Bench: Division Bench

Advocate: G.C. Sharma, O.P. Dua, K.B. Rohtagi and B. Kirpal, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) An important question repeatedly raised before the Admission Benches of the High Courts is whether and if so when a writ petition challenging

the validity of an order of a statutory authority should be entertained even though a statutory appeal is provided against the said order but is not

availed of by the petitioner.

(2) This and the connected writ petition (civil writ 781 of 1974) each challenges the validity of an order of the Additional Commissioner of Income

Tax passed u/s 263 of the Income Tax Act, 1961 cancelling the order of assessment made by the Income Tax Officer and asking the Income Tax

Officer to make a fresh assessment. These orders were appealable u/s 253 of the said Act to the Income Tax Appellate Tribunal but neither have

they been appealed against nor has any Explanation been given in the writ petitions as to why the petitioners chose not to file appeals but to file

these writ petitions.

(3) The challenge to the impugned orders is two-fold, namely, (a) that the conditions to be fulfillled before the Additional Commissioner could

assume jurisdiction u/s 263 to revise the orders of the Income Tax Officer were not fulfilled ;and (b) that on merits the orders of the Income Tax

Officers were correct and should not have been interfered with by the Additional Commissioner.

(4) The first question to which this court has to apply its mind is whether to admit such a writ petition for being considered as a whole. Once the

merits of such a writ petition are considered, the Court may find either that the writ petition deserves to be allowed or that it is liable to be

dismissed. In either event, the decision will be on merits. After consideration of the merits, there is little point in the Court deciding the preliminary

question whether the writ petition should have been entertained even though the petitioner has not availed himself of the opportunity of filing the

statutory appeal. In view of the decisions of the Supreme Court in Commissioner of Income Tax Vs. Indian Chamber of Commerce, , and L.

Hirday Narain Vs. Income Tax Officer, Bareilly, , this Court would not be warranted in dismissing a writ petition on the preliminary ground of the

failure to avail the alternative remedy of statutory appeal if the Court once considers the merits of the case. We have, Therefore, decided to

consider the preliminary question as to whether the writ petition should be entertained at all in view of the failure of the petitioners to avail

themselves of the statutory appeal at threshold without going into the merits of the case as a whole.

(5) The facts necessary to understand the petitions are as follows. Gee Vee Construction Company Private Limited was incorporated on July 25,

1969 with the object of acquiring land and making constructions thereon. It purchased bungalow No. Ii, Tolstoy Marg, New Delhi, for Rs.

9,5000.00 after borrowing loans inasmuch as the paid-up capital of the company was only Rs. 65,000/. Some of the directors and the

shareholders of the company along with some others also entered into a partnership called Gee Vee Enterprises and got. it registered with the

Registrar of Firms in 1969. An agreement was entered into between these two sister concerns on December 23, 1969. The partnership was to

build a multi-storeyed building on the plot after taking advance from the licensees to whom the flats in the building were to be allotted. The

partnership was to keep 90 percent of this money and pay 10 per cent out of it to the company along with Rs. 2,000.00 per month as

consideration for this agreement. In lieu of the 10 per cent of the money so received the company was to issue shares to the licensees who would

be taking up the flats. The agreement was to come to an end after the building was constructed, flats allotted and the money so distributed. The

Income Tax Officer granted registration to the firm under sections 184 and 185 of the Income Tax Act and made the very first assessments of the

company and the firm for the year 1971-72 on that basis apparently without ascertaining the truth of the facts on which the registration was granted

and the returns were made though the petitioners contend that the Income Tax Officer had made the inquiries and was satisfied about the truth of

the facts. Shortly before the expiry of the period of limitation of two years from the making of the assessment orders, the Additional Commissioner

called for the record of the assessment, issued notices to the company and the firm to show cause why the assessment should not be revised and

after hearing them passed the impugned orders cancelling the assessments and I directing the Income Tax Officer to make fresh assessments.

(6) The preliminary question for consideration is whether the writ petitions should be entertained at all in view of the failure of the petitioners to

avail of the alternative remedy of appeals against the impugned orders u/s 253 of the Act. On the one hand, it is rightly argued for the petitioners

that the jurisdiction of this Court under Article 226 is very wide. In law this Court certainly has jurisdiction to entertain a writ petition challenging

the validity and legality of the order of a quasi-judicial authority. But the very width of this jurisdiction must make this court circumspect. If writ

petitions were entertained merely because this Court can legally do so, evils will follow. Firstly, the writ jurisdiction of this Court which is

extraordinary civil jurisdiction will cease to be so and will be like the ordinary original jurisdiction of a civil court where a party has a right to file a

suit and the Court is bound to entertain it. An impossible burden will be thrown on this Court with a work-load which could not be coped with.

Secondly, the intention, of Parliament and the scheme of the statutes In which appeals and revisions are provided against authorities acting under

the said statutes would be defeated without any good reason. The fundamental rule laid down by a five Judges" Bench of the Supreme Court in

Lalji Haridas Vs. R.H. Bhatt and Another, , speaking through Gajendragadkar, C. J. is as follows :-

THE jurisdiction conferred on the High Court under Article 226 is not intended to supersede the jurisdiction and authority of the Income Tax

Officers to deal with merits" of all the contentions that the assesseds may raise before them, and so it would be entirely inappropriate to permit an

assessed to move the High Court under Article 226 and contend that a notice issued against him, is barred by time. That is a matter which the

Income Tax authorities must consider on the merits in the light of the relevant evidence.

This rule has been consistently followed subsequently by smaller Benches of the Supreme Court. In C.A. Abraham, Uppoottil, Kottayam Vs. The

Income Tax Officer, Kottayam and Another, also Shah, J. had laid down the same rule in the following words" :-

IN our view, the petition filed by the appellant should not have been entertained. The Income Tax Act provides a complete machinery for

assessment of tax and imposition penalty and for obtaining relief in respect of any improper orders passed by the Income Tax authorities, and the

appellant could not be permitted to abandon resort to 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 Tribunal.

In Gita Devi Aggarwal Vs. Commissioner of Income Tax, West Bengal and Others, , the rule was expressed in stronger terms as follows:-

IT is well-settled that when an alternative and equally efficacious remedy is open to a litigent, he should, be required to pursue that remedy and not

invoke the special jurisdiction of the High Court for issue of a prerogative writ. It is true that the existence of an alternative remedy dees not affect

the jurisdiction of the court to issue a writ; but, as observed by this court in Rashid Ahmed Vs. The Municipal Board, Kairana, , the existence of an

adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists, it will be a sound

exercise of discretion for the High Court to refuse to entertain a petition under Article 226 unless there are good grounds therefore. . . . In the

present case no Explanation has been given by the appellant in the writ petition for not preferring an appeal under the Act and justifying her

recourse to the special jurisdiction of the High Court under Article 226 of the Constitution. In our opinion the High Court would have justified in

the circumstances of this case in dismissing the writ petition of the appellant in liming.

The same rule had been affirmed in Standard Mills Co. Ltd. Vs. M. Ramalingam and Another, . The latest decision affirming the rule is Champalal

Binani Vs. The Commissioner of Income Tax, West Bengal and Others, in the following words:-

BEFORE parting with the case we deem it necessary once more to emphasize that the Income Tax Act provides a complete and self-contained

machinery for obtaining relief against improper action taken by the departmental authorities, and normally the party feeling himself aggrieved by

such action cannot be permitted to refuse to have recourse to that machinery and to approach the High Court directly against the action. The

assessed had an adequate remedy under the Income Tax Act which he could have availed of. He, however, did not move the Income Tax

Appellate Tribunal which was competent to decide all questions of fact and law which the assessed could have raised in the appeal including the

grievance that he had not adequate opportunity of making his representation and invoked the extraordinary jurisdiction of the High Court. In our

judgment, no adequate ground was made out for entertaining the petition. A writ of certiorari is discretionary; it is not issued merely because it is

lawful to do so. Where the party feeling aggrieved by an order of an authority under the Income Tax Act has an adequate alternative remedy which

he may resort to against the improper action of the authority and he does not avail himself of that remedy the High Court will require a strong case

to be made out for entertaining a petition for a writ.

(7) In the United States this rule is known as the exhaustion of administrative remedies. The division of functions between courts and administrative

agencies often raises the problems of determining whether initial action is to be taken by the court of by the administrative authority and at what

stage of administrative action an aggrieved party can invoke the jurisdiction of the court. The V. S. Courts have usually followed what the U. S.

Supreme Court said in Myers v. Bethlehem Ship-building Corporation, (1938) 303 U.S.41, to be ""the long settled rule of judicial administration

that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.

According to Professor Davis (Handbook on Administrative Law, page 615),

THE principal reasons for requiring exhaustion of administrative remedies relate to efficient management and orderly procedure, use of the

agency"s specialised understanding, adequacy of legal remedies, exclusive jurisdiction, and statutory requirement of final order.

(8) The rule established by the consistent decisions of the Supreme Court is that ordinarily a party aggrieved by the order of the statutory authority

under the Income Tax Act (which principle also applies to the orders under other Acts) must avail himself of the hierarchy of statutory remedies

under the said Act such as an appeal or a revision or a reference to this Court through the Income Tax Appellate Tribunal. This vertical judicial

review given to him by the statute is a matter of right of the assessed. If he wishes to abandon this right and seek a collateral review of an impugned

order in this Court under Articles 226 or 227, he must make out a strong case why this Court should entertain his writ petition and make an

exception to the general rule. Since the petitioners have given absolutely no Explanation why they did not file appeals against the impugned orders,

their case is really covered by the general rule and the writ petitions are liable to be dismissed in liming simply on the ground that no Explanation is

given why the alternative remedy of appeal has not been pursued by the petitioners.

(9) What is the nature of this rule? It is not a rigid rule of law. Had it been so, it would have been a rule of thumb to be followed in a routine

manner in every case. No writ petitions would then have been entertained whenever a statutory appeal, review, revision or reference was available

to the petitioner. No discretion would have been left to the Court to make an exception even in hard cases in the interests of justice. This would

have been contrary to the very object of Article 226 which gives this Court a wide power of judicial review with a discretion to intervene whenever

justice requires such interference. In short, when the conscience of the Court is touched, the court is able to depart from the rule and entertain a

writ petition in view of the particular circumstances of the case. But the discretion of the Court is not arbitrary. Had it been so, the law would be

uncertain and its operation would be left to chance. Whenever, Therefore, the Supreme Court thought that the case was of an exceptional nature,

the Court gave reasons for the making of the exception to the rule and thereby laid down guidelines for the High Courts in the exercise of their

discretion under Article 226. We may examine these guidelines and find out if the present case is covered by any of the exceptions.

(10) Petitioners who have approached High Courts under Article 226 by passing the statutory remedies of appeals, revisions, etc., have advanced

various grounds suitable to the individual circumstances of each case. Some of these grounds were as follows:-

(1) That the impugned order was passed without jurisdiction;

(2) That it violated rules of natural justice;

(3) That it disclosed an error of law apparent on the face of the record;

(4) That it was based on extraneous or mala fide considerations;

(5) That the statutory remedy was not adequate or was onerous;

(6) That resort to the statutory remedy would cause irreparable injury to the petitioner;

(7) That the impugned order infringes on a fundamental right of the party; and

(8) That the provision of law under which the order was passed is itself unconstitutional.

(11) Let us examine if the circumstances of the present two writ petitions fall under any of the above exceptions. (1) Lack of jurisdiction in passing

an order would be due either to the absence of the existence of jurisdictional facts or the non-fulfilment of the requirements of the jurisdictional law.

Where a statutory appeal is not available, this Court, may entertain a writ petition on the ground that the impugned order was without jurisdiction

because the jurisdictional facts did not exist particularly if remedy by way of suit is also barred to the petitioner. This would mean that there is

practically no alternative remedy and the Court would be morally bound to entertain a writ petition and even inquire into the existence of the

jurisdictional facts if necessary Delhi Transport Corporation Vs. Delhi Administration and Others, . Otherwise, the inquiry into the questions of

fact, even if it is jurisdictional in nature, is primarily the function of the statutory authority which is equipped to carry out full investigation into facts

by taking evidence. Similarly, the aggrieved party is entitled as of right to appeal: on questions of fact as well as of law. In the present case, for

instance, the Income Tax Appellate Tribunal would have heard'' an appeal against the impugned order u/s 253 on law as well as facts. A writ

petition would not, Therefore, be normally admitted by this Court where jurisdiction is challenged on factual grounds.

(12) A petitioner would be on a better footing when he challenges the jurisdiction of the authority passing the impugned order on purely legal

grounds such as the construction of the statutory provision under which the order is passed and the facts on which the order is based are not

disputed. The classic decision relied on by the assesseds in such a case is Calcutta Discount Company Limited Vs. Income Tax Officer,

Companies District, I and Another, ,. In its return the company (assessed) had stated all the material facts and its return had been accepted by the

Income Tax Officer and an assessment was made. Later a notice was issued to the assessed u/s 34 of the Income Tax Act, 1922 on the ground

that the Income Tax Officer had reason to believe that by reason Of the omission or failure on the part of the assessed to disclose fully and truly all

material facts necessary for assessment, some income had escaped assessment. The Revenue was unable to show that the assessed had failed to

disclose fully and truly all material facts necessary for assessment. All that was argued for the Revenue was that the assessed had failed to disclose

the true intention behind the sale of the shares"", that is to say, the secondary inferences to be drawn from the primary facts. The jurisdictional

condition for the issue of the notice u/s 34 was thus not fulfilled .But the writ petition challenging the notice was rejected by the High Court under

Article 226 of the Constitution. The appeal was allowed by a majority of three to two of the Supreme Court. The argument that the assessed had

sufficient opportunity to conduct the notice before the Income Tax Officer and thereafter before the appellate officer, the Appellate Tribunal and

ultimately in a reference to the High Court, did not impress the majority of the Court who observed at pages 207-208 that-

THE existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting

an authority acting without jurisdiction from continuing Such action.... . . .When the Constitution confers on the High Courts the power to give relief

it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without

adequate reasons.

The appeal was, Therefore, allowed and the orders winder section 34 were quashed.

(13) Shri G.C. Sharma argued that the orders passed by Income Tax authorities under sections 34 and 33B of the old Act corresponding to

sections 147, and 263 of the new Act stood on the same footing when they were challenged as being without jurisdiction by way of a writ petitions

We do not, however, think that he can derive any assistance from the decision in Calcutta Discount Company''s case. As pointed out by the

Supreme Court in Mysore State Road Transport Corporation v. The Mysore Road Appellate Tribunal, (Civil Appeal No. 1801 of 1970 decided

on August 8, 1974) (II) referring to an essay on ""Determining the Ratio Decidendi of a case"" by Dr. A. L. Good hart ,""the principle of a'' case is

determined by taking into account the facts treated by the Judge deciding a case as material and his decision as based thereon."" The ratio of the

decision in Calcutta Discount Company''s (10) case cannot apply to the facts of the present case for the following reasons :-

(I) u/s 34, the duty of the assessed is only to state the material facts necessary for the purpose of .assessment. Once these facts are accepted and

an assessment is made, the Income Tax Officer cannot reopen the assessment unless he had reason to believe that the material facts were not truly

disclosed.. The reason why the reopening of the assessment is thus made somewhat difficult is to preserve the finality of the previous decision

which should not be destroyed except for a good reason. Once it is found that the disclosure of facts was complete, no jurisdiction could arise for

the reopening of the assessment.

(II) On the other hand, the condition for the assumption of jurisdiction under old section 33B and the new section 263 is easier to fulfill. The reason

is that it is not the Income Tax Officer but a superior Officer like the Commissioner who is exercising a revisional jurisdiction suo motu there under.

The superior officer could be trusted with a larger power. The only requirement for the exercise of this power is that the Commissioner should

consider that the order passed by the. Income Fax Officer is ""erroneous in so far as it is prejudicial to the interests of the Revenue."" What is the

meaning of ""erroneous"" in this context? It was argued for the assesseds by Shri G. C. Sharma that the word ""erroneous"" means that the order must

appear to be wrong on the face of it. In other words, he equated the ""error"" with ""error of law apparent on the face of record"" which is a well-

known ground for the review of a quasijudicial order by this Court under Article 226. We arc unable to agree with this interpretation. The intention

of the legislature was to give a wide power to the Commissioner. He may consider the order of the Income Tax Officer as erroneous not only

because it contains some apparent error of reasoning or of law or of fact on the face of it but also because it is a stereo-typed order which simply

accepts what the assessed has stated in his return and fails to make inquiries which are called for in the circumstances of the case. Shri Sharma''s

contention that this would give the Commissioner the power to revise the order of the Income Tax Officer merely on the ground of suspicion is.

untenable in view of the following two Supreme Court decisions which have already construed the old section 33B. contrary to Shri Sharma''s

contention. In Rampyari Devi Saraogi Vs. Commissioner of Income Tax, West Bengal and Others, , the Income Tax Officer accepted the return

of the assessed in respect of the initial capital, the gift received and the sale of jewellery, the income from business, etc., without any inquiry or

evidence whatsoever. For this reason the Commissioner held the order to be erroneous. In revision, he cancelled the order and ordered the

Income Tax Officer to make a fresh assessment. In his order the Commissioner had used certain new grounds which had not been disclosed to the

assessed in the notice given to him to show cause why the order of the Income Tax Officer should not be revised. But apart from these new

grounds, the Supreme Court observed at page 88 of the report that-

THERE was ample material to show that the Income Tax Officer made the assessments in undue hurry.....,...The assessed made a declaration

giving the facts regarding initial capital, the ornaments and presents received at the time of marriage, other gifts received from her father-in law, etc.,

which should have put any Income Tax Officer on his guard. But the Income Tax Officer without making any inquiries to satisfy himself passed the

assessment order ..... A short-typed assessment order was made for each assessment year.....No evidence whatsoever was produced in respect

of the money-lending business done. .....No names were given as to the parties to whom the loans were advanced.

In Smt. Tara Devi Aggarwal Vs. Commissioner of Income Tax, West Bengal, Calcutta, , also the Income Tax Officer, Howrah, while remarking

that the source of income of the assessed was income from speculation and interest on investments stated that neither the assessed , able to

produce the details and vouchers of the speculative transactions made during the accounting year nor was there any evidence regarding the interest

received by the assessed from different parties on her investments. Notwithstanding these defects the Income Tax Officer did not investigate into

the various sources but assessed the assessed on a total income of Rs. 9037.00 . The inquiries made by the Commissioner revealed that the

assessed did not reside or carry on business at the address given in the return. The Commissioner was also of the view that the Income Tax Officer

was not justified in according the initial capital, the sale of ornaments, the income from business, the investments, etc.. without any inquiry or

evidence whatsoever and that the order of assessment was erroneous and prejudicial to the interests of the Revenue. The High Court held that

there were materials to justify the Commissioner''s finding that the order of assessment was erroneous insofar as it was prejudicial to the interests of

the Revenue. Shri Sharma tried to distinguish this decision on the ground that the address of the assessed in that case was given incorrectly. The

decision of the High Court and that of the Supreme Court were not, however, based on that ground at all. On the contrary, the Supreme Court

followed their previous decision in Rampyari Devi''s (12) case and upheld the decision of the High Court precisely on the same grounds. These

two decisions show that it is not necessary for the Commissioner to make further inquiries before cancelling the assessment order of the Income

Tax Officer. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Income Tax Officer

should have made further inquiries before accepting the statements made by the assessed in his return.

(14) The reason is obvious. The position and function of the Income Tax Officer is very different from that of a civil court. The statements A made

in a pleading proved by the minimum amount of evidence may he accepted by a civil court in the absence of any rebuttal. The civil court is neutral

.It simply gives decision on the basis of the pleading and evidence which comes before it. The Income Tax Officer is not only an adjudicator but

also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to

ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to

the word ""erroneous"" in section 263 emerges out of this contract. It is because it is incumbent on the Income Tax Officer to further investigate the

facts stated in the return when circumstances would make such an inquiry prudent that the word ""erroneous"" in section 263 includes the failure to

make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is any thing wrong with the

order if all the facts stated therein are assumed to be correct.

(15) The company and the partnership in this case were formed in the same year with many members common in both. The fact that the company

purchased the land but handed over construction work to the partnership even though the object of the company was to make such construction

should naturally provoke a query as to why this was done. The partnership was required to be in existence as a genuine firm in the previous year

before it could be registered u/s 185 of the Act. Such registration gives a substantial advantage to if for the purpose, of taxation. In the very first

assessment of the company and the firm the advantage of the registration was given to the firm. The question would naturally arise whether the firm

was formed merely for the purpose of getting a tax advantage. Shri Sharma argued that there is nothing wrong if a legitimate advantage is sought by

these means. But it was precisely for that reason that the Income Tax Officer had to be satisfied that the firm had existed in the previous year

genuinely. It cannot be said that the Commissioner could not be reasonably of the opinion that the order of the Income Tax Officer was erroneous

because previous inquiries were not made by the Income Tax Officer. Nor can ii be said that it was necessary for the Commissioner to himself

make such inquiry before cancelling the order of assessment. In view of the decisions of the Supreme Court in Rampyari Devi and Tara Devi

Aggraval (13). the challenge of the petitioners to the jurisdiction of the Commissioner exercised u/s 263 fails and the writ petitions do not qualify

for admission on the ground of the impugned orders being without jurisdiction.

(2) Violation of rules of nai ural justice must consist in the denial of a proper hearing or opportunity to the assessed to present his case. While it is

most important that the assessed must get the benefit of such rules of natural justice, such a benefit can be given to him by the Income Tax

authorities themselves. It cannot be said that the assessed can be given natural justice only by this Court under Article 226. In Champalal Binani''s

(7) case, the assessed had contended that the Commissioner violated the rules of natural justice because he did not give adequate opportunity to

the assessed to appear and contest u/s 33B of the old Act. The Supreme Court answered this contention at page 695 in the following words:- ""It

the assesses had any grievance about the sufficiency of the opportunity given to him to make his representation, his obvious remedy was to appeal

against the order to the Income Tax Appellate Tribunal and the Tribunal would have considered the appeal on merits and given him an opportunity

of of tendering evidence. But such a course would not have served the object of the assessed."" Shri sharma faintly referred to the denial of some

rule of natural justice without specifying it. If there was any such denial, the petitioners reined still lay in appeals to the Income Tax Appellate

Tribunal. The writ petitions are not, Therefore, covered by this exception.

(3) The impugned orders by the Additional Commissioner are reasoned orders. They do not disclose any error of law apparent on the face of the

record. In Joharmal Murlidhar and Co. Vs. Agricultural Income Tax Officer, Assam and Others, . the Supreme Court held that the assessments

were arbitrary and that the fact. that the appellant had not appealed under the Act was a good ground for refusing to give relief to the appellant.

But taking into account the amount involved and the simple nature of the proof required, the Supreme Court directed the Income Tax Officer to

issue fresh notice to the assessed to produce the Central Income Tax assessment orders and if the assessed produced those orders, the agricultural

Income Tax assessment shall stand cancelled and the officer shall make fresh assessments. If the facts of a case are undisputed and the question of

law can be answered without difficulty in favor of the assessed, then the High Court may exercise its discretion in entertaining a writ petition to give

a quick theft to the assessed to avoid the delay involved in his resorting to the departmental appeals etc. But. this exception would apply only when

the errors of law is apparent on the face of the record which according to the Supreme Court would mean only such error as would be evident

without much argument Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, . It is obvious that there is no such error of law apparent on

the face of the impugned orders.

(4) Art order based on extraneous considerations passed with an ulterior motive would smack of mala fides. In so far as such objection is provable

only by investigation of facts it is the appellate authorities who are better equipped to consider , inasmuch as they have jurisdiction over questions

of fact as well as of law. A writ court is'' not properly equipped to deal with disputed questions of fact. Nevertheless, in a proper case the

conscience of the Court would naturally be aroused by such allegations of mala fides and the writ petition would be entertained as an exception as

was held by the Supreme Court in Madhya Pradesh Industries Ltd. Vs. Income Tax Officer, Special Investigation Circle ''B'', Nagpur, . On the

facts disclosed, the Court was of the view that the power u/s 34 of the old Act was sought to be used ""as a mere cloak or pretence for making a

fishing enquiry or investigation with the object of reviewing the previous order"". The disclosure made by the assessed was found to be true in all

aspects. As the impugned notice was issued with a collateral object, the writ petition complaining against the or3er on such grounds could not be

rejected without an inquiry. The Supreme Court further, observed that we are constrained to set aside the order because we have no indicating as

to the grounds on which the High Court has rejected THE petition which, prima facie. makes out a case which may require investigation and trial.

In the special circumstances of this case, we think that the order of the High Court ought to be set aside. There is no such ground available to the

petitioners in the present case.

(5) At times the statutory remedy is inadequate either because all the grounds open to a petitioner in a writ petition would not be available to him in

the statutory appeal or revision or because the statutory remedy cannot be availed of unless some onerous condition such as the deposit of the full

amount of tax or penalty is required to be fulfilled .This cannot be said of the remedy of appeal u/s 253.

(6) In an exceptional case the relief to be given to the petitioner brooks no delay. Irreparable injury would be caused to him if he i.s directed to go

to the statutory remedy. In such an exceptional case, the writ petition may be entertained even though the alternative remedy is not availed of by

the petitioner. In J.S. Parkar Vs. V.B. Palekar and Others, , the whole of the property of the petitioner was attached. The writ petition was

allowed to remain pending in the High Court for two years before it came up for hearing. It was then thought by the Court that it would cause too

much hardship to the petitioner if the writ petition were to be thrown out in liming. at that stage on the ground that the petitioner had not availed of

the statutory remedies which would be time-consuming and even likely to cause harassment to the petitioner.

(7) Infringement of a fundamental right may be caused either by a quasi-judicial order or by a direct executive order. We are here concerned with

only the former and not with the latter. It is settled by the decision of the Supreme Court in Smt. Ujjam Bai Vs. State of Uttar Pradesh, that the

order of a quasi-judicial tribunal cannot be attacked on the ground of having infringed a fundamental right in a writ petition filed in the Supreme

Court under Article 32 of the Constitution. The infringement of a fundamental right cannot, Therefore, be a reason to persuade this Court to bypass

the usual rule that the remedy for the same is also primarily to be sought by the petitioner in the statutory appeal. Unless other exceptional facts

exist, this reason would not persuade this Court to make an exception and entertain a writ petition on that ground.

(8) No question of unconstitutionality of any provision of law has been raised in these writ petitions.

(16) The above enumeration of the circumstances which may constitute an exception to the rule is not obviously exhaustive. It is not possible to

envisage a priori all the categories of circumstances which may constitute such exceptions. It is entirely in the discretion of this Court to determine

in the circumstances and on the facts of each particular case whether there is sufficient reason to entertain a particular writ petition on the ground

that its circumstances constitute valid exception to the rule.

(17) When Shri G. C. Sharma, learned counsel for the petitioners was asked as to why the petitioners did not file appeals u/s 253 and simply filed

these writ petitions, he submitted that the petitioners did so because an examination of the decisions reported in the volumes of the Income Tax

Reports would show that numerous writ petitions challenging orders of reassessments under sections 34 of the old Act and 147 of the new Act as

also orders of rectification u/s 35 of the old Act and 154 of the new Act had been admitted by different High Courts and decided on merits without

dismissing them in liming on the ground that the alternative remedies of statutory appeals etc., were not availed of. This may be so. The Explanation

is two-fold. Firstly, some of them might have been admitted due to exceptional circumstances, special features or special reasons so as to

constitute one of the various exceptions, referred to above, to the rule that normally an Explanation why a statutory remedy "is not availed of must

be given before a writ petition could be entitled to be admitted. Secondly, some writ petitions might have been admitted without the attention of the

Courts being invited to the rule that normally the petitions must explain why the alternative statutory remedy is not being availed of "Once the merits

of the cases are considered after admission, it would have been too late to dismiss such cases on the ground of alternative remedy not being

availed of. None of those, decisions would, Therefore, constitute a sufficient reason why the normal rule should be departed in the two writ

petitions before, us .The rule was established, by a five Judges" Bench of the Supreme Court in Lalji Haridas (supra) and we have been recently

reminded in Mattulal Vs. Radhe Lal, , that in case of conflict between two decisions of the Supreme Court, the decision of a larger Bench would

prevail against the decision of a smaller Bench even if the latter was subsequent to the former. These decisions may, however, explain that the

petitioners may have thought that their writ petitions may be admitted as some others had been previously admitted without this Court raising the

preliminary question of alternative remedy as a condition precedent to admission. The petitioners have not filed appeals u/s 253. If they were to file

the appeals now and wish to advance the above reason as being a sufficient cause for the delay in filing the appeals, we may also mention that on

24th of June 1974 when the writ petitions were first filed, interim stay of operation of the impugned orders was granted by this Court in both the

writ petitions. This stay would come to an end only by the dismissal of these, writ petitions.

(18) For the above reasons, we are of the view that there are no exceptional circumstances to .persuade us to depart from the normal rule that a

writ petition complaining against the order of an Income Tax Commissioner would not be entertained in the absence of an adequate Explanation

why the petitioner does not avail himself of the appeal provided against the impugned order by the Income Tax Act.

(19) The writ petitions are, Therefore, dismissed in liming but in the circumstances without any order as to costs.