



ORISSA HIGH COURT : CUTTACK

W.P.(C) No.14835 of 2025

In the matter of an Application under Articles 226 & 227 of
the Constitution of India, 1950

* * *

Antarjyami Mohapatra
Aged about 58 years
Son of Late Jayaram Mohapatra
At/PO: Brahmanpal Dhusuri
District: Bhadrak – 756119
Odisha

...

Petitioner

-VERSUS-

- 1.** Central Board of Direct Taxes (CBDT)
Represented by
Chairman, North Block
New Delhi-110002.
- 2.** Principal Commissioner of Income Tax
Bhubaneswar, Rajaswavihar
Aayakar Bhawan, Bhubaneswar
District: Khordha, Odisha.
- 3.** National Faceless Assessment Unit
(NFAC), New Delhi.
- 4.** Income Tax Officer, Ward Bhadrak,
At/P.O./District: Bhadrak. ...

Opposite Parties

Counsel appeared for the parties:

For the Petitioner : M/s. Tushar Kanti Satapathy,
Debasish Hazara, K.R. Satapathy
and B.K. Panda, Advocates



For the Opposite Parties : Sri Subash Chandra Mohanty,
Senior Standing Counsel and
Sri Avinash Kedia,
Junior Standing Counsel

P R E S E N T:

**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN**

Date of Hearing : 15.07.2025 :: Date of Order : 24.07.2025

ORDER

MURAHARI SRI RAMAN, J.—

Assailing the assessment order dated 21.03.2023 passed under Section 147 and Section 144 read with Section 144B of the Income Tax Act, 1961, by the National Faceless Assessment Unit, New Delhi for the Assessment year 2018-19 under Annexure-1 in contravention of Section 48 *ibid.*, as same income could not be made to suffer taxation again for the Assessment year 2019-20 basing on information available in Form 26AS in the webportal of the Income Tax Department, the petitioner has come up before this Court by way of filing this writ petition under Articles 226 and 227 of the Constitution of India, craving for grant of following relief(s):



“Under the aforesaid facts and circumstances, it is prayed that this Hon’ble Court may be graciously pleased to-

- 1) Admit the Writ application;*
- 2) Issue Rule NISI calling upon the Opp. Parties to Show Cause as to why the order dated 21.03.2023 passed under Section 147 read with Section 144 read with Section 144B of the IT Act for the Assessment Year 2018-19 under Annexure-1 of the Writ Petition shall not be quashed;*
- 3) And if the Opposite Parties fail to show cause or sufficient cause, then the rule may be made absolute.*
- 4) And upon hearing further be pleased to quash the order dated 21.03.2023 passed under Section 147 read with Section 144 read with Section 144B of the IT Act and the consequential penal proceedings may be declared as illegal and without jurisdiction.*
- 5) And further your Lordships may please to pass such other order/orders as your Lordships may deem fit and proper;*

And for this act of kindness, the petitioner as in duty bound shall ever pray.”

Factual matrix:

- 2.** The petitioner in need of finances for discharging legal necessities, sold his agricultural land on 12.02.2018 by dint of registered sale deeds to two different persons for total consideration of Rs.61,87,500/-, which he has



disclosed as capital gains for the Assessment Year 2019-20 and also discharged his liability on self-assessment.

- 2.1. A notice dated 11.03.2022 has come to be issued under Section 148A(b) of the Income Tax Act, 1961 (for short, “the IT Act”) on the ground of escapement of income on account of consideration received with respect to sale of aforesaid immovable property relate to Assessment Year 2018-19.
- 2.2. Due to personal indisposition, the petitioner-assessee could not file his response, as a consequence of which the Assessing Officer appears to have proceeded under Section 144 of the IT Act based on best of his judgment.
- 2.3. Another notice dated 17.02.2023 was issued under Section 142(1) of the IT Act, to which the petitioner filed response on 22.02.2023 asserting that the aforesaid consideration has been shown in return pertaining to Assessment Year 2019-20. It is also disclosed that tax amounting to Rs.31,671/- in this regard has been paid/deposited with the Income Tax Department.
- 2.4. As the same transaction is sought to be levied with tax in both the Assessment Years, *i.e.*, 2018-19 and 2019-20, the demand is alleged to be untenable as on the self-same transactions, double taxation is prohibited, being hit by provisions of Article 265 of the Constitution of India.



2.5. With a mercy petition for consideration of plight of the assessee, and to have one chance to explain in detail with respect to non-liability by producing evidence in possession, the petitioner craves for invocation of extraordinary jurisdiction under provisions of Articles 226 and 227 of the Constitution of India.

Hearing:

3. On the concession of counsel for the both sides, this matter is taken up for final hearing at the stage of admission. Accordingly, heard Sri Tushar Kanti Satapathy, learned Advocate for the petitioner and Sri Subash Chandra Mohanty, learned Senior Standing Counsel along with Sri Avinash Kedia, learned Junior Standing Counsel for the Central Board of Direct Taxes (CBDT)-Opposite Parties.

Rival contentions and submissions:

4. Sri Tushar Kanti Satapathy, learned counsel appearing for the petitioner, having taken this Court to statement of income for the year ended 31st March, 2019 (Assessment Year 2019-20) along with return furnished to the Income Tax Department, submitted that the consideration received on account of aforesaid sale of immovable property has been shown under the Head of Income— “Long Term Capital Gains”, claiming exemption under Section 54F of the Income Tax Act.



4.1. He has also drew attention of this Court to documents showing transactions in Form 26AS to demonstrate that given an opportunity to produce relevant material in his possession, and if such evidence is taken into consideration the demand could be reduced to *nil*. With humility he would submit that due to prolonged ill-health, the petitioner could not avail opportunity to substantiate his claim before the authority concerned in response to show-cause notice dated 11.03.2022 under Section 148A. He fervently requested for setting aside the assessment order, so as to enable the petitioner to appear and produce the documents for consideration of the assessing officer.

5. Sri Subash Chandra Mohanty, learned Senior Standing Counsel assisted by Sri Avinash Kedia, learned Junior Standing Counsel appearing for the Opposite Parties opposing vehemently, contended that the petitioner has remedy of appeal and, therefore, the challenge laid to assessment order is not maintainable and/or entertainable on the specious plea of violation of principles of natural justice.

5.1. Since the petitioner-assessee did not choose to participate in the proceedings even after receipt of notices, no leniency can be shown. Had the evidence as produced before this Court available with the petitioner, nothing prevented him to place before the assessing



officer before passing the assessment order; if he wishes to do so, the petitioner can be relegated to avail alternative remedy of appeal.

Analysis and discussions:

6. Perused the materials available on record. Considered the plea, arguments and submissions of counsel for respective parties.
- 6.1. On a careful perusal of documents forming part of the writ petition and exchanged between the parties and those furnished before the Court during the course of hearing, it is found that the petitioner appears to have been prevented from appearing before the Assessing Officer to substantiate his claim and to demonstrate before the Assessing Authority that the very transaction in question raised for adjudication in the Assessment Year 2018-19, the liability of which has already been discharged in the subsequent Assessment Year 2019-20.
- 6.2. This Court in order to appreciate the factum of claim for capital gains alleged to have been escaped assessment has the occasion to peruse Judgment rendered by the High Court of Madhya Pradesh (Jabalpur Bench) in the case of *Nitin Nema Vrs. Office of Principal Chief Commissioner of Income Tax and others*, (2023) 458 ITR 690 (MP) and Judgment of High Court of Karnataka in the case of *Income-Tax Officer Vrs. Sanath Kumar Murali*,



reported in (2025) 172 *taxmann.com* 290 (Karnataka), wherein the modality for evaluation of tax liability with respect to capital gains have been discussed. It is cited by learned counsel appearing for the petitioner that the Department of Income Tax having approached the Hon'ble Supreme Court in the case of *Nitin Nema (supra)*, the same got dismissed *vide* order dated 17th September, 2024 in Special Leave Petition (Civil) Diary No.38708 of 2024 (Special Leave to Appeal (Civil) No.21707 of 2024).

6.3. Be that be, this Court appreciates that the circumstances that prevailed beyond the control of the petitioner at the relevant point of time rendered him indisposed in filing response before the Assessing Officer. This Court is persuaded by such material as found place in the writ petition for demonstrating double taxation. This Court fails to appreciate the contention of the learned Standing Counsel objecting to grant of an opportunity to furnish the evidence available with the petitioner for production before the assessing officer for re-adjudication. Had the document been adduced before the assessing officer the demand would have been reduced to *nil* and withholding the material available would not enure to the benefit of the assessee.

6.4. This Court takes note of the view expressed by the Hon'ble Supreme Court of India in the case of *Tin Box*



Company Vrs. CIT, (2001) 9 SCC 725 wherein it has been observed as follows:

“1. *It is unnecessary to go into great detail in these matters for there is a statement in the order of the Tribunal, the fact-finding authority, that reads thus:*

‘We will straight away agree with the assessee’s submission that the ITO had not given to the assessee proper opportunity of being heard.’

2. ***That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts. That order must be made after the assessee has been given a reasonable opportunity of setting out his case.*** *We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard.”*

6.5. In the spirit of said decision, this Court is of the view that the petitioner-assessee is entitled for a chance to submit documents available with him for appraisal of the Income Tax Officer for proper adjudication of liability, if any, during the period in question as the assessee has been consistently pleading that he has discharged liability in the succeeding assessment year.

6.6. This Court finds sufficient force in the argument advanced by the learned counsel for the petitioner and



to justify his claim the petitioner is to produce the documents before the Assessing Officer, which are subject to scrutiny by such competent Authority. After due appreciation of evidence for the purpose of consideration of transaction being taxed already for the said purpose, it is deemed mete and proper to relegate the petitioner to avail the opportunity to present evidence and refer aforesaid judgments for perusal of assessing authority.

Conclusion:

7. Though this Court is conscious about existence of alternative remedy to assail the assessment order before the appellate authority vested to appreciate the evidence, as the appeal is coterminous with the assessment proceeding¹, having regard to the material on record and taking note of undisputed factual position as emanated from the submissions advanced by the counsel for both the parties, finding that there is violation of basic tenets of natural justice, this Court entertains this writ petition as availability of alternative remedy is not an absolute bar for invocation of power of judicial review.

¹ Observation in *Santoshi Tel Utpadak Kendra Vrs. Deputy Commissioner of Sales Tax*, (1982) 1 SCR 97 = (1981) 48 STC 248 (SC) is as follows:
*“An appellate authority disposing of a first appeal has power to enhance the assessment. So has appellate authority in a second appeal. We may also point out that when an appellate authority is considering a second appeal a ‘first appellate’ order, it is examining an order which can be broadly described as an order of assessment. **It is a final order disposing of an appeal which, in a sense, is a continuation of the assessment.** A second appeal against such an order is an appeal against an order of assessment.”*



7.1. In *Commissioner of Income Tax Vrs. Chhabil Dass Agrawal*, (2014)1 SCC 603 it has been held:

“11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. **It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law.** Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See *State of U.P. Vrs. Mohd. Nooh*, AIR 1958 SC 56; *Titaghur Paper Mills Co. Ltd. Vrs. State of Orissa*, (1983) 2 SCC 433; *Harbanslal Sahnia Vrs. Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107; and *State of H.P. Vrs. Gujarat Ambuja Cement Ltd.*, (2005) 6 SCC 499).

12. *The Constitution Benches of this Court in K.S. Rashid and Son Vrs. Income Tax Investigation Commission*, AIR 1954 SC 207, *Sangram Singh Vrs. Election Tribunal*, AIR 1955 SC 425, *Union of India Vrs. T.R. Varma*, AIR 1957 SC 882, *State of U.P. Vrs. Mohd. Nooh*, AIR 1958 SC 86 and *K.S. Venkataraman and Co. (P) Ltd. Vrs. State of Madras*, AIR 1966 SC 1089



*have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. **If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted.** [See N.T. Veluswami Thevar Vrs. G. Raja Nainar, AIR 1959 SC 422, Municipal Council, Khurai Vrs. Kamal Kumar, AIR 1965 SC 1321 = (1965) 2 SCR 653, Siliguri Municipality Vrs. Amalendu Das, (1984) 2 SCC 436, S.T. Muthusami Vrs. K. Natarajan, (1988) 1 SCC 572, Rajasthan SRTC Vrs. Krishna Kant, (1995) 5 SCC 75, Kerala SEB Vrs. Kurien E. Kalathil, (2000) 6 SCC 293, A. Venkatasubbiah Naidu Vrs. S. Chellappan, (2000) 7 SCC 695, L.L. Sudhakar Reddy Vrs. State of A.P., (2001) 6 SCC 634, Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha Vrs. State of Maharashtra, (2001) 8 SCC 509, Pratap Singh Vrs. State of Haryana, (2002) 7 SCC 484 and GKN Driveshafts (India) Ltd. Vrs. ITO, (2003) 1 SCC 72.]”*

- 7.2. As the documents enclosed to the writ petition *ex facie* demonstrates that the tax liability has been discharged in the Assessment Year 2019-20 but not in the Assessment Year 2018-19, there is every likelihood of tax being assessed twice on the same transaction, in order to avoid piquant situation faced by the assessee,



this Court is inclined to exercise its discretion by invoking powers under Article 226 of the Constitution of India.

8. Having thus entertained the writ petition, it is to impress upon that proper and sufficient opportunity being not afforded to the petitioner and/or his representative, the impugned Order dated 21.03.2023, is liable to be set aside and this Court does so.

8.1. Hence, the matter is remitted to the assessing officer for passing fresh orders and the petitioner in order to avail opportunity of production of documents and have his say is directed to appear before the authority concerned within two weeks from date along with copy of this order and produce all the relevant material with him before the authority, who shall consider the same and pass fresh order within two months from date after affording opportunity of personal hearing.

8.2. Needless to say that in the event of failure on the part of the petitioner to comply with the above direction, the impugned assessment order shall revive automatically and the Department shall be at liberty to act on the assessment order dated 21.03.2023 in accordance with law to enforce the demand as raised.

8.3. It is clarified that this Court has not expressed any view or opinion on the merit of the matter. The facts narrated



and the observations made herein are for the purpose of appreciating the rival contentions and arguments. The assessing authority is not fettered to take independent decision in accordance with law.

- 9.** As a consequence of above observations made and directions issued, the writ petition stands disposed of along with pending interlocutory applications, if any, but in the circumstances there shall be no order as to costs.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE