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AFR

ORISSA HIGH COURT : CUTTACK

W.P.(C) No.19752 of 2025

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

* * *

Shri Samir Kundu
Proprietor of Shri Krishna Enterprises
Aged about 39 years
Son of Kashinath Kundu
Residing at Rajnowagarh, Puruliya
West Bengal – 723 128,
At present:
Khata No.25/343, Plot No.132/713
Canal Road, Dablin, Pramodprasad
Talcher, Odisha – 759 100. ... Petitioner

-VERSUS-

1. National Faceless Assessment Centre
Represented by
Additional/Joint/Deputy/
Assistant Commissioner
of Income Tax/Income Tax Officer
National Faceless Assessment Centre
New Delhi.

2. Office of the Income Tax Officer
Ward 3(2), Purulia
At: South Lake Road
Purulia – 723 101.

3. Principal Commissioner of Income Tax
Asansol

At: Income Tax Office, Parmar Building
G.T. Road (West)
Asansol – 713 304 ... Opposite Parties.

Counsel appeared for the parties:

For the Petitioner : Mr. Jagabandhu Sahoo,
Senior Advocate
Assisted by
Ms. Kajal Sahoo,
Mr. Ronit Ghosh,
Mr. Romeet Panigrahi,
Ms. Deepshikha Mallik,
Mr. Subhajeet Sahu,
Ms. Urmila Sahu,
Advocates

For the Opposite Parties : Mr. Subash Chandra Mohanty,
Senior Standing Counsel and
Mr. Avinash Kedia,
Junior Standing Counsel,
Income Tax Department

P R E S E N T:

HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON

AND

HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN

Date of Hearing : 29.07.2025 :: Date of Judgment : 06.08.2025

JUDGMENT

MURAHARI SRI RAMAN, J.—

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Questioning legality, impropriety and justness of demand raised to the tune of Rs.1,23,78,764/- pertaining to the Assessment Year 2020-21 [relevant to Financial Year 2019-20] by way of assessment framed under Section 147 read with 144 of the Income Tax Act, 1961, *vide* Order dated 26.03.2025 of Income Tax Officer, Ward-3(2), Purulia (Annexure-12), the petitioner has approached this Court insisting to invoke extraordinary jurisdiction under the provisions of Articles 226 and 227 of the Constitution of India, with the following prayer(s):

"Under the aforesaid circumstances it is prayed therefore that this Hon'ble Court may be graciously pleased to:

a. Admit the Writ Application;

b. Issue rule nisi calling upon the Opposite Party No.2 as to why Order of Assessment dated 26.03.2025 vide Annexure-12 shall not be quashed being illegal, arbitrary, unsustainable in law, gross violation of principles of natural justice and without jurisdiction.

c. If the Opposite Parties fails to show cause or show insufficient cause, make the rule absolute;

d. To issue further writ in the nature of mandamus or any other appropriate writ directing Opposite Parties to quash the Order of Assessment dated 26.03.2025 vide Annexure-12 in the ends of justice;

e. To pass such further order/orders, direction/ directions, writ/writs as may be fit and proper;

f. To allow the writ petition;

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

Pleadings in the writ petition:

2. The returns under Section 139 of the Income Tax Act, 1961 ("IT Act", for short) furnished by the petitioner, proprietor of a concern carrying on its business in the name and style "Shri Krishna Enterprises" situated within the district of Angul, Odisha State, being subject to scrutiny, a notice under Section 148A(b) was issued based on information supplied by the DDIT (Inv)-2(3), Bhubaneswar that amount representing input tax credit under the Goods and Services Tax Act, 2017, availed *qua* the transactions with M/s. Utsav Enterprise and many others during the Financial Year 2019-20 is "inadmissible claim of expenses". On obtaining approval of the Principal Commissioner of Income Tax, Asansol as required under Section 151 of the said Act, notice under Section 148 after observing statutory formality under Section 148A that certain amount has escaped assessment of income, was issued contemplating initiation of proceeding.

2.1. Responding to the notices under Section 142 of the IT Act directing for supply of information, though the petitioner citing bereavement in the family and serious health issues sought for adjournment(s), having imposed

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penalty *vide* Order dated 19.03.2025 under Section 272A(1), the opposite party No.2 rejected such prayer by issuing letter dated 21.03.2025.

2.2. The Assessing Officer framed assessment under Section 147 read with Section 144 of the IT Act *vide* Order dated 26.03.2025 by adding the amount stating it to be wrongful claim treating it to be bogus purchase transactions disclosed in the return of income and raised demand.

2.3. In the present writ petition said assessment order is assailed with the contention that, the petitioner had genuine transactions with M/s. Utsav Enterprises as there was physical movement of goods from the place of said supplier to the destination accompanied by e-waybills and supported by tax invoices and he is aggrieved by treating the transactions with other taxable persons, whose registration certificates under the Goods and Services Tax Act are alleged to have been cancelled, as bogus, before any information is received at his end.

2.4. It is requested that given an opportunity by extending time to furnish documents/evidences, the petitioner could convince the Assessing Officer that the transactions were genuine and the claim made in the self-assessment returns is just and proper.

Hearing:

3. At the consent of the counsel for the respective parties, this matter is taken up for final hearing at the stage of "Fresh Admission" as short point is involved whether to entertain the writ petition challenging the assessment order by circumventing remedy provided under the IT Act.

3.1. Heard Sri Jagabandhu Sahoo, learned Senior Advocate assisted by Ms. Kajal Sahoo, learned Advocate for the petitioner and Sri Subash Chandra Mohanty, learned Senior Standing Counsel assisted by Sri Avinash Kedia, learned Junior Standing Counsel, for the Income Tax Department.

Submissions and arguments:

4. Sri Jagabandhu Sahoo, learned Senior Advocate submitted that had the Assessing Officer granted proper opportunity to explain the details of the transactions with the alleged non-existent suppliers, he would have adduced evidence like e-waybills, tax invoices and other documents. He further submitted that the Assessing Officer should not have proceeded with the assessment awaiting response from the alleged suppliers, whose transactions with the assessee was alleged to be questionable. It is highlighted that the petitioner in response to the Show Cause Notice dated 11.03.2025 filed an adjournment petition dated 19.03.2025

(Annexure-9) whereby appraising bereavement in family and health issues, furnished certain details touching the merits of the allegations made with respect to bogus transactions. It is argued that the Assessing Officer in his order of assessment has not taken care of the explanation nor did he grant any adjournment. He submitted that having not considered the merit of the adjournment petition, the assessing officer *vide* Letter dated 21.03.2025 (Annexure-11) simply stating "no response" with respect to earlier notices/letter, observed as follows:

"Ample opportunities of being heard have already been provided to you for furnishing your compliance. ***The case is getting barred by limitation on 31.03.2025.*** *Hence, at this juncture, it is not possible to further adjourn your case.*

Hence your prayer for adjournment dated 19.03.2025 is hereby rejected."

4.1. The learned Senior Counsel, therefore, requested for grant of opportunity to present the documents before the Assessing Officer to substantiate the claim of the petitioner with reference to entries made in the returns and furnish replies with respect to alleged bogus transactions.

5. Sri Subash Chandra Mohanty, learned Senior Standing Counsel would submit that when there is availability of

alternative remedy, this Court need not exercise discretionary writ jurisdiction. Taking aid of principles culled out with respect to "maintainability" and "entertainability" of writ petition in *Godrej Sara Lee Ltd. Vrs. The Excise and Taxation Officer-cum-Assessing Authority, (2023) 3 SCR 871* it is submitted that the authorities under the statute are competent to deal with the aspect of "irregular assumption of jurisdiction". Therefore, he fervently contended to dismiss the writ petition as not maintainable at this stage inasmuch as sufficient opportunities were afforded to the petitioner which he did not avail.

Discussions:

6. Having heard the arguments advanced by the counsel for the respective parties, diligent consideration of documents enclosed to the writ petition transpires that after the death of his wife, the petitioner appears to have suffered prolonged health issues as certified by the physician attending him at Institute of Medical Sciences and SUM Hospital, Bhubaneswar. The learned Senior Standing Counsel did not dispute veracity of such documents. However, the objection of the learned Senior Standing Counsel deserves to be taken into consideration that the petitioner sought to drag the proceeding for assessment knowing fully well that the assessment would be barred by limitation on

31.03.2025, yet in his petition for adjournment dated 19.03.2025 he prayed for grant of one month's accommodation to trace out documents and submit evidence. Therefore, this Court has made minute examination of documents enclosed to the writ application to test the authenticity of the claim of the petitioner.

6.1. A detailed Show Cause Notice dated 11.03.2025 was issued to the petitioner eliciting the result of investigation with respect to alleged bogus purchase transactions made with certain named suppliers leading to initiation of proceeding for assessment on best of judgment under Section 144 of the IT Act. To this the petitioner has stated to have responded by filing reply dated 19.03.2025 by partially explaining the facts, but made the following prayer:

"Prayer

On the facts and circumstances, it is prayed that you honour may be kind enough to allow the petitioner a reasonable time to adduce more documentary evidence to substantiate sufficient proof for deciding the matter for the interest of justice and oblige."

6.2. Considering such petition and prayer made, the Assessing Officer has passed Order dated 21.03.2025 taking note of the following factual details:

Type of notice/	Date of	Date of	Response	Date of	Respon

communication	commu-nication	compliance given	of the assessee received or not received	response, if received	se type (Full / part/ adjourn-ment)
Notice under Section 148	30.03.2024	93 days	No response		
Notice under Section 142(1)	25.06.2024	10.07.2024	No response		
Letter (AU-1)	07.08.2024	5 days	No response		
SCN under Section 144	28.08.2024	06.09.2024	No response		
Notice under Section 142(1)	10.09.2024	18.09.2024	No response		
Centralised communication	05.10.2024	Immediate	No response		
SCN under Section 144	09.10.2024	16.10.2024	No response		
Notice under Section 142(1)	03.03.2025	10.03.2025	No response		
Show Cause Notice	11.03.2025	20.03.2025	Response received	19.03.2025 and 20.03.2025	Part

6.3. The sequence of events as projected by the Assessing Officer, which in fact has not been disputed by the petitioner, would go to show that the assessment proceeding has been protracted for around 12 months due to "non-response" of the petitioner. The Order dated 21.03.2025 (Annexure-11) rejecting the prayer of the petitioner for stand over for a period of one month shows that the assessment would be time-barred by 31.03.2025. Though it is known to the petitioner that the matter would be time-barred, yet in the reply dated 19.03.2025 he made the following statement:

"05. That, further, in this context, I am to state that I may be allowed a reasonable ***time of one month*** *to*

trace all Ledger copies in support of transaction made with all parties."

6.4. As is apparent from aforesaid table as reflected in the Order dated 21.03.2025 as also impugned Assessment Order dated 26.03.2025 that the proceeding commenced from March, 2024. The copy of document showing medical exigency issued by the Institute of Medical Sciences and SUM Hospital, Bhubaneswar depicts the following facts:

*"This is to certify that Mr. Samir Kundu ****

is under my treatment as an out-patient / in-patient at this Hospital

was treated as OPD patient from 15.12.2022 to 06.02.2024

was admitted as in-door patient on _____ and discharged on _____.

He/she had been advised rest for above days.

***He/she is fit to resume normal duties from 07.02.2024**."*

6.5. A copy of "Death Declaration Certificate" dated 01.03.2024 issued from the Office of the Pradhan, Chandra Gram Panchayat, At & PO: Chandra, PS: Kenda, District: Purulia, West Bengal shows that the wife of the petitioner died three years ago, though exact date of death is not disclosed.

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6.6. The medical documents does not indicate that the petitioner was ever admitted in the Hospital as an in-patient. The documents enclosed to writ petition do not evince the fact that after 07.02.2024 the petitioner was ever admitted to hospital or had any complaint regarding health issues. Hence, such documents furnished by the petitioner himself without any ambiguity leads to demonstrate that there was bereavement in the family in and around the year 2021, *i.e.,* much prior to issue of notices relating to subject-proceeding and the condition of the petitioner was found to be fit and fine in the month of February, 2024, *i.e.,* much prior to the issue of Notice dated 30.03.2024 under Section 148.

6.7. At paragraph 8 of the writ petition the petitioner has admitted to have been issued with Notices dated 25.06.2024, 10.09.2024 and 03.03.2025. On the contrary, at paragraph 9 of writ application, it is asserted by the petitioner that Notice dated 11.03.2025 was issued and in response thereto at paragraph 10, it has been stated thus:

"That the petitioner duly filed a reply to the above show cause notice whereby he stated that he could not follow with the proceeding as he had lost his wife and he was going through prolonged illness."

6.8. From the sequence of events and taking into consideration the averments contained in the writ

petition, it unequivocally leads to construe that it is well within the knowledge of the petitioner that the assessment would get time-barred by 31.03.2025. The petitioner having not responded and chosen to participate in the proceeding, even though medical certificate indicates he was maintaining sound health on and from 07.02.2024, he appears to have dragged the proceeding to the fag-end of the limitation period and sought for one month's accommodation by submitting a petition dated 19.03.2025 purported to be a reply to show cause notice dated 11.03.2025.

6.9. This apart, there is no pleading nor factual contention or averment available on record to suggest that the petitioner did not carry any business activity during 2024-25, *i.e.,* after he was certified by the physician to be fit.

6.10. Faced with such fact-situation as obtained from record, this Court does not find approach of the Assessing Officer in rejecting the adjournment request dated 19.03.2025 (Annexure-11) is erroneous or irregular. Finding that the Assessing Officer had no other option but to conclude the proceeding on or before 31.03.2025 having given sufficient opportunities to the petitioner (which has been acceded to by the petitioner in paragraph 2 of its petition dated 19.03.2025), this Court does not perceive any undue haste being shown by the

authority concerned in passing the Assessment Order dated 26.03.2025 (Annexure-12) so as to warrant indulgence.

7. An attempt has been made by the learned Senior Advocate to question the jurisdiction of the Assessing Officer under the Faceless Assessment process. It is contended that the business of the petitioner-assessee being situated in the State of Odisha and the returns being filed before the authority in this State, the Assessing Officer of Ward 3(2) of Income Tax Department at Purulia in the State of West Bengal does not have the jurisdiction to issue notice under Section 148 and proceed with the assessment.

7.1. Referring to *Biswajaya Dagara Vrs. Assistant Commissioner of Income Tax, 2023 SCC OnLine Ori 7091* it is submitted that "the petitioner will continue to be within the jurisdiction where he has been filing his return". To buttress his contention that the Income Tax Officer sitting at Purulia in West Bengal has no jurisdiction to exercise for assessment under Section 147 read with Section 144 by issue of notice Section 148 of IT Act learned Senior Counsel placed heavy reliance on the decision of the High Court of Telangana rendered in *Venkataramana Reddy Patloola Vrs. Deputy Commissioner of Income Tax, (2024) 468 ITR 181 = 2024 SCC OnLine TS 1792.*

7.2. It may be stated that both the case laws cited are not applicable to the fact situation of the present case in the light of following dicta expounded in *Union of India Vrs. Arulmozhi Iniarasu, (2011) 7 SCC 397*:

"*Before examining the first limb of the question, formulated above, it would be instructive to note, as a preface, the well-settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. The observations of the courts are neither to be read as Euclid's theorems nor as provisions of statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases.*"

7.3. The case of *Biswajaya Dagara (supra)* was a case relating to challenge as to jurisdiction of Income Tax Circle from Kolkata to Balasore by not following statutory requirement under Section 124 of the IT Act. In the present case such a question does not fall for consideration. The first paragraph of said judgment makes it transparent that the petitioner (Biswajaya Dagara) questioned issue of notice under Section 142 of the IT Act by the Officer of transferee-Ward of Income Tax Department, but not the assessment order.

7.4. In the case of *Venkataramana Reddy Patloola (supra)* the Court was considering the following question:

> *"The singular and pivotal question raised in these writ petitions filed under Article 226 of the Constitution is whether the show cause notices issued under Section 148 of the Income-tax Act, 1961 (for short, the Act)* ***in matters relating to international tax charges*** *are exempted to follow the statutory faceless procedure?"*

After discussion, the Hon'ble High Court of Telangana came to hold that "there is no cavil of doubt that Section 144B of the Act and order of the Central Board of Direct Taxes dated September 6, 2021 give exemption from following the mandatory faceless procedure only in relation to passing of assessment orders in cases of central charges and international tax charges (paragraph 24)" and "Since notices under Section 148 of the Act were not issued in a faceless manner, the entire further proceeding founded upon it and assessment orders stand vitiated (paragraph 29)".

7.5. No case is set up by the instant petitioner with respect to "international tax charge" or "central charges", as such the challenge as to jurisdiction of the Income Tax Officer, Ward 3(2) of Purulia does not call for any adjudication at this stage, particularly so when the petitioner in paragraph 2 of its reply dated 19.03.2025 (portion of which has already been extracted herein above) in response to Show Cause Notice dated 11.03.2025

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surrendered to the jurisdiction of the Assessing Officer, Ward 3(2), Purulia, West Bengal and in the "prayer" he has sought for "reasonable time to adduce more documentary evidence".

7.6. *Deepak Agro Foods Vrs. State of Rajasthan, (2008) 10 SCR 877* is a case to the point to emphasise the effect of "irregular assumption of jurisdiction" as opposed to "illegal assumption jurisdiction". In the said case the following observations of the Hon'ble Supreme Court of India may be pertinent to consider the plea of the petitioner:

> *"14. Having come to the above conclusion, the next question which requires consideration is whether in the light of the observations of the Division Bench in the afore-extracted paragraph on the irregularities as also the conduct of the assessing officer, the assessment orders could be said to be null and void, as pleaded on behalf of the appellants?*
>
> *15. All irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal. Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null, non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. (See: Kiran Singh & Ors. Vrs. Chaman Paswan & Ors., 1955 SCR 117).* ***However,***

exercise of jurisdiction in a wrongful manner cannot result in a nullity— it is an illegality, capable of being cured in a duly constituted legal proceedings.

16. *Proceedings for assessment under a fiscal statute are not in the nature of judicial proceedings, like proceedings in a suit inasmuch as the assessing officer does not adjudicate on a lis between an assessee and the State and, therefore, the law on the issue laid down under the civil law may not stricto sensu apply to assessment proceedings. Nevertheless, in order to appreciate the distinction between a 'null and void' order and an 'illegal or irregular' order, it would be profitable to notice a few decisions of this Court on the point.*

17. *In Rafique Bibi (Dead) By LRs. Vrs. Sayed Waliuddin (Dead) By LRs. & Ors., (2004) 1 SCC 287, explaining the distinction between 'null and void decree' and 'illegal decree', this Court has said that a decree can be said to be without jurisdiction, and hence a nullity, if the Court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction. The Court further held that a distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or*

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irregularity of procedure, cannot be termed inexecutable.

18. *In view of the above, in the present case, apart from the fact that on a plain reading of Section 29(8)(b) of the Act, it is manifestly clear that fresh assessment for the assessment year 1995-96, framed pursuant to the order passed by the appellate authority on 8th June, 2000, was well within the prescribed time, even otherwise, in the light of the afore-stated settled law, the assessments orders in question could not be held to be null and void on account of the stated irregularities committed by the assessing officer during the course of assessment proceedings. In our opinion, therefore, despite scathing observations by the Division Bench on the conduct of the assessing officer, it was a case of an irregularity in assessment proceedings by the officer, who was not bereft of authority to assess the appllant. At best, it was an illegality, which defect was capable of and has been cured by the High Court by setting aside the orders and by granting consequential relief."*

7.7. This Court cannot be oblivious to take note of the following observations of the Hon'ble Supreme Court of India (5-Judge Bench) rendered in the case of *Central Potteries Vrs. State of Maharashtra*, :

"It was argued for the appellant that it would make a difference in the procedure prescribed for making assessment whether a dealer was registered or not. It was said that under Section 10(1) while every registered dealer is under an obligation to make returns for the purposes of assessment, a dealer who is not registered

becomes liable to send the return only if he is required to do so by the Commissioner by notice served in the prescribed manner and Rule 22 which has been framed for carrying out the purpose of Section 14(1) provides that if the Commissioner is of opinion that a dealer other than a registered dealer is liable to pay tax, he may send a notice to him in a form prescribed therein, requiring him to furnish returns. It is contended that the jurisdiction of the Sales Tax Officer to take proceedings for assessment with respect to non-registered dealers depends, on the issue of a notice such as is prescribed by Section 10 and Rule 22 and that as no such notice had been issued in the case of the appellant, the assessment proceedings must be held to be incompetent, if the registration certificate is invalid. We see no force in this contention. ***The taxing authorities derive their jurisdiction to make assessments under Sections 3 and 11 of the Act, and not under Section 10, which is purely procedural.*** *The appellant had itself, acting under Section 10(1) been submitting voluntarily returns on which the assessments had been made and it is now idle for it to contend that the proceedings taken on its own returns are without jurisdiction.*

In this connection it should be remembered that ***there is a fundamental distinction between want of jurisdiction and irregular assumption of jurisdiction, and that whereas an order passed by an authority with respect to a mattar over which it has no jurisdiction is a nullity and is open to collateral attack, an order passed by an authority which has jurisdiction over the matter, but has assumed it otherwise than in the mode prescribed by law, is not a nullity.*** *It may be liable to be questioned in those very proceedings, but subject to that it*

is good, and not open to collateral attack. Therefore even if the proceedings for assessment were taken against a non-registered dealer without the issue of a notice under Section 10(1) that would be a mere irregularity in the assumption of jurisdiction and the order of assessment passed in those proceedings cannot be held to be without jurisdiction and no suit will lie for impeaching them on the ground that Section 10(1) had not been followed. This must a fortiori be so when the appellant has itself submitted to jurisdiction and made a return. We accordingly agree with the learned Judges that even if the registration of the appellant as a dealer under Section 8 is bad that has no effect on the validity of the proceedings taken against it under the Act and the assessment of tax made thereunder."

7.8. Coming back to the factual details as discussed in the foregoing paragraphs, untrammelled statement made before the Assessing Officer in his reply dated 19.03.2025 that the petitioner beseeches "unconditional apology" for not having submitted any response to the notices issued during 30.03.2024 to 03.03.2025. This would suggest that he has not availed the first opportune occasion to question the jurisdiction of the Income Tax Officer, Purulia in West Bengal. Therefore, this Court leaves such a challenge there without saying anything more.

8. It is with vehemence Sri Jagabandhu Sahoo, learned Senior Advocate citing plethora of judgments on the issue of claim of input tax credit *vis-à-vis* alleged bogus

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transactions effected by the alleged non-existent suppliers submitted that this Court is vested with the power to examine the issue to set the assessment right by nullifying the demand.

8.1. Expanding his argument learned Senior Counsel referred to *PHR Invent Educational Society Vrs. UCO Bank, (2024) 6 SCC 579,* wherein it has been laid down as follows:

> *"37. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:*
>
> *(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;*
>
> *(ii) it has acted in defiance of the fundamental principles of judicial procedure;*
>
> *(iii) it has resorted to invoke the provisions which are repealed; and*
>
> *(iv) when an order has been passed in total violation of the principles of natural justice."*

8.2. As has already been discussed in the paragraphs *supra*, no objection to jurisdiction of the Assessing Officer at Purulia has been set out in reply dated 19.03.2025 (Annexure 9). Rather the Assessing Authority appears to have extended all cooperation by inviting the petitioner

time and again to participate in the proceeding right since March, 2024 till March, 2025. It is interesting to take note of following fact from aforesaid reply of the petitioner before the Assessing Officer:

> *"02. That, at the outset, I owe you an unconditional apology for not submitting any reply to your good office online show cause notices issued right from 30.03.2024 to 03.03.2025 allowing several opportunities as I was totally ignorant of such adjudication e-proceedings due to my continuous and prolong illness and more specifically during the said periods I was completely distress for loss of my wife. ***"*

8.3. Bare perusal of Assessment Order dated 26.03.2025 reveals that:

> *"An enquiry/investigation was carried out by DDIT (Inv)-2(3), Bhubaneswar in the case of M/s. dhanalaxmi Iron, Prop: Iswar Chandra Barik, PAN DZLPB1223H. From this enquiry it is established that M/s. Dhanalaxmi Iron was never filed its income tax return and is a fictitious/non-existing entity. M/s. Dhanalaxmi Iron, Prop: Iswar Chandra Barik has made sales to M/s. Ganapati Enterprises, Prop: Sumati Mukhi, PAN: EWQPM1326F which is also a non-filer and fictitious entity. Further Ganapati Enterprises, Prop: Sumati Mukhi has issued sale bills to M/s. Utsav Enterprises, Prop: Dharma Nayak, PAN: BOSPN3468J which is also a non-filer. Then M/s. Utsav Enterprises, Prop: Dharma Nayak, PAN: BOSPN3468J has issued sale bills to other parties who are regularly filing their return of income. It is established from the enquiry that M/s. Utsav Enterprises, Prop:*

Dharma Nayak, is a fictitious/non-existing entity formed for providing accommodation entries to other entity or persons. The investigation also revealed that some parties have availed input tax credit (ITC) of the strength of bogus invoices issued by these fictitious/non-existing entities.

*During the above, enquiry, it is found that M/s. Utsav Enterprises, Prop. Dharma Nayak, which is fictitious/non-existing entity has issued bogus sale bills amounting to Rs.25,47,180/- to the assessee Samir Kundu, Proprietor of M/s. Shri Krishna Enterprises, PAN: CRLPK6091H. Further Samir Kundu has shown these bogus sales as his purchases in his GSTR filed for the Financial Year 2019-20. The assessee has taken accommodation entries in the form bogus purchase to book bogus expenditure to minimise his profit and evade tax liability. ***"*

8.4. There cannot be cavil that such factual merit requires exhaustive examination of documents having nexus with the transactions and validity of registration certificates of the suppliers by the Assessing Authority. Since the petitioner did not make himself available before the Assessing Officer till March, 2025, though he was found and certified to be fit by his physician in the Month of February, 2024 itself, the petitioner-assessee should have been vigilant; more so, the pleadings fell short of averment that there was no business activity of proprietorship concern during 2024-25. The circumstances as transpired from the Order dated 21.03.2025 and the Assessment Order dated 26.03.2025 do not make out a case for the petitioner to contend that

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the Assessment was framed without adherence to principles of natural justice.

8.5. Since disputed question of fact is patent on the face of the record, this Court, therefore, desists from exercising its discretionary extraordinary power conferred under Articles 226 and 227 of the Constitution of India. Thus, to question the legality and propriety of the demand, proper course is to challenge the order of assessment before the appellate fora subject to compliance of requirements/conditions, if any, under the relevant provisions of the statute.

8.6. In the case of *Transtech Solution Vrs. Commissioner of CT & GST, 2025 SCC OnLine Ori 2846*, this Court in the presence of disputed question of fact with respect to wrongful availment of input tax credit under the Goods and Services Tax Act, 2017, *qua* the suppliers, who were considered to be non-existent/ghost suppliers by the authority concerned, restrained itself by not entertaining the writ petition. It may be worthwhile to quote the following paragraph of said judgment:

"Delving into such dispute at this stage when the reply of the petitioner is pending adjudication would be to resolving factual anomaly by the writ Court. This Court desists from doing such exercise. This Court feels it pertinent to have reference to a Judgment rendered by the Delhi High Court in Banson Enterprises Vrs. Assistant Commissioner, W.P.(C) No.6503 of 2025, decided on

15.05.2025 [reported at 2025 SCC OnLine Del 3952] declining to entertain writ petition challenging Show Cause Notice, which also has application to the challenging any order or decision which is available for challenge before the appellate authority under the statutory framework. The observation of said Court runs as follows:

'10. The Court has considered the matter. As held in Assistant Commissioner of State Tax Vrs. Commercial Steel Limited (2021) 7 SCR 660, a writ petition can be entertained under exceptional circumstances only which are set out in the said judgment as under:

'11. The respondent had a statutory remedy under Section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

(i) a breach of fundamental rights;

(ii) a violation of the principles of natural justice;

(iii) an excess of jurisdiction; or

(iv) a challenge to the vires of the statute or delegated legislation.

12. In the present case, none of the above exceptions was established. There was, in fact,

no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.

13. For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the state in the present case.'

11. The above legal position has also been reiterated in Elesh Aggarwal Vrs. Union of India, (Neutral Citation: 2023:AHC:121765-DB) wherein the Allahabad High Court has held that no ground is made for interference on merits in exercise of extraordinary jurisdiction.

12. ***The nature of the allegation against the Petitioner in the present case, as is clear from the SCN as also the impugned order is that the Petitioner, in collusion with other entities has***

taken substantial benefit of ITC without sale of any goods or services. This strikes at the root of the Input Tax Credit facility which is recognised in the GST regime.

13. *The statement of Petitioner No. 2-Mr. Bansal, itself having been recorded by the Respondent Department and the principles of natural justice having been fully complied with during the adjudication proceedings, this Court does not find any infirmity in the impugned order so as to exercise its extraordinary writ jurisdiction. There is no justification for not challenging the same by way of an appeal.*

14. *An appeal before the appellate authority is a full-fledged remedy provided under Section 107 of the Central Goods and Service Tax Act, 2017.*

15. *The contentions that the Petitioner wishes to raise can always be raised in appeal, inasmuch as this Court has already taken a view in W.P.(C) 5737 of 2025 titled Mukesh Kumar Garg Vrs. Union of India & Ors. [decided on 09.05.2025 reported at 2025 SCC OnLine Del 3324] In the said case, the Court, has already taken a view in this regard that where cases involving fraudulent availment of ITC are concerned, considering the burden on the exchequer and the nature of impact on the GST regime, writ jurisdiction ought not to be usually exercised in such cases. The relevant portions of the said judgment are set out below:*

> *'11. The Court has considered the matter under Article 226 of the Constitution of India, which is an exercise of extraordinary writ jurisdiction.*

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The allegations against the Petitioner in the impugned order are extremely serious in nature. They reveal the complex maze of transactions, which are alleged to have been carried out between various non existent firms for the sake of enabling fraudulent availment of the ITC.

12. *The entire concept of Input Tax Credit, as recognized under Section 16 of the CGST Act is for enabling businesses to get input tax on the goods and services which are manufactured/ supplied by them in the chain of business transactions. The same is meant as an incentive for businesses who need not pay taxes on the inputs, which have already been taxed at the source itself. The said facility, which was introduced under Section 16 of the CGST Act is a major feature of the GST regime, which is business friendly and is meant to enable ease of doing business.*

13. *It is observed by this Court in a large number of writ petitions that this facility under Section 16 of the CGST Act has been misused by various individuals, firms, entities and companies to avail of ITC even when the output tax is not deposited or when the entities or individuals who had to deposit the output tax are themselves found to be not existent. Such misuse, if permitted to continue, would create an enormous dent in the GST regime itself.*

14. *As is seen in the present case, the Petitioner and his other family members are alleged to have incorporated or floated various firms and*

businesses only for the purposes of availing ITC without there being any supply of goods or services. The impugned order in question dated 30th January, 2025, which is under challenge, is a detailed order which consists of various facts as per the Department, which resulted in the imposition of demands and penalties. The demands and penalties have been imposed on a large number of firms and individuals, who were connected in the entire maze and not just the Petitioner.

15. *The impugned order is an appealable order under Section 107 of the CGST Act. One of the co-noticees, who is also the son of the Petitioner i.e. Mr. Anuj Garg, has already appealed before the Appellate Authority.*

16. *Insofar as exercise of writ jurisdiction itself is concerned, it is the settled position that this jurisdiction ought not be exercised by the Court to support the unscrupulous litigants.*

17. *Moreover, when such transactions are entered into, a factual analysis would be required to be undertaken and the same cannot be decided in writ jurisdiction. The Court, in exercise of its writ jurisdiction, cannot adjudicate upon or ascertain the factual aspects pertaining to what was the role played by the Petitioner, whether the penalty imposed is justified or not, whether the same requires to be reduced proportionately in terms of the invoices raised by the Petitioner under his firm or whether penalty is liable to be imposed under Section 122(1) and Section 122(3) of the CGST Act.*

> *18. The persons, who are involved in such transactions, cannot be allowed to try different remedies before different forums, inasmuch as the same would also result in multiplicity of litigation and could also lead to contradictory findings of different Forums, Tribunals and Courts.'*
>
> *16. Under these circumstances, this Court is not inclined to entertain the present writ petition.' ***"*

8.7. In *Commissioner of Income Tax Vrs. Chhabil Dass Agrawal, (2014) 1 SCC 603* the exposition of law has been reiterated in the following terms:

> *"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, MunicipalCouncil, 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.]"

8.8. On the set of principles enunciated for consideration of jurisdiction to entertain writ petition against order of assessment for which efficacious alternative remedy is available under the statute, as enumerated hereinabove, when the present contents of the writ petition is tested, the averments and fact-situation narrated by the petitioner do not seem to have fallen within such parameters.

8.9. In the present case, since disputed question of fact is patently perceived on the record, this Court is of the considered view that the appellate authority is the competent authority to deal with the facts as well as the law including the point of jurisdiction of the Assessing Authority. It deserves to be observed that the question whether Office of Income Tax Officer, Purulia in the State of West Bengal has the jurisdiction to proceed with the assessment under the IT Act is essentially a mixed question of fact and law. Therefore, issues raised in the present case can very well be addressed to in appeal under the IT Act. If need be other alternative fora are also put in place to question the appellate order(s) after disposal of the first appeal.

8.10. This Court takes this opportunity to reproduce hereunder the following expression contained in *Santoshi Tel Utpadak Kendra Vrs. Deputy Commissioner of Sales Tax, (1982) 1 SCR 97 = (1981) 48 STC 248 (SC)*:

> *"11. Now the sub-section speaks of an "Appellate Authority both in the first appeal and the second appeal". It is quite clear, therefore, that the appellate powers detailed in clause (a) have the same amplitude in a second appeal as in a first appeal. An Appellate Authority disposing of a first appeal has power to enhance the assessment. So has an Appellate Authority in a second appeal. We may also point out that when an Appellate Authority is considering a second appeal against 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."*

8.11. In the wake of above discussions made with reference to the legal perspective to entertain writ petition when disputed questions of fact are involved which can be dealt with by the authorities vested with power under the IT Act, this Court restrains to entertain the present writ petition keeping in view the fact that it is the petitioner who has taken the proceeding to the fag-end of statutory limitation for framing assessment.

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8.12. However, it goes without saying that the factual details discussed above are taken out for the purpose of deciding whether to entertain writ petition; but the same would not impose fetter on the statutory authorities to decide and adjudicate merit of the issues, if raised before them in the event circumstances so arise.

Conclusion:

9. As a consequence of above observations made, the writ petition, sans merit, is dismissed and pending interlocutory applications, if any, shall also be dismissed accordingly. In the circumstances there shall be no order as to costs.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE