

## Writ Petition in Income tax Act



CA. Amit Kumar Gupta  
amitkrg246@yahoo.com

### Introduction

A Writ means a formal order in writing issued under a seal, in the name of a sovereign government, court, or other authority commanding an officer or other person to whom it is issued, to do or refrain from doing something specified there in. The Constitution of India empowers the Supreme Court and the High Courts to issue Writs for the enforcement of the fundamental rights conferred by the Part-III of the Indian Constitution under Article 32 and Article 226. There are five types of Writs- Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo- Warranto.

Article 226 of the Constitution of India confers extraordinary jurisdiction on the High Court to issue high prerogative writs for the enforcement of the fundamental rights or for any other purpose. Thus in case of writ petition, the power of the High Court to issue a writ is much wider than that of the Supreme Court. A writ petition can be filed under a supreme court only if the petitioner can prove that there is infringement of fundamental rights. However it is important to note that the right to approach the Supreme Court in case of a violation of a Fundamental Right is in itself a Fundamental Right since it is contained in Part III of the Constitution.

### Writ Petition under Income tax act

Writ Petitions are constitutional remedies and are generally filed by the assessee. Exceptionally, they can be filed by the Department against the order passed by the ITAT or Settlement Commission. Writs are generally filed when there is no other legal remedy available with the petitioner. In case at any time during the assessment the income tax act does not provide any remedy for filing appeal to higher income tax authority, the assessee has an option that he can take the benefit of Constitution of India, Article 226 which provides every citizen of India can file Writ petition with the High court. Time to time it has been observed that the revenue authorities adopt aggressive positions by not conforming or accepting the documents and reasons submitted by the assessee or that they do not just truly appreciate the existence or non existence of circumstances that may entitle them to pass any order against assessee which resulting in derogation of fundamental principles suggested by Indian constitution and natural justice. The aggressive position being adopted by revenue authorities across the country in income tax matters have resulting in increase in the number of writ petitions being filed by tax-payers in the high courts.

Writ Jurisdiction of the High court is discretionary but not absolute It is well settled that the jurisdiction of the High Court under Article

226 of the Constitution is equitable and discretionary. The power under that Article can be exercised by the High Court "to reach injustice wherever it is found." The role of the High Court under the Constitution is crucial to ensuring the rule of law throughout its territorial jurisdiction. In order to achieve these transcendental goals, the powers of the High Court under its writ jurisdiction are necessarily broad. They are conferred in aid of justice. The exercise of the discretionary jurisdiction under Article 226 has been a subject matter of several decisions of the Supreme Court. The Courts have repeatedly held that no limitation can be placed on the powers of the High Court in exercise of its writ jurisdiction. The power of the High Court under Article 226 of the Constitution of India cannot be circumscribed by strict legal principles. At the same time, there is no gainsaying that this discretionary jurisdiction is not absolute. This necessarily means that the Courts have to exercise the power under Article 226 judiciously, in the facts of a case and in accordance with law.

While the powers the High Court may exercise under its writ jurisdiction are not subject to strict legal principles, two clear principles emerge with respect to when a High Court's writ jurisdiction may be engaged. First, the decision of the High Court to entertain or not entertain a particular action under its writ jurisdiction is fundamentally discretionary. Secondly, limitations placed on the court's decision to exercise or refuse to exercise its writ jurisdiction are self- imposed. It is a well settled principle that the writ jurisdiction of a High Court cannot be completely excluded by any statute.

In exercising its discretion to entertain a particular case under Article 226, a High Court may take into consideration various factors including the nature of the injustice that is alleged by the petitioner, whether or not an alternate remedy exists, or whether the facts raise a question of constitutional interpretation. These factors are not exhaustive. In case of *Genpact India Private Limited v. Deputy Commissioner of Income Tax* it is held that it cannot be laid down as a proposition of law that once a petition is admitted, it could never be dismissed on the ground of alternative remedy. If such bald contention is upheld, even this Court cannot order dismissal of a writ petition which ought not to have been entertained by the High Court under Article 226 of the Constitution in view of availability of

alternative and equally efficacious remedy to the aggrieved party, once the High Court has entertained a writ petition albeit wrongly and granted the relief to the petitioner". The Supreme Court in the case of Maharashtra Chess Association v Union of India 2019 held that "The High Court may decline to exercise jurisdiction under Article 226 invoking the principle of forum non conveniens in an appropriate case. The High Court must look at the case of the Appellant holistically and make a determination as to whether it would be proper to exercise its writ jurisdiction".

#### Writ petition is the Last Resort

The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available. The above proposition has been laid down in the case of Thansingh Nathmal, Titaghar Paper Mills and other similar judgments. The judgement conveys that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation." This is to ensure that the Jurisdiction of the High Court does not become an appellate mechanism for the adjudication of the disputes.

In the case of Dr.K.Nedunchezian vs. The Deputy Commissioner of Income Tax (2005) the Hon'ble Supreme Court held that "particularly in tax matters, there should be no short circuiting of the alternative statutory remedies as has been repeatedly emphasised by the Supreme Court. When there is an alternative remedy ordinarily writ jurisdiction of this Court under Article 226 of the Constitution should not be invoked. Where there is a hierarchy of appeals provided by the statute the party must exhaust the statutory remedies before resorting to writ jurisdiction, especially income tax related matters, have exhausted the remedies available under the Statutes".

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. In the case of Commissioner of Income Tax and Others vs. Chhabil Dass Agarwal, 2014 the Supreme Court has recognised some exceptions to the rule of alternative remedy i.e.

- a) Where the statutory authority has not acted in accordance with the provisions of the enactment in question,
- b) Defiance of the fundamental principles of judicial procedure, or
- c) Statutory authority has resorted to invoke the provisions which are repealed, or
- d) When an order has been passed in total violation of the principles of natural justice,

Writ will not normally issue to quash Notice

Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet. No Doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.'

The rare and exceptional cases where a High Court will quash such notices have been laid down in a long line of authorities and broadly they are cases:

- a. Where the show- cause notice has been issued without jurisdiction by the authority.
- b. Where such show- cause notice reopens a well-settled position of law.
- c. Where such show - cause notice has prejudged the issue.
- d. Where the show- cause notice has been issued with mala fides.

#### Time Limit for filing Writ Petition

In State of M.P., v. Nandlal Jaismal reported in 1986 (4) SCC 566, the Hon'ble Supreme Court, held as follows: If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs the High Court in deciding whether or not to exercise such jurisdiction. Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court however every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."

#### Conclusion

Generally writ petitions in Income tax are filed in case of section 147/148 notices, where these notices are issued without proper jurisdiction, without taking proper approval from additional CIT, Where assessing officer does not clear objections raised by the assessee. The fate of Writs depends upon case to case and proper understanding of facts and law involved. The Assessee may go for Writ option where the department totally ignores the basic principles of natural justice and behaves in an erratic manner. This option should not be used in casual manner.