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**(2019) 09 RAJ CK 0245**

**In the Rajasthan High Court**

**Case No :** Special Appeal Writ No. 491, 492, 493, 494, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526 Of 2017

M/s. HCL Infosystems Limited And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

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**Date of Decision :** 17-09-2019

**Acts Referred:**

Rajasthan Value Added Tax, 2003 — Section 22, 23, 24, 25, 26, 26(1), 55, 61, 82, 83, 84

Income-tax Act, 1961 — Section 34, 260A

Code Of Civil Procedure, 1908 — Section 100

Foreign Exchange Management Act, 1999 — Section 35

Constitution Of India, 1950 — Article 32, 226

**Citation :** (2019) 09 RAJ CK 0245

**Hon'ble Judges :** Mohammad Rafiq, J; Narendra Singh Dhaddha, J

**Bench :** Division Bench

**Advocate :** K.K. Sharma, Siddharth Ranka, Nikhil Gupta, Prakul Khurana, Rahul Lakhwani, Bhavya Verma, Sameer Jain, Yogendra Adlak, Daksh Pareek, Arjun Singh, Karan Sachdev, R.B. Mathur, Nikhil Simlote

**Final Decision :** Dismissed

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## Judgement

Mohammad Rafiq, J

All these appeals have been preferred against the judgement of the learned Single Judge dated 10.3.2017, whereby the writ petitions filed by the appellants were dismissed. The appellants in the writ petitions challenged the notices issued to them under Section 25, 26, 55 and 61 of the Rajasthan Value Added Tax, 2003 (for short-`the Act of 2003') as also the reassessment orders passed, on the basis of such notice in some of the cases, relying on the judgment of the Supreme Court in State of Punjab vs. Nokia India Pvt. Ltd.-(2014) 16 SCC 410. Some of the petitioners filed reply to the show cause notice and agitated those very arguments, which have been raised before this Court and in some of the cases, the assessment orders have been passed, therefore, after considering

such issues, in the facts and circumstances of the case, the learned Single Judge taking note of the submissions made by learned counsel for the revenue that the entire due amount of tax and interest has been paid by the appellants, thus the condition of the prior payment of due amount to maintain the appeal stands satisfied and that despite there being no interim order, the demand for recovery of penalty has not been pressed against the petitioners during the pendency of the writ petitions, therefore, it was held that the appellants would have efficacious alternate remedy of successive appeals provided in the Act of 2003 itself. Considering however that the period for filing the appeal has expired, the learned Single Judge gave liberty to the appellants to file appeal within 60 days from the date the judgement is pronounced. Learned Single Judge in taking that view mainly relied on the judgement of Himachal Pradesh High Court in Samsung India Electronics Pvt. Ltd. vs. State of Himachal Pradesh & Ors.-(2017) 102 VST 78 (HP), in which case also the reassessment orders passed on the basis of judgement of the Supreme Court in Nokia India Pvt. Ltd., supra was directly challenged before the High Court in writ petitions, which were dismissed as not maintainable on the ground of availability of alternate remedy.

We have heard Shri K.K. Sharma, learned senior counsel, Shri Siddharth Ranka, Shri Nikhil Gupta & Shri Sameer Jain learned counsel for the appellants and Shri R.B. Mathur, learned counsel for the revenue at length. They have also supplemented their arguments by written submissions. The arguments were advanced both on the merits and also on the correctness of the judgement, dismissing the writ petitions on satisfaction by the learned Single Judge that the appellants have efficacious alternate remedy of appeal.

We may at the outset make it clear that even though the arguments have been heard both on merits as also on the objection of alternative remedy, we shall, at the first instance, consider whether the efficacious alternative remedy of appeal is available before the appellate authority i.e. first appeal before the Deputy Commissioner (Appeals) under Section 82 of the Act of 2003 and thereafter second appeal before the Rajasthan Tax Board under Section 83 of the Act of 2003 or the writ petitions should have been directly entertained before this Court. The necessity to examine the arguments on merits advanced by the learned counsel on both the sides would therefore arise only if we reverse the judgement of learned Single Judge and hold that writ petitions should have been directly entertained before this Court, and despite there being no findings rendered by learned Single Judge on merits of the case, instead of remanding the matter to single bench, and then decide to examine the matter on merits. We shall, therefore, first confine our examination to the correctness of the dismissal of the writ petitions on the premise of availability of the efficacious alternative remedy.

In order, however, to understand the background in which the show cause notices were issued to the appellants to reopen the assessment already made, the narration of brief facts would not be out of order. The appellants are

registered as dealers with the respondents under Act of 2003. Appellants are engaged in the business of sale of mobile phones, tablets, laptops etc. Bone of contention between the parties is that whether the charger/adaptor, battery, earphone, data cable, which are sold along with mobile phone or laptop, in a composite box, against a single sale price, are liable to be taxed along with the main packet or separately and if separately, at what rate and whether they can be sold separately also. The basis on which the revenue sought to reopen the assessment already made is the judgement of the Supreme Court in Nokia India Pvt. Ltd., supra, in which it was held that the mobile phone charger is an accessory and is liable to be taxed separately under the residuary entry of the Punjab Value Added Tax Act, 2005.

Learned counsel for the appellants have submitted that the re-assessment orders passed by the Assessing Officer in these cases are without any jurisdiction and therefore the writ petitions can be directly maintained before this court. Availability of alternate remedy of appeal can never be a bar for exercise of extraordinary jurisdiction in exceptional cases before this Court under Article 226 of the Constitution of India. In matters where a lower authority has acted without jurisdiction or in violation of the principles of natural justice, writ petition before the High Court is maintainable and in such cases, the party ought not be relegated to alternative remedy. Reliance in support of this argument is placed on the judgement of the Supreme Court in following cases:

1. Raza Textiles vs. ITO-1973 (1) SCC 633
2. Calcutta Discount Co. vs. ITO-1961 (2) SCR 241
3. Jeans Knit Pvt. Ltd. vs. DCIT Bangalore-(2017) 77 Taxmann.com 176 SC
4. Collector of Central Excise and Land Customs vs. Sanawarmal Purohit-1979 (4) ELT J613 (SC)
5. Whirlpool Corporation vs. Registrar of Trade marks, Mumbai & Ors.-(1998) 8 SCC 1
6. CIT vs. Chhabil Dass Agarwal-(2014) 1 SCC 603
7. Kuntesh Gupta vs. Management of Hindu Kanya Mahavidyalaya, Sitapura & Ors.-1987 (32) ELT 8 (SC)
8. Bengal Investments Ltd. vs. Assistant Commissioner-2016 (42) STR J 274 (SC)
9. State of West Bengal vs. North Adajai Coal Co. Ltd.-1971 (1) SCC 309
10. Authorised Officer, State Bank of Travancore & Anr. vs. Mathew K.C.-(2018) 3 SCC 85.

It is argued that the learned Single Judge in the impugned judgement has acknowledged the fact that there are indeed certain exceptions to the rule of alternative remedy, even then the writ petitions were dismissed on the ground of efficacious alternative remedy without any finding as to how the present cases do

not fall within these exceptions. It is argued that the provisions pertaining to re-opening of assessment is provided under Section 26 of the Act, which can be invoked only in the case of escaped assessment. Explanation to Section 26(1) of the Act provides that re-assessment under Section 26 cannot be resorted to include that part of the business, which has already been assessed or deemed to have been assessed, under the provisions of the Act. In terms of that provision, the assessing officer can reopen the assessment only if it has some reason to believe that the whole or any part of the turnover of a dealer has escaped assessment or has been under-assessed or has been assessed at a lower rate of tax than what was applicable. In the present case, the assessment for the period in dispute has been duly completed. Thus it cannot be said that there any escaped assessment. The Assessing Officer had no reason to believe to conclude about the escaped assessment. Reliance is placed on judgement of the Supreme Court in CIT vs. Kelvinator of India Ltd.-(2010) 2 SCC 723. Mere change of opinion cannot be considered as valid ground for reopening of assessment, argued the learned counsel. In support of this arguments, reliance is placed on judgement of the Supreme Court in Binani Industries Ltd. vs. Assistant Commissioner of Commercial Taxes-(2007) 15 SCC 435, DCIT vs. Simplex Concrete Piles (India) Ltd.-(2013) 11 SCC 373 and MEPCO Industries vs. CIT-(2010) 1 SCC 434.

Learned counsel for the appellants have also argued that a subsequent decision of the Supreme Court cannot be used to reopen the assessment, is a settled proposition of law. Reliance in support of this argument is placed on the judgement of the Supreme Court in DCIT vs. Simplex Concrete Piles (India) Ltd.-2013 (358) ITR 129 (SC), Rajakumar Bapna vs. UOI-(2002) 125 Taxman 532 (Raj.), Sesa Goa vs. JCIT-(2007) 294 ITR 101 (Bom.), CIT vs. Baer Shoes-2011 (331) ITR 435 (Mad.), CIT vs. Austin Engineering Pvt. Ltd., SLP No.2843 of 2009, dated 16.03.2009, Austin Engineering Co. vs. JCIT-2009 (312) ITR 70 (Guj.) and CIT vs. Nedungadi Bank-2003 (264) ITR 545 (Mer.).

Per contra, Shri R.B. Mathur, learned counsel for the revenue has argued that while in some cases, the Assessing Officer has issued show cause notice on the basis of judgement of the Supreme Court in Nokia India Pvt. Ltd., supra, but the satisfaction in some cases was also based on survey conducted at the business premises of the assessee's whereafter the details of sale of mobile phones and laptops along with chargers etc. were sought. The Assessing Officer in these matters served show cause notice on the assessee's under Section 25, 55 and 61 of the Act of 2003 as to why additional tax, consequential interest and penalty may not be levied on the appellant-assessee's for short payment of tax. The Assessing Officer after considering the replies and other material on record passed the assessment orders, holding in all these cases that the laptop charger/adaptor, mobile charger/adaptor and tablet charger/adaptor are independent products and do not fall within the category of goods mentioned in Schedule-IV-A. The Assessing Officer has held that the aforesaid items sold by the assessee do not find place in any schedule. They ought to be taxed as per the rates

specified in Schedule-V i.e. the goods are not covered in any other schedule. It is argued that case of the appellants is fully covered by judgement of the Supreme Court in Nokia India Pvt. Ltd., supra, wherein it has been held that mobile phone chargers are independent products and cannot be held to be a part of mobile phones. It is argued that the assessee in the aforesaid case of Nokia India Pvt. Ltd., supra, filed a review petition before the Supreme Court, which was also dismissed vide order dated 27.8.2015.

Shri R.B. Mathur, learned counsel for the revenue has argued that while original assessment is made under Section 23 of the Act of 2003, but subsequent re-assessment after scrutiny in these matters, were made by invoking Section 24, 25 and 26 of the Act. While Section 23 provides for 'self assessment', 'assessment' under Section 24 is made after last date of furnishing of annual return for the year even when return has been furnished, it is subject to scrutiny as may be determined by the Commissioner, to verify its correctness. The 're-assessment' under Section 25 is made in case of avoidance or evasion of tax. Section 26 is invoked in the case of escaped assessment. All these will have to be determined on the basis of facts of a given case and may differ from case to case. It is open to the appellants to raise all such legal arguments, which they are seeking to make before this court, firstly before the appellate authority i.e. Deputy Commissioner (Appeals) and thereafter before the Rajasthan Tax Board and then finally before this Court again, in the sales tax revision. Citing the judgement of Chandi Ram vs. ITO & Anr., S.B. Civil Writ Petition No.5595/1993 dated 22.12.1995, learned counsel argued that reliance on the subsequent decision of the Supreme Court to revise the assessment order, cannot be said to be a case of change of opinion.

Learned counsel argued that the appellants have the remedy of appeal under Section 82 of the Act of 2013 before the Deputy Commissioner (Appeals) and if their grievances are not remedied by the first appellate authority, they have further remedy of further appeal before the Rajasthan Tax Board under Section 83 of the Act of 2003. It is only thereafter that they have the remedy of filing revision petition before this court under Section 84 of the Act.

Shri R.B. Mathur, learned counsel for the revenue has submitted that in all the present cases, substantial part of the recovery has already been made as far as tax and interest is concerned and only penalty part has been stayed. In many cases, similarly situated parties including some of the petitioners like M/s. HCL Infosystems Ltd., Best IT Word and M/s. Acre India have filed appeals before the Deputy Commissioner and thereafter before the Rajasthan Tax Board. While in some cases, the Deputy Commissioner (Appeals) granted waiver of penalty, in certain other cases, the Rajasthan Tax Board granted such waiver. Revenue has not challenged such orders in so far as waiver of penalty is concerned. It is argued that appeal under Section 260A of Income Tax Act is provided only on substantial question of law, which is analogous to Section 100 of CPC, but appeals under Section 82 and 83 is available to the appellants herein on the

question of fact as well as law and sales tax revision before the High Court under Section 84 thereafter is available merely on a question of law, not necessarily on substantial question of law. Ultimate remedy of revision before this court is thus not subject to a stringent requirement of having a substantial question of law like in appeal under Section 260A of the Income Tax Act.

Shri R.B. Mathur, learned counsel has furnished the details of 9 Sales Tax Revisions filed by different parties viz. Best IT Word, which has filed 3 STRs, M/s. Acre India, which has filed 4 STRs and M/s. HCL Info, which has filed 2 STRs before this Court, including one appellant herein namely; M/s. HCL Info and submitted that in one of those matters, the Tax Board by upholding the argument of assessee, has set aside the reassessment order, thus nullifying the demand of tax and the interest as well as penalty. Subsequently, however, when the same issue cropped up before the Board in other 8 appeals, 4 appeals filed by M/s. Suresh Infotesh and 4 appeals filed by Assistant Commissioner, the Tax Board vide order dated 10.08.2018 has made a reference of the questions of law involved in those matters to its Full Bench for an authoritative decision.

Since remedy of appeals are provided to the assessee under the VAT Act, which are equally efficacious and speedy remedy, especially when after 2003, there is no bar for the High Court to grant appropriate interim order of stay in sales tax revision. In fact, in one of the cases, the Tax Board has decided the matter against the revenue not only on the question of penalty and interest, but also on the question of tax and subsequently the Board has itself made reference to its Larger Bench on the issues raised in these appeals, which is pending. It therefore cannot be said that alternate remedy available under the Act is not effective and efficacious.

We have given our anxious consideration to the rival submissions and perused the material on record.

Undeniably, there are hierarchy of appeals and revision provided under the Act of 2003 in which the order of reassessment passed with reference to Section 25 and 26 can be assailed by the assessee. What has to be however examined is whether the writ petitioners in these matters should be directly entertained by this court treating them under exceptional category so as to deviate from the normal rule of relegating the parties to avail the alternate remedy.

Earliest judgement of the Supreme Court on which reliance has been placed by the learned counsel appearing for the assessee is Calcutta Discount Co., supra, in which case, the writ petitions were filed against the notice issued under Section 34 of the Income Tax Act, calling upon the assessee to submit fresh returns of its total income and the total world income assessable for the three accounting years relating to three assessment years. Argument was that the notices were issued without the existence of the necessary conditions precedent, which confers jurisdiction under Section 34, supra, particularly when the amendment of Section 34, supra was not retrospective, and that the assessment in respect of

three years became barred long before 14.3.1951 when such notices were issued. The Single Bench of High Court allowed the writ petition, but the division bench of High Court in appeal reversed that judgement. The Supreme Court allowed the appeal and restored the judgement of the Single Bench holding that to confer jurisdiction under Section 34 to issue notice in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year, two conditions have to be satisfied. Firstly, that the Income-tax Officer must have reason to believe that income chargeable to income-tax has been under-assessed and secondly, that such "under assessment" has occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income under Section 22, or (ii) omission or failure on the part of an assessee to disclose fully and truly all material facts. The Supreme Court noted that while there was no dispute with regard to first condition, but appellant's case all along has been that second condition was not satisfied and therefore the only question was whether the Income-tax Officer had reason to believe that "there had been some omission or failure to disclose fully and truly all material facts necessary for the assessment" for any of these years in consequence of which the under-assessment took place. It was therefore held that the conditions precedent to the exercise of jurisdiction under Section 34 of the Income- tax Act did not exist and the Income-tax Officer had therefore no jurisdiction to issue the impugned notices under Section 34.

Reliance is also placed on the judgement of Whirlpool Corporation, *supra* in which it was held that alternative remedy would not operate as an absolute bar in three contingencies namely, (i) where the Writ Petition has been filed for the enforcement of any of the fundamental rights or (ii) where there has been a violation of the principles of natural justice or (iii) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The judgement of Supreme Court in *Raza Textile*, *supra* has also been relied, in which it was held that the question whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. Also relied is the judgement of the Supreme Court in *North Adjai Coal Co. Ltd.*, *supra*, in which the Supreme Court held that it is true that normally before a petition under Article 226 of the Constitution is entertained, the High Court would insist that the party aggrieved by the order of a quasi-judicial tribunal should have recourse to the statutory authorities, which have power to give relief. But that is a rule of practice and not of jurisdiction. In appropriate cases, the High Court may entertain a petition even if the aggrieved party has not exhausted the remedies available under a statute before the departmental authorities.

The question that arises for determination by this Court is whether the present one should be considered as an appropriate case to fall in any of the categories wherefor exceptions have been carved out, to entertain the writ petitions against the order of assessment directly in the High Court bypassing the hierarchy of appeals/revisions provided in the Act of 2003 under which the Assessing Officer

has exercised the power to pass such order. We shall in this question seek guidance from the decided case laws on the subject.

The Supreme Court in *Thansingh Nathmal vs. Supt. of Taxes* AIR 1964 SC 1419 has held as under:

"7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

The Supreme Court in *Mafatlal Industries Ltd. vs. UOI-* (1997) 5 SCC 536 has held as under:

"77. ... So far as the jurisdiction of the High Court under Article 226 or for that matter, the jurisdiction of this Court under Article 32 is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/ Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment."

The Supreme Court in *Union of India vs. Guwahati Carbon Ltd.*-(2012) 11 SCC 651 has held as under:

"8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in *Munshi Ram vs. Municipal Committee, Chheharta*, (1979) 3 SCC 83. In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23).

"23. ... when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking remedy are excluded."

In a rather recent judgment of the Supreme Court in *Commissioner of Income-tax & Ors. vs. Chabbil Dass Agarwal-* (2014) 1 SCC 603, it has been held that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available, is a rule of selfimposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. The following are the relevant observations made by the Supreme Court in para 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. vs. Mohammad Nooh*, AIR 1958 SC 86; *Titaghur Paper Mills Co. Ltd. vs. State of Orissa*, (1983) 2 SCC 433; *harbanslal Sahnia vs. Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107; *State of H.P. vs. Gujarat Ambuja Cement Ltd.*, (2005) 6 SCC 499)."

The Supreme Court in the aforesaid case of Chabbil Das Agarwal, supra had referred to not one, but five constitution bench judgements of Supreme Court, delivered much after the judgement in *Calcutta Discount Company*, supra-namely; in *K.S. Rashid and Sons vs. Income Tax Investigation Commission*, AIR 1954 SC 207; *Sangram Singh vs. Election Tribunal, Kotah*, AIR 1955 SC 425; *Union of India vs. T.R. Varma*, AIR 1957 SC 882; *State of U.P. vs. Mohd. Nooh*, AIR 1958 SC 86 and *K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras*, AIR 1966 SC 1089, in all of which, the view has been taken that though Article 226 confers a 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. It was also held that the Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

The Supreme Court in Chabbil Das Agarwal, supra, in para 15 and 16 of the report has held as under:

"19. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal* case, *Titagarh Paper Mills* case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

20. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon 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 Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram and Shyam Co. vs. State of Haryana*, (1985) 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility."

The Supreme Court in *Union of India vs. Satyavati Tandon*- (2010) 8 SCC 110 has held that when a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. Paras 31 & 32 of the report are worth quoting:

"31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has however dismissed the writ petition on the ground of lack of territorial jurisdiction.

32. No reason could be assigned by the appellant's counsel to demonstrate why the appellate jurisdiction of the High Court under Section 35 of FEMA does not provide an efficacious remedy. In fact there could hardly be any reason since the High Court itself is the appellate forum."

The Supreme Court in *Rajkumar Shivhare vs. Assistant Director, Directorate of Enforcement*-(2010) 4 SCC 772, has in para 34 held as under:

"34. When a statutory forum is created by law for redressal of grievance and that too in a fiscal Statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go bye by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating the aspect of the matter. It has however dismissed the writ petition on the ground of lack of territorial jurisdiction."

In a very recently delivered judgement by the Supreme Court in *Union of India (UOI) & Ors. vs. Coastal Container Transporters Association & Ors.*-2019 (3) Scale 758 (SCC citation), in para 19 of the report, the Supreme Court held that the High Court has committed error in entertaining the writ petition under Article 226 of Constitution of India at the stage of show cause notices. Though there is

no bar as such for entertaining the writ petitions at the stage of show cause notice, but it is settled by number of decisions of this Court (the Supreme Court), where writ petitions can be entertained at the show cause notice stage. Neither it is a case of lack of jurisdiction nor any violation of principles of natural justice is alleged so as to entertain the writ petition at the stage of notice.

Applying the ratio of all the aforesaid judgement, especially in Coastal Container Transporters Association, *supra*, we are inclined to hold that the present one cannot be said to be a case where the Assessing Officer completely lacked the jurisdiction in passing the reassessment order. It certainly cannot be said to be a case of inherent lack of jurisdiction. Aside of the fact whether or not the reassessment order could have been legally passed, the appellants cannot be allowed to contend that such orders have been passed dehors the principles of natural justice. Admittedly, show cause notices were served on each of the appellants prior to passing of the impugned reassessment orders. The case of the appellants cannot also said to be fall in any category of exceptions including about breach of any fundamental right where the remedy available in the Act of 2003 under the scheme of the Statute cannot be considered as effective and efficacious, particularly in the face of the fact that similarly situated assessees in many such identical cases, including some of the petitioners, have already approached the appellate authority and first appellate authority and thereafter the Tax Board and almost in all of them, penalty has been waived and number of sales tax revisions, as referred to above, then have been filed by the assessee before this Court, which are still pending. Moreover, as has been argued by learned counsel for the revenue that in one matter, the Tax Board has decided in favour of the assessee, apart from penalty, even on the question of tax and interest and subsequently when many other appeals were filed before the Board, a reference on the questions of law involved in these cases has been made to the Full Bench of the Rajasthan Tax Board. This is therefore an additional reason for this Court to refrain from entertaining the writ petition as the Rajasthan Tax Board has yet to take an authoritative view in the matter on the Full Bench reference.

We have therefore refrained from examining the arguments on merits made by both parties lest it may prejudice their case before the appellate authority/Tax Board where they can avail the alternate remedy.

In view of above discussion, we are not persuaded to interfere with the view taken by the learned Single Judge. The appeals fail and are accordingly dismissed.

Considering that the limitation for filing appeal in these matters expired long back, we deem it appropriate to direct that if appeals are now filed before the appellate authority concerned within 60 days from today, the same shall be entertained, heard and decided on merits.

Office to place a copy of the aforesaid judgement in each connected matter.