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**(2003) 05 KL CK 0034**  
**In the High Court Of Kerala**  
**Case No : OP No. 12888 of 2003**

Tolin Rubbers (P) Ltd.

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

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**Date of Decision :** 21-05-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Income Tax Act, 1961 — Section 147

**Citation :** (2003) 184 CTR 241 : (2003) 264 ITR 439

**Hon'ble Judges :** K. Balakrishnan Nair, J

**Bench :** Single Bench

**Advocate :** Babu Paul, for the Appellant; P.K.R. Menon, for the Respondent

**Final Decision :** Dismissed

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## Judgement

K. Balakrishnan Nair, J.—The petitioner is a company registered under the Companies Act. It is an assessee under the IT Act. It feels aggrieved by Exts P7 to P12 orders passed by the Asstt. CIT, Circle I, Aluva, who is the concerned AO. They are orders assessing/reassessing income, which has escaped assessment, u/s 147 r/w Section 143(3) of the IT Act for the asst. yrs. 1996-97 to 2001-02. The petitioner has got effective statutory remedies against those orders. They are appealable u/s 246A(1)(b). The appellate authority is the CIT(A). If the petitioner is aggrieved by the order of the CIT(A) disposing of the appeals u/s 250, it has got a further remedy of appeal to the Tribunal u/s 253(1)(a). On substantial questions of law, the petitioner has got a right of further appeal to this Court u/s 260A of the Act.

2. But, the petitioner has chosen to approach this Court directly by passing the statutory authorities.

The ground for making such frog-leap to this Court is detailed in Ground of the original petition, which reads as follows :

"The petitioner has no other effective alternative remedy against the impugned

assessment particularly since the assessment is violative of the principles of natural justice and the provisions of the IT Act and is without jurisdiction. The petitioner is hence constrained, to approach this Hon''ble Court under Article 226 of the Constitution of India and is entitled to do so and cannot be driven to follow the procedure prescribed under the IT Act insofar as that would be a gross negation of justice."

3. Learned senior counsel Shri V. Ramachandran justified the approach of the petitioner directly to this Court relying on the decisions of the apex Court/this Court in *State of Kerala v. K.T. Jhyaduliyusuff* 39 STC 478, *GKN Driveshafts (India) Ltd. v. ITO and Ors.* (2003) 259 ITR 19, *Dunlop India Ltd. and Another Vs. Assistant Commissioner of Sales Tax and Another*, *T.C.N. Menon Vs. Income Tax Officer, B-Ward*, *Capricorn Shopping Complex Vs. Income Tax Officer and Others*, *P. S. ABDUL MAJEED Vs. AGRICULTURAL Income Tax AND SALES TAX OFFICER AND OTHERS.*, *Tin Box Company Vs. Commissioner of Income Tax*, *Tin Box Company Vs. Commissioner of Income Tax*, *M/s J.T. (India) Exports and another Vs. Union of India and another*, and *M. S. JEWELLERY Vs. ASSISTANT COMMISSIONER (ASSESSMENT), AGRICULTURAL Income Tax AND SALES TAX AND ANOTHER.*, .

4. Relying on the above decisions, the learned senior counsel submitted that if the order of the AO is contrary to the provisions of the IT Act or if he has exceeded his jurisdiction during the course of the assessment proceedings by violating the principles of natural justice, this Court can interfere with the assessment orders directly under Article 226 of the Constitution of India.

5. The main grievance of the petitioner against the impugned orders is that they have been passed in violation of the principles of natural justice. Notices were issued u/s 148 based on the belief that certain income has escaped assessment. Such belief was based on reasons which were recorded by the AO. Notwithstanding repeated requests, the reasons so recorded were not communicated to the petitioner, it is submitted. Therefore, it was disabled in submitting effective objections to the notices issued u/s 148. It is also the petitioner''s case that the assessment orders were passed relying on certain materials unearthed by the Central excise authorities. But, those materials were not furnished to the petitioner by the AO.

Thus, it is contended, inter alia, that the impugned orders have been passed in gross violation of the principles of natural justice. It is also contended that in view of the amendment introduced to Section 251(1)(a) by the Finance Act, 2001, w.e.f. 1st June, 2001, the CIT(A) does not have any power to remand the case to the AO. Therefore, it is submitted that when an assessment is made in violation of the principles of nature justice as was done in the case on hand, the petitioner is left without any remedy.

6. I heard the learned senior counsel Shri P.K.R. Menon for the Revenue. The learned senior counsel would submit that a hierarchy of authorities is provided

under the Act giving efficacious alternative remedy to the petitioner, Therefore, it is submitted that there is no justification for directly knocking at the doors of this Court. It is also submitted that the provision empowering remand has been deleted to avoid unnecessary delay in finalising the cases. The appellate authority has got all the powers of the original authority. Anything which should have been done by the original authority can be done by the appellate authority also, it is submitted.

7. Normally, this Court will entertain a writ petition, if there is no other alternative efficacious remedy to the petitioner. In other words, the existence of an effective alternative remedy is normally a ground for dismissing the original petition in limine. No doubt, if an inferior authority commits any jurisdictional error, this Court has the power to interfere notwithstanding the existence of an alternative remedy. But, the point to be decided is whether this Court is justified in exercising the extraordinary jurisdiction under Article 226 of the Constitution of India in the face of the alternative remedies available to the petitioner in the case on hand. If this Court entertains writ petitions on the ground of jurisdictional error unmindful of the existence of an alternative remedy, I think this Court will be doing a great disservice to public interest. The efficacy of this Court has been considerably compromised owing to docket explosion. The Court's precious time should be preserved for those matters which this Court alone is competent to deal with. Even though the right to approach the apex Court in a fundamental right under Article 32 of the Constitution of India, it was held in *Kanubhai Brahmbhatt Vs. State of Gujarat*, that the petitioner should first approach the High Court under Article 226 of the Constitution of India, instead of directly knocking at the doors of the apex Court at the first instance. In the said decision, it was held :

"Reasons, good and substantial, exist for directing the petitioner to approach the concerned High Court in the first instance instead of knocking at the doors of this Court straightway. And these need to be spelled out.

2. An illustration may tell more effectively, what otherwise may not be told as effectively, and perhaps, only with some embarrassment, Suppose there is only one national hospital established especially for performing open-heart surgery which cannot be performed elsewhere in any of the eighteen regional hospitals. What will happen to the patients needing such surgery, if the national hospital which alone is specially equipped for this type of surgery, throws its doors wide open also for patients suffering from other ailments who can be treated by any and every one of the eighteen regional hospitals ? More particularly when the patients already admitted for such surgery by the national hospital are already lying unattended to, on its floors, and in its corridors, for an unconscionably long time ? Showing sympathy for a patient with other than a heart problem who can also be treated equally effectively, and perhaps much more quickly, may well constitute cruelty to the heart patients who can be treated only by the national hospital established especially and exclusively for the treatment of such patients.

Will it not be more merciful to all concerned (by being firm enough) to tell those suffering from other than heart problems to go to regional hospitals, instead of insisting on being treated at the national hospital, which also can of course treat them, but only at the cost of neglecting the heart patients who have nowhere else to go ? More so as the patients going to the regional hospital may well benefit much more by securing more personalized and urgent attention there. On the other hand, not to do so may well amount to being engaged in trying to relieve the distress of those whose distress can be removed by anyone else at the cost of refusing to treat those who cannot be treated by anyone else.

3. If this Court takes upon itself to do everything which even the High Court can do, this Court will not be able to do what this Court alone can do under Article 136 of the Constitution of India, and other provisions conferring exclusive jurisdiction on this Court. There is no reason to assume that the concerned High Court will not do justice. Or that this Court alone can do justice. If this Court entertains writ petitions at the instance of parties who approach this Court directly instead of approaching the concerned High Court in the first instance, tens of thousands of writ petitions would in course of time be instituted in this Court directly. The inevitable result will be that the arrears pertaining to matters in respect of which this Court exercised exclusive jurisdiction under the Constitution will assume more alarming proportions. As it is, more than ten years old civil appeals and criminal appeals are sobbing for attention. It will occasion great misery and immense hardship to tens of thousands of litigants if the seriousness of this aspect is not sufficiently realized. And this is no imaginary phobia. A dismissed Government servant has to wait for nearly ten years for redress in this Court. A litigant whose appeals has been dismissed by wrongly refusing to condone delay has to wait for 14 years before his wrong is righted by this Court. The time for imposing self-discipline has already come, even if it involves shedding of some amount of institutional ego, or raising of some eyebrows. Again, it is as important to do justice at this level, as to inspire confidence in the litigants that justice will be meted out to them at the High Court level, and other levels. Faith must be inspired in the hierarchy of Courts and the institution as a whole, not only in this Court alone. And this objective can be achieved only this Court showing trust in the High Court by directing the litigants to approach the High Court in the first instance. Besides, as a matter of fact, if matters like the present one are instituted in the High Court, there is a likelihood of the same being disposed of much more quickly, and, equally effectively, on account of the decentralisation of the process of administering justice. We are of the opinion that the petitioner should be directed to adopt this course and approach the High Court."

8. The above reasoning of the apex Court will squarely apply to the cases where the petitioners directly come to this Court without invoking the effective statutory remedies available to them.

9. Now, after *Anisminic Ltd. v. Foreign Compensation Commissioner* 1969 (1) All

ER 208 , every error of law is a jurisdictional error. Further, the omission to take into account a relevant fact or taking into account an irrelevant fact, will take the decision of the inferior authority outside its jurisdiction. If during the course of the proceedings, the authority departs from the rules of natural justice, the resultant decision will be one suffering from jurisdictional error. Having regard to the extended meaning given to "jurisdiction" in Administrative Law in the post "anismic" era, a wrong decision even on a decisive fact will be a jurisdictional error. The learned authors HWR Wade and Forsyth have summarised the old and new rules regarding jurisdictional error in their Administrative Law (8th Edition pp. 285-286). The said statement of law made by those learned authors has been quoted with approval by the apex Court in *Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others*, . So in the light of the new concept of jurisdictional error, if the contention of the petitioner is accepted, it will be opening the floodgate without any justifiable reason as this Court has to be consistent and has to admit all similar original petitions.

10. The hierarchy of authorities provided under the IT Act will give effective remedy to the petitioner. The powers of the appellate authority are coterminous with that of the original authority. So, the contention of the petitioner that since there is no power of remand for the appellate authority, petitioner has no effective remedy, is plainly untenable. As rightly contended by the learned senior counsel for the Revenue, the appellate authority has got all the powers of the original authority. Therefore, the petitioner can seek redressal of all its grievances before the said authority.

11. In view of the above position, there is no justification for this Court to interfere with the impugned orders in exercise of its power under Article 226 of the Constitution of India.

Accordingly, the original petition is dismissed in limine without prejudice to the right of the petitioner to invoke the statutory remedy available to it.