Neutral Citation Number: 2022/DHC/004517

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 17.10.2022

% Judgment delivered on: 31.10.2022

\+ **LPA 592/2022**

DIRECTORATE OF ENFORCEMENT ..... Appellant

Through: Mr. Vikramjeet Banerjee, Additional Solicitor General with Mr. Anurag Ahluwalia, CGSC and Mr. Tathagat Sharma, Mr. Ved Prakash & Mr.Siddhartha Sinha, Advocates.

versus

PC FINANCIAL SERVICES PRIVATE LIMITED & ANR. ..... Respondents

Through: Mr. S. Ganesh and Mr. Arvind Nayar, Senior Advocates with Mr. Ajay Bhargava, Ms. Vanita Bhargava, Mr.Atul Pandey, Mr. Hirak, Mr.Karan Gupta & Mr. Milind Jain, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present appeal is arising out of order dated 13.09.2022 passed by the learned Single Judge in W.P.(C.) No.8514/2022 titled ***PC Financial Services Private Limited Vs. Directorate of Enforcement & Another***.

2. The facts of the case reveal that the appellant Directorate of Enforcement is investigating a number of Non-Banking Financial Companies (NBFCs) and Fintech Companies under the provisions of the Prevention of Money Laundering Act, 2002 (PMLA). In exercise of the powers conferred under the PMLA, the appellant seized an amount of Rs.106,93,84,385/- (Rupees One Hundred and Six Crores Ninety Three Lakhs Eighty Four Thousand Three Hundred Eighty Five only) vide seizure order dated 26.08.2021 [later corrected as Rs.87,84,26,805/- (Rupees Eighty Seven Crores Eighty Four Lakhs Twenty Six Thousand Eight Hundred and Five Only)] vide letter dated 12.10.2021 to Commissioner of Customs (Appeals-I), and an amount of approximately Rs.51,22,88,087/- (Rupees Fifty One Crores and Twenty Two Lakhs Eighty Eight Thousand and Eighty Seven Only) under Section 37A(1) of Foreign Exchange Management Act, 1999 (FEMA) vide Seizure Orders dated 26.08.2021, 30.09.2021 and 15.12.2001.

3. The respondent No.1 company preferred a Writ Petition No.36212/2021 before the High Court of Telangana praying for quashment of the impugned Seizure Orders and directing release of the properties which have been seized, and the learned Single Judge vide order dated 11.02.2022 passed in the said writ petition, i.e. W.P.(C.) No. 36212/2021 directed release of Rs.15,35,45,317/- (Rupees Fifteen Crores Thirty Five Lakhs forty Five Thousand Three Hundred and Seventeen Only).

4. An appeal was preferred before the Division Bench of the High Court of Telangana, i.e. Writ Appeal No.87/2022 titled ***Directorate of Enforcement Vs. PC Financial Services Private Limited & Others***, and the

Division Bench by an order dated 25.02.2022 has set aside the order dated 11.02.2022 passed by the learned Single Judge.

5. The respondent No.1 company preferred a Special Leave Petition, i.e. SLP (Civil) No.7551/2022 titled ***PC Financial Services Private Limited Vs. Union of India & Others,*** and the Hon'ble Supreme Court by an order dated 13.05.2022 passed in the said SLP directed release of the funds of Rs.15,35,45,317/- (Rupees Fifteen Crores Thirty Five Lakhs forty Five Thousand Three Hundred and Seventeen Only).

6. It is pertinent to note that subsequently respondent No.1 filed a writ petition before this Court (High Court of Delhi), i.e. W.P.(C.) No. 8514/2022 on 25.05.2022 and the learned Single Judge vide order dated 31.05.2022 has directed release of an additional amount of Rs.25,00,00,000/- (Rupees Twenty Five Crores Only) to respondent No.1 company. An interim application was preferred by the Directorate of Enforcement before the Hon'ble Supreme Court on 24.06.2022 challenging the grant of additional relief to the respondent No.1, however, the same was dismissed.

7. The appellant later on filed a complaint dated 21.06.2022 under Section 16(3) of the FEMA before the Adjudicating Authority against the respondent No.1 company and the other Noticees praying for penalisation of the Noticees and for confiscation of the seized properties of Rs.252,36,23,862/- (Rupees Two Hundred and Fifty Two Crores Thirty Six Lakhs Twenty Three Thousand Eight Hundred and Sixty Two Only).

8. It is pertinent to note that the order dated 31.05.2022 granting release of additional amount of Rs.25,00,00,000/- (Rupees Twenty Five Crores Only) was challenged before this Court in Letters Patent Appeal, i.e. LPA No.487/2022. This Court has disposed of the said LPA because at the relevant point of time, the Appellate Tribunal was not functional, and the order dated 24.08.2022 passed by this Court is reproduced as under:

> *"CM APPL. 36656/2022 (Exemption)*
>
> *Allowed, subject to all just exceptions.*
>
> *LPA 487/2022 & CM APPLs. 36655/2022 & 36657/2022*
>
> *1. Mr. S Ganesh, learned Senior Counsel appearing for the Respondents, very fairly states that the matter has to be heard finally by the learned Single Judge and, therefore, he will not press for the interim order which was passed on 31.05.2022, meaning thereby, he will not file any contempt petition.*
>
> *2. Mr. Vikramjeet Banarjee, learned ASG, also very fairly states that the present LPA may be disposed of with a request to the learned Single Judge to decide the matter at an early date, which is coming up for hearing before the learned Single Judge on 29.08.2022.*
>
> *3. Resultantly, the present LPA stands disposed of with liberty to the parties to argue the matter on 29.08.2022 before the learned Single Judge. The learned Single Judge is requested to decide the matter at an early date.*
>
> *4. Pending applications stand disposed of."*

9. It is reiterated that the order was passed by this Court requesting the learned Single Judge to decide the matter on merits only because at the relevant point of time, the Tribunal was not functional. On 13.09.2022, the writ petition came up before the learned Single Judge and it was brought to

the notice of the learned Single Judge that the Tribunal has become functional. However, the learned Single Judge has passed the order directing further hearing of the matter. The order dated 13.09.2022 is reproduced as under:

> *" The Court notes that the instant writ petition had been entertained notwithstanding the petitioner having instituted an appeal before the Appellate Tribunal against the order impugned here. However, one of the considerations which had weighed then was that the Appellate Tribunal was not functional in the absence of members having been appointed. Subsequently however, the Tribunal has become functional and the Court is informed that Members as well as the Chairperson have come to be appointed. In view of the aforesaid, the first issue which arises is whether the writ petition should be continued.*
>
> *Mr. Ganesh, learned Senior Counsel appearing for the petitioner, submits that it chooses not to pursue the appeal which is pending before the Tribunal subject to rights being reserved to agitate all questions in the pending writ petition. This, in the backdrop, as Mr. Ganesh would contend, of the fact that pleadings have been duly exchanged on the instant writ petition and the Division Bench in the LPA No. 487/2022 has framed directions for the disposal of the writ petition itself.*
>
> *In view of the aforesaid, let the petitioner, if so chosen and advised, withdraw the appeal which is pending before the Appellate Tribunal subject to rights being reserved to pursue and agitate all questions in the instant writ petition.*
>
> *List again on 18.10.2022 in the category of "End of Board"."*

10. Learned ASG appearing for the appellant has vehemently argued before this Court that once the Tribunal has become functional, the order dated 24.08.2022 passed in LPA 487/2022 will not come in the way of the

parties as an appeal was already pending on the date when the order was passed, i.e. on 13.09.2022 keeping in view the equally efficacious alternative remedy available to respondent No.1.

11. Mr. Ganesh, learned senior counsel for the respondent No.1 has vehemently argued before this Court that pursuant to the order dated 13.09.2022, the appeal had been withdrawn by respondent No.1 and, therefore, the matter has to be heard by the learned Single Judge.

12. This Court has carefully gone through the statutory provisions governing the field and it is an undisputed fact that an appeal lies before the Tribunal. The Division Bench of this Court has requested the learned Single Judge to decide the matter vide order dated 24.08.2022 only because at the relevant point of time when the order was passed by the Division Bench, no Tribunal was functional.

13. The Hon'ble Supreme Court in ***Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others,*** (1983) 2 SCC 433, has, *inter alia*, held as under:

> *"6. We are constrained to dismiss these petitions on the short ground that the petitioners have an equally efficacious alternative remedy by way of an appeal to the Prescribed Authority under sub-section (1) of Section 23 of the Act, then a second appeal to the Tribunal under sub-section (3)(a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court under Section 24 of the Act… … … … … "*

14. The Hon'ble Supreme Court in ***Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. And Others,*** (1985) 1

SCC 260, by placing reliance on ***Titaghur Paper Mills*** (supra) has, *inter alia*, held as under:

> *"3. In Titaghur Paper Mills Co. Ltd. v. State of Orissa [(1983) 2 SCC 433 : 1983 SCC (Tax) 131 : 1983 Tax LR 2905 : (1983) 142 ITR 663 : (1983) 53 STC 315] A.P. Sen, E.S. Venkataramiah and R.B. Misra, JJ. held that where the statute itself provided the petitioners with an efficacious alternative remedy by way of an appeal to the Prescribed Authority, a second appeal to the tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring as it were, the complete statutory machinery. That it has become necessary, even now, for us to repeat this admonition is indeed a matter of tragic concern to us. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."*

15. The Hon'ble Supreme Court in ***Punjab National Bank Vs. O.C. Krishnan and Others,*** (2001) 6 SCC 569, has, *inter alia*, held as under:

> *"5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable*

under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act"). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."

16. The Hon'ble Supreme Court in ***Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Another,*** (2010) 4 SCC 772, has observed as under:

"39. ... ... If the appellant in this case is allowed to file a writ petition despite the existence of an efficacious remedy by way of appeal under Section 35 of FEMA this will enable him to defeat the provisions of the statute which may provide for certain conditions for filing the appeal, like limitation, payment of court fee or deposit of some amount of penalty or fulfilment of some other conditions for entertaining the appeal. (See para

13 at SCC p. 408.) It is obvious that a writ court should not encourage the aforesaid trend of bypassing a statutory provision."

17. The Hon'ble Supreme Court in ***United Bank of India Vs. Satyawati Tandon and Others,*** (2010) 8 SCC 110, has, *inter alia*, observed as under:

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

> *45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."*

18. The Hon'ble Supreme Court in ***Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal,*** (2014) 1 SCC 603, has, *inter alia*, observed as under:

> *"10. In the instant case, the only question which arises for our consideration and decision is whether the High Court was justified in interfering with the order passed by the assessing authority under Section 148 of the Act in exercise of its jurisdiction under Article 226 when an equally efficacious alternate remedy was available to the assessee under the Act.*
>
> *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. v. Mohd. Nooh [AIR 1958 SC 86] , Titaghur Paper Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] , Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2*

SCC 107] and State of H.P. v. Gujarat Ambuja Cement Ltd. [(2005) 6 SCC 499])

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15. Thus, while it can be said that this Court has recognised 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 [AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] 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.

16. In the instant case, the Act provides complete machinery for the assessment/reassessment 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. v. 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.

> *17. In the instant case, neither has the writ petitioner assessee described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of the instant case. ... ...”*

19. The Hon’ble Supreme Court in ***State of Maharashtra and Others Vs. Greatship (India) Limited,*** (2022) SCC OnLine SC 1262, has, *inter alia*, observed as under:

> *“14. At the outset, it is required to be noted that against the assessment order passed by the Assessing Officer under the provisions of the MVAT Act and CST Act, the assessee straightway preferred writ petition under Article 226 of the Constitution of India. It is not in dispute that the statutes provide for the right of appeal against the assessment order passed by the Assessing Officer and against the order passed by the first appellate authority, an appeal/revision before the Tribunal. In that view of the matter, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India challenging the assessment order in view of the availability of statutory remedy under the Act. At this stage, the decision of this Court in the case of Satyawati Tondon (supra) in which this Court had an occasion to consider the entertainability of a writ petition under Article 226 of the Constitution of India by by-passing the statutory remedies, is required to be referred to. After considering the earlier decisions of this Court, in paragraphs 49 to 52, it was observed and held as under:*
>
> > *“49. The views expressed in Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 were echoed in CCE v. Dunlop India Ltd., (1985) 1 SCC 260 in the following words : (SCC p. 264, para 3)*
> >
> > > *“3. ... Article 226 is not meant to short-circuit or circumvent statutory*

> *procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."*

50. In Punjab National Bank v. O.C. Krishnan, (2001) 6 SCC 569 this Court considered the question whether a petition under Article 227 of the Constitution was maintainable against an order passed by the Tribunal under Section 19 of the DRT Act and observed : (SCC p. 570, paras 5-6)

> *"5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and*

Financial Institutions Act, 1993 (for short 'the Act'). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the

> *appeal mechanism provided by the Act."*

51. In CCT v. Indian Explosives Ltd. [(2008) 3 SCC 688] the Court reversed an order passed by the Division Bench of the Orissa High Court quashing the show-cause notice issued to the respondent under the Orissa Sales Tax Act by observing that the High Court had completely ignored the parameters laid down by this Court in a large number of cases relating to exhaustion of alternative remedy.

52. In City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwala [(2009) 1 SCC 168] the Court highlighted the parameters which are required to be kept in view by the High Court while exercising jurisdiction under Article 226 of the Constitution. Paras 29 and 30 of that judgment which contain the views of this Court read as under : (SCC pp. 175-76)

> *"29. In our opinion, the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution is duty-bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an ex parte writ of mandamus, order or direction in a public law remedy. Further, while considering the validity of impugned action or*

inaction the Court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extraordinary jurisdiction under Article 226 of the Constitution.

30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for

> *the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law."*

53. In Raj Kumar Shivhare v. Directorate of Enforcement [(2010) 4 SCC 772] the Court was dealing with the issue whether the alternative statutory remedy available under the Foreign Exchange Management Act, 1999 can be bypassed and jurisdiction under Article 226 of the Constitution could be invoked. After examining the scheme of the Act, the Court observed : (SCC p. 781, paras 31-32)

> *"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."*

15. Applying the law laid down by this Court in the aforesaid decision, the High Court has seriously erred in entertaining the writ petition under Article 226 of the Constitution of India against the assessment order, bypassing the statutory remedies."

20. This Court in ***Rai Foundation Through Its Trustee Mr. Suresh Sachdev Vs. The Director, Directorate of Enforcement and Others,*** 2015 SCC OnLine Del 7626 – wherein the writ petition had been filed for quashing of provisional attachment orders under the PMLA, has held as under:

> *"8. Section 26 of the Act provides remedy of appeal before the Appellate Tribunal to any person aggrieved by the order made by the Adjudicating Authority. Section 42 of the Act further envisages that any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order.*

9. In view of the availability of alternative remedies available to the petitioner under the this Act, I am not inclined to entertain this writ petition under Article 226 of the Constitution of India at this nascent stage, more so when complete mechanism has been provided under the Act to safeguard the interest of aggrieved person. The petitioner has effective and efficacious statutory remedies to prove the nature of acquisition of assets and to ventilate their grievances. Furthermore, at the stage of provisional attachment, the person concerned is not divested of the property, but is only prevented from dealing with the same till orders are passed by the adjudicating authority under Section 8(2). Against order of adjudicating authority appeal shall lie to the Appellate Tribunal under Section 26 and further appeal to High Court under Section 42, the statute has provided enough safeguards and redressal mechanism. The writ court cannot go into the merits of the issue at this stage even before attachment order has become final, investigation is completed, trial concluded and issue of attachment is considered by Adjudicating Authority, Appellate Authority and second Appellate Authority.

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12. It is trite law that Article 226 of the Constitution of India vests wide discretion in the Writ Court to entertain the writ petition on any grievance and to grant appropriate relief. It is an extraordinary jurisdiction vested in the writ Court. The Writ Courts observe self-imposed restraint in exercising the jurisdiction under Article 226. Availability of alternative remedy is not a bar to entertain a writ petition. However, ordinarily, the writ petition is not entertained under Article 226 if the aggrieved person has an efficacious and effective remedy provided by concerned statute whereunder an adverse decision is taken against the person, which he seeks to assail in the writ petition. Notwithstanding, availability of alternative remedy in a case of exceptional nature or a case of glaring injustice, Writ Court can entertain a writ petition. However, that would not mean that writ jurisdiction can be exercised in every case, where alternative remedies are available to

safeguard the interest of the aggrieved person. It is one thing to say that in exercise of power vested in it under Article 226 of the Constitution, this High Court entertain a writ petition against any order passed by or action taken by the State and/or its agency or any public authority or order passed by quasi-judicial authority and it is altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

21. This Court in ***Rose Valley Hotels and Entertainment Limited Vs. The Secretary, Department of Revenue, Ministry of Finance and Others,*** (2015) 221 DLT 335 – which is another matter pertaining to the PMLA, has held as under:

"5. Heard learned counsel for the parties. Section 26 of the PML Act provides for appeals to the Appellate Tribunal by any person aggrieved by an order made by the adjudicating authority under the Act. Even aggrieved by the order of the Appellate Tribunal the Statute under Section 42 of the PML Act provides for an appeal on any question of law or fact to the High Court. Thus, even accepting the version of the petitioner that the impugned order is a non-reasoned order and the Appellate Court would not have the benefit of reasoning before it however such order is also an appealable order and wherein the Appellate Court on appreciation of facts and law can form its opinion. There is no denial that giving reasons is one of the fundamentals of good administration and failure to give reasons amounts to denial of justice. However, it is not a principle of law that if an order of a competent authority is bereft of reasons, the appellate authority is denuded of its statutory jurisdiction to entertain the appeal. However, brevity of reasoning cannot be understood in legal parlance as absence

of reasoning. While no reasoning in support of order whether judicial/quasi-judicial order is impermissible, the brief reasoning would suffice to meet the ends of justice at least at interlocutory stages and would render the remedy of appeal purposeful and meaningful.

x x x x x x x x x

9. In Satyawati Tondon (supra) the Supreme Court while dealing with the maintainability of the writ petition in view of the availability of alternate remedy held that it is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision etc. and the particular legislation contains a detailed mechanism for redressal of his grievance and only if the petitioner is able to show that its case falls within any of the exception carved out in Whirlpool Corporation (supra) and some other judgments then the High Court may after considering all the relevant parameters and in public interest pass an appropriate interim order.

10. Thus, without dwelling into the merits of the matter since the case of the petitioners do not fall in the exceptions as laid down in Whirlpool Corporation (supra), the writ petitions and applications are dismissed with liberty to the petitioner to avail the alternative efficacious remedies available under Section 26 of the PML Act, if so advised."

22. In the light of the aforesaid judgments delivered by the Hon'ble Supreme Court and this Court, there is an equally efficacious remedy available under Section 26 of the PMLA and the High Court is an Appellate Authority above the Appellate Authority by virtue of Section 42 of the PMLA. Hence as the Appellate Authority is very much functional, the matter deserves to be heard by the Appellate Authority only. It is true that

the High Court can certainly exercise its discretion keeping in view the peculiar facts & circumstances of the case to decide a matter even if alternative remedy is available.

23. In the considered opinion of this Court, in the present case, there is an equally efficacious alternative remedy available before the Appellate Tribunal and the Tribunal is very much functional, the matter deserves to be heard before the Tribunal and, therefore, the Tribunal is requested to decide the appeal at an early date.

24. It has been brought to the notice of this Court that on the date the LPA order was passed i.e. order dated 24.08.2022 passed in LPA No. 487/2022 and also on the date the subsequent order was passed by the learned Single Judge in W.P.(C) No.8514/2022 dated 13.09.2022 the appeal was very much pending and, therefore, in case it has been withdrawn, the same shall be restored to its original number and the Tribunal is requested to decide the same on merits at an early date.

25. With the aforesaid observations, the present LPA stands allowed. The Tribunal is requested to decide the appeal at an early date. Needless to state that this Court has not dealt with the merits of the case and all contentions and rights of the parties are left open.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

OCTOBER 31, 2022/*B.S. Rohella*