HIGH COURT OF GUJARAT

RELIANCE INDUSTRIES LIMITED & 1 ORS
Versus
ASSITANT PROVIDENT FUND COMMISSIONER - SUB REGIONAL

Date of Decision: 13 July 2016

Citation: 2016 LawSuit(Guj) 1001

Hon'ble Judges: K M Thaker

Case Type: Special Civil Application

Case No: 4130 of 2008

Subject: Constitution, Direct Taxation, Labour and Industrial

Acts Referred:
Constitution Of India Art 226
Income Tax Act, 1961 Sec 33(a), Sec 16(3)(a)(II)
Employees Provident Funds And Miscellaneous Provisions Act, 1952 Sec 7I, Sec 7O, Sec 8A(1), Sec 7A, Sec 8(a)(1)

Final Decision: Appeal disposed

Advocates: Nanavati Associates, Joy Mathew

Cases Referred in (+): 16

K.M. Thaker, J.

[1] Heard Mr. K.S. Nanavati, learned senior counsel with Mr.Chudgar, learned advocate, and Mr. Desai, learned advocate for the petitioner, and Mr. Mathew, learned advocate for the respondent.

1.1 The petitioner felt aggrieved by order dated 26.2.2008 passed by the Assistant Provident Fund Commissioner, Surat in exercise of powers under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ('the Act' for short), whereby the said authority quantified the amount allegedly due and payable towards provident fund contribution and directed the petitioner to Rs.44,02,758/-.

1.2 Within about one week after said order was passed, i.e. on or around 4.3.2008, the petitioner filed present petition against the said order dated 25/26.2.2008.

[2] In present petition, the respondent filed reply affidavit on 2.6.2008. Thereafter, the petition was adjourned from time to time without any substantive or effective hearing.

[3] Today, when the petition is taken up for final hearing, Mr. Nanavati, learned Senior Counsel for the petitioner submitted that the impugned order suffers from vice violation of principles of natural justice and that therefore, it is not sustainable and deserves to be set aside.

3.1 Without disputing the fact that the petition cannot be heard on merits and cannot be finally adjudicated and decided by this Court because several issues of disputed facts are involved in this case and final adjudication of petition would require detailed examination and assessment of oral evidence as well as documentary evidence like pay registers, attendance registers and determination of issues like total number of contractors who were engaged by the petitioner company at the relevant time, total number of employees who were engaged/deployed by various contractors in the company at the relevant time, the salary paid / not paid by the contractors during the period in question, the amount of salary and whether the contribution in respect of all contract workers were paid by the contractors during the said period or not or if there were default in respect of how many employees / contractors such default had occurred and what would be the amount of such unpaid contribution, etc. are involved in present case and they cannot be considered or examined and finally decided in writ proceeding by this Court, however, since the order is passed in violation of principles of natural justice, instead of relegating the petitioner to statutory alternative remedy, the case should be remanded to the original adjudicating authority. He also submitted that while passing the impugned order, the respondent authority did not appreciate the petitioner's contention which was supported by the decision by Hon'ble Apex Court in case of Food Corporation of India v. Provident Fund Commissioner, 1990 1 SCC 68 which is subsequently considered in the case of Bharat Heavy Electricals Ltd. v. Employees State Insurance Corporation, 2008 3 SCC 247 wherein Apex Court has observed that the contractors would be necessary party for adjudicating the dispute relating to alleged dues payable in respect of the employees engaged in the company through contractors. He also submitted that without appreciating the said submission, the respondent authority proceeded to decide the case and passed the impugned order.

According to the learned Senior Counsel for the petitioner, the order should be set aside and the matter should be remanded to the adjudicating authority i.e. APFC.

[4] Mr.Mathew, learned advocate for the respondent department, opposed the petition and submitted that the petition is not maintainable because statutory alternative

remedy is provided, inasmuch as under Section 7-I appeal is maintainable before the learned Appellate Tribunal against the order passed by the adjudicating authority in exercise of powers under Section 7-A and that therefore, the petitioner deserves to be relegated to the alternative remedy. He further submitted that several issues and questions of disputed fact which require appreciation of evidence are involved in present petition and that therefore also, the petition does not deserve to be entertained and the petition should be relegated to the learned Tribunal where the process of examining and appreciating evidence can be undertaken. Mr. Mathew, learned advocate for the respondent department, further submitted that the order which is impugned by the petitioner in present petition was passed after granting various opportunities to the petitioner and after granting several adjournments in the proceedings.

He submitted that the petitioner had filed detailed submissions/reply and had also placed on record and thereafter, the authority passed the order and that therefore, the allegation that the impugned order is passed in violation of principles of natural justice, is not correct. So as to support his submission and request to relegate the petitioner to alternative remedy, learned advocate for the respondent department relied on the decision dated 21.3.2016 passed by this Court in Special Civil Application No.5801 of 1998 and the order passed in Special Civil Application No.8336 of 1998 whereby the Court relegated the petitioners in the said two petitions (which were filed in 1998 and were pending since then) to statutory alternative remedy i.e. before the learned Tribunal constituted under the Act. He also relied on the decision dated 1.3.2005 passed by the Court in Special Civil Application No.16052 of 2004 where the petitioner was relegated to alternative remedy.

[5] In his rejoinder, learned Senior Counsel for the petitioner did not dispute that opportunities to place material on record and to file written reply/submission and for personal hearing were granted, he, however, so as to support his claim that the authority did not grant opportunity of hearing submitted that during the proceedings/hearing before the APFC, a report was submitted by the inspection team but a copy of that report was not provided to the petitioner which amounts to violation of principles of natural justice. Thus it is in backdrop of the said allegation that the petitioner claims that reasonable opportunity of hearing was not granted but the fact that opportunity to file reply / submissions and relevant documents as well as the fact that personal hearing was granted to the petitioner is not in dispute. However, the learned advocate for the petitioner company emphasized that the authority relied on the report (which was submitted during the proceedings) without supplying copy of

said report to the petitioner and that therefore, the impugned order is infected by the said defect and it is vitiated on account of violation of principles of natural justice.

5.1 On this count, it is appropriate to take into account the affidavit filed by the respondent. In the said affidavit dated 2.6.2008, the authority stated, inter alia, that:-

(3) In para (1) of the petition establishment has contended that while passing the order principal of natural justice were not observed. To this I say that the order made U/s 7-A has been passed after allowing due opportunity to the petitioner observing natural justice and acting within jurisdiction. Taking into account the responsibility of the principles establishment as per section 8A of EPF & MP Act the contractors were not summoned.

Natural justice was not compromised at any stage as opportunities on 5 different occasions were provided to the establishment for production of records. Thereafter on request of establishment again opportunity on 4 occasions was provided tgo produce relevant records. When the establishment failed to produce the necessary records, the enquiry officer deputed a squad of Enforcement Officer to persue & collect the necessary records of employees engaged by the petitioner through contractor in or in connection to the work of the establishment. Later the representative of establishment could produce only a list of contractors which was partially complete."

5.2 With regard to the petitioner's allegation on the basis of the inspection team's report, the respondent has in paragraph No.5 of the said affidavit stated that:-

"(5) I further submit that the petitioner has contended that the EO's report was not provided to them to which I say that enforcement officer's report dated 25.02.2008 was submitted to the assessing officer on the same day. On the basis of the same report & after having completed the due procedure of enquiry the case was reserved for order on 25.02.2008, which was to be pronounced at 5:30 PM on that day [copy of proceedings in Annexure-II] but at 5:30 PM when the order was being pronounced no one appeared on behalf of the establishment. Now seeking for EO's report & pleading for absence of natural justice at this stage after not having sought the opportunity being given on 25.02.2008, is an after thought and nothing but an attempt to delay justice."

5.3 Above mentioned facts bring out that there is dispute even with regard to the petitioner's allegation that the copy of the report was not supplied to the petitioner. The petitioner has filed a counter dated 23.6.2008 and stated, inter alia, that:-

"6. With regard to para 5 of the reply, it is submitted that the respondent authority has clearly admitted in the said paragraph that the E.O.'s report is not provided to the petitioners and that the E.O.'s report has been taken into consideration by the adjudicating authority under Section 7-A of the P.F.Act, without affording any opportunity to the petitioners to meet with the contents in the E.O.'s report.

Thus, the above admission clearly supports the contention of the petitioners that the principles of natural justice are violated by the respondents, who under the provisions of the P.F.Act is mandated to abide by the principles of natural justice and fair play. On this ground alone, the petition is required to be allowed and the order impugned in the petition is required to be quashed and set aside."

5.4 Having emphasized said aspects of the case, learned Counsel for the department submitted that show cause notice was issued by the department and proceedings were adjourned on several dates and sufficient time and opportunity were granted to the petitioner and the petitioner had appeared before the authorities and it had even placed certain material on record for consideration and during the process of hearing, the concerned representative of the petitioner company had also made submissions before the authority.

5.5 In response to the said submission by learned advocate for the respondent department that alternative remedy by way of appeal is available and therefore, the petitioner should be relegated to alternative remedy, Mr. Nanavati, learned Senior Counsel for the petitioner, relied on the decision in case of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors., 1998 8 SCC 1 and the decision in case of L. Hriday Narain v. Income Tax Officer, Barelly, 1970 2 SCC 355 and submitted that in case where principles of natural justice are violated alternative remedy is not a bar in entertaining a petition.

[6] I have considered rival submissions by learned Senior Counsel for the petitioner and learned advocate for the respondent department.

[7] The petitioner herein was visited with show cause notice dated 29.8.2007 and was asked to submit explanation and reply as to why the alleged dues towards provident fund contribution for the period from April 2005 to March 2007 should not be recovered. The said show cause notice was issued in pursuance of the inspection by enforcement officer on 11.6.2007 and 12.6.2007. After issuing the show cause notice dated 29.8.2007 and calling the petitioner to appear before the authority on 5.9.2007, the proceedings were adjourned from time to time, e.g. to 5.9.2007 and then to 12.9.2007, 18.9.2007, 24.9.2007, 9.10.2007, etc. During the said period/adjournments, the petitioner appears to have placed various documents and

other materials on record before the authority who was conducting adjudication in exercise of powers under Section 7-A of the Act. In the impugned order, the authority has observed, inter alia, that:-

"That the M/S Reliance Industries Ltd, Hazira Manufacturing Division, vide Annexure "B" to the representation submitted on 25/02/08, submitted a list of 59 contractors who have been engaged by them in or in connection with their work for which no PF code number details are available. xxx xxx

It is clear from the examination of submissions made by the representatives of the establishment over a span of five and half months (approximately), they have never expressed before 25/02/08, their inability in producing the records with respect to contractors engaged by them, rather the factual position is diametrically opposite. M/S RIL HMD vide their letter number NIL dated 29/08/07 received in the office same day have made a request for expediting inspections under EPF Act, 1952 in respect of their contractors.

The relevant paragraph of the letter from M/S Reliance Industrial Ltd, Hazira Manufacturing Division, dated 29/08/07 is reproduced hereiwth to expose the real intentions of the establishment in asking the commissioner in summoning those 59 contractor for which no PF number is available. The prara reads "that in connection to your office demand regarding contractors for services, you are requested to set the inspection schedule for finalizing the inspection under EPF Act, 1952 and intimate us so that we can keep your contractors ready to produce all the records necessary for your inspection". The letter dated 29/08/07 is signed by the then Vice President (Finance & Accounts). In the instant case Vice President (Finance & Accounts) has been representing the case on behalf of M/S Reliance Industrial Ltd, Hazira Manufacturing Division, and are supposed to be custodians of the records pertaining to/relating to this inquiry. xxx xxx"

In the said order, the authority also observed that:-

"However as per the submission of the representative vide representation dated 25/02/08, one undeniable fact emerges that during the period of enquiry i.e. 04/2005 to 03/2007, out of the contractors engaged by M/S Reliance Industries Ltd, Hazira Manufacturing Division in or in connection with its work for which compliance has not been reported.

In view of the foregoing, I, Vikas Kumar, am of the view that ends of justice will be met by making M/S Reliance Industries Ltd, Hazira Manufacturing Division totally responsible for liabilities under the Act as per provision of section 8(A)(1) read with

Para 30(1)(2)(3) of the scheme for those contractors for whom no compliance has been reported.

Meanwhile the squad of Enforcement Officers have submitted their report dated 25/02/08 after examining the details provided by M/S Reliance Industries Ltd., Hazira Manufacturing Division, the records collected by them and have stated that given the nature of work being executed by the contractors, the payments being made by M/S Reliance Industries Ltd, Hazira Manufacturing division to those contractors, the various components constituting such payments in similar nature of work being executed, that out of the 59 contractors for whom no PF code number is available and which are reported to have been engaged by M/s. Reliance Industries Ltd., Hazira Manufacturing Division. There are 40 contractors in the year 2005-2006, and 34 contractors in the year 2006-2007 for whom PF fund liability arises and M/S Reliance Industries Ltd, Hazira Manufacturing Division be made responsible for ensuring compliance as per provisions of the section 8A(1) of the Act read with Para 30(1)(2)(3) of the EPF scheme."

7.1 With the said observations and other findings of fact recorded by the authority, the order dated 25/26.2.2008 came to be passed.

7.2 The petitioner felt aggrieved by the said order.

7.3 Despite the fact that statutory alternative remedy is available, the petitioner preferred this petition on 4.3.2008 and challenged the order dated 25/26.2.2008.

[8] As mentioned above, the impugned order is challenged on the ground of violation of principles of natural justice and relying on the decision in case of Whirlpool Corporation , the learned Senior Counsel for the petitioner would contend that when order is challenged on the ground of violation of principles of natural justice, then, the alternative remedy would not be a bar in entertaining the petition.

[9] Before proceeding further, it would be appropriate to take into account the provision under Section 7-I and Section 7-O of the Act, which read thus:-

"7I. Appeals to the Tribunal- (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government, or any authority, under the proviso to sub-section 3, or sub-section4, of section I, or section3, or sub-section 1 of section 7A, or section 7B except an order rejecting an application for review referred to in sub-section 5 thereof, or section 7C, or section 14B may prefer an appeal to a Tribunal against such order.

(2) Every appeal under sub-section 1 shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

7O. Deposit of amount due, on filing appeal.- No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent of the amount due from him as determined by an officer referred to in section 7A:

Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section."

Thus, under Special Act, special fora are constituted for adjudication of dispute and for deciding appeal from order of adjudicating authority. Further, the Act also mandates predeposit of adjudicated amount.

[10] From the impugned order, it appears that the major issue is related to the contractor's employees.

10.1 It appears that the petitioner had assigned contracts for different work of the company for which the contractors had engaged and deployed several employees.

10.2 According to the allegations by the department, the provident fund contribution in respect of the employees engaged by/through the contractors' were not paid and therefore, the proceedings under Section 7-A had commenced.

10.3 In light of the subject matter of the proceedings initiated by the department in light of the observations in the order, it appears that the impugned order as well as the petition involves several disputed questions of fact and for considering/examining the petition on merits, it will be necessary to consider and examine several documents and oral evidence and to decide several issues of disputed facts which would evelope issues like number of contractors, number of employees deployed during the period in question, salary of the employees, dispute as to whether the contribution in respect of each and every employees of the contractors' were paid salary and whether contribution from their salary was deducted and paid to the department or not.

[11] Such process would not be feasible and cannot be undertaken in writ proceedings.

11.1 It is pertinent that it is after examining in details the documents that the authority reached to the conclusion that the provident fund dues / contribution were not paid in respect of contract labourers and the company would be liable for non-payment of such contribution and the contribution should be recovered from the company.

11.2 As mentioned earlier, even according to the learned Senior Counsel for the petitioner, the real, actual and substantive issues, which are required to be determined for final decision in respect of the subject matter involve examination and reappreciation of documentary and oral evidence and such process cannot be undertaken by this Court in writ proceedings and it will neither be feasible nor practicable for this Court to examine documentary/oral evidence and to finally adjudicate and decide the real and actual subject matter i.e. the demand by the department and quantification of the alleged dues.

[12] In this backdrop and in light of the facts of the case, learned Senior Counsel for the petitioner claims that the order by APFC may be set aside by this Court and then the original/first adjudicating authority may be directed to decide the matter afresh i.e. the petition may be allowed by this Court.

[13] The above discussed aspect go to show that,

[a] there are several issues and questions of disputed facts involved in present case;

[b] determination of the issues involved/raised in the petition would need detailed examination of documents and oral evidence. The said process cannot be undertaken in writ proceeding.

[c] there is statutory alternative remedy available under the Act, i.e. Section 7-I which provides statutory appeal under the Act.

[d] the provision under Section 7-O of the Act obliges the party aggrieved by the order passed under Section 7-A to deposit 75% of the adjudicated amount while preferring the appeal (pre-deposit of 75% amount out of total assessed dues is a pre-condition for maintaining appeal);

[e] the assessed dues are payable towards P.F. contribution (unpaid P.F. amount) are welfare measures and the amount belongs to workmen/members.

[f] if the petitioner is not relegated to statutory alternative remedy (despite the fact that the disputed issues of the facts undisputedly cannot be examined and finally decided in writ proceeding) would amount to frustrating the provision under Section 7-O of the Act.

[g] the proceedings arise from and in light of the provision under Special Act and for adjudication of disputes under the said Special Act Special for a viz. adjudicating authority and appellate tribunal are created, which clarify the intention

of legislature that the disputes are required to be adjudicated and decided by Special Forum.

[14] So far as the issue related to alternative remedy is concerned, the learned Senior Counsel relied on the decision in case of Whirlpool Corporation . In the said decision Hon'ble Apex Court explained the exception to the rule and practice of relegating the petitioner to alternative remedy which include, inter alia, violation of principles of natural justice.

14.1 In this context, it is appropriate to recall relevant facts which are mentioned in para 5 to 5.5 and in that background it is also appropriate to take into account the decision by Hon'ble Apex Court:

(a) in case of State of M.P. v. Nerbudda Valley Refrigerated Products Company Pvt. Ltd. & Ors., 2010 AIR(SC) 2859 wherein Hon'ble Apex Court has, in para-12 observed that :-

12) In Punjab National Bank vs. O.C. Krishnan & Ors., 2001 6 SCC 569, this Court held:-

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.

(b) In the decision in case of United Bank of India v. Satyawati Tondon & Ors., 2010 AIR(SC) 3413, Hon'ble Apex Court considered the issue related to statutory remedy and / or justification for entertaining writ petition under Article 226 of the Constitution of India where the petitioning litigant, despite statutory remedy being available, did not approach statutory remedy and instead preferred writ petition. Hon'ble Apex Court observed in the said decision that:-

19. In Thansingh Nathmal v. Superintendent of Taxes, 1964 6 SCR 654, the Constitution Bench considered the question whether the High Court of Assam should have entertained the writ petition filed by the appellant under Article 226 of the Constitution questioning the order passed by the Commissioner of Taxes under the Assam Sales Tax Act, 1947. While dismissing the appeal, the Court observed as under:

The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self- imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. 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.

25. In Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and another, 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:

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.

(c) In the decision in case of Bank of Baroda vs. Balbir Kumar Paul and other, 2010 2 GLH 790 the Division Bench of this Court has observed that:-

7. It is not in dispute that orders passed by the Recovery officer were appealable under Section 30 of the said Act. Section 30 of the said Act reads as follows :

30. Appeal against the order of Recovery Officer &&&&.

7.1 In view of availability of statutory appeal under the Act, we are of the opinion that ordinarily this Court would not entertain a writ petition before the person aggrieved has availed of such alternative remedy.

8. From the decision of Learned Single Judge, no reasons are forthcoming to indicate why the petition was entertained without insisting on the petitioner availing of such statutory appeal. As observed by the Apex Court in case of Punjab National Bank v. O.C. Krishnan and others when the statutory appeal is available, writ petition would normally not be entertained.

(d) In the decision in case of Sri Siddeshwara Co-operative Bank Ltd. the Hon'ble Apex Court has observed that:-

30. In Satyawati Tondon[1], the Court was concerned with an argument of alternative remedy provided under Section 17 of SARFAESI Act. Dealing with this argument, the Court had observed that where an effective remedy was available to the aggrieved person, the High Court must insist that before availing the remedy under Article 226 the alternative remedies available to him under the relevant statute are exhausted. In paragraphs 43,44 and 45 (pg. no. 123) of the Report, the Court stated as follows :

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 selfimposed 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.

31. No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented.

(e) In LPA No. 1708 of 2009 and allied matters, the Division Bench, while referring the decision in case of Union Bank of India vs Satyawati Todon, observed that:-

12. The aforesaid issue fell for consideration before the Supreme Court in the case of United Bank of India vs. Satyawati Tondon, 2010 8 SCC 110. Therein, the Supreme Court held that issuance of notice to guarantor-mortgagor u/Sec.13(2) and (4) and filing an application u/Sec.14 of the SARFAESI Act without first initiating action against the principal borrower is permissible. In the said case, the Supreme Court also noticed that there was alternative remedy of appeal u/Sec.17, which could have been availed by any aggrieved person, and held that the High Court will ordinarily not entertain the 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 the said case, the Supreme Court held as follows:-

"42. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression any person used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

"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 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, 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".

13.In view of the settled principle under the SARFAESI Act, it is always open to the secured creditor to take measures u/Sec.14, 13(4) against a guarantor, without initiating any action against the principal borrower, as both stand in the same footing of borrower, and action can be taken against any one or other borrower, we hold that it was well within the jurisdiction of the secured creditor to take separate action against the principal borrower and/or to settle the issue with such principal borrower, and a separate action against the guarantor, and/or to settle with the guarantor. In case the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Rules framed thereunder are violated, it will be always open to the aggrieved person to assail such action or measures taken by secured creditor by filing appeal u/Sec.17

before the Debt Recovery Tribunal. Learned Single Judge, thereby, having refused to exercise jurisdiction under Article 226, there being a remedy of appeal, no interference is called for against such order. The appellant-petitioner is given liberty to move before the Debt Recovery Tribunal, if it is aggrieved, within a reasonable period, say within a month. The Letters Patent Appeal and the connected Civil Application are dismissed with the aforesaid observations, but there shall be no order as to costs.

14.2 It emerges from the above mentioned judicial pronouncements and precedents that when statutory appeal remedy is available, the writ Court should relegate the petitioner to the statutory remedy.

The writ Court would exercise strict control and highest degree of restrain and would decline to entertain petition when statutory remedy is available.

14.3 It is also pertinent to take into account the decision by Hon'ble Apex Court in case of Commissioner of Income Tax & Ors. v. Chhabil Dass Agarwal, 2014 1 SCC 603 wherein it is observed thus:-

"3. It has come on record that the assessee did not comply with the aforesaid notices issued under Section 148 of the Act and thus, a letter dated 19.01.2001 came to be issued to the assessee as a reminder to file his return of income for the assessment years clearly mentioning that failure to do so would lead to an ex-parte assessment under Section 144 of the Act. Thereafter, upon filing of written submissions by the assessee, notice under Section 142(1) of the Act dated 25.06.2001 was issued for the Assessment Year 1995-1996 alongwith final show cause fixing compliance for hearing dated 09.07.2001. The assessee sought for an adjournment which was not granted and the assessments were completed exparte under Section 144 of the Act raising a tax demand of Rs.2,45,87,625/- and Rs.6,32,972/- for Assessment Years 1995-96 and 1996-97, respectively by orders dated 09.07.2001 and 28.03.2001, respectively. Further, penalty proceedings under Section 271(1)(c) of the Act were also initiated for both Assessment Years.

12. The Constitution Benches of this Court in K.S.Rashid and Sons vs. Income Tax Investigation Commission, 1954 AIR(SC) 207; Sangram Singh vs. Election Tribunal, Kotah, 1955 AIR(SC) 425; Union of India vs. T.R.Varma, 1957 AIR(SC) 882; State of U.P. vs. Mohd. Nooh, 1958 AIR(SC) 86 and K.S.Venkataraman and Co. (P) Ltd. vs. State of Madras, 1966 AIR(SC) 1089 have held that though Article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to

exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

15. 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.

18. In view of the above, we allow this appeal and set aside the judgment and order passed by the High Court in Writ Petition (Civil) No.44 of 2009. We grant liberty to the respondent, if he so desires, to file an appropriate petition/ appeal against the orders of re-assessment passed under Section 148 of the Act within four weeks' time from today. If the petition is filed before the appellate authority within the time granted by this Court, the appellate authority shall consider the petition only on merits without any reference to the period of limitation.

However, it is clarified that the appellate authority shall not be influenced by any observation made by the High Court while disposing of the Writ Petition (Civil) No.44 of 2009, in its judgment and order dated 05.10.2010."

[15] Mr. Nanavati, learned Senior Counsel for the petitioner, then raised another contention and submitted that the petition is admitted and that therefore, now, the petitioner may not be relegated to alternative remedy. So as to support his submission, Mr. Nanavati, learned Senior Counsel for the petitioner, relied on the decision in case of L.Hriday Narain . So far as said decision is concerned it is relevant to mention that the facts involved in the cited decision give out that in said case, the High Court had examined and decided the petition on merits. After examining the petition on merits, the High Court rejected the petition holding, inter alia, that at the stage of original assessment, the question that the income was not liable to be assessed under Section 16(3)(a)(ii) of the Income Tax Act was not raised. The High Court also observed that

the assessee had not applied in revision to the commissioner under Section 33(A) of the Act. Likewise, in appeal, Hon'ble Division Bench also examined the case and made observations on merits, including the observation that it was not clear that after 19.11.1949, there was a Hindu Undivided Family which the appellant represented and therefore, it could be said with certainty that the income tax officer was wrong in proceeding on the footing that the assessment would be supported as an assessment of an individual. It was in view of the fact that before the learned Single Judge as well as before the Hon'ble Division Bench in the High Court, the petition was considered and examined on merits and in respective judgments observations were made on merits also that Hon'ble Apex Court observed in paragraph No.13 of the decision that when the appellant had moved the petition in the High Court and the High Court had entertained the petition, the High Court was not justified in dismissing the petition as not maintainable when it was entertained and was heard on merits.

15.1 So far as present petition is concerned the petition is, until now, not heard on merits.

15.2 During present hearing also the Court has yet not heard and / or examined this petition on merits. The objection against maintainability in light of alternative remedy is being considered.

In present petition, it is relevant to mention that at the time of first / admission hearing on 10.3.2008, the Court had passed below quoted order:-

"1. Heard learned senior advocate Mr.K.S. Nanavati for Nanavati Associates appearing on behalf of petit ioners.

2. Issue notice to respondent returnable on 24th March 2008.

3. Meanwhile, it is directed to respondent not to take any coercive measures against the petit ioners in pursuance to the order dated 25 th February 2008 till 24 th March 2008."

15.3 Thereafter, the hearing of the petition was adjourned because the process was not received back and, subsequently, time was granted at the request of the respondent. Accordingly, without any effective hearing, the proceedings were adjourned from time to time and on 29.8.2008, the Court passed below quoted order:-

"In this petition, the petitioner has challenged an order passed by the respondent No.1 P.F. Commissioner calling upon the petitioner company to deposit the alleged dues towards the P.F. Commissioner on the ground that the petitioner company is a

principal employer. From the contents of the petition and from the impugned award, it transpires that the dispute is regarding alleged non-payment of P.F. Contribution in respect of the workmen employed by various contractors. It appears from the order that the petitioner company insisted that the contractors should also be made parties and notice should be issued to the said contractors because primary liability of payment of contribution is of the contractors and according to the settlement of the company almost all or at least most of the contractors had deposited the amounts in question and therefore presence of the contractors was necessary. The petitioner has alleged in the petition that without considering the said request the respondent-Commissioner proceeded in the matter and passed the impugned order. The petitioner in support of his request relies upon its communication dated 18.2.2008 and claims that it had provided details to the respondent-Commissioner, however on perusal of the said communication it appears that all that the petitioner mentioned in the said letter is some names of the establishments which according to the petitioner were working as contractors at the relevant point of time, however the said list does not contain complete and correct addresses of the said contractors. Under the circumstances, even if for the sake of consideration the contention of the petitioner is to be accepted, then also the request of the petitioner could not have been considered or entertained by the P.F. Commissioner in absence of complete and correct details which were required to be supplied by the petitioner. It also appears that earlier in 2007 the details were asked for by the respondentCommissioner from the petitioner and the same, as per the say of the respondent-Commissioner, not supplied by the petitioner.

2. In this view of the matter, Mr. Nanavati submits that the petitioner will place the complete details of all the contractors who were working as such during the period between 2005-2006 and 2006-2007 (i.e., the period in question) which would contain all relevant details such as names of the contractors, correct and complete addresses of the contracts, details of the contract which was awarded to them, their execution etc. The said details will be placed on record under an Affidavit. S.O. to 17th September, 2008."

15.4 Even thereafter, the petition was adjourned from time to time and on 4.12.2008, the Court admitted the petition and directed that ex-parte ad-interim relief will continue.

15.5 After the said order, hearing of the petition was adjourned on various dates and it is only now that the petition is taken-up for hearing and the petition is opposed on the ground that statutory alternative remedy is available.

15.6 In this view of the matter, the decision on which learned Senior Counsel for the petitioner has relied would not support the submission that this Court should decide the petition on merits.

[16] Thus, having regard to the fact that the proceedings in question are related to and arise from a special Act enacted for special purpose under which special forum viz. Appellate Tribunal is created and constituted and having regard to the facts of present case and having regard to the fact that the order passed by APFC cannot be termed as an order without jurisdiction considering the fact that in present case, the grievance is more about sufficiency of hearing rather than denial of opportunity of hearing and considering the fact that all issues and grievance and contentions can be raised before learned Tribunal as well and also having regard to above quoted observations by the Hon'ble Apex Court in above mentioned decisions and when the adjudicating authority has passed the order after process of adjudication, the legality and propriety of the order deserves to be and should be examined by the learned appellate tribunal, who can conduct examination and appreciation of documentary and oral evidence available on record, this Court is of the view that since a statutory alternative remedy by way of Appeal before learned tribunal is available to the petitioner a writ petition does not deserve to be entertained and the petitioner should be relegated to avail statutory alternative remedy of appeal before learned appellate tribunal. In this context, it is appropriate to recall the observation in the decision in case of G.M, Shri Siddheshwar Co-operative Bank Limited , wherein Hon'ble Apex Court has expressed a word of caution against entertaining petition under special statute when special forum is created under a statute. Hon'ble Apex Court observed thus:-

31. No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented.

16.1 For the aforesaid reasons, this Court is not inclined to entertain present petition. In light of foregoing discussion and afore-stated reasons, the petitioner is relegated to the alternative remedy under the Act. With the said observations and direction, the petition is disposed of. Rule is discharged. No cost.

[17] Since, at this stage, learned Senior Counsel for the petitioner expressed that the appeal may be opposed on the ground of limitation, it is appropriate to clarify that the petition against the order dated 25/26.2.2008 was filed within short period of one week i.e. on or around 4.3.2008. The said fact gives out that the petitioner has not

caused delay in raising challenge against the order and the petitioner had immediately challenged the order in question.

Under the circumstances, if at all the maintainability of the appeal is opposed on the ground of limitation, then, the petitioner can certainly claim that it was prosecuting present petition before the High Court during the intervening period.

Mr. Nanavati, learned Senior Counsel for the petitioner, requested that the interim relief granted by previous order may be continued.

Ordinarily, when the Court relegates the petitioner to alternative remedy, the Court would not continue the inter relief. However, having regard to the fact that in present case, the Court granted ad-interim relief in March 2008 and since then, the said relief has remained in operation, it would neither be just nor proper to reject the request. Therefore, it is clarified that the ad-interim relief granted earlier will continue for six weeks.