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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
O.O.C.J.**

WRIT PETITION NO. 284 OF 2019

Cenveo Publisher Services India Ltd. ...Petitioner.  
vs  
Union of India & Ors. ...Respondents

.....

Mr Bharat Raichandani a/w Ms Pragya Koolwal I/b UBR Legal for the  
Petitioner.  
Mr N.C.Mohanty for Respondent Nos.2 and 3.

.....

**CORAM : AKIL KURESHI &  
B.P.COLABAWALLA, JJ.  
FEBRUARY 01, 2019.**

**P.C. :**

The Petitioner has challenged the notice of reopening of the assessment dated 31.3.2018, as at annexure "A" to the petition and further an order dated 28.12.2018 passed by Respondent No.3-Assessing Officer rejecting the Petitioner's objections to the notice of reopening. By the time this petition was filed, the Assessing Officer had also passed the order of reassessment. The petitioner has, therefore, challenged such an order of reassessment dated 29<sup>th</sup> December, 2018.

2 This challenge arises in the following background. The

Petitioner is a company registered under the Companies Act. For the Assessment Year 2011-12 the Petitioner had filed the return of income declaring the total income of Rs.1.65 crores (rounded off). Subsequently the Petitioner had revised the return declaring the revised income of Rs.2.64 Crores (rounded off). The return of the petitioner was taken in scrutiny by the Assessing Officer who passed the order under Section 143(3) of the Income Tax Act, 1961 (“the Act” for short) on 3.3.2015 accepting the Petitioner's revised income.

3 To reopen such assessment, the Assessing Officer issued the impugned notice. He had recorded the reasons for issuing the notice. In response to the notice of reopening of the assessment, the Petitioner filed return in April 2018 stating that the revised return may be treated as the return in response to the notice. In such a communication the Petitioner had also asked the Assessing Officer to supply the reasons recorded for reopening the assessment. Such reasons are supplied by the Assessing Officer to the Petitioner on 14.9.2018. The Petitioner thereupon filed Writ Petition No. 3534 of 2018 challenging the notice of reopening the assessment. This was, at the request of the Petitioner was taken up for hearing by the Court on 13<sup>th</sup> December, 2018. This Court noticed that the Petitioner had approached the Court without raising objections before the Assessing

Officer. This was clearly in breach of the mechanism devised by the Supreme Court in the case of **GKN Driveshafts (India) Ltd. Vs. Income Tax Officer** reported in **259 ITR 19 (SC)**. The petition was disposed of in following terms.

“Learned counsel for the petitioner sought permission to withdraw the petition leaving all contentions open to be raised before the Assessing Officer either in form of objections to the notice of re-opening or during the course of re-assessment opposing the validity of the re-assessment proceedings themselves. Permission as prayed for granted. Needless to clarify that all other contentions on merits are also kept open. Petition disposed of accordingly.”

4           The Petitioner thereupon raised the objections before the Assessing Officer to the notice of reopening of the assessment on 14.12.2018. Such objections were disposed of by the Assessing Officer on 28.12.2018. Since the last date for framing the assessment was fast approaching and the assessment would get time barred on 31<sup>st</sup> December, 2018, the Assessing Officer passed the order of assessment on 28.12.2018.

5 In such circumstances, the Petitioner has once again approached the Court challenging very notice of reopening of the assessment and also including the challenge to the order of re-assessment as consequential to the main challenge to reopening of the assessment.

6 At the outset we had called upon counsel for the Petitioner to satisfy us why the petitioner should not be relegated to the statutory appellate remedy. In response to the same, counsel for the petitioner vehemently contended that the notice of reopening of the assessment is based on the reasons which are not sustainable. He submitted that the impugned notice has been issued beyond the period of four years from the end of relevant assessment year without there being any failure on the part of the assessee to disclose truly all material facts. In that view of the matter, the counsel contended, that the Assessing Officer would have no jurisdiction to reopen the assessment. Such being the facts the Petitioner should not be relegated to the alternative remedy. He further submitted that the Assessing Officer consumed considerably long time in providing the reasons for reopening the assessment. It is, therefore, that the Petitioner could not challenge the notice earlier. The Petitioner should not be penalized for delay on the part of the Assessing Officer

in supplying the reasons.

- 7 The learned counsel relied on following decisions;
- (1) The Division Bench of this Court in the case of **Aroni Commercials Ltd. Vs. The Dy. Commissioner of Income Tax-2(1)** reported in **362 ITR 403 (Bom)** in which the Court examined the challenge of the Petitioner to the very notice of reopening of the assessment though assessment order was already passed.
  - (2) In case of **Crompton Greaves Ltd. Vs Assistant Commissioner of Income Tax** reported in **275 CTR (Bom) 49** in which the Division Bench of this Court once again entertained the challenge of the Petitioner to the notice of reopening of the assessment, even though by the time the petition was filed, the order of the assessment was passed.

8 In facts in the present case we are not inclined to entertain this petition and we would relegate the petition to the statutory remedy. This is so for the following reasons.

(i) We may recall the petitioner after being supplied the reasons for reopening of the assessment by the Assessing Officer on

14.9.2018, approached this Court by filing the Writ Petition in November, 2018, without first raising the objections before the Assessing Officer. This was in clear breach of the procedure laid down by Supreme Court in the case of **GKN Driveshafts (supra)**. It is true that in a given case the mechanism provided by the Supreme Court in the case of **GKN Driveshafts** may be open to flexibility. However, the petitioner - assessee cannot without any reason or explanation, at his will choose to file the Writ Petition directly before the Court without following the procedure set out in **GKN Driveshafts (supra)** i.e. without first raising the objections before the Assessing Officer. Allowing the assessee to do so without any explanation at all would dismantle such mechanism. It was because of this that the Court had previously refused to entertain his petition directly filed without raising objections before the Assessing Officer. The Petitioner thereupon withdrew the petition on 13<sup>th</sup> December, 2018 and filed the objections before the Assessing Officer.

(2) The fact that in this case the petitioner raised objections promptly after withdrawing the petition from this Court, would not in any manner dilute the fact that it was on the ground of the petitioner's conduct that the Assessing Officer was left with little time to dispose of his objections and thereafter complete the assessment

before it becomes time barred. We may record that this Court in the case of **Asian Paints Ltd. Vs. Dy. Comm. Of Income Tax & Ors.** reported in **296 ITR 90 Bom** has provided that if the Assessing Officer does not accept the objections of the assessee, he shall not proceed further in the matter within a period of four weeks from the date of receipt of said order of objections. The petitioner by its conduct destroyed this formula provided by the Court in the case of **Asian Paints** (supra), making it impossible for the assessing officer to wait for four weeks after disposal of objections without running the risk of allowing the assessment to be time barred.

(3) The Supreme Court in the case of **Commissioner of Income Tax Vs Chhabil Dass Agarwal** reported in **357 ITR 357 (SC)** has held that, ordinarily Writ Petition should not be entertained when an alternative statutory remedy is available. As correctly pointed out by the petitioner, it does not completely oust the writ jurisdiction of the High Court under Article 226 of the Constitution of India. Nevertheless the facts may emerge in a given case, where despite availability of the jurisdiction, the Court may refuse to exercise the same. In a case where the order of the assessment is passed, the jurisdiction of the Assessing Officer to pass such an order on the basis of validity of reopening of the assessment would be one part of the challenge. Another part would involve the challenge to the

assessment made by the Assessing Officer and would necessarily entail examination of facts on record which the High Court would be loath to do as a writ court. Ordinarily, therefore, the Court would insist that in such a situation the assessee should take appellate route. Otherwise, the petitioner would argue the jurisdictional question in the High Court and if he fails, would opt to challenge the order on merits before the Appellate Authority, which would be most convenient.

9 Before closing we may record that in a case where the Petitioner is already before the Court and the order of the assessment was passed thereafter may stand on entirely different footing. Further in the present case by the self imposed restriction, we have refused to entertain the petition since by not following the procedure set out by the Supreme Court in the case of **GKN Driveshafts (India) Ltd.**(supra), the petitioner has brought about a situation where the Assessing Officer was left with short time to dispose of the objections and complete the assessment. This element is clearly absent in the judgments cited before us by the counsel for the petitioner.

10 In these circumstances, this petition is not entertained, leaving it open to the petitioner to challenge the assessment order



before the Appellate Authority. If in the process, there has been some delay, we are sure that the Appellate Authority shall consider the same in view of the fact that the Petitioner was bona fide pursuing its remedies before this Court. All contentions of the Petitioner are kept open.

**(B.P.COLABAWALLA, J.)**

**(AKIL KURESHI, J. )**