



Committee on Commercial Laws, Economic Advisory & NPO Cooperative
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

CAs' HANDBOOK ON WRITS



CAAs' Handbook on Writs



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The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

The role of writs in the Indian legal framework is of paramount significance, serving as a powerful constitutional remedy to safeguard individual rights and uphold the rule of law. Chartered Accountants (CAs), as key stakeholders in financial and corporate governance, often find themselves navigating complex legal landscapes where an understanding of writ jurisdiction can be an invaluable asset.

The **CAs' Handbook on Writs** provides an in-depth analysis of writs under Articles 32 and 226 of the Indian Constitution, covering their historical evolution, key principles, and applications in taxation, regulatory compliance, and public interest litigation. It examines the five principal writs and their role in judicial review, administrative law, and fundamental rights enforcement, with a focus on emerging areas like environmental and digital rights, making it an essential guide for professionals in legal and financial governance.

I extend my heartfelt appreciation to CA. Chandrashekhar Vasant Chitale; CA. Prakash Sharma, Vice-Chairman and other members for their dedication and expertise in compiling this invaluable resource.

I hope this handbook serves as a valuable resource, providing meaningful insights and guidance to its readers. I encourage all readers to make the most of this resource and leverage the insights provided within.

February 11, 2025
Delhi

CA. Ranjeet Kumar Agarwal
President, ICAI,

Preface

Beyond financial expertise, Chartered Accountants (CAs) are instrumental in legal compliance and advocacy. Their role in drafting writs is crucial in addressing tax disputes, regulatory challenges, and financial litigations. A strong grasp of writ drafting empowers CAs to contribute effectively to legal proceedings, reinforcing their position as key advisors in the financial-legal domain.

Writ petitions serve as a vital constitutional remedy, enabling individuals and organizations to seek judicial redress for fundamental rights' violations and administrative lapses. For Chartered Accountants, proficiency in writ drafting adds significant value, particularly in financial disputes, tax matters, and compliance-related cases where their expertise is essential.

This handbook provides CAs with a structured approach to drafting writs, emphasizing clarity, precision, and adherence to legal procedures. By mastering this skill, CAs can enhance their role as trusted advisors, bridging financial expertise with legal advocacy while reinforcing their commitment to justice and the rule of law.

I extend my sincere gratitude to CA. Ranjeet Kumar Agarwal, President, ICAI, and CA. Charanjot Singh Nanda, Vice-President, ICAI, for their unwavering support in driving this initiative forward. I also appreciate the valuable insights and contributions of CA. Suhas P. Bora.

Additionally, I acknowledge the dedicated efforts of CA. Prakash Sharma, Vice-Chairman, and the esteemed members of the Committee for their commitment to these initiatives throughout the year. My heartfelt appreciation also goes to the Committee's Secretariat for their diligence and perseverance in bringing this publication to fruition.

I hope this handbook serves as a valuable resource, providing meaningful insights and guidance to its readers.

January 27, 2025
Delhi

CA. Chandrashekhar Vasant Chitale
Chairman, Committee on Commercial Law,
Economic Advisory, and NPO Cooperative

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Chapter 1

Introduction to Writs

A writ is a formal legal instrument issued by a court that commands a party to perform or refrain from performing a specific act. Rooted in the ancient practices of English common law, writs originally functioned as royal commands, serving as tools of administrative control. Over centuries, these writs have evolved into fundamental judicial remedies used to uphold the rule of law and protect individual rights against unlawful actions by authorities. Under the Indian Constitution, the Supreme Court and High Courts are vested with the power to issue writs for the enforcement of fundamental rights and other legal rights, as provided under Articles 32 and 226 respectively. The writs serve as robust mechanisms for judicial intervention, providing immediate relief to individuals whose rights have been infringed. The five primary writs are **Habeas Corpus**, **Mandamus**, **Prohibition**, **Certiorari**, and **Quo Warranto**.

These writs are indispensable tools in the exercise of judicial review, a process through which courts oversee the actions of the executive and legislative branches. By empowering citizens to challenge illegal or unconstitutional actions, writs ensure that governance adheres to the rule of law, serving as a check on the exercise of power by public authorities and preventing arbitrary or unlawful actions.

Uses of WRITS

Writs are essential tools in legal systems for ensuring that the rule of law is maintained. Their uses extend to various contexts, including the protection of individual rights, governance, judicial review, and more. Below is a detailed exploration of the **uses of writs**:

1. Protection of Fundamental Rights

- **Habeas Corpus** is often used to safeguard personal liberty and prevent unlawful detention or imprisonment.
- It ensures that no individual is deprived of freedom without lawful justification.
- Writs are instrumental in cases where constitutional or human rights are at risk.

2. Ensuring Compliance by Authorities

- Writs such as **Mandamus** compel public officials, government bodies, or organizations to perform their statutory duties.
- They are used when an authority refuses or fails to act as required by law.
- Example: Ordering a municipal authority to provide essential services like water or sanitation.

3. Correction of Judicial Errors

- Higher courts use writs like **Certiorari** to review and correct errors made by lower courts or tribunals.
- This ensures that decisions are lawful, fair, and within the jurisdiction of the lower court.
- Example: Overturning an invalid ruling made by a trial court.

4. Preventing Abuse of Power

- Writs like **Prohibition** are used to stop courts, tribunals, or authorities from exceeding their jurisdiction or acting unlawfully.
- Example: Preventing a tax authority from conducting an illegal assessment.

5. Challenging Authority and Accountability

- The writ of **Quo Warranto** is used to challenge individuals who claim to hold a public office without proper legal authority.
- Example: A citizen questioning the appointment of an official who does not meet the eligibility criteria.

6. Administrative and Governance Oversight

- Courts use writs to ensure that administrative bodies and government agencies function within the legal framework.
- Writs ensure transparency and accountability in public administration.
- Example: Mandating fair distribution of resources or services under a government scheme.

7. Safeguarding Democracy

- Writs are powerful tools to check abuse of power by any branch of government—executive, legislature, or judiciary.
- They protect democratic principles by ensuring that laws and regulations are followed.

8. Enforcing Court Orders

- Writs act as mechanisms to ensure that individuals or entities comply with court decisions.
- Example: Enforcing payment of fines, compliance with injunctions, or release of property.

9. Providing Remedies in Public Interest Litigation (PIL)

- In cases where public rights are violated or the public interest is at stake, writs are used as remedies.
- Example: Directing governments to act on environmental issues, human rights violations, or public safety concerns.

10. Supporting Justice in Emergency Situations

- Writs provide quick remedies when there is an urgent need for judicial intervention.
- Example: Preventing illegal demolition of homes or halting the execution of an invalid law.

11. Ensuring Fair Elections

- Writs like **Quo Warranto** and **Mandamus** can be used to ensure that elections are conducted fairly and according to the law.
- Example: Ordering a recount of votes or disqualifying an ineligible candidate.

12. Promoting Rule of Law

- By compelling compliance with legal duties and preventing unlawful actions, writs reinforce the principle that no one is above the law.
- They are tools to ensure equity, justice, and adherence to constitutional provisions.

Chapter 2

Kinds of Writs

1. Habeas Corpus

The writ of Habeas Corpus is a critical legal remedy for protecting individual liberty against unlawful and arbitrary detention. Derived from the Latin term meaning "you shall have the body," this writ serves as an immediate judicial inquiry into the legality of a person's detention. It requires the detaining authority to bring the detained individual before the court, ensuring that the detention is lawful, and that due process has been followed. Habeas Corpus stands as a cornerstone of personal freedom and is often invoked in cases of preventive detention, custodial violence, and other instances where the liberty of a person is in jeopardy. A notable case involving this writ is **A.K. Gopalan v. State of Madras (1950)**, where the Supreme Court upheld the detention of a communist leader under the Preventive Detention Act, 1950. Another significant case is **ADM Jabalpur v. Shivkant Shukla (1976)**, known as the Habeas Corpus case, where the Supreme Court controversially held that during an Emergency, the right to habeas corpus could be suspended. This decision was later criticized and partially overturned by the 44th Amendment, which reaffirmed the importance of the writ in protecting individual rights even during exceptional circumstances. The writ of habeas corpus continues to play a vital role in safeguarding individual freedom, particularly in situations involving unlawful arrests, detentions under preventive detention laws, and instances of police custody without proper legal authority. It acts as a bulwark against state overreach, ensuring that personal liberty is not curtailed without the due process of law.

2. Mandamus

The writ of Mandamus, meaning "we command" in Latin, is a powerful judicial remedy aimed at compelling a public authority to perform a duty that it is legally obligated to execute. This writ is invoked when a public official, body, or government entity fails to act on a matter that falls within its jurisdiction and where there is no other adequate remedy available. Mandamus is instrumental in ensuring that public duties are carried out in accordance with the law, particularly in areas where inaction or refusal by the authorities could result in the denial of justice or the infringement of rights. A key case

that illustrates the use of this writ is ***Gujarat State Financial Corporation v. Lotus Hotels (1983)***, where the Supreme Court issued a writ of mandamus compelling the Gujarat State Financial Corporation to fulfil its contractual obligations, demonstrating the court's willingness to enforce public duties in the realm of statutory contracts. Another important case is ***Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi (2012)***, where the Court clarified that the writ of mandamus is not available to enforce a duty of a discretionary nature, emphasizing that mandamus applies only when a clear legal duty is established. The writ of mandamus cannot be issued against private individuals or entities and is limited to public authorities. Furthermore, it cannot compel actions that fall within the discretionary powers of an authority and is unavailable where there is an alternative remedy, such as an appeal, unless that remedy is deemed inadequate or ineffective.

3. Prohibition

The writ of Prohibition is a preventive remedy issued by a superior court to restrain a lower court or tribunal from continuing proceedings that fall outside its jurisdiction or violate the principles of natural justice. This writ serves as a vital tool in maintaining the jurisdictional boundaries of judicial and quasi-judicial bodies. By halting proceedings that are ultra vires, or beyond the legal authority of the adjudicating body, prohibition ensures that the rule of law is upheld and that judicial actions are conducted within the framework established by law. A significant case that highlights the application of this writ is ***East India Commercial Co. Ltd. v. Collector of Customs (1962)***, where the Supreme Court emphasized the importance of the writ of prohibition in preventing lower courts from exercising jurisdiction in matters beyond their competence. Another relevant case is ***Hari Vishnu Kamath v. Ahmad Ishaque (1955)***, where the Court established that the writ of prohibition could be used not only to prevent an excess of jurisdiction but also to address instances of abuse of jurisdiction, thereby broadening the scope of the writ.

Application in Modern Judiciary: The writ of prohibition is primarily utilized as a preventive measure in the modern judicial system. It is particularly relevant in cases where lower courts or tribunals are perceived to be acting beyond their legal mandate or where there is a significant risk of miscarriage of justice due to procedural irregularities.

4. Certiorari

Certiorari is a judicial order directing a lower court or tribunal to transmit the record of a proceeding for review by a higher court. This writ is typically issued to quash the order or decision of a lower court that has acted without jurisdiction, more than its jurisdiction, or in violation of the principles of natural justice. Certiorari plays a crucial role in correcting errors of law that are apparent on the face of the record and serves as an essential mechanism for ensuring that judicial and quasi-judicial bodies operate within the confines of their legal authority. In the case of ***Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation (1959)***, the Supreme Court quashed the orders of the Andhra Pradesh government, holding that the principles of natural justice were violated, thus justifying the issuance of a writ of certiorari. This case illustrates the application of the writ in correcting procedural irregularities. In ***Surya Dev Rai v. Ram Chander Rai (2003)***, the Court expanded the scope of certiorari, stating that the writ could be issued not only to quash orders that are ultra vires but also to correct errors of jurisdiction, thereby reinforcing the supervisory role of higher courts. Certiorari differs fundamentally from an appeal in that it is a supervisory writ rather than a continuation of the original proceedings. While an appeal involves a re-evaluation of the merits of a case, certiorari focuses on jurisdictional errors and procedural violations, ensuring that lower courts do not overstep their bounds or contravene established legal principles.

When is a writ of Certiorari issued?

It is issued to quasi-judicial or subordinate courts if they act in the following ways:

1. Either without any jurisdiction or in excess.
2. In violation of the principles of Natural Justice.
3. In opposition to the procedure established by law.
4. If there is an error in judgement on the face of it.

It is pertinent to note that the Writ of certiorari is issued after the passing of the order.

Important Judgements on writ of Certiorari

In ***Surya Dev Rai v. Ram Chander Rai & Ors.***, the Supreme Court has explained the meaning, ambit and scope of the writ of Certiorari. Also, in this it was explained that Certiorari is always available against inferior courts and not against equal or higher court, i.e., it cannot be issued by a High Court against any High Court or benches much less to the Supreme Court and any of its benches. Then in the case of ***T.C. Basappa v. T. Nagappa & Anr.*** [13], it was held by the constitution bench that certiorari maybe and is generally granted when a court has acted (i) without jurisdiction or (ii) more than its jurisdiction. In ***Hari Bishnu Kamath v. Ahmad Ishaque*** [14], the Supreme Court said that “the court issuing certiorari to quash, however, could not substitute its own decision on the merits or give directions to be complied with by the court or tribunal. Its work was destructive, it simply wiped out the order passed without jurisdiction and left the matter there.” In ***Naresh S. Mirajkar v. State of Maharashtra*** [15], it was said that High Court’s judicial orders are open to being corrected by certiorari and that writ is not available against the High Court.

Circumstances when the writ of Certiorari cannot be issued

The writ of certiorari cannot be issued against:

1. An individual
2. A company
3. Any private authority
4. An association
5. To amend an Act or Ordinance
6. An aggrieved party who has an alternative remedy

In the case of ***General Manager, Electrical Rengali Hydro Electric Project, Orissa and Others v. Giridhari Sahu and Ors.*** (2019), the Hon’ble Supreme Court laid down the factors determining the validity of the writ of certiorari.

In the case of ***Whirlpool Corporation v Registrar of Trademarks, Mumbai***, (1998) 8 SCC 1, the Hon’ble Supreme Court held that the alternative remedy has been consistently held not to operate as a bar in at least three contingencies, namely, (i) where the writ petition has been filed for the enforcement of any of the Fundamental Rights or (ii) where there has been a

violation of the principle of natural justice or (iii) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

The Court also held in *Harbanslal Sahnia v Indian Oil Corpn. Ltd, (2003) 2 SCC 107* that in an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

5. Quo Warranto

Quo Warranto is a judicial order requiring a person to show by what warrant or authority they hold a public office or exercise a public duty. The term "Quo Warranto" translates to "by what authority," reflecting its role as a tool to challenge the legality of an individual's claim to a public office. This writ is essential in ensuring that only those legally entitled to hold public office can do so, thereby maintaining the integrity and legality of public administration. In *University of Mysore v. Govinda Rao (1964)*, a landmark case in the application of Quo Warranto, the Supreme Court held that the writ could be issued even if the appointment in question did not violate a specific statute but was nonetheless irregular or illegal. The court reinforced the principle that public offices must be held only by those who meet all legal qualifications. Similarly, in *N. Kannadasan v. Ajoy Khose (2009)*, the Supreme Court issued a writ of Quo Warranto against the appointment of a person as a State Information Commissioner, highlighting that the appointee did not possess the requisite qualifications as per the statute. This case underscores the importance of adhering to statutory qualifications in public appointments. The writ of Quo Warranto remains a powerful judicial tool in modern governance, particularly in cases involving controversial appointments to public offices. With increasing instances of appointments being challenged on grounds of political favouritism or lack of qualifications, Quo Warranto plays a critical role in safeguarding the legality and transparency of public appointments. However, Quo Warranto cannot be issued against a private individual or in cases where the office in question is not a public one. Additionally, the writ is not applicable where the challenge is based purely on moral or ethical grounds without a clear legal violation.

Chapter 3

Comparative Analysis of Writ Jurisdiction

The Indian Constitution's provisions for writs draw heavily from English common law, yet they have been adapted to the Indian context to address the specific needs of a diverse and complex society. Unlike in the UK, where the prerogative writs have been largely replaced by statutory remedies, the writ jurisdiction in India remains a vital part of judicial oversight. In the United States, writs such as habeas corpus also play a significant role, particularly in federal courts. However, the scope and application of writs in the U.S. are influenced by the principles of federalism, where both state and federal courts have varying degrees of writ jurisdiction. In comparison to jurisdictions like the UK and the U.S., Indian courts have a broader and more accessible writ jurisdiction, particularly under Article 226 of the Constitution, which allows individuals to seek remedies for the violation of not just fundamental rights but also other legal rights. Indian courts have progressively expanded the scope of writ jurisdiction to encompass new areas of law, including environmental protection, human rights, and even economic regulations. This expansion reflects the dynamic nature of writ jurisdiction as a tool for addressing contemporary legal challenges. For example, in *Vineet Narain v. Union of India (1998)*, the Supreme Court issued a writ of mandamus directing the Central Bureau of Investigation (CBI) to investigate high-profile corruption cases, demonstrating the judiciary's proactive role in combating corruption through writ jurisdiction. In this case, the Supreme Court treated a letter as a writ petition, thereby expanding the accessibility of writ remedies and paving the way for public interest litigation (PIL) to address violations of fundamental rights.

The Black's Law Dictionary further defines almost 109 types of Writs; following are the types of writs to name a few:

- (i) alias writ
- (ii) alternative writ
- (iii) close writ

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- (iv) concurrent writ
- (v) conventual writ
- (vi) ground writ
- (vii) judicial writ
- (viii) optional writ
- (ix) proprietary writ
- (x) remedial writ
- (xi) testatum writ
- (xii) vicontiel writ
- (xiii) writ of association
- (xiv) writ of conspiracy
- (xv) writ of deceit
- (xvi) writ of election
- (xvii) writ of inquiry
- (xviii) writ of privilege
- (xix) writ of pro retorno habendo

To sum up, the Indian Constitution vide Article 32 and Article 226 provides for a Writ remedy to be exercised by the Hon'ble Supreme Court of India and various Hon'ble High Courts, respectively which are in the nature of prerogative writ which constitutes of Certiorari, Habeus Corpus, Mandamus, Quo-Warranto and Prohibition.

Chapter 4

Historical Background

Remedy by prerogative writs in England started with the very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission "to review the existing remedies for the judicial control of administrative acts and commissions with a view to evolving a simpler and more effective procedure". The Law Commission made their report in March 1976. It was implemented by Rules of court (Order 53) in 1977 and given statutory force in 1981 by section 31 of the Supreme Court Act, 1981.

It combined all the former remedies into one proceeding called judicial review. Lord Denning explained the scope of this "judicial review":

"At one stroke the courts could grant whatever relief was appropriate. Not only Certiorari and mandamus, but also declaration and injunctions. Even damages. The procedure was much simpler and more expeditious. Just a summons instead of a writ. No formal proceedings. The evidence is given by affidavit. As a rule, no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the appellant had to get the leave of a judge."

(see The Closing Chapter by Hon'ble Lord Denning)

The Supreme Court in ***Rupa Ashok Hurra v. Ashok Hurra and Anr., 2002 (4) SCC 388*** stated the historical background of prerogative writs thus:

"Inasmuch as the Supreme Court enforces the fundamental rights by issuing appropriate directions, orders or writs, including writs in the nature of habeas corpus, mandamus, Prohibition, quo warranto and Certiorari, it may be useful to refer to, in brief, the characteristics of the writs in general and writ of Certiorari in particular with which we are concerned here. In English law there are two types of writs (i) judicial procedural writs like writ of summons, writ of motion, etc., which are issued as a matter of course; these writs are not in vogue in India and (ii) substantive writs often spoken of as high prerogative writs like writ of quo warranto, habeas corpus, mandamus, Certiorari and Prohibition, etc.; they are frequently resorted to in Indian High

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Courts and the Supreme Court. "Historically, Prohibition was a writ whereby the royal courts of common law prohibited other courts from entertaining matters falling within the exclusive jurisdiction of the common law courts; Certiorari was issued to bring the record of an inferior court into the King's Bench for review or to remove indictments for trial in that court; mandamus was directed to inferior courts and tribunals, and to public officers and bodies, to order the performance of a public duty. All three were called prerogative writs." In England while issuing these writs, at least in theory, the assumption was that the King was present in the King's Court. The position regarding the House of Lords is described thus, "of the Court of Parliament, or of the King in Parliament as it is sometimes expressed, the only other supreme tribunal in this country." in Rajunder Narain Rai v. Bijai Govind Singh, 1836 (1) Moo. (PC) 117. They are discretionary writs but the principles for issuing such writs are well defined. In the pre-constitutional era, the jurisdiction to issue the prerogative writs was enjoyed only by three chartered High Courts in India but with the coming into force of the Constitution, all the High Courts and the Supreme Court are conferred powers to issue those writs under Article 226 and Article 32, respectively, of the Constitution. Regarding the writ jurisdiction, the High Courts in India are placed virtually in the same position as the Courts of King's Bench in England. It is a well-settled principle that the technicalities associated with the prerogative writs in English Law have no role to play under our constitutional scheme. It is, however, important to note that a writ of Certiorari to call for records and examine the same for passing appropriate orders is issued by a superior court to an inferior court which certifies its records for examination. "Certiorari lies to bring decisions of an inferior court, tribunal, public authority or any other body of persons before the High Court for review so that the court may determine whether they should be quashed, or to quash such decisions. The order of Prohibition is an order issuing out of the High Court and directed to an inferior court or tribunal or public authority which forbids that court or tribunal or authority to act in excess of its jurisdiction or contrary to law. Both Certiorari and Prohibition are employed for the control of inferior courts, tribunals and public authorities.

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Statutory Procedure

In income tax procedures, the assessing authority decides that matter of tax determination, imposition of penalty, etc. Therefore, the tax dispute first arises before the tax authority. The authority acts in a quasi-judicial field. It acts both as an investigator as well as an adjudicator. If the assessee is dissatisfied with the decision of assessing authority, he has been conferred statutory right to agitate the matter by way of appellate procedures. The powers of the first appellate authority are co-extensive and coterminous to the primary tax authority. The second appellate forum is also a quasi-judicial. It is the Income Tax Appellate Tribunal (ITAT), where the appeal is heard in a manner like that of a civil court.

The next two appellate forum are the High Court and the Supreme Court, where the assessee can agitate his case. These Courts are formal civil courts. High Courts and the Supreme Court deal with matters that involve a substantial question of law. A similar rite of taking up the matter to the High Court and the Supreme Court is also available to the Tax Department.

Thus, for income tax matters, the matters that involve a question of facts, ITAT is the final authority and the road ends there. Therefore, the ITAT is considered as a final fact-finding authority.

Where the matters involve a substantial question of law, then only the assessee or the Tax Department is allowed to take the matter before the High Court and thereafter the Supreme Court.

Thus, an appeal against the order of the Tribunal lies with the High Court under the Income tax Act, 1961. The time limit for filing the same is 180 days from the date of receipt of the order of the Tribunal by the taxpayer. The High Court may admit an appeal even after the lapse of this period if it deems fit.

Thereafter, an appeal against the order of the High Court lies with the Supreme Court. Such an appeal can be filed only when the High Court grants a certificate stating that a case is fit for filing an appeal before the Supreme Court. If the High Court refuses to grant such a certificate, then an appeal

can be brought before the Supreme Court by way of a Special Leave Petition.

For indirect taxes, taxpayers' similar road for appeal is prescribed. If any party to the appeal is not satisfied with the order of the Tribunal, then an appeal can be preferred before the jurisdictional High Court; however, such appeal can only be preferred if the issue involves a question of law - in other words, if an issue is related to a question of fact, then the order of the Tribunal is final. Further appeal against the order of the High Court can be preferred before the Supreme Court, the highest court in India. The order passed by the Supreme Court is final and binding upon both the parties and no further appeal can be preferred against the same.

In the Indian legal system, writ petitions serve as a mechanism to challenge decisions made by various authorities, including the Income Tax Appellate Tribunal (ITAT). While the ITAT is a specialized tribunal for tax disputes, its decisions can be contested in higher courts under specific circumstances.

Challenging ITAT Decisions:

1. High Court:

- **Writ Petitions:** Parties may file writ petitions under Article 226 of the Constitution of India to challenge ITAT orders. However, the High Court typically entertain such petitions only when there is a substantial question of law, a violation of natural justice, or if the petitioner has exhausted all statutory remedies. For instance, in *Deeksha Suri v. ITAT*, the Delhi High Court dismissed writ petitions filed against ITAT's assessment orders, emphasizing that once statutory remedies are exhausted, writ petitions on the same issues become non-maintainable.

2. Supreme Court:

Special Leave Petitions (SLP): Under Article 136 of the Constitution, the Supreme Court has the discretionary power to grant special leave to appeal against any judgment, decree, or order from any court or tribunal in India, including the ITAT. This provision allows the Supreme Court to address substantial questions of law or prevent gross injustice.

Notable Case References:

- **Writ Petition against ITAT Order Due to Judicial Delay:** In a case where a writ petition against an ITAT order was not heard due to the

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retirement of the presiding judge, the Supreme Court directed the High Court to rehear the petition, underscoring the importance of timely judicial proceedings.

- **Maintainability of Writ Petitions against Assessment Orders:** The Supreme Court has addressed the maintainability of writ petitions under Article 226, particularly emphasizing that when alternative statutory remedies are available, parties should typically exhaust those remedies before approaching the High Court.

Intersection of Writs and PIL

What is PIL?

In the Indian legal context, **PIL** stands for **Public Interest Litigation**. It is a powerful legal tool that allows individuals, groups, or organizations to file a petition in court seeking justice in matters of public interest. The concept of PIL in India is rooted in promoting access to justice for marginalized and disadvantaged sections of society, ensuring the protection of fundamental rights, and addressing broader public concerns.

Unlike traditional litigation, where only the aggrieved party can approach the court, in a PIL, **any person or organization** can file a petition on behalf of those who cannot represent themselves. It can also be initiated by the courts **suo motu** (on their own).

To address grievances related to environmental protection, corruption, social welfare, human rights, and governance. To provide a mechanism for judicial intervention in areas where administrative actions or inactions have failed to serve public interest.

PILs can be filed in the **High Courts** under Article 226 of the Constitution or the **Supreme Court** under Article 32. The strict principle of **locus Standi** (right to bring an action) is relaxed, allowing individuals or entities to file petitions even if they are not directly affected.

Is PIL and WRITs are inter-linked?

Public Interest Litigation (PIL) and **writs** are closely linked in the Indian legal system, as PILs are often filed in the form of writ petitions. Writs are constitutional remedies provided under Articles 32 and 226 of the Indian Constitution for enforcing fundamental rights or other legal rights. PIL uses this mechanism to address issues of public interest. A landmark case in this context is **S.P. Gupta v. Union of India (1981)**, also known as the "Judges' Transfer Case." In this case, the Supreme Court held that any member of the public could approach the court for a writ if a public injury was involved, significantly expanding the scope of writs to include matters of public interest.

Connection between PIL and Writs

1. Writ Jurisdiction:

- PILs are filed in the **Supreme Court** under Article 32 or in the **High Courts** under Article 226.
- These articles empower the courts to issue writs to protect fundamental rights (Article 32) and other legal rights (Article 226).

2. Relaxation of Locus Standi:

- Traditional writ petitions require the petitioner to demonstrate a personal grievance or harm.
- In the case of PILs, the courts relax this requirement, allowing any public-spirited individual or organization to approach the judiciary on behalf of others.

3. Types of Writs Used in PILs: The following writs are commonly invoked in PIL cases:

- **Habeas Corpus:** To challenge illegal detention or imprisonment.
- **Mandamus:** To compel a public authority to perform a statutory duty.
- **Prohibition:** To prevent a lower court or tribunal from exceeding its jurisdiction.
- **Certiorari:** To quash an order passed by a lower court or tribunal that exceeds jurisdiction or violates the law.
- **Quo Warranto:** To challenge the authority of a person holding a public office.

4. Scope of Relief in PILs:

- PILs filed through writ petitions address not just individual grievances but systemic issues affecting the public, such as environmental concerns, human rights violations, corruption, and governance failures.

- The courts can issue broad directives to the government or public authorities for remedial measures.

Impact of PIL on Writ Jurisdiction:

The introduction of PIL has led to a more active and interventionist judiciary, particularly in areas where the executive has failed to act. Writs issued in PIL cases have addressed a wide range of issues, including environmental degradation, human rights violations, and corruption. For instance, in *M.C. Mehta v. Union of India (1987)*, a series of cases involving environmental protection saw the Supreme Court issuing writs of mandamus to enforce environmental regulations. This demonstrated the use of writs as tools for public governance and the protection of collective rights.

Challenges and Criticisms:

While PILs have expanded access to justice, they have also faced criticism for leading to judicial overreach. The issuance of writs in PIL cases has occasionally blurred the lines between the judiciary and the executive, raising questions about the appropriate limits of judicial intervention. Despite these challenges, writs remain a cornerstone of the PIL framework, providing a mechanism for addressing grievances that affect the broader public interest.

Differences between PILs and Traditional Writs

Aspect	Traditional Writ Petition	Public Interest Litigation (PIL)
Locus Standi	Filed by an aggrieved party directly affected.	Filed by any individual or group in public interest.
Purpose	Addresses individual grievances.	Addresses broader public or societal issues.
Scope	Limited to specific violations of legal rights.	Expansive, covering systemic issues and policy failures.
Outcome	Focused on relief for the petitioner.	Aims at broader public benefit and systemic changes.

Writs and Fundamental Rights

The power of the Supreme Court and High Courts to issue writs under Articles 32 and 226 of the Indian Constitution is a cornerstone of the judicial system, providing a robust mechanism to protect and enforce fundamental rights. These writs, which include habeas corpus, mandamus, prohibition, certiorari, and quo warranto, act as direct remedies for individuals whose rights have been violated. By enabling citizens to approach the courts for the enforcement of their rights, these provisions ensure that the constitutional guarantees are not merely theoretical but are upheld in practice.

Role of Writs in Protecting Fundamental Rights

A notable instance of writ issuance was in the landmark case of **Maneka Gandhi v. Union of India (1978)**, where the Supreme Court significantly expanded the scope of **Article 21** (Right to Life and Personal Liberty). The court held that any procedure established by law must meet the criteria of being "just, fair, and reasonable." The judgment emphasized that personal liberty cannot be curtailed arbitrarily. In this case, the court issued a **writ of mandamus**, compelling the government to return the petitioner's confiscated passport. This decision not only upheld the petitioner's rights but also marked a shift towards a broader and more progressive interpretation of the fundamental rights guaranteed under the Constitution.

Expanding Interpretation of Fundamental Rights

Indian courts have consistently interpreted fundamental rights expansively, broadening their scope to address contemporary challenges and emerging concerns. While the Constitution originally envisioned the protection of traditional civil and political rights, judicial interpretations have extended the ambit of these rights to include socio-economic and environmental dimensions.

For instance, in **Olga Tellis v. Bombay Municipal Corporation (1985)**, the Supreme Court recognized that the **right to livelihood** is an essential component of the **right to life** under Article 21. The case arose when the Bombay Municipal Corporation sought to evict pavement dwellers. The court

held that such evictions, without adequate rehabilitation measures, would violate the right to life. A **writ of mandamus** was issued, preventing the eviction and reinforcing the judiciary's role in safeguarding socio-economic rights through the vehicle of writ jurisdiction.

Similarly, environmental rights have gained recognition under the judiciary's expansive interpretation of fundamental rights. The right to a clean and healthy environment has been deemed integral to the right to life. In cases such as **M.C. Mehta v. Union of India (1987)**, the court issued writs to mandate stringent measures to control pollution, demonstrating the proactive role of the judiciary in addressing environmental concerns. The judiciary's commitment to safeguarding emerging rights ensures that the Constitution remains dynamic and responsive to the needs of society.

Writs and the Doctrine of Natural Justice

Ensuring Fairness through Writs:

The doctrine of natural justice, encompassing principles such as *Audi alteram partem* (the right to be heard) and *nemo iudex in causa Sua* (no one should be a judge in their own cause), is a cornerstone of administrative law. Writs play a critical role in enforcing these principles, particularly when administrative actions have violated the principles of natural justice. A significant case that influenced Indian jurisprudence is ***Ridge v. Baldwin (1964)***. Although this is a UK case, it has had a profound impact on Indian law. The House of Lords ruled that the dismissal of a police officer without giving him an opportunity to be heard was invalid, reinforcing the importance of natural justice in administrative proceedings. Indian courts frequently cite this case in writ petitions challenging administrative actions.

Writs as Tools for Judicial Review:

Writs of certiorari and prohibition are particularly relevant in cases involving breaches of natural justice. These writs enable higher courts to quash decisions made by lower courts or tribunals that have violated these principles, thereby ensuring that justice is not only done but also seen to be done. In ***A.K. Kraipak v. Union of India (1970)***, the Supreme Court issued a writ of certiorari to annul the selection of candidates for a government post because the selection process had violated the principles of natural justice. The court emphasized that even administrative actions must adhere to these principles, thus broadening the scope of judicial review through writs.

Contemporary Challenges:

Enforcing natural justice through writs presents challenges in an era of rapid administrative expansion and increasing complexity of governance. Courts must balance the need for efficient administration with the requirement to uphold procedural fairness, often resulting in intricate and nuanced judgments. Despite these challenges, the doctrine of natural justice remains

CAs Handbook on Writs

a fundamental aspect of Indian law, with writs serving as essential tools to ensure that administrative actions are conducted fairly and justly.

Principles of Writs in Administrative Actions

The principles of writs in relation to administrative actions, the impact of technological advancements, and the future of writ jurisdiction in India: -

Writs and Administrative Discretion:

Controlling Administrative Discretion:

One of the key roles of writs in modern jurisprudence is to control the abuse of administrative discretion. Discretionary powers are essential for effective governance, but they must be exercised within the bounds of the law. Writs such as mandamus and certiorari are crucial in ensuring that discretion is not exercised arbitrarily or capriciously. In ***State of West Bengal v. Anwar Ali Sarkar (1952)***, the Supreme Court held that administrative discretion must be exercised reasonably and in accordance with the principles of natural justice. The court quashed the government's action, demonstrating the judiciary's role in overseeing the exercise of discretionary powers.

Principles Governing Discretion:

The exercise of administrative discretion is guided by principles such as reasonableness, fairness, and proportionality. Writs serve as a mechanism to enforce these principles, ensuring that administrative decisions are just and equitable. The Supreme Court, in ***E.P. Royappa v. State of Tamil Nadu (1974)***, established that equality before the law requires administrative discretion to be exercised in a fair and just manner, free from arbitrariness. This case emphasized that writs can be used to challenge administrative actions that violate the principle of equality.

Judicial Review of Discretionary Powers:

Writ jurisdiction allows courts to review administrative actions to ensure that they conform to legal standards. This review focuses on the manner in which a decision was made rather than its merits. Courts examine whether the decision was within the scope of the authority, made in good faith, and based

on relevant considerations. In *Indian Express Newspapers v. Union of India* (1985), the Supreme Court observed that administrative discretion is not absolute and must be exercised within the framework of the law. The court issued a writ to ensure that the government's discretionary powers were not misused, reinforcing the role of writs in maintaining the rule of law.

Impact of Technology on Writ Jurisdiction:

Technological Advancements and Writs:

The rapid advancement of technology has transformed the landscape of legal practice, including writ jurisdiction. Digital platforms and e-governance have introduced new challenges and opportunities for the application of writs. Issues such as data privacy, cyber security, and digital rights have increasingly become subjects of writ petitions. In *K.S. Puttaswamy v. Union of India* (2017), also known as the Privacy Case, the Supreme Court recognized the right to privacy as a fundamental right under Article 21 of the Constitution. This landmark case highlighted the judiciary's willingness to adapt writ jurisdiction to address issues arising from technological advancements, particularly in the context of state surveillance and data protection.

E-Governance and Writs:

The shift towards e-governance has impacted the administration of writs. With the digitization of government records, online grievance redressal mechanisms, and electronic filing of petitions, writ jurisdiction has become more accessible to the public. However, this shift has also raised concerns about digital exclusion and the need for robust cyber security measures to protect sensitive information. In Justice *K.S. Puttaswamy v. Union of India (Aadhaar Case)* (2018), the Supreme Court issued a writ of mandamus directing the government to ensure that the Aadhaar system complies with data protection norms and does not infringe upon the fundamental rights of citizens. This case underscored the role of writs in safeguarding digital rights in an increasingly digital world.

Challenges of Cyber Jurisdiction:

As more governmental and administrative functions move online, the scope of writ jurisdiction will need to evolve to address the unique challenges posed by cyber governance. Issues such as jurisdictional boundaries in cyberspace, regulation of digital platforms, and protection of digital rights will require

Principles of Writs in Administrative Actions

innovative applications of writs. Courts are beginning to explore the implications of cyber jurisdiction, and future writ petitions are likely to focus on ensuring that digital governance adheres to the principles of transparency, accountability, and legality.

Writs and Environmental Protection

Environmental Jurisprudence and Writs

Environmental protection has emerged as a significant area of writ jurisdiction, with courts issuing writs to enforce environmental laws, prevent ecological degradation, and uphold the constitutional right to a clean and healthy environment. Public interest litigation has played a crucial role in bringing environmental issues before the courts. In ***M.C. Mehta v. Union of India (Ganga Pollution Case) (1988)***, the Supreme Court issued a series of writs of mandamus directing various state agencies to take action to prevent pollution of the Ganges River. This landmark case established the principle that environmental protection is an integral part of the right to life under Article 21 of the Constitution.

Principles of Sustainable Development

Indian courts have embraced the principles of sustainable development, using writ jurisdiction to balance economic growth with environmental conservation. Writs have been issued to prevent activities that threaten ecological balance, enforce environmental regulations, and ensure that development projects comply with environmental standards. In ***Narmada Bachao Andolan v. Union of India (2000)***, the Supreme Court issued writs related to the construction of the Sardar Sarovar Dam, balancing the need for development with the rights of affected communities and environmental protection. This case demonstrated the judiciary's approach to sustainable development through writ jurisdiction.

Environmental Rights as Fundamental Rights

The recognition of environmental rights as fundamental rights has expanded the scope of writ petitions in environmental matters. Courts have issued writs to address issues such as deforestation, air and water pollution, and the impact of industrial activities on local communities. In ***T.N. Godavarman Thirumulpad v. Union of India (1996)***, the Supreme Court issued a writ of mandamus to enforce forest conservation laws and prevent deforestation.

Writs and Environmental Protection

The case underscored the judiciary's proactive role in environmental protection and the use of writs to uphold environmental rights.

Future of Writ Jurisdiction in India

Emerging Trends in Writ Jurisdiction

The future of writ jurisdiction in India will be shaped by emerging legal and societal trends, including the increasing importance of digital rights, environmental sustainability, and global economic governance. Courts will need to adapt writ jurisdiction to address these challenges while maintaining the core principles of justice, fairness, and legality. The continued evolution of public interest litigation, particularly in areas such as climate change, data privacy, and human rights, will likely lead to an expansion of writ jurisdiction. Courts are expected to play a more proactive role in shaping public policy through the issuance of writs.

Challenges and Opportunities

One of the key challenges for the future of writ jurisdiction is balancing judicial activism with judicial restraint. As courts take on more complex and politically sensitive cases through writ petitions, there is a risk of overstepping the boundaries of judicial review. However, this also presents an opportunity for the judiciary to reinforce the rule of law and protect fundamental rights in a rapidly changing world. Another challenge is ensuring that writ jurisdiction remains accessible to all citizens, particularly in an era of digital governance. The judiciary must address issues such as digital exclusion and the need for cyber security to ensure that writ petitions remain an effective tool for justice.

Role of Chartered Accountants

While before the Court only Advocates can appear, there is a significant role can be played by a chartered accountant.

When income tax disputes escalate to litigation, CAs becomes indispensable allies for taxpayers. They collaborate with legal professionals to build a robust defence strategy, ensuring that the taxpayer's case is presented comprehensively and convincingly in court. CAs plays a critical role in analysing legal precedents, preparing financial evidence, and providing

expert testimony, all of which contribute to a favourable outcome for the taxpayer.

A chartered accountant is best aware of facts, the order passed under any tax law, provisions of law and the attendant judicial thought process by way of several decisions rendered till the date.

Therefore, a CA can be able to guide the taxpayer to prefer writ remedy for quick relief from the offence committed against him. In case of doubt, a CA can present his case to the council.

A CA can play role in selection of counsel for appearing to argue the writ.

Drafting of writ petition can be made by a chartered accountant.

When the writ petition comes up for hearing, a CA can assist the advocate appearing on behalf of the taxpayer. He can make the groundwork and administrative preparations. He can guide the advocate of the line of argument.

What should a CA know?

A **Chartered Accountant (CA)** should have a basic understanding of **writs** in the Indian legal system, as they can play a critical role in certain professional scenarios involving taxation, corporate governance, regulatory compliance, and disputes with government authorities. Writs are constitutional remedies available under **Article 32** (Supreme Court) and **Article 226** (High Courts) of the Indian Constitution to protect legal or fundamental rights. As a CA, understanding writs is essential because they are often used to challenge:

- Actions by tax authorities.
- Administrative orders or regulations that violate rights.
- Arbitrary decisions by government or regulatory bodies like the GST Council, Income Tax Department, SEBI, or RBI.

Situations Where a CA May Be Involved

A CA may encounter writ petitions in the following situations:

CA's Handbook on Writs

Taxation Matters

- Filing or advising on writ petitions against:
 - Unreasonable tax assessments or penalties.
 - Refusal to grant legitimate tax refunds.
 - Arbitrary notices issued under Income Tax Act or GST laws.
 - Violation of principles of **natural justice**, such as denial of a hearing.

Regulatory Compliance

- Challenging decisions by regulatory bodies like:
 - SEBI (Securities and Exchange Board of India).
 - RBI (Reserve Bank of India).
 - MCA (Ministry of Corporate Affairs).
- For example, if a company's license or registration is suspended without due process, a CA may advise on filing a writ.

Corporate Disputes

- Advising clients in cases where public authorities or tribunals interfere in business matters beyond their jurisdiction.

Procedural Violations

- Filing writs for breach of:
 - The **right to be heard**.
 - Fair treatment during audits, assessments, or inspections.

Key Principles to Keep in Mind

- **Alternative Remedy:** Courts generally discourage writs if an alternate statutory remedy (e.g., appeal) is available unless:
 - There is a violation of fundamental rights.
 - The statutory authority acts beyond jurisdiction.
 - The issue involves a question of law.

Future of Writ Jurisdiction in India

- **Timeliness:** Writ petitions should be filed promptly after the grievance arises.
- **Documents and Evidence:** Proper documentation is crucial to demonstrate:
 - Violation of rights.
 - Lack of jurisdiction by the authority.

A writ petition can be filed before any High Court, as a whole or in part, whose jurisdiction the cause of action arises, as per Article 226. Whether or not the authority the writ petition is filed against is located within the territory is irrelevant. The High Court has broader authority to issue writs compared to the Supreme Court.

Stages of Writ, normally, are as under:

Filing a Writ Petition involves several procedural steps:

1. Drafting of petition: this should be done meticulously. Clearly mention grounds, facts, and legal provisions relevant to the matter. It should bring out that there is violation of fundamental rights or the illegal action of the concerned authority.
2. Supporting affidavits stating the relevant facts should be executed. These affidavits serve as evidence in the case.
3. Relevant documents should be annexed. These documents substantiate the case.
4. Court fees for writ are prescribed under the court rules. Payment of fees should be made.
5. The set of documents and affidavit of the 'writ petition' should be filed in the relevant court. The petitioner must ensure that multiple copies are submitted, as required by the court.
6. On writ petition being filed, a copy is served to the respondent, i.e., the government authority or individual against whom the petition is filed.
7. An opportunity to respond to the allegations is available to the other party.
8. The High Court or the Supreme Court will schedule hearings where both parties present. Both parties present their respective arguments

CAs Handbook on Writs

and evidence. The court can issue interim orders or directions as necessary.

9. Finally, the court will deliver a judgment based on the merits of the case. If the petition is allowed, the court may issue appropriate writs or directions to remedy the situation.

The court's decision is binding, and it plays a crucial role in upholding the rule of law in protecting fundamental rights of the petitioner.

FORMAT OF WRIT PETITION

A SYNOPSIS AND LIST OF DATES (Specimen enclosed)

B FROM NEXT PAGE

IN THE SUPREME COURT OF

INDIA ORIGINAL JURISDICTION CIVIL WRIT PETITION NO. OF 2005

IN THE MATTER OF

.....

Petitioner

versus

.....

Respondents

PETITION UNDER ARTICLE ___ OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF UNDER ARTICLE OF THE CONSTITUTION OF INDIA.

To

Hon'ble The Chief Justice of India and

His Lordship's Companion Justices of the Supreme Court of India.

The Humble petition of the Petitioner abovenamed.

MOST RESPECTFULLY SHEWETH:

1. Facts of the case
2. Question(s) of Law
3. Grounds
4. Averment: -

That the present petitioner has not filed any other petition in any High Court or the Supreme Court of India on the subject matter of the present petition.

PRAYER

In the above premises, it is prayed that this Hon'ble Court may be pleased:

- (i)
- (ii) to pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case.

FOR WHICH ACT OF KINDNESS, THE PETITIONER SHALL AS INDUTY BOUND, EVER PRAY.

FILED BY:

PETITIONER-IN-PERSON

DRAWN:

FILED ON:

C The Writ Petition should be accompanied by:

- (i) Affidavit of the petitioner duly sworn.
- (ii) Annexures as referred to in the Writ Petitioner, Rs.2/- per annexure.
- (iii) 1+5 copies of the Writ Petition are required

CAs Handbook on Writs

- (iv) Court fee of Rs.50/- per petitioner (In Crl. Matter no court fee is payable)**
- (v) Index (As per Specimen enclosed)**
- (vi) Cover page (as per Specimen enclosed)**
- (vii) Any application to be filed, Rs. 12/- per application**
- (viii) Memo of appearance, Rs. 5/- Court fee.**

Petitioner-in-person may see a copy of WP (kept with AR-IB) to have practical knowledge about drafting of petition.

Case Law on Jurisdiction and Assessment in Tax Matters

1. Synopsis and List of Dates
2. Writ Petition along with Affidavit in support
3. Annexures
4. Application if any

IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

CIVIL WRIT PETITION NO. OF 2005

IN THE MATTER OF

.....

Petitioner

versus

.....

Respondents

P A P E R - B O O K

FOR INDEX KINDLY SEE INSIDE

FILED BY:

(ADVOCATE FOR THE PETITIONER/

PETITIONER-IN-PERSON)

Filed on:

Misty Meadows (P.) Ltd. v. UOI [2024] 162 taxmann.com 702 (P & H)

33. Thus, when there was no search conducted under Section 132 and 132A of the Act as against the petitioner and only a panchnama reflects the name

CAs Handbook on Writs

of the petitioner prepared at the registered office of M3M India Limited, the action of the respondents in passing second assessment order on 07.02.2024 on the basis of notice under Section 153A dated 05.01.2018 is held to be unjustified and without jurisdiction. Once the search and seizure were conducted and assessment order dated 28.02.2014 was passed by invoking Section 153A of the Act for the AY 2006-07 to 2012-13, fresh order without conducting search and seizure operation would not be sustainable in law. In view of the aforesaid findings and conclusions, we are satisfied that the entire proceedings initiated under Section 153A of the Act including notice issued on 05.01.2018 are liable to be quashed.

35. Accordingly, the writ petition is allowed and the notice dated 05.01.2018; assessment order and demand notice dated 07.02.2024 are quashed and set aside, and the proceedings are held to be non est.

H. P. Diamonds India (P.) Ltd. v. DCIT [[2022] 139 taxmann.com 516 (SC)]

4. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Bombay in Writ Petition No. 3233/2019 by which the High Court has dismissed the said writ petition in the most casual and cursory manner and the order is a non-speaking order and nothing has been discussed on merits at all and the recent decision of this Court in the case of *Vishal Ashwin Patel* ([\[2022\] 136 taxmann.com 372/443 ITR 1 \(SC\)](#)) by which this Court has *set aside* the similar order passed by the very Bench and remanded the matter to the High Court, we *set aside* the impugned order passed by the High Court dismissing the writ petition. We remand the matter to the High Court to decide and dispose of the writ petition in accordance with law and on merits and to pass a reasoned and speaking order.

5. The present Appeal is accordingly allowed to the aforesaid extent. No costs.

Meerut Development Authority v. Pr. CIT [2024] 159 taxmann.com 1226 (All)

5. Accordingly, in the interest of justice, writ petition is disposed of with the direction, let the Appeal Nos. CIT(A), Ghaziabad/10660/2016-17, CIT(A), Meerut/10399/2017-18, CIT(A), Meerut/10337/2018-19, NFAC/2016-17/1020668, NFAC/2016-17/1020669, NFAC/2017-18/10039960 and

Case Law on Jurisdiction and Assessment in Tax Matters

NFAC/2019-20/10193992 be heard and decided by the Appeal Authority within a period of three months from today.

6. In view of the facts noted above, for the period of three months or disposal of the above-described appeals, whichever is earlier, no coercive measure shall be adopted against the petitioner for A.Y.s 2017-18, 2018-19 and 2020-21.

Virchow Drugs Ltd. v. ITO [2023] 156 taxmann.com 89 (Telangana)

22. Given the aforesaid facts and circumstances of the case and also the admitted factual matrix, as has been, revealed in the preceding paragraphs, we are of the considered view that the present is also the case which squarely stands covered by the decision of the Hon'ble Supreme Court in the case of *Maruti Suzuki (India) Ltd. (supra)*, and the recent decision of the High Court of Bombay in the case of *SLSA India (P.) Ltd. (supra)* and the earlier judgment of the High Court of Delhi in the case of *Spice Infotainment Ltd. (supra)*.

23. The present Writ Petition deserves to be and is accordingly allowed, holding that the notice dated 24-3-2023 issued section 148A(d) of the Act and the consequential notice of the same date *i.e.* 24-3-2023 under section 148 of the Act, both being bad in law, are set aside, as the entire proceedings itself is against a non-existing Company. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

Modern Living Solutions (P.) Ltd. v. ITO [2023] 153 taxmann.com 306 (Bombay)

5. We find that in the present writ petition the petitioner has raised a challenge to the initiation of proceedings and exercise of power under section 148 of the Act of 1961 by urging that the statutory requirements prescribed by Section 148 have not been satisfied. In other words, it is submitted that since there is no existence of any reason to believe, re-opening of the proceedings by the respondent No. 1 is without jurisdiction. Since the jurisdiction of the respondent No. 1 of initiating the proceedings itself is under challenge, the writ petition would be maintainable. In the light of the challenge as raised it cannot be said that the writ petition is not maintainable. The further question as regards the entitlement to any relief would be a matter to be considered on merits while entertaining such

jurisdictional challenge is an aspect to be considered on merits. It is therefore held that the writ petition was filed is maintainable and the same is liable to be entertained on merits.

6. The preliminary objection to maintainability of the writ petition is thus turned down. Since challenge as raised in the writ petition is required to be considered further, we have not referred to the various decisions relied upon by the learned counsel for the parties on merits since the same would be considered when the writ petition is heard on the challenge as raised. The writ petition shall accordingly be heard for admission. Place the same for admission accordingly.

Fino Paytech Ltd. v. UOI [2024] 161 taxmann.com 416 (Bombay)

4. It is submitted that the show-cause-notice was issued on 30 December 2020 which was almost after one year from the date in the change of address. The show-cause-notice was issued to the petitioner on an address which was in fact the address prior to even the first change of petitioner's address which was affected on 23 October 2019 on the GST portal. It is thus submitted that as the show-cause-notice itself was not served on the petitioner or received, the petitioner could not participate in the adjudication of the show-cause-notice and eventually, the adjudicating officer proceeded to adjudicate the show-cause-notice while passing the ex-parte order-in-original.

10. In view of the above discussion, we are inclined to partly allow this petition by the following order:-

ORDER

- (i) The impugned order-in-original dated 30 August 2022 (Exhibit-B) is quashed and set aside.
- (ii) Proceedings stand remanded to the Adjudicating Officer, namely, the Commissioner, CGST & Central Excise, and Belapur Commissionerate.
- (iii) The petitioner shall place on record the reply to the show cause-notice along with the appropriate documents within a period of four weeks from today.
- (iv) After a reply is filed, the Commissioner shall fix a convenient date for hearing the petitioner and proceed to pass an order within a

Case Law on Jurisdiction and Assessment in Tax Matters

period of eight weeks from the date of hearing.

- (v) All contentions of the parties on the adjudication of the show-cause-notice are expressly kept open.
- (vi) Petition stands disposed of in the aforesaid terms. No costs.

Nikunj Steel v. State of Punjab [2019] 104 taxmann.com 454 (P & H)

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 to take a decision on the representation dated 13.3.2019 (Annexure P-10), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one week from the date of receipt of the certified copy of the order.

SABH INFRASTRUCTURE LTD. v ACIT W.P. (C) 1357/2016 (Del) Dt. 25.09.2017

18. Thus, the Petitioner cannot be said to have failed to disclose fully and truly all the material facts. This being a jurisdictional issue, the assumption of jurisdiction under Sections 147 and 148 of the Act was erroneous. The notice dated 20th March 2015 and the subsequent order dated 1st February, 2016 deserve to be and are hereby quashed.

19. Before parting with the case, the Court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under Sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the Court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:

- (i) While communicating the reasons for reopening the assessment, the copy of the standard form used by the AO for obtaining the approval of the Superior Officer should itself be provided to the Assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the AO to the Assessee is to be avoided.

- (ii) The reasons to believe ought to spell out all the reasons and grounds available with the AO for re-opening the assessment - especially in those cases where the first proviso to Section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and <http://www.itatonline.org> W.P. (C) 1357/2016 Page 13 of 13 any enquiry conducted by the AO on the same and if so, the conclusions thereof.
- (iii) Where the reasons make a reference to another document, whether as a letter or report, such document and/ or relevant portions of such report should be enclosed along with the reasons;
- (iv) the exercise of considering the Assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasijudicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed.

20. The writ petition is allowed in the above terms.

There will be no order as to costs.