# WRIT REMEDY IN TAX MATTERS AN OVERVIEW

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# SALIENT FEATURES

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**Constitutional Remedy** 

**Expeditious Remedy** 

**Right to Statutory Remedy remains intact** 

Opportunity to challenge wrong action at very threshold

Saves from protracted litigation and expenditure

Extraordinary jurisdiction

OSole remedy to challenge constitutional validity of statute/delegated legislation

Effective Remedy to Safeguard and enforce fundamental rights

# CONSTITUTIONAL PROVISIONS

Article-32 – Confers right to move to Supreme court for Enforcement of fundamental rights

Right to Equality before law (Art.14,15 and 16)

Right to Freedom (Art.19,20 and 21)

Right Against Exploitation (Art.23 & 24)

Right to Freedom of Religion (Art. 25,26 & 27)

Right to Cultural and Educational Rights(Art. 29 & 32)

Right to Constitutional Remedies (Art.32)

#### Salient Features

Constitutional validity of a legislative enactment can be challenged provided it invades the guaranteed fundamental rights.

No need to resort to Article 226 before approaching Supreme Court.

Itself a fundamental right.

Can be invoked even in case of reasonable apprehension of invasion of fundamental rights.

Powers not limited by territorial jurisdiction.

# ARTICLE- 226 POWER OF HIGH COURT TO ISSUE CERTAIN WRITS

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"To issue any writ for the enforcement of any of the rights conferred by Part III and for <u>any other purpose</u>".

•Remedy in public law



Territorial Jurisdiction

•Wider scope then supreme court under Article 32



# "ANY OTHER PURPOSE" - SCOPE

"To issue any writ for the enforcement of any of the rights conferred by Part III and for <u>any other purpose</u>".



# WRITS IN INCOME TAX LAW

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Section- 147/148 OF Income Tax Act (Reassessment)

#### Section 220(6) of Income Tax Act- Stay of demand

Section 254 - ITAT ORDERS

Section 132- Search and Seizure

# WRITS IN INCOME TAX LAW Section- 147/148 (Reassessment)

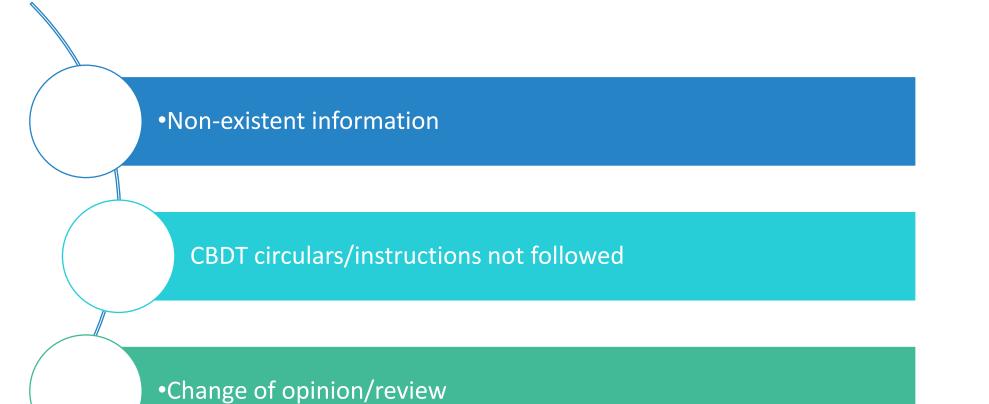
•Ex-facie Barred by limitation

•Objections not dealt / proper reasoning not assigned while passing Order passed u/s 148A(d) of the IT Act.

•Procedure prescribed u/s 148A(b)/ 144B not followed

•Without jurisdiction

## WRITS IN INCOME TAX LAW Section- 147/148 (Reassessment)



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WRITS IN INCOME TAX LAW-Section 220(6)- Stay of demand

Recovery without disposing off stay application

Opportunity of hearing not granted

**CBDT** Circulars not followed

Refusal to exercise discretion

Non-speaking order on stay application

#### WRITS IN INCOME TAX LAW- Section 254 - ITAT ORDERS

Order rejecting rectification application u/s 254(2)

Order rejecting application for additional evidence under rule 27 of ITAT Rules

Recalling of order passed in appeal

# WRITS IN INCOME TAX LAW- Section 132- Search and Seizure

# Legal validity of search

# **Release of Assets**

### WRITS IN INCOME TAX LAW- SECTION 201 – TDS PROCEEDINGS

#### **Ex-Facie Barred by Limitation**

### **Territorial Jurisdiction**

TDS Officer going beyond the powers vested with him by Section 201 of the Act

#### **Case Law on Section 201- TDS Proceedings**

Bharti Airtel Ltd. v. Union of India[2016] 76 taxmann.com 256(Delhi)

Petitioner challenged the TDS proceedings initiated under Section 201 IT Act in the case when payment was made to Non Resident Indian and where no limitation was prescribed for the same in the IT Act.

The Hon'ble Delhi High Court held that even though there is absence of any limitation period in respect of payment to NRI for purpose of Section 195 r/w 201 of the Act, yet proceedings under Section 201 can be initiated against non-residents only within reasonable time period.

Held: Notice issued u/s 201 of the Act to assessee in respect to payment made to nonresidents after expiry of four years from end of relevant assessment year, it was to dismissed being barred by limitation

# WRITS IN GST

Section 109 of the CGST Act provides for Constitution of Appellate Tribunal and Benches thereof.

However, GST Tribunal has not been constituted till date.

Thus, the person aggrieved of the orders passed by Appellate/Revisional Authority are constrained to approach respective High Court under Article 226 by way of Writ Petition.

## CHALLENGE TO SECTION 109 OF THE CGST ACT

Bharatiya Vitta Salahkar Samiti Vs. Union of India [2020] 113 taxmann.com 510 (Delhi):

Court directed that the respondents shall not, without prior intimation to this Court, proceed to appoint persons to the GST Appellate Tribunal.

Matter is pending before the Hon'ble High Court of Delhi

### CHALLENGE TO SECTION 109 OF THE CGST ACT

Revenue Bar Association v. Union of India [2019] 109 taxmann.com 375 (Madras)

Section 110(1)(b)(iii) of the GST Act - which states a member of Indian Legal Services, who has held a post not less than Additional Secretary for a period of three years, can be appointed as a Judicial Member in GSTAT, has been struck down.

Section 109(3) and 109(9) of CGST Act, 2017, which prescribes that the Tribunals shall consist of one Judicial Member, one Technical Member (Centre) and one Technical Member (State), has been struck down.

The High Court has also recommended to the Parliament that it must consider amendment of the relevant Section, to include Lawyers to be eligible to be appointed as Judicial Members to the Appellate Tribunal, in view of the issues which are likely to arise for adjudication under the CGST Act and in order to maintain uniformity in various statutes

#### CHALLENGE TO SECTION 109 OF THE CGST ACT

Clarification in respect of appeal in regard to non-constitution of Appellate Tribunal-Circular No. 132/2/2020 – GST dated 18th March 2020

The appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case maybe, of the Appellate Tribunal enters office, whichever is later.

# SPECIFIC WRITS

Habeas Corpus	To protect personal liberty
Mandamus	To command/direct any person, corporation, inferior court or govt. to do a particular thing pertaining to his office and is in the nature of public duty.
Prohibition	To compel the inferior court, tribunals, quasi judicial authorities from continuing proceedings in excess of its jurisdiction.

# SPECIFIC WRITS

Certiorari	To quash an order passed without or in excess of jurisdiction or in contravention of rules of natural justice.
Quo-Warranto	To call any person to show to the court under which authority he holds the office and to oust him if without authority.

### LOCUS STANDI

# Person aggrieved

## Stranger

# Busy body or meddlesome interloper

A person whose interests are prejudiced genuinely or suffered a legal grievance.

A person who is not privy or party to any act but has a substantial and genuine interest

Professional/habitual litigant for cheap popularity or ulterior motives.

# EXCEPTIONS

**O**Habeas Corpus

Oua warranto

Minor person

Public mischief

Violation of statutory obligations ①Statutory
participation

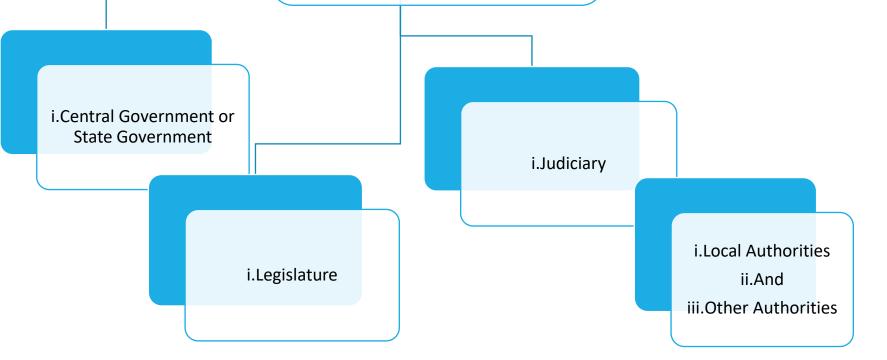
Public interest litigation

# AUTHORITIES AGAINST WHOM WRIT CAN BE ISSUED

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**State** – Defined under Article 12 of the Constitution .

"the state <u>includes</u> the government and Parliament of India and the government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of Government of India"





➢If entire share capital of company held by government.

Monopoly status conferred by state.

Existence of deep and pervasive control of state.

➢ Functions performed have public importance and closely related to governmental functions.

When it regulates a profession or vocation of a citizen which is otherwise a fundamental right.

When state delegates its legislative power.

# LIMITATIONS

Public Law Remedy

#### Policy matters

Contractual Rights and Liabilities

#### Disputed questions of facts

Suppression and Concealment of facts

Legal Delay and Latches

Alternate Remedy

# Thank You

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