



## **Global Business Tax Alert** Sharp Insights

**The Supreme Court, in the case of Jeans Knit Private Limited v. DCIT (Civil Appeal No. 11189/2016) and other cases has held that writ petitions filed before the High Courts ('HC') challenging the re-assessment notices issued under section 148 of the Income-tax Act, 1961 ('ITA') are valid. The Supreme Court also directed the respective HCs to decide the writ petitions on merits.**

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## Background

- The High Courts in over 40 cases, had dismissed the writ petitions filed by the taxpayers challenging the re-assessment notices issued under section 148 of the ITA and the reasons which were recorded by the Assessing Officer for reopening the assessment as not maintainable.
- While dismissing the writ petitions, the High Courts had referred to the Supreme Court decision in the case of CIT v. Chhabil Dass Agarwal (357 ITR 357).
- The Supreme Court, in decision of Chhabil Dass Agarwal (supra) had held that the provisions regarding filing of writ petitions cannot be invoked against an assessment order when adequate remedy is available to the taxpayer under the ITA by way of filing an appeal before the Commissioner of Income-tax (Appeals).

## Ruling of the Supreme Court

- The Supreme Court has held that the principle laid down in the decision of Chhabil Dass Agarwal (supra) does not apply to the cases which are subject matter of the appeals before it.
- The Supreme Court observed that decisions taken by the High Courts in dismissing the writ petitions as not maintainable is contrary to the decision of the Supreme Court in the case of Calcutta Discount Limited Company v. ITO (41 ITR 191).
- Accordingly, following the decision in the case of Calcutta Discount Limited Company (supra), the Supreme Court has set aside the High Court orders and remitted the cases to the respective High Courts for deciding the writ petitions on merits. The Supreme Court also stated that each case shall be examined on its merits keeping in view the scope of judicial review while entertaining such matters, as laid down by this Court in various judgements.
- The Supreme Court has further granted stay against re-assessment proceedings till the disposal of the writ petitions by the High Courts.

## Conclusion

The Supreme Court's ruling is a land-mark decision in upholding the validity of writ petition filed before the High Court against the re-assessment notice issued under section 148 of the ITA when various High Courts are dismissing the writ petitions on the basis that remedy available under the ITA has to be exhausted before invoking jurisdiction under Article 226 of the Constitution of India.

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