

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**WRIT PETITION NO.1594 OF 2016**

TV18 Home Shopping Network Limited. ] ... Petitioner

Versus

The State of Maharashtra and Ors. ] ... Respondents

Mr. V. Sridharan, Senior Advocate, a/w Mr. Prakash Shah i/b M/s.  
PDS Legal for Petitioner.

Mr. M. A. Sayed, AGP for State - Respondents.

**CORAM :- S. C. DHARMADHIKARI, AND  
B. P. COLABAWALLA, JJ.**

**DATE :- SEPTEMBER 20, 2016**

**P. C. :-**

1. By this Writ Petition under Article 226 of the Constitution of India, the petitioner claims a Writ of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, calling for the records pertaining to the petitioner's case and after examining the legality and validity thereof, to quash and set aside the impugned order dated 28/03/2016.

2. At the outset, Mr. Sayed, learned AGP for State - respondents, raises a preliminary objection to the maintainability of the writ petition by submitting that the impugned order can be challenged by way of an appeal under the Maharashtra Value Added

Tax Act, 2002. These remedies are equally efficacious. Therefore, the writ petition be dismissed.

3. Mr. Sridharan, learned Senior Advocate appearing for petitioner, submits that the nature of the business of the petitioner is set out in para 2 of the petition. The petitioner is complaining that a copy of the impugned order provided to the petitioner contains fundamental and basic errors. The petitioner's business and the manner in which it is carried out, has been explained in detail. The petitioner has not indulged in any act which the Assessing Officer presumes that the petitioner was involved in and for the relevant assessment year. The attention of this Court is invited to the fundamental errors and which vitiate the impugned order.

4. Our attention is invited by Mr. Sridharan to page 37 of the petition, grounds FFF and GGG, to submit that the errors in the order are not mere typographical. The petitioner had, at no point of time, stated that the business is identical to one M/s. Naaptol. Yet, some facts in relation to M/s. Naaptol and the statement of one Mr. Manu Agrawal, Managing Director of M/s. Naaptol, has been referred to. It is in these circumstances, that the assessment order is stated to be vitiated by non-application of mind and based on completely erroneous facts and details.

5. After hearing both the Counsel on preliminary point of maintainability, we are of the opinion that the petition cannot be

dismissed on the ground of maintainability. It is well settled that availability of an alternate remedy is no bar for entertaining a Writ Petition under Article 226 of the Constitution of India. Further, if the order under challenge suffers from an error which goes to the very root of the determination, then, in our writ jurisdiction, we can interfere with the same even if that is an assessment order and appealable.

6. In the present case, what we find from page 50 i.e. copy of assessment order, that the name of the petitioner is stated to be 'TV18 Home Shopping Network Limited'. The said business is stated to be that of e-commerce. It has various web portals. The company stated that it is not carrying business of buying and selling of goods. There is a completely erroneous inference drawn. The Chartered Accountant of the company is one Mrs. Anshul Agarwal. The officer who attended the assessment proceedings on behalf of the petitioner is one Mr. Kinshuk Mishra. Then what we find is that the assessment order proceeds to refer to a statement of one Mr. Manu Agrawal. Now Mr. Manu Agrawal has not been established to be connected with the petitioner or its activities. Up to page 55 of the paper-book, what the Assessing Officer refers to is the statement of the officer of the petitioner and the nature of the petitioner's business and the mode and manner in which it is carried out. However from page 56 onwards, it is stated that one Mr. Manu Agrawal, Managing Director of the company, appeared and his statement was recorded on 02/04/2012 regarding the activities of the company. Those activities

are stated to be narrated by him in the statement and details thereof are available, according to the Assessing Officer, from pages 56 to 59 of the paper-book. Thereafter, certain proceedings based on the agreement by the company with the vendor, service providers, are referred to and then it is stated that Homeshop 18 has effective control over all the transactions. We do not see any co-relation between the activities stated to be indulged in by the petitioner and that what is attributed to them by the Assessing Officer. One finds that there is no application of mind for Mr. Manu Agrawal is the Managing Director of one M/s. Naaptol Online Shopping Pvt. Ltd. Unless and until the petitioner's activities and that of M/s. Naaptol are held to be identical or similar, the facts in relation to M/s. Naaptol and their business could not have been utilized and for assessing income of the petitioner and holding them liable to pay the VAT.

7. We, therefore, agree with Mr. Sridharan that the impugned order contains fundamental errors and is vitiated by total non-application of mind.

8. We, therefore, allow the Writ Petition. We quash and set aside the assessment order dated 28/03/2016 but grant liberty to the respondents to pass fresh order in accordance with law and after complying with the principles of natural justice. When the respondents pass a fresh order, they shall not be influenced in any manner by the contents of the earlier order.

9. The Writ Petition is allowed in these terms.

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

**(S. C. DHARMADHIKARI, J.)**

Bombay High Court