

Writ Petition

Is It an Alternative Remedy?

Cases where a Writ Petition Can Be Filed in the High Court
Writ v. Appeal — How to Take the Decision

Constitutional Framework

- ❖ The Constitution of India grants powers to the Supreme Court and the High Court(s) to issue “prerogative writs” reflecting their discretionary and extraordinary power.
- ❖ **Article 32** empowers the Supreme Court to issue writs for enforcement of Fundamental Rights under Part III of the Constitution.
- ❖ **Article 226** embodies wider powers for the High Courts to issue writs for enforcement of fundamental rights as well as for any other purpose.
- ❖ **Under the Income Tax Act, 1961, taxpayers challenge under three main writs : Certiorari, Mandamus and Prohibition.**

Writs in the Tax Sphere

- ❖ Under the sphere of Tax Laws, including the Income Tax Act, writ petitions usually encompass the following reliefs [on a combination/modification thereof]:
 - ❖ **Mandamus** – seeking relief in the form of a conclusive “direction” from the Court
 - ❖ **Certiorari** – questioning the authority or jurisdiction of an action, seeking quashing/ invalidation thereof
 - ❖ **Prohibition** – restraining the body or authority from taking adverse action

“Alternative Remedy” Rule

- ❖ Issuance of writ(s), being a Constitutional prerogative of an extraordinary nature, is subjected by the Constitutional Courts to the self-imposed restraint of existence of an “alternative remedy”. The bar is founded on considerations of policy, convenience and judicial discipline [*Radha Krishan Industries 2021 SC*]
- ❖ The rule postulates that where there exists an alternative remedy, mechanism or procedure for redressing the grievance of the party, the aggrieved person must ordinarily exhaust such statutory remedy before invoking the extraordinary writ jurisdiction of the Courts.
- ❖ The remedy envisaged under this rule may be statutory or even administrative, but ought to be efficacious enough to provide adequate redressal and relief to the aggrieved party.

Writs: Maintainability v. Entertainability

Maintainability	Entertainability
Relates to the Court's jurisdiction to hear the petition.	Relates to the Court's discretion in hearing the petition.
If not maintainable, the Court cannot proceed further.	Even if maintainable, the Court may decline to entertain it
Concerns legal competence of the petition	Concerns prudence, convenience and judicial restraint
Determines whether the Court can hear the matter at all	Determines whether the Court should exercise its writ jurisdiction.

The Apex Court has clarified that the existence of an alternative statutory remedy does not render a writ petition non-maintainable; it only influences whether the Court should entertain the petition. Therefore, maintainability and entertainability are distinct concepts and should not be used interchangeably. [Godrej Sara Lee 2023 SC]

Exceptions to the rule of Alternative Remedy

❖HOWEVER, the existence of “alternative remedy” is not an absolute bar to the invocation and exercise of extraordinary writ jurisdiction, and such restraint is subject to the following exceptions:

- ☐ where the remedy is not efficacious, but merely formal and illusory;
- ☐ where there is a violation of fundamental rights;
- ☐ where the impugned action is patently without jurisdiction;
- ☐ where the principles of natural justice are violated;
- ☐ where the vires or validity of a statutory provision, rule or notification is challenged;
- ☐ where the impugned action is arbitrary, mala fide or in abuse of power.

[Whirlpool Corporation 1998 SC; Harbanslal Sahnia 2003 SC; Radha Krishan Industries 2021 SC]

Examples of Application of Exceptions to the Rule of Alternative Remedy

- ❖ Violation of Fundamental Rights [*Himmatlal Harilal Mehta* 1954 SC]
- ❖ Challenge to Constitutional Validity / Vires a statutory provision [*Bengal Immunity Co.* 1955 SC]
- ❖ Patent lack of Jurisdiction or illegal exercise of jurisdiction [*Calcutta Discount Co.* 1961 SC; *Raza Textiles* 1973 SC]

Examples of Writ Actions under the IT Act

- ❖ **Challenge to proceedings** [such as reassessment, special audit, transfer pricing] - lack of jurisdiction, time-barred proceedings, illegal exercise of powers, violation of statutory procedure, etc.
- ❖ **Stay of Demand** – restraining recovery in violation of statutory/ CBDT Guidelines, adequate time/ opportunity, illegal exercise of discretion, non-speaking orders, lifting attachment, etc.
- ❖ **Lifting Attachment** – challenging coercive recovery, garnishee notices, bank account attachments.
- ❖ **Search & Seizure** – challenging illegal search action(s), release of seized goods, money, bullion, jewellery, etc.

Examples of Writ Actions under the IT Act (contd.)

- ❖ **Challenge to actions/ inaction of Statutory/ Regulatory Bodies** – exercise of powers by CBDT u/s 119, notification of deductions under Chapter VI-A, Section 35(2AB), etc.
- ❖ **Challenge to Statutory Orders** – such as orders passed by Interim Board of Settlement, ITAT u/s 254(2) if resulting in recall of order u/s 254(1) in entirety or dismissal of MA, order passed by ITAT in Stay application, order passed by CIT u/s 264 [i.e., in the absence of statutory appeal provided there-against]
- ❖ **Refund of Tax** – seeking refund of excess taxes paid, release of unpaid refund/ interest, correction of refund dues, etc.
- ❖ **Directions of Authorities** – to pass appeal-effect orders, remand order(s) pursuant to appellate adjudication.

Leading Precedents

- ❖ ***Calcutta Discount Co.* [1961 SC]** - The Apex Court noted that writ can be entertained where the Department acts without jurisdiction; an assessee cannot be compelled to undergo lengthy proceedings when the very initiation of proceedings is legally unsustainable.
- ❖ ***Whirlpool Corporation* [1998 SC]** - The Apex Court clarified that the existence of an alternative remedy is not an absolute bar to a writ petition and outlined the exceptions thereto.
- ❖ ***Krishnadatt Awasthy* [2025 SC]** – The Apex Court concluded that violation of natural justice at the initial/ trial stage cannot be rectified at appellate stage.

Writ Vs. Appeal

- ❖ The choice between writ and appeal depends upon the nature of the grievance raised, and the relief sought - while issues relating to the merits of an assessment are generally left to the appellate authorities, writ jurisdiction is often invoked where the challenge concerns the legality of the proceedings themselves.

Writ Petition may be preferred where:

- ❖ Proceedings are initiated without jurisdiction;
- ❖ Notice/order is ex-facie barred by limitation;
- ❖ Principles of natural justice have been violated;
- ❖ Mandatory statutory procedure has not been followed;
- ❖ Constitutional validity of a provision is under challenge;
- ❖ Immediate/ interim intervention is necessary to prevent irreversible injury.

Writ Vs. Appeal (contd.)

Statutory Appeal may be preferred where:

- ❖ Challenge relates to additions, disallowances or computation of income or where disputed questions of fact require examination;
- ❖ Adequacy or sufficiency of evidence is in issue;
- ❖ Matter requires appreciation of records and factual findings;
- ❖ Effective appellate remedy is available under the Act;
- ❖ There is no challenge to the very genesis or assumption of jurisdiction under the Act.

THANK YOU