IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.499 OF 2025

Mediacom Communications Private Limited ...Petitioner

Versus

Assistant Commissioner of Income Tax Circle – 2(2)(1), Mumbai & Ors. ...Respondents

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Mr. Dharan V. Gandhi for Petitioner.
Mr. N. C. Mohanty for Respondents.

CORAM : M. S. Sonak & Jitendra Jain, JJ.
DATED : 11 February 2025

PC.:- *(Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.

2. Mr. Gandhi, learned counsel for the Petitioner, on instructions presses for relief in terms of only prayer clause (f) of this petition which reads as follows:-

> *"(f) In the alternate issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or direction under Article 226 of the Constitution of India, directing the Respondents or their employees, subordinates, agents and successors in office to forthwith reprocess the rectification application dated 06.02.2024 (Exhibit I) and issue the amount of refund due of Rs. 22,57,81,670/- along with interest under section 244A of the Act till the date of actual payment;"*

3. In paragraph 6 of the writ petition, the Petitioner has admitted that as against the order dated 24 September 2024 rejecting the Petitioner's rectification application dated 6 February 2024, an appeal lies to the appellate authority in terms of Section 246A(c) of the Income Tax Act, 1961 ("IT Act"). However, the argument is that since the order dated 24 September 2024 is passed arbitrarily and without jurisdiction, the Petitioner should not be relegated to avail of the alternate remedy.

4. Upon hearing Mr. Gandhi, learned counsel for the Petitioner, we are satisfied that no case has been made to bypass the available alternate remedy. The usual rule of exhaustion of alternate remedies cannot be bypassed by simply styling the order dated 24 September 2024 as arbitrary or without jurisdiction.

5. In prayer clause (f), the Petitioner has not even applied for setting aside the order dated 24 September 2024. The Petitioner has directly prayed for a writ of mandamus to re-process the rectification application dated 6 February 2024, which is already rejected by the order dated 24 September 2024. By simply paraphrasing the prayer clauses in a particular manner, no relief, which would virtually have the effect of setting aside the order dated 24 September 2024, can be obtained.

6. Mr. Gandhi relied on the order made by the Coordinate Bench of this Court on 18 December 2023 in Writ Petition No.1678 of 2023 in the petition instituted by this Petitioner. On perusing the order, we find that a statement was made on behalf of the Department that a jurisdictional Assessing Officer has been assigned to investigate the grievances raised by the Petitioner. Based upon such statement and after recording the same, this Court disposed of the petition, keeping open all rights and contentions of the parties. This order does not discuss the issue of alternate remedy, and in any event, this petition was disposed of based on a statement made on behalf of the Department.

7. Mr. Gandhi also relies on yet another order dated 27 March 2024 made by the Coordinate Bench of this Court in Writ Petition (L) No.5941 of 2024 in the petition instituted by this Petitioner. Again, this order directed the disposal of the Petitioner's application under Section 154 of the IT Act by passing a reasoned order. It was clarified that no observations were being made on the merits of the matter. Even this order cannot be an answer to the objections about non-exhaustion of alternate remedies available to the Petitioner.

8. In ***Oberoi Constructions vs. Union of India*** in Writ Petition (L) No.33260 of 2023 by order dated 11 November 2024, we have discussed the issues relating to the exhaustion of alternate remedies in tax matters. In the decision, we also referred to several precedents of the Hon'ble Supreme Court on this issue. By adopting reasoning therein, we decline to entertain this petition because the Petitioner has an alternate and efficacious remedy under the IT Act. None of the well-recognised exceptions for bypassing the alternate remedy are made out in this matter.

9. For all the above reasons, we dismiss this petition, but we leave the Petitioner free to choose alternate remedies.

10. However, All parties' contentions on merits are left open since we have not examined such contentions.

(Jitendra Jain, J.) **(M. S. Sonak, J.)**

Signed by: Sayyed Saeed Ali
Designation: PA To Honourable Judge
Date: 12/02/2025 15:04:55