IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2025

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.13891 of 2025
and
W.M.P.Nos.15616 and 15619 of 2025

Shri Prasad Shipping Private Limited,
Rep by its Director, Mr.N.R.Baskaran,
Old.No.122/1, New No.249, 1st Floor,
Thambu Chetty Street, Chennai - 600 001.

...Petitioner

Vs.

1. The Commissioner of Income Tax (TDS)
Office of Commissioner of Income Tax (TDS),
BSNL Building Tower 1, 1 Floor,
Room No. 120,
No. 16 Greams Road,
Chennai 600 006.

2.Income Tax Officer,
TDS Ward 3(2), BSNL Building
Tower-1, 1st Floor, Room No.113,
No.16, Greams Road,
Chennai 600 006.

3.Income -Tax Officer,
Corporate Ward 6(2),
Chennai 600 006.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the second respondent in PAN/TAN:AABCS5172R/CHES37844C dated 31/03/2023 relating to Assessment Year 2016-17 and the consequential order passed by the first respondent in PAN/TAN: AABCS5172R/CHES37844C relating to assessment year 2016-17 dated 24/03/2025, quash the same as illegal, unjustified, arbitrary and without Jurisdiction.

For Petitioner : Mr.V.Sundareswaran
For Respondent : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

The challenge in this Writ Petition is to the order dated 31.03.2023 passed by the respondent and to quash the same.

2. The facts of the case in the nutshell would run as follows:

(i) The petitioner is a Clearing agent/Customs House Agent and they are also filing paying the Income Tax and filing Income Tax returns regularly. The Customs Freight Station raises the Bill in the name of the importer/customer straightaway for its services. The imported goods by customer are cleared by petitioner straightaway for its services. The imported goods by customer are cleared by petitioner by remitting the applicable "customs duty." The petitioner raises the bill on the importer/customer by bifurcating the taxable and non taxable amount received from the importer/Customer. The Income tax is paid on the income earned and not on the "reimbursable expenses" in which no profit is earned.

(ii) The importer/customer settles the entire bill in the name of the petitioner,including the Commission to be paid to the petitioner and the customs duty and charges payable to the Customs Freight Station. The petitioner discloses the amount of income received by way of commission and files the income tax return and remits the income tax on such income. The "reimbursable expenses" such as payment of "customs duty" and "charges paid to Customs Freight Station" disclosed in the bill separately as “non-taxable” on which the actuals are paid by the petitioner without any profit element are excluded.

(iii) It is further stated that since 2002 there was no issue raised by the respondents and returns were accepted and finalised accepting the income tax returns. However, for the assessment year 2016-2017, the third respondent upon scrutiny of returns disallowed the claim of “reimbursable expenses” of Rs.4,06,10,263/- under Section 40(1)(1a) of the Income Tax Act, 1961 (in short 'the Act') and passed assessment order treating the “reimbursable expenses” paid on behalf of the importer/customs as income and levied income tax at 30% of Rs.4,06,10,262/- vide order dated 21/12/2018. Being aggrieved, the petitioner filed an appeal before the Commissioner (Appeals) on 07.01.2019 and the same was taken on file. The aforesaid authority vide communication dated 20/11/2019 requested the Assessing Officer to forward the remand report.

(iv) While the matter stood thus, the Appeal was transferred to the National Faceless Appeal Centre and thereafter the National Faceless Appeal

Centre vide communications dated 25/10/2022, 11/06/2024 and 10/03/2025 had repeatedly requested for documents which were also sent to them without fail. In the meantime, the second respondent initiated proceedings under Section 201/201A of the Act and passed an order dated 31.03.2023 raising the demand of TDS @ 2% on Rs.4,06,10,263/- along with interest.

(v) Thereafter, the revision petition was filed under Section 264 of the Act before the 1st respondent dated 24.03.2025 and the same was dismissed. The order passed by the 2nd respondent dated 31.03.2023 and the consequential order passed by the 1st respondent dated 24.03.2025 are impugned in this writ petition.

3. The learned counsel for the petitioner would submit that once the order dated 21/12/2018 was taken on file by the appellate authority and remand report was called as early as on 20/11/2019, the petitioner cannot be treated as assessee in default. Further, he would submit that though the petitioner is not liable to pay the TDS, the 2nd respondent passed the impugned order by raising the demand of TDS @ 2%. He therefore prays to set aside the same.

4. Per contra, Dr.B.Ramaswamy, learned Senior Standing Counsel appearing for the respondents by relying upon the paragraph 5 of the impugned order passed by the 1st respondent dated 24.03.2025 would submit that the petitioner had not produced any documentary evidence to show that the TDS need not be deducted and or they are exempted from deducting the TDS. In the absence of such documents, the respondents cannot hold that the petitioner is not liable to pay TDS. He therfore prays for dismissal of this writ petition.

5. In reply, the learned counsel for the petitioner would submit that one more opportunity may be granted to the petitioner to produce all the required documents before the authorities to substantiate that they are not liable to pay TDS and the respondents may be directed to pass orders after considering the documents filed by the petitioner.

6. Heard both sides. Perused the records.

7. The petitioner is a Customs House Agent and they are supposed to perform the duties of payment of duty on behalf of their client. Though a specific plea has been taken by the petitioner that they are not liable to pay TDS, no supporting documents have been produced by the petitioner either before the assessing authority or before the revisional authority to that effect, which is evident from paragraph 5 of the order passed by the 1st respondent dated 24.03.2025. Though the petitioner has stated that they have produced all the document before the authorities concerned, the same was not sufficient to substantiate its case.

8. Under such circumstances, in the interest of justice and in order to provide one more opportunity to the petitioner to substantiate its case, it would be appropriate to remand the matter back to the authorities concerned and direct the petitioner to produce the documentary evidence before the assessing officer and the assessing officer after taking note of the same can pass orders.

9.In such view of the matter,this Court is inclined to set aside the impugned order dated 31.03.2023 passed by the 2nd respondent. Accordingly, this Court passes the following order:

(i) The impunged order dated 31.03.2023 passed by the 2nd respondent is set aside.

(ii) The matter is remanded back to the 2nd respondent for fresh consideration.

(iii) The petitioner is directed to file all the documents before the 2nd respondent, within a period of two weeks from the date of receipt of a copy of this order.

(iv) Thereupon, the 2nd respondent is directed to consider the documents and shall issue a 7 clear days notice by fixing the date of personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

10. Since the assessment order itself has been set aside, the subsequent order passed by the 1st respondent/revision authority dated 24.03.2025 is also set aside.

11. Accordingly, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

13.08.2025

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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