BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.(MD)No.8847 of 2025
and
W.M.P.(MD)Nos.6618 and 6619 of 2025

Arulappan Joseph Maria Sebastian ... Petitioner

-vs-

1.The Commissioner of Income Tax (Appeals),
Income Tax Department,
National Faceless Appeal Centre (NFAC),
New Delhi.

2.The Principal Commissioner of Income Tax,
Madurai - 1, Madurai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in DIN and Order No.ITBA/NFAC/S/ 250/2024-25 /1070612957 (1) dated 25.11.2024 on the file of the first respondent and quash the same as illegal, error of law and error on the face of record and contrary to the provisions of the Income Tax Act and direct the second respondent to consider the application for refund dated 20.03.2023 on merit, in accordance with law by granting an opportunity of personal hearing.

For Petitioner	:	Dr.A.Thiagarajan Senior Counsel for Mr.S.Karunakar
For Respondents	:	Mr.J.Parekh Kumar Standing Counsel

ORDER

This Writ Petition is filed challenging the order passed by the first respondent under Section 250 of the Income Tax Act, 1961, dated 25.11.2024, for the Year 2022-2023 and a consequential direction to the second respondent to consider the application of the petitioner for refund dated 20.03.2023.

2. With the consent of both sides, this Writ Petition is taken up for final disposal at the admission stage itself.

3. The learned Senior Counsel for the petitioner submits that the second respondent, having held that no condonation petition is required in the present case, ought to have decided the issue of refund as claimed by the petitioner in the return filed under Section 139(4) of the Income Tax Act, 1961. The second respondent failed to consider the fact that the buyer of the petitioner has erroneously deducted tax at source and deposited the same with the Government, as reflected in Form 26AS. Therefore, the second respondent ought to have refunded the said amount. Further, the second respondent failed to consider the fact that a sum of Rs.14,00,000/- collected by the buyer constitutes an exempted transaction and the collection was illegal and without any legal basis. Therefore, the second respondent ought to have refunded the same. Moreover, the second respondent failed to consider that the petitioner has duly reported the claim in the return and sought a refund thereof. Hence, the entire proceedings are without application of mind and are liable to be set aside.

4. The learned Standing Counsel appearing for the respondents submits that the petitioner is having an appeal remedy before the appellate Tribunal under Section 253 of the Income Tax Act, 1961, instead of invoking the said appeal remedy, the petitioner has directly approached this Court.

5. Considering the fact that the petitioner is having an appeal remedy before the appellate Tribunal under Section 253 of the Income Tax Act, 1961, this writ petition is disposed of, with liberty to the petitioner to approach the appellate Tribunal and raise all the grounds raised in this writ petition in the appeal. In the event, if any appeal is filed within a period of two weeks from the date of receipt of a copy of this order, the appellate Tribunal shall entertain the appeal without reference to the period of limitation and dispose of the same in accordance with law, within a period of six months thereafter. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes / No **01.04.2025**
Index : Yes / No
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To:-

1.The Commissioner of Income Tax (Appeals),
Income Tax Department,
National Faceless Appeal Centre (NFAC),
New Delhi.

2.The Principal Commissioner of Income Tax,
Madurai - 1, Madurai.

VIVEK KUMAR SINGH, J.

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W.P.(MD)No.8847 of 2025

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