IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-03-2026

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THE HON'BLE MR JUSTICE C. SARAVANAN

WP No. 28581 of 2025

Nirmala Chandrasekaran

..Petitioner(s)

Vs.

1. Tax Recovery Officer III,
   Company Range III, IV Floor, New Block,
   Room No.404,
   121, Nungambakkam High Raod,
   Chennai 600 034.

2. The Principal Commissioner of Income Tax -3,
   Wanaparthy Block,
   121, Nungambakkam High Road,
   Chennai – 600 034.

..Respondent(s)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the 2nd Respondent to forthwith refund the amount of Rs.62,12,255/- along with interest as Prescribed in Section 244A of the Income-Tax Act.

For Petitioner(s): Mr.Baskar G

For Respondent(s): Mrs.S.Premalatha
Senior Standing Counsel

ORDER

This is the second round of litigation before this Court. The Petitioner had earlier approached this Court by way of the Writ Petition in W.P.No.5636 of 2009. Earlier, an interim order came to be passed in W.P.No.5636 of 2009 vide order dated 11.09.2009 with the following observations:-

> "*6.The issue as to whether the revenue can invoke recovery proceedings against the Director of the company under Section 179 of the Income Tax Act has been dealt with by a Division Bench of this Court, in case reported in 2022 ITR Page 139 (C.Rajendran and another Vs. Income-Tax Officer) as follows:*
>
> > *"The language of the Section is very clear to suggest that the action under the Section can be activated only when the tax due from a private limited company pertaining to the previous year cannot be recovered. The words "cannot be recovered" are most important. The phraseology suggests essentially that in sport of the efforts made as per the procedure followed in the Income-tax Act for recovery of the tax arrears when the said tax arrears cannot be recovered then alone the liability can be transferred under Section 179(1) of the Income Tax Act to the directors. Therefore, in order to activate this section and the action thereunder, a finding would have to be recorded to the effect that in spite of the efforts to recover the tax arrears the said tax arrears could not be recovered from the assessee-company . The second part of the section comes into effect only thereafter. Firstly, once there is a finding that such tax arrears cannot be recovered then the liability could be transferred to every person who was a director and it would be then for such a person to show that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company and when he discharges this burden, he would no more be required to discharge*

the tax liability so transferred to him. However, that stage would come only later on, after it is found that the tax arrears cannot be recovered from the assessee-company."

7.It would be for the Department to prove the impossibility of the recovery of the tax arrears from the assessee-company before the concerned officer by putting relevant material and not merely relying upon the notice issued under 221 and 222 of Income Tax Act.

8. As rightly contended by the learned counsel for the Writ Petitioner, though the company is stated to be defunct, a perusal of the impugned order does not indicate that any efforts had taken by the revenue to collect the arrears of tax from the company. No specific finding has also been recorded as mandated in the statute. In that view of the matter, this Court is of the view that the petitioner has made out a case for grant of interim orders, as held by the Division Bench. Accordingly, the interim stay granted by this Court is made absolute. Accordingly, the interim stay granted by this Court is made absoluted. The Miscellaneous Petitions are closed."

2. Thereafter, the Writ Petition was finally disposed of by an order dated 16.03.2020, wherein, it was ordered as under:-

"*6.Considering the facts and circumstances of the case and having regard to the submission now made by the learned counsel for the Petitioner, which has not been seriously opposed on the side of the first respondent, this Court permits the petitioner to make a representation along with required documents, seeking refund due to the company in question, before the authority concerned within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said representation, the authority concerned shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a period of two weeks thereafter."*

3. Pursuant to the aforesaid order, the Petitioner has sent the following representations to the following authorities:-

Sl.Nos	Date of representations	Addressee
1	20.09.2020	The Tax Recovery Officer – III, Company Range – III, Room No.404, 4th Floor, New Block, 121, Nungambakkam High Road, Chennai – 600 034.
2	21.10.2024	The Income Tax Officer, Non-corporate Ward – 15(1), 121, Nungambakkam High Road, Chennai – 600 034.
3	21.10.2024	The Deputy Commissioner of Income Tax, Corporate Circle – 3(1), 121, Nungambakkam High Road, Chennai – 600 034.
4	28.05.2025	The Principal Commissioner of Income Tax – 3, Chennai, Room No.601, 6th Floor, Wanaparthy Block, 121, Nungambakkam High Road, Chennai – 600 034.

4. It is in this background, the Petitioner has approached this Court for the following relief:-

> *"to direct the 2nd Respondent to forthwith refund the amount of Rs.62,12,255/- along with interest as Prescribed in Section 244A of the Income-Tax Act."*

5. The learned Senior Standing Counsel for the Respondents have filed the counter affidavit, wherein, it has been stated as under:-

> *"6.I submit that with respect to Para 16, the affidavit, it is mentioned that a representation to the JAO, the DCIT, Corporate Circle -3(1) on 21.10.2024 had been given. In such a situation, the petitioner has mentioned the respondent as erstwhile TRO-III,*

Company Range-III, Chennai. Further it is submitted that this 1st respondent has no power to issue refund as per Income Tax Act, 1961.

7. It is submitted that as per Income Tax Act, 1961, the Tax Recovery Officer (TRO) has no power to issue refund however this power is vested with the JAO. Therefore, the petitioner's request may be made before the DCIT, Corporate Circle 3(1), Chennai for the refund to be received in this case. Further, it is submitted that the jurisdiction over the individual case i.e., this petitioner lies with NCW-15(1), Chennai. Therefore another request may also be made with ITO, NCW-15(1), Chennai also to get the refund if any to be issued."

6. The Petitioner is a 72 year old Senior Citizen who has been constrained to run from pillar to post for getting refund, despite order having been passed as early as 16.03.2020 in W.P.No.5636 of 2019. Notwithstanding the said order and the various representations submitted to the Respondents herein, including the Jurisdictional Assessing Officer and the Deputy Commissioner etc., no action has been taken to the refund the amount due to the Petitioner. The 2nd Respondent herein is the Administrative Head of the Jurisdictional Assessing Officer who is duty bound to ensure the amounts due and refundable to an assessee are processed and paid in a timely manner. The *inter se* jurisdictional issue if any, has to be resolved within the Department.

7. Therefore, there shall be a direction to the 2nd Respondent to ensure the concerned Officer to refund the amounts due to the Petitioner as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order.

8. This Writ Petition stands disposed of with the above observations. No costs.

17-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

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C.SARAVANAN, J.

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