BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

DATED: 18.02.2026

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.(MD)Nos.3817 & 3818 of 2026

and

W.M.P.(MD)Nos.3127 & 3130 of 2026

R.Ansar Ali ... Petitioner in W.P.(MD)No.3817/26

R.Jainallaudeen ... Petitioner in W.P.(MD)No.3818/26

Vs.

1.The Principal Commissioner of Income Tax,
Central Revenue Buildings,
BB Kulam, Madurai – 02.

2.The Income Tax Officer,
Ward – 1, Pudhukkottai,
8663/2, Annavasal Road,
Chola Real Estate, Thirukkokaranam,
Pudhukkottai – 622 502.\
Tamil Nadu.

3.The National Faceless Appeal Centre,

C-Block, 4th Floor, S.P.M. Civic Centre,

New Delhi – 110 001. ... Respondents in both W.P.s

COMMON PRAYER:

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned recovery notice in DIN and Notice Nos.ITBA/COM/F/17/2025-26/1084924590(1) & ITBA/COM/F/17/2025-26/1084925768(1) dated 19.01.2026 issued by the second respondent and quash the same and consequently direct the second respondent not to initiate any recovery proceedings till the disposal of the appeal dated 31.05.2024 pending before the third respondent.

For Petitioner : Mr.B.Vijaykarthikeyan

For Respondent : Mr.N.Dilip Kumar

[In both Writ Petitions]

COMMON ORDER

Challenge has been made against the impugned recovery notices dated 19.01.2026.

2.The learned Counsel for the petitioners would submit that the petitioners in these Writ Petitions are brothers and they are running a Petrol Bunk as a partnership firm namely M/s.Rasheed Ali & Sons, being dealer of Indian Oil Corporation Ltd. Therefore, two proceedings were initiated against two partners separately. In the present case, since the petitioners were unable to file the Income Tax Returns for the financial year 2018-19 due to their ill-health and Covid period, an ex-parte assessment order came to be passed on 28.12.2023. Against the said order, the petitioners have filed appeal before the appellate authority and the same is pending. He further submits that the first respondent has taken all the cash deposits as income under Section 69-A.

3.Learned Counsel for the petitioners submits that the petitioners are dealers of petroleum products and they have obtained dealership from the Indian Oil Corporation. In the petrol bunk, whatever amount is received from the customers either in the form of cash or in the form of other online transactions, the same has to be deposited in the Bank. Therefore, out of the cash deposits as well as the bank deposits, the petitioners are only entitled for the commission. In the previous assessment years from 2014-2015, upto 2018-19, the petitioners have furnished details with regard to the turn over, income and tax paid, which are as follows:

S.No	Assessment Year	Turnover	Total Income	Total Tax Paid	ITR Acknowledgment Number	Date of ITR Filing
1	2014-15	108,555,117	79,410	29,010	563144271060415	6/4/2015
2	2015-16	71,658,614	80,080	25,688	822440021270915	27/9/2015
3	2016-17	57,582,017	81,380	30,104	749308471310317	31/3/2017
4	2017-18	61,731,488	83,229	29,024	351554551311217	31/12/2017
5	2018-19	43,379,713	76,417	27,425	360409371301018	30/10/2018

4.Referring to the above tabular column, learned Counsel for the petitioner would submit that even in the previous years the Income Tax has not crossed more than Rs.1 Lakh. If the respondents had given due consideration to the transactions which happened in the petrol bunk in the previous financial years, they would have arrived at the correct calculation, but no such assessment was made. Hence, by total non-application of mind, the impugned assessment order came to be passed which is against the provisions of Section 144. Ultimately, the present demand notices came to be issued. Hence, he prays for quashing the impugned notices.

5.However, learned Counsel for the respondents fairly submits that if this Court intends to protect the interest of the petitioner to some extent, the appellate authority shall be directed to dispose of the appeal taking into consideration and verifying the said aspect pointed out by the petitioners.

6.Heard the learned Counsel for the parties and perused the materials available on record.

7.In the present case, admittedly, the petitioners failed to file their returns for the financial year 2018-19, due to their ill-health and Covid-19. Thereafter, proceeding were initiated under Section 144 of the Income Tax Act, 961. Section 144 of the Act reads as follows;

> *"**144. Best judgment assessment.**— [(1)] If any person—*
>
> *(a) fails to make the return required [under sub-section (1) of section 139] and has not made a return or a revised return under sub-section (4) or sub-section (5) of that section, or*
>
> *(b) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 [or fails to comply with a direction issued under sub-section (2A) of that section], or*
>
> *(c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143,*
>
> *the [Assessing Officer], after taking into*

account all relevant material which the [Assessing Officer] has gathered, [shall, after giving the assessee an opportunity of being heard, make the assessment] of the total income or loss to the best of his judgment and determine the sum payable by the assesse on the basis of such assessment:

[Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment"

8.A reading of the aforesaid Section clearly shows Assessment must be based on the best judgment as contemplated under Section 144 of the Income-tax Act, 1961; it cannot be contrary to the best judgment or one made without application of mind.

9. Further, the above provisions of Section 144 would reveal that the Assessing Officer shall make the assessment after taking into account of all the relevant materials gathered by him. He can make the assessment of total income or loss to the best of his judgment and determine the sum payable by the Assessee on the basis of such assessment. In other words, the provisions of Section 144 mandates the Assessing Officers to comply with the following aspects:

The Assessing Officer shall

i) Collect all the relevant materials.

ii) Provide an opportunity to the Assessee before making assessment.

iii) Make the assessment of the total income and loss to the best of his judgment.

iv) Finally, determine the sum payable, by the Assessee, as tax on the basis of such assessment.

10. Therefore, initially, the Assessing Officer is required to collect all the materials, which includes the total receipts and expenditure incurred by the assessee during the relevant assessment year.

11. In this case, the Assessing Officer had made efforts to collect information with regard to all the receipts of the Assessee during the relevant financial year. However, he had failed to gather the materials with regard to the expenditure incurred by the Assessee for the said financial year. As per the provision of Income Tax Act, only after gathering the details with regard to expenditure incurred by the Assessee, the Assessing Officer can enter into the process of determining the assessment of total income and loss. Here, in contrary to the said provision, without gathering the details of the expenditure, even in the absence of said material produced by the petitioner, best of his judgment and without providing any due credit for the expenditure incurred by the Assessee, the Assessing Officer has considered the entire receipts as "income from business" and determined tax liabilities against the petitioner.

12. When the Assessing Officer treated the materials collected with regard to the income of the petitioner as "income from business", the duty cast on the said officer to trace out the expenditure incurred by the petitioner as well. In this case, no attempt was made to trace the expenditure even to the best of his judgment. If the income of the petitioner was treated as "disclosed income", certainly, the aspect of best judgment would not come into picture and in such case, the entire receipt is required to be treated as income, for which, tax would be imposed in terms of Section 69B of the IT Act. However, in this case, the income was not assessed as "disclosed income" but as "income from business".

13. Under these circumstances, even if the entire details were not provided by the Assessee, the Assessing Officer should have made some efforts to find out the expenditure incurred by the Assessee at the time of determination of tax liabilities based on the returns filed for previous years and subsequent years. In the present case, the petitioner, who is into the business of dealership of petroleum products, have already filed the income tax returns for previous years as well as subsequent years. In such case, the Assessing Officer should have determined the income by taking into consideration of the expenditure incurred and income earned by the Assessee during the previous years as well as subsequent years and accordingly, proposed deduction should have been made for the relevant financial year in accordance with the provisions of the IT Act. If the said aspect was complied with at the time of making assessment, then only it would be considered that the assessment was made as "best judgment assessment" in terms of the provisions of Section 144 of the IT Act.

14. Further, in the present case, average turnover of the petitioner in the relevant assessment year is around a sum of Rs.6 Crores. During previous and subsequent years, the petitioner had shown the taxable income as 3% of the total turnover. In such case, the best judgment assessment should have been made by the Assessing Officer by applying the same yardstick for the relevant year. The said aspect is very much known for the department as well. When such being the case, the assessment should have been made by taking the income of the Assessee as 3% of the total turnover. Even in the absence of filing returns, the income of the Assessee shall be determined based on the same ratio by following the previous or subsequent years. However, without doing so, in total non application of mind, the entire receipts were considered as income of the Assessee and accordingly, the tax was determined, which is contrary to the provisions of Section 144.

15. Therefore, taking into consideration of all these aspects, this Court feels that it would be appropriate to set aside the assessment order, which is not sustainable in law. However, the subject matter before the Court is only against the recovery notice issued by the respondents. Therefore, this Court is not inclined to interfere with the assessment order, as the said order was already challenged before the Appellate Authority and the same is pending for adjudication.

16. For all the reasons stated above, this Court grants stay for further recovery until the disposal of appeals filed by the petitioner, subject to the payment of Rs.4,00,000/- by the petitioner to the respondents, within a period of 4 weeks from the date of receipt of a copy of this order. The Appellate Authority is directed to dispose of the appeal, after taking into consideration of all the aspects discussed above and thereafter, pass a detailed order within a period of 4 months from the date of receipt of copy of this order.

17. With the above directions, these writ petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

18.02.2026

Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
MR
Note: Issue a copy of this order by 17.04.2026.

To

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KRISHNAN RAMASAMY, J.

MR

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