IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

WP(C).No. 25611 of 2015 (B)
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PETITIONER(S) :

M/S.MY HOME VILLAS & APARTMENTS,
DOOR NO. IV/255, DESOM, ALUVA, ERNAKULAM DISTRICT,
REPRESENTED BY ITS PARTNER MR.K.P.JOSE.

BY ADVS.SMT.S.K.DEVI
SRI.SANTHOSH P.ABRAHAM

RESPONDENT(S) :
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1. **THE INTELLIGENCE OFFICER,**
   (INVESTIGATION BRANCH), (MATTANCHERRY),
   DEPARTMENT OF COMMERCIAL TAXES, MINI CIVIL STATION,
   ALUVA, ERNAKULAM DISTRICT- 682 001.

2. **THE INSPECTING ASSISTANT COMMISSIONER (IB),**
   DEPARTMENT OF COMMERCIAL TAXES, ERNAKULAM - 682 016.

3. **THE DEPUTY COMMISSIONER (INTELLIGENCE),**
   DEPARTMENT OF COMMERCIAL TAXES, EDAPPALLY,
   ERNAKULAM- 682 024.

BY SR.GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.,

WP(C).No. 25611 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS :

P1: TRUE COPY OF THE NOTICE NO. IMB-I/IR-72/14-15 DATED 07.10.2014 ISSUED BY THE 1ST RESPONDENT.

P2: TRUE COPY OF THE REPLY DATED 24.10.2014 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

P3: TRUE COPY OF THE NOTICE NO.IMB-I/IR-72/14-15 DATED 12-11-2014 ISSUED BY THE 1ST RESPONDENT.

P4: TRUE COPY OF THE REQUEST DATED 24.11.2014 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

P5: TRUE COPY OF THE NOTICE NO.IMB-I/IR-72/14-15 DATED 20.05.2015 ISSUED BY THE 1ST RESPONDENT.

P6: TRUE COPY OF THE REPLY DATED 24.07.2015 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

P7: TRUE COPY OF THE NOTICE NO.IMB-I/IR-72/14-15/OR-9/15-16 DATED 27.07.2015 ISSUED BY THE 1ST RESPONDENT.

P8: TRUE COPY OF THE STATEMENT OF ACCOUNTS OF ACCOUNT NO.7930.

P9: TRUE COPY OF THE STATEMENT OF ACCOUNTS OF ACCOUNT NO.7648.

P10: TRUE COPY OF THE STATEMENT OF ACCOUNTS OF ACCOUNT NO.857120110000084.

P11: TRUE COPY OF THE STATEMENT OF ACCOUNTS OF ACCOUNT NO.857120110000087.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A. MUHAMED MUSTAQUE, J

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W.P.(C).No. 25611 of 2015

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Dated this the 20th day of August, 2015

JUDGMENT

The petitioner is a partnership firm, challenging penalty order, has approached this Court.

2. The 1st respondent issued a notice under Section 67 (1) of KVAT Act. In the notice, a proposal was issued as it has come out that from the Bank accounts, the petitioner has receipts of Rs.6,69,63,899/-.

3. The petitioner gave Ext.P2 reply disclosing the details of three accounts relating to the partnership firm. The petitioner also made Ext.P4 request stating that they could not identify the details from the books of accounts as regarding the receipt of Rs.6,69,63,899/-. The petitioner again gave a request by Ext.P6 to furnish the details before passing the order.

4. It is seen that the proceedings have been concluded relying upon the four accounts which are 7930, 7648, 0087, 0010. According to the petitioner, the account Nos.0087 and

0010 are the petitioner's accounts and the account Nos.7930 and 7648 are the personal accounts of the partners. It is pointed out by the learned counsel for the petitioner that the petitioner has no opportunity to explain regarding receipts in the accounts of 7930, 7648 for the obvious reason that it is maintained by a partners in personal accounts.

5. As seen from Exts.P4 and P6, the petitioner was vigilant enough in demanding the details from the Assessing Authority regarding the receipts relied in Ext.P1. It is apparent that the petitioner was not given the details of the accounts relied by the Authority. The petitioner having given a reply in respect of certain accounts maintained by them, did not refer to the personal accounts of the partners.

6. This Court is of the view, in such circumstances, an opportunity should have been given to the petitioners to explain in relation to the account nos.7930 and 7648. In that view of the matter, absence of an opportunity would result in denial of principle of natural justice. Accordingly, impugned order is set aside.

Considering the facts and circumstances, the following directions are issued :

The petitioner shall appear before the Authority on 15.09.2015 at 11 a.m. and explain on accounts referred as above. Thereafter, the Authority shall conclude the proceedings within a further period of one month.

The writ petition is disposed of as above. No costs.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE

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