IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

WP(C).NO. 28478 OF 2015 (H)

PETITIONER(S):

M/S CHEMMANNUR GOLD PALACE INTERNATIONAL LTD,
ANGAMALLY -683572 REPRESENTED BY ITS DIRECTOR
SRI.JISSO BABY

BY ADVS.SRI.A.KUMAR
SMTG.MINI(1748)

RESPONDENT(S):

COMMERCIAL TAX OFFICER (II),
ANGAMALLY-683572
ERNAKULAM (DIS.)

BY GOVERNMENT PLEADER SRI.RIJU V.STEPHEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE NOTICE DATED 22.06.2015

EXT.P2: TRUE COPY OF THE REPLY DATED 21.08.2015

EXT.P3: ACKNOWLEDGEMENT ISSUED BY THE ASSESSING OFFICER DATED 21.08.2015

EXT.P4: TRUE COPY OF THE ASSESSMENT ORDER DATED 19.08.2015

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.28478 of 2015

....

Dated this the 18th day of September, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P4 order of assessment passed in relation to the petitioner for the assessment year 2013-2014. The main ground of challenge in the writ petition against Ext.P4 order is that the assessing authority while passing the said order did not consider the objections and detailed explanation that was preferred by the petitioner before her. On a perusal of Ext.P4 order, it is seen that, a preassessment notice was served on the petitioner on 29.06.2015 and on receipt of the notice, the petitioner requested for a further period of 30 days for submitting documents. A period of 15 days was allowed to the petitioner to submit the required documents. Thereafter, a notice was issued to the petitioner giving him an opportunity of personal hearing on 12.08.2015. It is stated that, while the authorized representative of the petitioner appeared on 12.08.2015 and made submissions in the matter, no written objections were filed before the assessing authority. It was under those circumstances that, the assessing authority proceeded to pass Ext.P4 order. Counsel for the petitioner would submit that Ext.P2 reply to the notice proposing assessment was submitted before the authority on 21.08.2015 and was acknowledged on the same date as evidenced from Ext.P3. It is his case that inasmuch as Ext.P4 order was not communicated to him before that date, and the same was communicated to him only on 03.09.2015, the respondent assessing authority ought to have considered Ext.P2 objections also and passed fresh orders of assessment taking into account the objections filed by the petitioner.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.

3. I am not impressed with the contention of the petitioner that the Assessing Officer should have recalled an order already passed solely for the reason that a reply from the assessee was received in her office after the date of passing the order but before communicating the same to the assessee. While an assessment order may be effective against an assessee only on its communication, the order becomes final as against the assessing officer when it is signed by him and sealed. Thereafter, the assessing officer does not get a power to re-open his order since the statute does not confer on him a power to review his own orders. I find, however, that in the instant case, the petitioner is faced with a huge demand pursuant to Ext.P4

order of assessment and the petitioner has a specific case that if the objections that were submitted before the Assessing Officer on 21.08.2015 were considered by the Assessing Officer then the result of the assessment would have been different. Under the said circumstances, and finding that there would be no prejudice caused to the revenue by a reconsideration of the issue, I quash Ext.P4 order and direct the respondents to pass fresh orders of assessment in relation to the petitioner for the assessment year 2013-2014 after considering Ext.P2 reply filed by the petitioner and hearing the petitioner in the matter. To enable the respondents to do so, I direct the petitioner to appear before the respondent at his office at 11 am on 28.09.2015. The respondents shall pass fresh orders of assessment in relation to the petitioner within a period of one month thereafter.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns