IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.Nos.27911 to 27914 of 2015
and
M.P.Nos.1, 1 and 1 of 2015

IAB Photos (CBE) Private Limited,
Rep. by its Executive Director,
Ajay Kumar.J.,
191, NSR Road,
Coimbatore 641 001. ... Petitioner in all WPs

-Versus-

The Assistant Commissioner (CTO),
Saibaba Colony Assessment Circle,
Coimbatore 641 018. ... Respondent in all WPs

Prayer in W.P.No.27911 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorari calling for the records of the respondent in TIN No.33102061238/2006-07 dated 24.07.2015 and to quash the above said proceedings.

Prayer in W.P.No.27912 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorari calling for the records of the respondent in TIN No.33102061238/2007-08 dated 27.07.2015 and to quash the above said proceedings.

Prayer in W.P.No.27913 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorari calling for the records of the respondent in TIN No.33102061238/2008-09 dated 28.07.2015 and to quash the above said proceedings.

Prayer in W.P.No.27914 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorari calling for the records of the respondent in TIN No.33102061238/2009-10 dated 28.07.2015 and to quash the above said proceedings.

For Petitioner(s) in all the WPS : Mr.N.Inbarajan

For Respondent(s) in all the WPS : Mr.S.Manoharan Sundaram, Addl.Government Pleader (T)

COMMON ORDER

Challenging the revised orders of assessment relating to the assessment years 2006-07, 2007-08, 2008-09 and 2009-10, the petitioner company is now before this court with these writ petitions.

2. The case of the petitioner company in brief is that the petitioner is a Private Limited Company incorporated under the Companies Act. The petitioner owns a composite photo studio-cum-lab at Coimbatore. The petitioner is an assessee on the file of the respondent. The petitioner company treated its activity of preparation of photographs as taxable service under Section 65 (105)(zb) of the Finance Act, 1994 and was regularly paying service taxes due to the authorities concerned. While so, the respondent issued pre-assessment notice in respect of the period between 2006-07, 2007-08 and 2009-10 thereby proposing to treat the photographic service as works contract. In respect of the assessment year 2009-10 , the respondent has passed provisional assessment orders for the months of April and May 2009. In the earlier round of litigations the petitioner challenged the pre-assessment notice and the provisional assessment demands and obtained some reliefs from this court. The only grievance now expressed by the petitioner company is that the impugned order suffer from gross violation of principles of natural justice as the officer who heard the matters went on transfer and the orders impugned in these writ petitions have been passed by a different officer without there being an opportunity of personal hearing Hence, the petitioners are now before this court with these writ petitions.

3. Heard both sides and also perused the records carefully.

4. The learned counsel for the petitioner would submit that the Officer, who originally issued notice, was able to receive the objections filed by the petitioner and the officer before whom a specific plea for personal hearing made got transferred and the new incumbent, who took charge of the office did not at all look into the issue properly and has straight away without being any opportunity passed the

impugned orders of assessment. Hence, he prays for quashing the impugned orders on the sole ground of violation of principles of natural justice.

5. The learned Additional Government Pleader, who took notice on behalf of the respondent, on instructions, fairly submitted that personal hearing was not given before passing the impugned assessment orders.

6. There is no dispute that the impugned assessment orders came to be passed without affording opportunity of personal hearing to the petitioner company. Thus, this court is of the view that the impugned orders which have been passed by the respondent are liable to be set aside on the sole ground of violation of principles of natural justice and the matters are to be remitted back for fresh consideration.

7. In the result, the writ petitions are disposed of. The impugned orders of assessment are set aside and the matters are remitted back to the respondent for passing orders afresh. The petitioner company shall appear before the respondent on any one of the working days for the purpose of hearing him along with objections, if any, and the relevant documentary evidence within a two weeks from the date of receipt of a copy of this order. On such appearance and the objections and the documentary evidence being filed, the petitioner be heard in person and the respondent shall pass orders as directed above within a period of four weeks thereafter. No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kmk
To

1.The Assistant Commissioner (CTO),
Saibaba Colony Assessment Circle,
Coimbatore 641 018.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.56933
+1cc to the Special Government Pleader(T), S.R.No.57625

Writ Petition Nos.27911 to 27914 of 2015

VGI(CO)
CA(03/11/2015)