IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2016

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.39143 of 2016
and
W.M.P. No.33513 of 2016

Kavithalayaa Promoters
Raj Valli Residency
28-A, Dandeeswaram 4th Avenue,
Velachery, Chennai-600 042.
rep. by its Proprietor ... Petitioner

Vs.

Assistant Commissioner (CT),
O/o.Assistant Commissioner of
Commercial Taxes,
Velacherry Assessment Circle,
No.48, Greenways Road,
R A Puram, Chennai 600 028. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records of the respondent in his proceedings leading to passing of the Assessment Order vide TIN/33940989605 5/2013-14 dated 29.08.2016, quash the same and direct the respondent to pass fresh revised assessment order after considering the reply filed and providing an opportunity of personal hearing.

For Petitioner : Mr.S.Sathiyanarayanan

For Respondent : Mr.K.Venkatesh,
Government Advocate

ORDER

Heard Mr.S.Sathiyanarayanan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent.

2.With the consent of either side, the writ petition is taken up for final disposal. The petitioner has challenged the order of Assessment dated 29.08.2016 on the ground that there is a violation of principles of natural justice. Therefore, this Court while entertaining the writ petition passed the following interim direction on 09.11.2016:

> "2.The learned counsel for the petitioner would submit that the Pre-Revision Notice dated 17.05.2016 was not received by the petitioner and what was received by the petitioner is the Notice dated 21.01.2015, for which, the petitioner has submitted their objections on 17.02.2015 and the then Assessing Officer, has received the objections and given acknowledgment in the Letter Delivery Book on 26.02.2015. It is further submitted that the respondent has stated that the petitioner has not filed the monthly Returns. The copies of the E-Returns filed by the petitioner for the period from April 2013 have been filed in the typed set of papers, which prima facie show that the petitioner has been filing Returns since April 2013 till March 2014.
> 3.The learned Government Advocate seeks time to get instructions in the matter.
> 4.List on 16.11.2016, end of motion list. Till then, no coercive action shall be initiated against the petitioner."

3.Today, learned Government Advocate has produced a written instruction given by the respondent from which it is seen that the department is not able to establish that notice was served on the petitioner. It is stated that they are unable to get details even from the Postal Department.

4.In the light of the said stand taken, this Court is of the view that the Assessment should be re-done, after giving due opportunity to the petitioner. Accordingly, this writ petition is allowed and the impugned order is set aside and the matter is remitted back to the respondent for fresh consideration. The assessment shall be re-done in accordance with law, after affording an opportunity to the petitioner to state objections and after conducting a personal hearing. Consequently, connected M.P. is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vga

To

The Assistant Commissioner (CT),
O/o.Assistant Commissioner of
Commercial Taxes,
Velacherry Assessment Circle,
No.48, Greenways Road,
R A Puram, Chennai 600 028.

+1cc to the Special Government Pleader(T), S.R.No.71990

W.P. No.39143 of 2016

NRI(CO)
CA(29/12/2016)