BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.11.2016

C O R A M

THE HONOURABLE DR.JUSTICE S.VIMALA

Writ Petition (MD) No.20382 of 2016
and
WMP(MD)No.14577 of 2016

Aurolab Trust Rep. by its
Managing Director,
Dr.P.Balakrishnan. .. Petitioner

Vs.

Assistant Commissioner (CT)
Tallakulam Assessment Circle,
CT Building, Dr.SVKS Thangaraj Salai,
Madurai - 625 020.
.. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari filed Mandamus calling for the records of the case and quash the impugned order passed in TIN/33914880631/2008-09, dated 31.08.2016 by the respondent and further direct the respondent to re-do the assessment after considering the objections without reference to enforcement authority report in accordance with law, respectively.

For petitioner ... Mr.N.Murali

For Respondents ... Mr.R.Karthikeyan
Additional Government Pleader

**O R D E R**

This writ petition has been filed challenging the impugned assessment orders, dated 31.08.2016, in which, the tax and penalty to be paid, has been fixed and consequently, directing the respondent to re-do the assessment after considering the objections without reference to report of the enforcement authority report in accordance with law.

2.Heard the learned counsel for the petitioner. Mr.R.Karthikeyan, learned Additional Government Pleader, takes notice for the respondents.

3.The learned counsel for the petitioner relied upon earlier judgment of this Court in ***MADRAS GRANITES (P) LTD.,v.COMML.TAXOFFICER (Mad.)*** reported in ***2006 STC 642 (Vol.146***), which was thereafter, followed by the learned single Judge of this Court in the case of ***M/s.SNEH COMMUNICATION, REP. BY ITS MANAGER JITENDRA JAIN v.THE ASSISTANT COMMISSIONER (CT), KODAMBAKKAM ASSESSMENT CIRCLE, CHENNAI-6***

***(W.P.Nos.18762 to 18764 of 2016)***, under which, it has been held that the assessing officer being a statutory authority has to independently apply his mind and afford reasonable opportunity to the petitioner. There with a direction to the assessee to produce the Books of Account and thereafter to complete the assessment.



4.The learned counsel for the petitioner also pointed out that as the original assessment is a deemed assessment, the petitioner had no opportunity to produce the Books of Accounts and therefore, when the Inspecting Authority submitted a final report, the assessing authority should not have accepted the same and before that they should have called for Books of Accounts from the petitioner and then they should have completed the assessment.

5.Considering the facts of this case in the light of the legal dictum enunciated in the above two cases, this Court is of the view that before completing the assessment, the authorities should have given opportunity to the petitioner to produce the Books of Accounts and after enquiry and personal hearing only, they should have completed the assessment.

6.Under such circumstances, the impugned order dated 31.08.2016 is hereby set aside. The writ petition is allowed. The case is remitted back to the assessing authority. The respondent is directed to call for the books of account from the petitioner and give opportunity of hearing to the petitioner including personal hearing and then, to decide the matter in accordance with law and on merits. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

rj2

To

Assistant Commissioner (CT)
Tallakulam Assessment Circle,
CT Building, Dr.SVKS Thangaraj Salai,
Madurai - 625 020.

GJM/SKS/RR/SAR-I-9.12.16-2p-2C

Writ Petition (MD) No.20382 of 2016
04.11.2016