IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAVICHANDRABAABU

W.P.No.7739 of 2017
and
W.M.P.No.8460 of 2017

Tvl.Gokul Traders
Represented by its proprietor
Sri.A.Paramasivam ... Petitioner

Versus

The Commercial Tax Officer
Rasipuram, Salem District. ... Respondent

Prayer:
Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Certiorari, calling for the records on the files of the respondent in TIN.33073164290/2014-15 dated 29.07.2016 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

The petitioner is aggrieved by the order of assessment dated 29.07.2016 passed in respect of the assessment year 2014-2015.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

3. The learned counsel appearing for the petitioner submitted that the only issue involved in this case is mis-match and the said issue was already considered by this Court in WP.No.105 of 2016 etc., dated 01.03.2017, wherein certain directions / guidelines are issued to the Assessing Officer to follow while dealing with the issue of mis-match. Therefore, he submitted that when the Assessing Officer in this case has not

followed those procedures / guidelines, even before issuing the notice of proposal, failure to give a reply to the notice of proposal, will not absolve the liability of the Assessing Officer to pass the order of assessment in accordance with the order passed by this Court in WP.No.105 of 2016 etc., dated 01.03.2017.

4. The learned Government Advocate appearing for the respondent submitted that since the petitioner has not utilized the opportunity by giving a reply to the show cause notice, the Assessing Officer is left with no other option, but to pass the assessment order.

5. Heard both sides.

6. It is not in dispute that the only issue involved in this matter is the mis-match and the said issue was already covered by the decision of this Court made in WP.No.105 of 2016 etc., dated 01.03.2017. It is true that the petitioner has not utilized the opportunity by giving a reply to the notice of proposal. However, as pointed out by the learned counsel appearing for the petitioner, even before issuing the said notice of proposal, the Assessing Officer has to do some exercise as stipulated in the above said order passed by this Court in WP.No.105 of 2016 etc., dated 01.03.2017. Therefore, there is no purpose in saying that the petitioner has not given a reply to the show cause notice. In any event, as the Assessing Officer has to re-do the assessment in the light of the order passed by this Court in WP.No.105 of 2016 etc., dated 01.03.2017, this Court is of the view that the matter should be remitted back to the Assessing Officer for re-doing the assessment after giving an opportunity of hearing to the petitioner as well.

7. Accordingly, this writ petition is allowed and the impugned order of assessment is set aside. Consequently, the matter is remitted back to the Assessing Officer for re-doing the assessment, commencing from the issuance of the notice of proposal after following the procedures / guidelines issued by this Court in WP.No.105 of 2016 etc., dated 01.03.2017. The whole exercise shall be completed by the Assessing Officer within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mk

To

The Commercial Tax Officer
Rasipuram, Salem District.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.44688
+1cc to the Special Government Pleader(T), S.R.No.44043

W.P.No.7739 of 2017

MSM(CO)
CA(30/06/2017)