IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.04.2017
CORAM:
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.8889 to 8891 OF 2017
AND
W.M.P Nos.9799 to 9801 OF 2017

Tvl.Ashvar Builders and Promoters,
Rep. By its Proprietor,
T.Soundararajan,
Block No.12, No.7/5, A-Block,
Water Tank Road,
Arumpakkam,
Chennai 600 106. [PETITIONER in all W.Ps.]

Vs

1.The Commercial Tax Officer,
Vadapalani Assessment Circle,
Commercial Taxes Complex,
No.1, C.T.Annex Building,
Greams Road,
Chennai 600 006.

2.The Assistant Commissioner (CT),
Vadapalani Assessment Circle,
No.1, Greams Road,
Chennai 600 006. [RESPONDENTS in all W.Ps.]

Common Prayer:-Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus to call for the records pertaining to the impugned proceedings of the first respondent in 1.TIN.33241466066/2012-13, 2.TIN.33241466066/2013-14 and 3.TIN.33241466066/2014-2015 dated 28.11.2016 respectively and consequential impugned Pre-attachment order of the second respondent dated 28.03.2017 and quash the same and consequently direct the respondent to redo the assessment afresh after giving adequate opportunity to the petitioner.

For Petitioner : Mr.E.Vijay Anand
in all W.Ps.

For Respondents: Mr.S.Kanmani Annamalai
in all W.Ps. Additional Government Pleader

COMMON ORDER

In all these writ petitions, the petitioner is one and the same. They are aggrieved against the order of assessment passed in respect of the Assessment Years 2012-2013, 2013-2014 and 2014-2015.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3.The main grievance of the petitioner before this court is that the Assessing Authority, while considering the issue of mismatch, has not followed the procedures/guidelines issued by this court in a recent pronouncement made in W.P.No.105 of 2016 dated 01.03.2017. Since the orders of assessment were passed without furnishing the material details to the petitioner, it is contended that the same is in violation of the principles of natural justice. There are other two issues also, apart from the mismatch issue.

4.Perusal of the orders of assessment would show that before passing the same, the petitioner was issued with notice of proposal and that they have not chosen to reply to the same or appeared before the respondent in person. The petitioner is not disputing the above said fact before this court. On the other hand, it is their case that the Auditor, with whom they entrusted the matter, has not informed the petitioner then and there the developments and thus, they were put in dark till pre-attachment orders are passed on 28.03.2017. Therefore, it is contended by the petitioner that their inaction for not replying the notice of proposal is neither willful nor wanton and on the other hand, it was only due to the above said bonafide reason.

5.Upon hearing the learned counsels appearing on either side and considering the fact that the issue with regard to the mismatch has to be dealt with by the Assessing Officer in line with the directions/guidelines issued by this court in W.P.No.105 of 2016, etc., dated 01.03.2017 and further considering the fact that the reason for not replying to the notice of proposal was not with any willful intention and only due to the said bonafide reason, I am of the view that the matter needs to be remitted back to the Assessing Officer so as to consider all the issues afresh, after hearing the petitioner and considering their objections. However, the petitioner should also be put on some terms so as to show their bonafide.

6. Accordingly, these writ petitions are allowed and the impugned orders of assessment are set aside subject to the following terms and conditions:

a) The petitioner shall deposit 25% of the tax demanded in each Assessment Year with the respondent within a period of four weeks from the date of receipt of a copy of this order along with the written objections;

b) On receipt of such payment and objections, the Assessing Officer will consider the matter afresh and pass fresh order of assessment after giving due opportunity of hearing to the petitioner;

c) Such exercise shall be done by the respondent within a period of four weeks from the date of receipt of the above said payment and objections.

No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri

To

1.The Commercial Tax Officer,
Vadapalani Assessment Circle,
Commercial Taxes Complex,
No.1, C.T.Annex Building,
Greams Road,
Chennai 600 006.

2.The Assistant Commissioner (CT),
Vadapalani Assessment Circle,
No.1, Greams Road,
Chennai 600 006.

+1cc to Mr.Vijay Anand, Advocate, S.R.No.22214
+1cc to the Government Pleader, S.R.No.22351

W.P.Nos.8889 to 8891 of 2017

NRI(CO)
RS(17/04/2017)