IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.05.2017

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

WRIT APPEAL No.590 of 2017
and
CMP.No. 8230 of 2017

M/s. BBC City Paark
Represented by its Partner
Vummidi Ananth
No.20, Mylai Ranganathan Street
T.Nagar, Chennai -600 017 ... Appellant/petitioner

Vs

1. The Assistant Commissioner (CT)
   T.Nagar Assessment Circle
   No.46, Greenways Road
   Chennai -600 035

2. The Deputy Commissioner (CT)
   Enforcement (Central) Division
   PAP JM Building,
   Greams Road, Chennai - 600 006 ... Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent challenging the order dated 17.4.2017 passed in W.P.No.9143 of 2017.

W.P.No.9143 of 2017 : Petition filed under Article 226 of the Constituion of India, praying this Hon'ble Court may be pleased to issue a Writ, order or direction in the Nature of a Writ of Certiorari, calling for the records relating to the Proceedings of the 1st Respondent in Rc/909/2015-A4(2009-10)(Unregistered Period) date 08.02.2017 and quash the same.

For Appellant : Mr.R.Thirumavalavan

For Respondent : Mr.A.Kanmani Annamalai
Additional Government Pleader

JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN,J.)

Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Tax) takes notice for the respondents.

2. By consent of the learned counsel appearing on either side, the writ appeal is taken up for final disposal.

3. The writ appeal is directed against the order of the learned Single Judge passed in WP.Nos.9143 dated 17.4.2017 in allowing the writ petition by setting aside the impugned order of assessment in its entirety, however, by imposing a condition to pay 25% of the tax demanded.

4. The issue involved in this appeal is squarely covered by the Division Bench of this Court in W.A.Nos.750 and 751 of 2015, wherein this Court, while referring to the decision in W.A.Nos.211 to 218 of 2015 dated 06.3.2015, has held as follows:

> " .. .. .. 6. Perusal of the said judgment would show that the Division Bench considered similar circumstances of a case, where the writ Court directed the writ petitioner therein to deposit 5% of the tax amount, while setting aside the order of assessment and remitting the matter back for fresh assessment.After setting aside the said portion of the order directing the deposit of 5% of the tax, the Division Bench directed the respondent therein to consider the claim of the petitioner therein, independently and after giving an opportunity of hearing to pass orders afresh on merits and in accordance with law.
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> 7. Following the above said judgment, we allow the writ appeals and set aside the order of the learned Single Judge in so far as directing the appellant/writ petitioner to pay 10% of the disputed tax. Consequently, the respondent is directed to consider the assessment proceedings afresh and pass appropriate orders, after giving an opportunity of hearing to the appellant / writ petitioner, on meirts and in accordance with law, as expeditiously as possible, however, within a period of four weeks from the date of receipt of the objections filed by the appellant/ writ petitioner. .. .. "

5. The aforesaid decision was also followed by this Court in W.A.Nos.760 and 761 of 2015 and in paragraph No.4 of the said judgment, it has been observed as follows:

> " .. .. .. 4. In our considered view, the aforesaid submission of the learned counsel for the appellant is justified. Accordingly, the direction issued by the Writ Court regarding deposit of 5% of the tax amount alone is set aside. However, as per the order of the Writ Court,the appellant shall file its bjection along with documents, if any, before the respondent within a period of two weeks and on receipt of the same, the respondent is directed to consider the same independently and after giving opportunity of hearing, shall pass orders afresh, on merits and in accordance with law, as expeditiously as possible and not later than four weeks from the date of receipt of the objections. .. .."

6. Following the above judgments, the conditions imposed by this Court in the present case by the learned Single Judge to deposit 25% of the tax demanded is set aside. However, the appellant shall file its objection before the concerned assessing officer, the 1st respondent herein, along with documentary evidences within a period of four weeks from the date of receipt of a copy of this judgment and the 1st respondent upon receipt of the same, shall consider and pass appropriate orders on merits and in accordance with law within a period of four weeks thereafter.

The writ appeal is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(V.O)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT)
   T.Nagar Assessment Circle
   No.46, Greenways Road,
   Chennai -600 035

2. The Deputy Commissioner (CT)
Enforcement (Central) Division
PAP JM Building,
Greams Road, Chennai - 600 006

+1cc to Mr.R.Thirumavalavan, Advocate, S.R.No.37607
+1cc to the Special Government Pleader(T), S.R.No.37667

WRIT APPEAL No.590 of 2017
and
C.M.P.No. 8230 of 2017

RJ(CO)
CA(25/05/2017)