IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.21329 to 21333 of 2018
and
W.M.P.Nos.25004 to 25008 of 2018

M/s Palani Andavar Trading Company,
represented by its Prop: N. Sethuramalingam,
No.188 E.V.J.Complex, Brindha Street,
Erode - 638 001. .. Petitioner in all W.Ps

Vs.

The Assistant Commissioner (CT),
Mettur Road Circle,
Erode. .. Respondents in all W.Ps

Writ petitions Nos. 21329 to 21333 of 2018 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN: 33853044163/2009-10, 33853044163/2010-11, 33853044163/2011-12, 33853044163/2012-13 33853044163/2013-14 respectively, quash the assessment orders dated 01.09.2016 passed there in.

For Petitioner: P.V.Sudakar

For Respondents: Mrs.G.Dhana Madhri,
Government Advocate (T)

COMMON ORDER

In all these writ petitions, the petitioner is one and the same. These writ petitions are filed challenging the order of assessment passed in respect of assessment years 2009-10 to 2013-14 dated 01.09.2016.

2. Mrs.G.Dhana Madhri, learned Government Advocate (Tax) takes notice for the respondents. Since the issue involved in the case lies in a narrow compass, the main writ petitions are taken up for final disposal.

3. The main grievance of the petitioner is that the

impugned orders of assessment were passed in violation of principles of natural justice. It is the case of the petitioner that they have closed down the business at the premises referred to in the assessment order as early as in the month of March,2014 and therefore, the assessment orders made after affixture of notice at the said premises, where the business was already closed, cannot be considered as proper.

4. On the other hand, the learned Government Advocate contended that though the assessment order was made as early as on 01.09.2016, the petitioner has not taken any steps to challenge the same and therefore, the present attempt of the petitioner in challenging those assessment orders, after a period of nearly two years, is to be treated only as an afterthought. It is further contended by the learned Government Advocate that the notice of proposals were sent to the known address of the assessee and one such notice sent by RPAD was returned with an endorsement “No such addressee” and hence, the Assessing Officer resorted to effect the service by affixture. Thus, the learned Government Advocate contended that the petitioner is not entitled to claim as though the respondent has violated the principles of natural justice

6. Heard both sides.

7. The petitioner is questioning the impugned orders of assessment mainly by contending that the petitioner was not given an opportunity of being heard. Perusal of the impugned orders would show that immediately on receiving the original notice of proposal, the petitioner made objections dated 24.10.2013 and the said objection was referred to in the impugned order. Perusal of the said objection would show that the petitioner, apart from making other contentions on merits, also sought for furnishing copies of returns filed by the sellers and copies of the orders of assessment passed under section 22(2) of the Act, so as to enable them to submit their objection in detail to the notice of proposal. When such reply was received by the respondent admittedly on 25.10.2013, it is not known as to why the respondent has kept quite for two years to sent further notice to the petitioner only on 01.10.2015, which was admittedly returned by the postal authorities with an endorsement “no such addressee”. It is further stated that two more notices sent on 17.06.2016 and 27.06.2016 also were not served on the petitioner. Therefore, the Assessing Officer resorted to effect service by affixture on 11.07.2016 and 21.07.2016. It is claimed by the petitioner that in the meantime, the business was closed at the above said premises and therefore, they were not aware of the notice affixed at the said premises.

8. From the above stated facts and circumstances, it is evident that the impugned orders of assessment were passed without hearing the petitioner. At the same time, perusal of the assessment orders would show that the Assessing Officer examined

the reply submitted by the petitioner on 24.01.2013 and has chosen to reject the same, but however, before doing so, admittedly, he has not given a personal hearing to the petitioner. Therefore, considering all these aspects, this Court is of the view that the Assessing Officer can give one more opportunity to the petitioner to putforth their case by way of personal hearing. However, this Court is of the further view that such indulgence can be shown to the petitioner only by putting the petitioner on some terms, since the impugned order of assessment were passed as early as on 01.09.2016, that too, in respect of the assessment years 2009-10 to 2013-14.

9. Accordingly, these writ petitions are disposed of, on the following terms.

(a) The impugned orders of assessment dated 01.09.2016 are set aside and the matter is remitted back to the Assessing Officer, subject to the condition that the petitioner shall pay 10% of the demand of tax in respect of each assessment year within a period of three weeks from the date of receipt of a copy of this order. The petitioner is directed to file their reply/objection, if any, while making such 10% of tax as stated supra.

(c) On receipt of such payment and reply/objection, the respondent/ Assessing Officer shall fix a date for personal hearing and inform the petitioner.

(d) On completion of such personal hearing, the respondent shall pass fresh order of assessment on merits and in accordance with law within a period of four weeks thereafter.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsi

To

The Assistant Commissioner (CT),
Mettur Road Circle,
Erode.

+1cc to Mr.B.Raveendran Advocate, S.R.No. 57306
+1cc to Special Government Pleader, S.R.No.57326

W.P.Nos.21329 to 21333 of 2018

VSNII(CO)
GN(04/09/2018)