IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.26080 of 2018
and
W.M.P.No.30308 of 2018

M/s.PGSD Engineering LLP
(Formerly known as PGSD Engineering Pvt. Ltd.,)
Represented by its Designated Partner
SF No.925, Nandavanmpalayam
Mettukadai, Dharapuram-638 702. ... Petitioner

Vs.

The State Tax Officer
Dharapuram,
Tirupur. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a WRIT OF CERTIORARI, calling for the records of the respondent in his proceedings in TIN:33721925388/2012-2013, quash the assessment order dated 24.01.2018 passed therein.

For Petitioner : Mr.S.Subramaniam

For Respondent : Mrs.G.Dhana Madhri,
Government Advocate (Tax)

O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate takes notice for the respondent. By consent of the parties, this writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 24.01.2018 passed in respect of the assessment year 2012-2013.

3. Mr.S.Subramaniam, learned counsel for the petitioner submitted that apart from the other grounds raised on the merits of the assessment, the impugned order is liable to be set aside solely on the ground of violation of principles of natural

justice, as the respondent has chosen to pass the impugned order without considering the reason for not filing the reply to the second notice. Therefore, he contended that the impugned order cannot be sustained on the above reason and also on ground that the Assessing Officer has not afforded an opportunity of personal hearing.

4. Per contra, the learned Government Advocate submitted that when the second notice was issued, the petitioner has not filed their reply and therefore, the Assessing Officer cannot be found fault with in completing the assessment, based on the reply already filed.

5. It is seen that in respect of the subject matter assessment order, the Assessing Officer issued the first notice of proposal on 05.10.2017 and that the petitioner has filed their reply on 16.10.2017. As the reply filed by the petitioner was not satisfactory or bereft of some particulars, the Assessing Officer has issued the second notice dated 14.11.2017, calling upon the petitioner to furnish some more details and particulars. Admittedly, the petitioner has not filed their reply to the said second notice. However, the reason for not filing the reply within the time is explained in the affidavit filed in support of the writ petition, by stating that during the relevant time, the Managing Director/Designated Partner was suffering from advance stage of cancer and her only son viz., other Director/Designated Partner, who was actually in-charge of the business and over all management, was totally pre-occupied with the treatment of his ailing mother, as a result of which the petitioner was unable to file the reply/objections to the notice of proposal. In support of such contention, the petitioner has placed the PET-CT report pertaining to the ailing Managing Director. Therefore, it is evident that the petitioner was reasonably prevented from making the reply to the second notice dated 14.11.2017 in time and therefore, such non-filing of reply resulting in passing an adverse order, when found to be with some justifiable cause, this Court is of the considered view that one more opportunity can be given to the petitioner for filing the reply to the said notice dated 14.11.2017, so that the Assessing Officer can pass a fresh order of assessment on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner.

6. Considering the above stated facts, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment in the following terms and conditions:

(a) The petitioner shall furnish reply to the notice dated 14.11.2017 within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such reply, the Assessing Officer shall intimate the date of personal hearing to the petitioner.

(c) On completion of such personal hearing, the Assessing Officer shall pass fresh orders on merits and in accordance with law, within a period of four weeks thereafter.

It is made clear that this Court is not expressing any view on the merits of the assessment, as it is for the respondent to consider and decide the same. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The State Tax Officer
Dharapuram, Tirupur.

+1cc to Mr.B.Raveendran, Advocate, S.R.No.68473
+1cc to the Government Pleader(T), S.R.No.68596

W.P.No.26080 of 2018

CA(CO)
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