IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.32381, 32387, 32389, 32392 & 32396 of 2018
and
W.M.P.Nos.37581, 37583, 37585, 37588 & 37590 of 2018

M/s. Prince Foundation Ltd,
Represented by Mr.Ashwinkumar K Kamdar,
Chairman and Managing Director
No.61, Ormes Road, Kilpauk,
Chennai.10. ...Petitioner in all W.Ps

vs.

The Assistant Commissioner (CT),
Ayanavaram Assessment Circle,
Station No.F 50, 3rd Floor,
I Avenue, Anna Nagar,
Chennai-102. ...Respondent in all W.Ps

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the impugned Assessment Order No. TIN/33321002168/2011-2012, TIN/33321002168/2012-2013, TIN/33321002168/2013-2014, TIN/33321002168/2014-2015, TIN/33321002168/2015-2016 dated 28.09.2018 of the respondent and quash the same.

For Petitioner : Mr.S.Jaikumar
(in all W.Ps)

For Respondent : Mr.M.Hariharan
Additional Government Pleader
(in all W.Ps)

C O M M O N O R D E R

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, these main writ petitions are taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the orders of assessment dated 28.09.2018 passed in respect of assessment years 2011-2012 to 2015-2016.

3. The main grievance of the petitioner before this Court against the impugned orders is that the same were passed in violation of principles of natural justice. According to the petitioner, the reply submitted by the petitioner dated 17.09.2018 was not considered or taken into account by the Assessing Officer before passing the impugned orders of assessment on 28.09.2018. It is the further contention of the petitioner that the Assessing Officer also failed to afford an opportunity of personal hearing to the petitioner before concluding the assessment. Therefore, it is stated that the assessment orders are liable to be set aside on the grounds of violation of principles of natural justice. It is also contended by the petitioner that the delay in filing the reply to the notice of proposal was due to the death of the Accountant of the petitioner, who handled the matter and therefore, the Assessing Officer ought to have considered the reply dated 17.09.2018, though filed belatedly, while passing the orders of assessment.

4. Per contra, the learned Additional Government Pleader appearing for the respondent contended that the very notice of proposal was issued on 07.02.2017 and that the petitioner did not file any reply within the time stipulated. He further contended that in the notice of proposal itself, it was informed to the petitioner that they can appear before the Assessing Officer on any day within 15 days from the date of receipt of the notice of proposal and therefore, such opportunity of personal hearing given to the petitioner was also not utilised. Thus, the learned Additional Government Pleader contended that the petitioner is not entitled to seek any indulgence from this Court.

5. Heard both sides and perused the materials placed before this Court.

6. The impugned orders of assessment were passed by considering various issues. This Court at this stage is not expressing any view on the merits of the assessment, since the only ground on which, those orders are sought to be challenged is in violation of principles of natural justice. Therefore, this Court has to consider as to whether such violation has taken place or not.

7. It is seen that the pre-assessment notice for each assessment year was issued on 07.02.2017, giving 15 days time for the petitioner to send the reply. It is the case of the

petitioner that one Gokul Krishna, who was functioning as an Accountant at the office of the petitioner, received the notice of proposal and did not bring it to the knowledge of the petitioner immediately and that the said Gokul Krishna died suddenly on 15.03.2017 due to his ill health. Under such circumstances, it is stated that the petitioner filed their reply belatedly on 17.09.2018 in person, also by sending the same, by registered post on 01.10.2018. But, the perusal of the assessment orders would show that no such reply was received by the Assessing Officer. However, a copy of the said reply is filed in the typed set of papers.

8. It is seen that there is a considerable delay in filing such reply, even assuming, that such reply was received by the Assessing Officer. It is stated that the Accountant passed away on 15.03.2017. Atleast within a short time, they should have taken steps to send the reply to the notice of proposal immediately thereafter. However, it has not been done in this case.

9. Further, it is seen that the Assessing Officer has concluded the assessment, only on the reason that there was no reply from the petitioner. Therefore, the orders of assessment as such passed is without considering the merits of the case.

10. Further, it is seen that the notice of proposal indicated that the petitioner can utilise the personal hearing on anyone day within 15 days time from the date of receipt of the notice. It is contended on behalf of the respondent that in the notice of proposal itself, it was specifically mentioned that the Assessee is entitled to appear in person on any one of the days, within which, the notice has to be replied. Therefore, it is contended that the opportunity of personal hearing was given to the Assessee, which they failed to utilize.

11. This Court is not in a position to appreciate the above said contention for the simple reason that such indication made in the notice of proposal itself, that too, before getting reply and without indicating the date of personal hearing, cannot be construed as the compliance of requirement of providing personal hearing. In other words, only after receiving the reply from the petitioner, the Assessing Officer has to send a communication indicating a specific date for personal hearing, which alone, will be an effective hearing, since at that time, the notice of proposal as well as the objections raised by the petitioner will be there before the Assessing Officer, so as to enable him to hear the petitioner also in person and take a decision thereafter on merits and in accordance with law. The personal hearing does not mean formal hearing, on the other hand, it should be an effective hearing, so that both the

parties must be in a position to debate the issue.

12. Considering the above stated facts and circumstances, this Court is inclined to grant one more opportunity to the petitioner to put forth their case before the Assessing Officer, however, subject to the condition that the petitioner pays 10% of the tax liability so as to show their bona fide for the purpose of making the assessment orders afresh, on merits and in accordance with law.

13. Accordingly, all these Writ Petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the Assessing Officer on the following terms and conditions:

a) The petitioner shall pay 10% of tax liability for each assessment year along with their reply once again before the Assessing Officer, within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such reply and the payment of 10% of tax liability within the time stipulated as stated supra, the Assessing Officer shall indicate the date of personal hearing to the petitioner.

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

(d) This Court is not expressing any view on the merits of the assessment orders already passed, as those orders are set aside only on the reasons stated supra.

(e) If the amount of 10% of tax liability for each assessment year, as directed supra, is not deposited within the time stipulated, the orders of assessment impugned in these writ petitions stand restored.

No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sni/mk

To

The Assistant Commissioner (CT),
Ayanavaram Assessment Circle,
Station No.F 50, 3rd Floor,
I Avenue, Anna Nagar, Chennai-102.

+1 cc to Mr.S.Jaikumar, Advocate Sr.No.85225
+1 cc to The Special Government Pleader(Taxes), Sr.No.86391

W.P.Nos.32381, 32387,
32389, 32392 & 32396 of 2018

NM(CO)
CSL/09.01.2019