IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 15.11.2018

CORAM
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.29780, 29850 & 29853 of 2018
and
W.M.P.Nos.34754, 34755, 34842, 34843, 34849 & 34851 of 2018

M/s.Guru Constructions,
Represented by its Partner G.Jyothivel,
Civil Contractors,
No.70/128-A, Ayya Gounder Street,
A.Valappadi Post, Valappadi Taluk,
Salem District. ... Petitioner
(in all WPs)

vs.

The Assistant Commissioner (CT),
Salem Rural Circle,
Salem, Salem District. ...Respondent
(in all WPs)

Writ petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the entire records of the respondent in TIN:33562705453/2012-13, 2013-14 and 2014-15 respectively dated 07.07.2018 and quash the orders passed therein.

For Petitioner : Mr.A.P.Srinivas
(in all Wps)

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

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate (Tax), takes notice for the respondent. By consent of the parties, these writ petitions are taken up for final disposal at the admission stage itself.

2. These writ petitions are filed challenging the orders of assessment dated 07.07.2018 passed in respect of assessment years 2012-2013, 2013-2014 and 2014 -2015.

3. The grievance of the petitioner before this Court is that the Assessing Officer has erroneously confirmed the

proposal, merely because, the petitioner did not appear for personal hearing, especially when the reply filed by the petitioner dated 03.07.2015 is already thereon record, which ought to have been considered even though the petitioner did not appear in person. Non-appearance of the petitioner at the time of personal hearing is sought to be explained on health grounds.

4. On the other hand, it is contended by the learned Government Advocate that the petitioner did not file any reply within the time stipulated by this Court in the earlier round of litigation in W.P.Nos.39288 to 39290 of 2015 dated 15.12.2015. He further contended that, apart from not filing the reply as directed by this Court, the petitioner did not appear in person as well, in spite of sufficient opportunity granted to them. Therefore, she contended that the petitioner is not entitled for any indulgence from this Court.

5. Heard both sides.

6. It is seen that the very same petitioner has approached this Court and filed the writ petitions in W.P.Nos.39288 to 39290 of 2015, challenging the notices of proposal dated 11.06.2015 in respect of the subject matter assessment years. It is further seen that this Court has disposed of those writ petitions on 15.12.2015, by directing the petitioner to submit their replies to the notices within a period of two weeks and further directed the respondent-Assessing Officer to pass appropriate orders on merits and in accordance with law, thereafter. While passing the said order, this Court has also recorded the submission made by the learned counsel for the petitioner therein that the objections dated 03.07.2015 was already filed in pursuant to the above notices of proposal.

7. In pursuant to the above said order passed by this Court in W.P.Nos.39288 to 39290 of 2015 dated 15.12.2015 admittedly, the petitioner did not file any further reply within the time stipulated. However, the learned counsel for the petitioner contended that even though the petitioner did not file any further reply as directed by this Court, the reply dated 03.07.2015 already filed is available with the respondent and therefore, the same ought to have been considered by giving a finding on those objections. Therefore, it is contended that the impugned proceedings are not sustainable in the absence of any specific finding rendered by the Assessing Officer on the reply filed by the petitioner dated 03.07.2015.

8. No doubt, the petitioner has not filed any reply in pursuant to the order passed by this Court in W.P.Nos.39288 to 39290 of 2015 dated 15.12.2015. But at the same time, it is an admitted fact that the petitioner filed a reply on 03.07.2015 and the same is available with the respondent. In fact, the respondent has extracted the objections raised by the petitioner in their reply dated 03.07.2015, while passing the present impugned orders. However, the respondent has not chosen to give any finding on the said objections dated 03.07.2015. On the other hand, the respondent has proceeded to confirm the proposal only on the reason that the petitioner did not appear in person in spite of granting sufficient opportunity. Therefore, it is evident that the Assessing Officer has not considered the objections already filed by the petitioner dated 03.07.2015 and given any finding on those objections. Therefore, on this ground, this Court is inclined to interfere with the impugned orders and remit the matter back to the Assessing Officer to redo the assessment. At the same time, such indulgence cannot be shown to the petitioner without putting them on some terms, since they have not filed further objections, as directed by this Court earlier and also has not chosen to appear in person before the Assessing Officer.

9. Accordingly, these writ petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the Assessing Officer subject to the following terms and conditions:

a) The petitioner shall pay 15% of the tax liability for each assessment year within a period of two weeks from the date of receipt of a copy of this order.

b) On receipt of such payment and further reply, if any, within the time stipulated therein, the Assessing Officer shall inform the date of personal hearing to the petitioner.

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

(d) If the petitioner fails to make payment of 15% tax liability, as stated supra within the time stipulated by this Court, the impugned orders get restored.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (CT),
Salem Rural Circle,
Salem, Salem District.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.78202
+1cc to the Government Pleader (Taxes), S.R.No.78455

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CA(CO)

rrs 07/12/2018