IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.31323 & 31328 of 2018
and
WMP.Nos.36509, 36511, 36515 & 36518 of 2018

Thiru.A.Ragothaman
Proprietor
Sri Murugan Electricals & Mill Stores
Thiruvannamalai Main Road,
State Bank (Opposite)
Manalurpet - 605 754. ..Petitioner in both WPs

Vs

The Deputy Commercial Tax Officer
Tirukoilur,
Villupuram-605 757. ..Respondent in both WPs

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondent in order dated 11.01.2017 and 06.03.2017 in TIN No.33304762093/2011-2012 & 2012-2013 respectively and quash the same.

For Petitioner : Mr.Adithya Reddy
(in both WPs)

For Respondents : Mr.V.Hari Babu
Additional Government Pleader
(in both WPs)

COMMON ORDER

Mr.V.Hari Babu, learned Additional Government Pleader 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. The petitioner is aggrieved against the orders of assessment dated 11.01.2017 and 06.03.2017 passed in respect of the assessment years 2011-2012 & 2012-2013 respectively.

3. Heard both sides.

4. The impugned orders of assessment were passed based on mis-match issue alone. Therefore, it is contended by the learned counsel for the petitioner that the Assessing Officer ought to have followed the guidelines/directions issued by this Court in WP.No.105 of 2016 etc., dated 01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343), while dealing with mis-match issue. Thus, the petitioner seeks for indulgence of this Court for remitting the matter back to the Assessing Officer to consider the matter afresh by following the procedures/guidelines issued in the above said case.

5. It is true that this Court has issued certain guidelines/directions to be followed while making assessment based on mis-match issue in WP.No.105 of 2016 etc., dated 01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343). But, at the same time, the fact remains that the said order was issued by this Court on 01.03.2017, whereas, the order of assessment in respect of the assessment year 2011-2012 was passed two months prior to the order passed in JKM Graphics case. However, the other assessment order in respect of the assessment year 2012-2013 was passed on 06.03.2017, subsequent to the order passed in JKM Graphics case.

6. Considering the above stated facts and circumstances, also considering the fact that the petitioner has not filed any reply to the notice of proposal in respect of the assessment year 2011-2012 and further considering the fact that the petitioner has chosen to file these writ petitions only after a period of 1 1/2 years, this Court is inclined to remit the matter back to the Assessing Officer for re-doing the assessment once again, however, by putting the petitioner on some terms and conditions.

7. Accordingly, both these writ petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the Assessing Officer for re-doing the assessment under the following terms and conditions:

> (a) The petitioner shall pay 15% of the tax liability for each assessment year before the Assessing Officer within a period of two weeks from the date of receipt of a copy of this order, along with their reply to the notice of proposal issued in respect of the assessment year 2011-2012.
>
> (b) On receipt of such reply and payment of 15% of the tax liability as stated supra,

the Assessing Officer shall re-do the assessment, after giving due opportunity of personal hearing to the petitioner as well.

(c) The Assessing Officer shall follow the guidelines/directions issued by this Court in WP.No.105 of 2016 etc., dated 01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343), before completing the assessment.

(d) The whole exercise shall be completed by the Assessing Officer within a period of eight weeks from the date of receipt of a copy of this order.

No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

The Deputy Commercial Tax Officer
Tirukoilur, Villupuram-605 757.

+1 cc to The Special Government Pleader, Sr.No.87953
+1 cc to Mr.a.Adithya Reddy, Advocate Sr.No.81823

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VGI(CO)
CSL/20.12.2018