

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.30677, 30701, 30710, 30741 & 30743 of 2018  
and  
WMP.Nos.35882, 35883, 35878, 35879, 35875, 35876, 35813, 35817,  
35801 & 35806 of 2018

M/s.Arun & Co.,  
Rep by its Managing Partner - T.Muthuraman  
Koolaiyur, Konur-636 401  
Mettur Dam, Salem District.

..Petitioner  
(in all WPs)

Vs

The Assistant Commissioner (ST) (FAC)  
Omalur,  
Salem District.

..Respondent  
(in all WPs)

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the respondent in its impugned proceedings made in TIN:33563244385/2011-2012, 2012-2013, 2013-2014, 2014-2015 and 2015-2016 respectively dated 30.08.2018 and quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.S.Rajasekar  
(in all Wps)

For Respondent : Mr.Master Ganesh  
Government Advocate  
(in all WPs)

COMMON ORDER

Mr.Master Ganesh, learned Government Advocate 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. These writ petitions are filed challenging the orders of assessment passed in respect of assessment years 2011-2012 to 2015-2016.

3. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

4. The main grievance of the petitioner before this Court is that the Assessing Officer has passed the impugned orders of assessment without affording sufficient opportunity to the petitioner to place their objections and participate in the personal hearing.

5. The learned counsel for the petitioner submitted that the notice of proposal dated 02.07.2018 in respect of assessment years 2011-2012 to 2015-2016 was in fact sent by the registered post on 11.07.2018, by fixing the date of personal hearing as 16.07.2018. Therefore, he submitted that the Assessing Officer without even waiting for the petitioner to file their reply within 15 days from the date of receipt of the said notice, has fixed the date of personal hearing as 16.07.2018 in the notice of proposal itself. Therefore, he contended that the opportunity provided to the petitioner by way of notice of proposal is not an effective or sufficient opportunity. Apart from the fact, the learned counsel for the petitioner also submitted that the partner of the petitioner was under medical treatment at Christian Medical College, Vellore from 15.02.2018 to 22.10.2018. Therefore, the objections could not be filed against the notices of proposal in time.

6. On the other hand, the learned Government Advocate for the respondent submitted that the Assessing Officer has passed the impugned orders of assessment after issuing the notices of proposal and that the petitioner has not utilized the opportunity provided under the said notices.

7. Perusal of the notices of proposal dated 02.07.2018 and the postal seal affixed in the cover containing the said notices would show that even though the said notices were dated 02.07.2018, they were actually posted on 11.07.2018. Therefore, it is apparent that the petitioner was having 15 days time from the date of receipt of the said notices for filing their objections. However, the fact remains that the said notices informed the petitioner that the personal hearing will be conducted on 16.07.2018, which undoubtedly, show that such personal hearing was scheduled even before the expiry of the date for filing objections. Needless to say that before filing the objections, no purpose would be met by conducting personal hearing. Therefore, this Court finds that the Assessing Officer

has not given sufficient opportunity to the petitioner to make an effective objections to the notices of proposal and participating in the personal hearing. At the same time, this Court is not expressing any view on the merits of the matter, as it is for the Assessing Officer to consider and decide afresh after getting reply from the petitioner.

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

(a) The petitioner shall file their reply to the notices of proposal 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 inform the date of personal hearing to the petitioner in writing.

(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.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST) (FAC)  
Omalur,  
Salem District.

+5cc to Mr.S.Rajasekar, Advocate sr.nos.80183 to 80186  
+1cc to Special Government Pleader(Taxes) sr.no.80559

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skv(co)  
nr 18/12/2018