IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.31194 & 31195 of 2018
and
W.M.P.Nos.36394 & 36397 of 2018

Virgo Realtors Private Limited
represented by its Managing Director
T.Shyam Prasad
No.5, Thirumurthy Street,
T.Nagar,
Chennai - 600 017. ...Petitioner in both the W.Ps.

vs.

State Tax Officer,
Pondy Bazaar Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028. ...Respondent in both the W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent passed in TIN/33520702813/2013-14 and TIN/33520702813/2014-15 respectively dated 08.10.2018 and quash the same and further direct the respondent to re-do the assessment in accordance with law by providing sufficient opportunity of personal hearing to the petitioner.

For Petitioner : Mr.N.Murali

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

COMMON ORDER

The petitioner is aggrieved against the orders of assessment passed in respect of the assessment years 2013-14 and 2014-15.

2. Mrs.G.Dhana Madhri, learned Government Advocate (Tax) takes notice for the respondent and by consent, the main writ petitions are taken up for final disposal.

3. Heard both sides.

4. The main grievance of the petitioner before this Court is that the Assessing Officer has not followed the principles of natural justice in its strict sense as no opportunity of personal hearing is given to the petitioner before concluding the assessment, more particularly, when the Assessing Officer has chosen to impose penalty.

5. Learned Government Advocate, on the other hand, contended that the objections raised by the petitioner were considered and thereafter, the impugned assessment orders were passed and therefore, the petitioner is not entitled to contend as though the Assessing Officer violated the principles of natural justice. However, she is not disputing the fact that the Assessing Officer has not conducted any personal hearing.

6. It is seen that the notice of proposal itself was issued on 05.10.2015 and the petitioner filed their reply on 03.03.2016. They also filed further reply on 12.06.2017. However, the impugned orders were passed after a period of three years from the date of issuance of notice, by that time, it seems that there is change of Officer as well. Therefore, it is evident that the assessment was made after the period of three years also by imposing penalty on the petitioner. Admittedly, the Assessing Officer has not afforded an opportunity of personal hearing to the petitioner before passing the impugned orders. This Court has considered the issue regarding the personal hearing passed by the Revenue in Circular No.7/2014 wherein the grant of personal hearing is stated to be mandatory. Moreover, in this case, the Assessing Officer also got changed and therefore, in all fairness, the petitioner should have been given an opportunity of personal hearing before concluding the assessment. Since no such opportunity is given and more particularly, when the assessment orders were passed after a period of three years from the date of issuance of notice, this Court is of the view that the matter needs to be remitted back to the Assessing Officer to redo the assessment once again after giving due opportunity of personal hearing to the petitioner. Accordingly, these Writ Petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment on merits and in accordance with law by giving an opportunity of personal hearing to the petitioner. The whole exercise shall be done by the Assessing Officer within a period of eight

weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

vsi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
State Tax Officer,
Pondy Bazaar Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028.

+2 CC To Mr.N.Murali,Advocate, SR.NO.81094.
+1CC TO The Special Government Pleader SR.No.81482

W.P.Nos.31194 & 31195 of 2018

RSV(CO)
KAK(18/12/2018)