IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.33572 & 33576 of 2018
and
W.M.P.Nos.38957 & 38960 of 2018

New Consolidated Construction Co.,Ltd.,
Represented by its Vice President Udaykumar B.N.,
3, Venkatesapuram Colony 2nd Street,
Chennai-23.

...Petitioner (in both W.Ps)

Vs

The Assistant Commissioner (CT),
Ayyanavaram Assessment Circle,
F-50, Third Floor, First Avenue,
Anna Nagar, Chennai-102.

...Respondent (in both W.Ps)

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent in TIN 33521002640/2014-2015 and TIN 33521002640/2015-2016 dated 05.10.2018 and quash the same.

For Petitioner : Mr.R.Kumar
(in both W.Ps)

For Respondent : Mr.V.Haribabu
Additional Government Pleader
(in both W.Ps)

C O M M O N   O R D E R

Mr.V.Haribabu, 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 05.10.2018 passed in respect of assessment years 2014-2015 and 2015-2016.

3. The only grievance expressed before this Court against the impugned orders is that the same were passed in violation of principles of natural justice. It is contended that the notices of proposal were not sent to the principal place of business and on the other hand, it was sent to the godown of the petitioner and therefore, such service of notices was not brought to the knowledge of the petitioner immediately. The further contention is that no personal hearing was given to the petitioner before concluding the assessment, even though the Assessing Officer has chosen to impose penalty on the petitioner in respect of assessment year 2014-2015.

4. On the other hand, the learned Additional Government Pleader appearing for the respondent contended that the notices were sent to the address, which was given by the petitioner themselves as their branch and therefore, the petitioner is not entitled to contend as though the service of notices was not sent to an appropriate place. Insofar as the issue regarding personal hearing is concerned, the learned Additional Government Pleader for the respondent contended that in the notices of proposal themselves, it was clearly stated that the petitioner can utilize the opportunity of personal hearing within 15 days time, in which, the reply has to be filed.

5. Heard both sides.

6. It is seen that the notices of proposal dated 07.02.2017 were issued. While the address referred to in the said notices indicate as though it was to be served at Plot No.127, 2nd Floor, IOB Buildings, 100 Feet Road, Velachery, Chennai-600042, but the address shown in the cover is a different one, that is No.439, Cheran Nagar, Medavakkam Road, Perumbakkam, Chennai-600100. Therefore, there is some confusion in indicating the address, in which the notices have been sent. However, it is an admitted fact that the petitioner is having their godown/site office at Perumbakkam, to which the notices were sent and as it is also admitted by the petitioner that their workers have received the said notices and failed to inform the same, this Court is of the view that the effecting of service of notices cannot be faulted in toto and on the other hand, the respondent has sent the notices of proposal to one of the addresses shown by the petitioner as their branch. However, it is contended by the petitioner that they could not file their reply, since the said notices were not brought to their knowledge by the workers.

7. While coming to the next issue viz., grant of personal hearing, it is seen that such opportunity was shown at the

notices of proposal themselves, to be utilised by the petitioner in any way of 15 days time, before which, they have to file their reply. This Court has already dealt with the issue and found that it is not the proper way of intimating the date of personal hearing and that such personal hearing should take place after getting the reply.

8. Considering the fact that the assessment orders were passed only on the reason that the petitioner did not file their reply and that the personal hearing was not given to the petitioner, this Court is of the view that one more opportunity should be given to the petitioner to agitate the matter before the Assessing Officer by filing their reply. However, such opportunity cannot be given to the petitioner without putting them on some terms, since the notices of proposal were sent to one of the addresses recognised by the petitioner as their branch office.

9. Accordingly, both these Writ Petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment under the following terms and conditions:

> a) The petitioner shall pay 15% of tax liability for each assessment year within a period of two weeks from the date of receipt of a copy of this order along with their reply to the notices of proposal.
>
> b) On receipt of such payment and reply, the Assessing Officer shall inform the date of personal hearing to the petitioner.
>
> c) On completion of such personal hearing, the Assessing Officer shall complete the assessment and pass fresh orders of assessment on merits and in accordance with law within a period of six weeks thereafter.

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

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sni/mk

To

The Assistant Commissioner (CT),
Ayyanavaram Assessment Circle,
F-50, Third Floor, First Avenue,
Anna Nagar, Chennai-102.

+1cc to Mr.R.Kumar, Advocate sr.no.88313
+1cc to Special Government Pleader(Taxes)sr.no.89106

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