IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.33761, 33767 & 33772 of 2018
and
W.M.P.Nos.39197, 39195, 39203, 39205, 39211 & 39212 of 2018

M/s.Pratipa Cashews
Rep. by its Partner - M.Ramakrishnan
Keezhakuppam-607 103
Cuddalore District. ...Petitioner
(in all W.Ps)

Vs

The Commercial Tax Officer
Panruti (Rural) Circle
Panruti
Cuddalore District. ...Respondent
(in all W.Ps)

Prayer: Writ Petition No.33761 of 2018 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN 33454500353/2015-2016 dated 16.06.2017 and quash the same.

Prayer: Writ Petition No.33772 of 2018 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN 33454500353/2014-2015 dated 09.06.2017 and quash the same.

Prayer: Writ Petition No.33767 of 2018 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN 33454500353/2016-2017 dated 16.06.2017 and quash the same.

For Petitioner : Mr.S.Rajasekar
(in all W.Ps)

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

C O M M O N   O R D E R

Mr.V.Haribabu, learned Additional Government Pleader (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 09.06.2017, 16.06.2017 and 16.06.2017 passed in respect of assessment years 2014-2015, 2015-2016 and 2016-2017 respectively.

3. Heard both sides.

4. The present writ petitions are filed challenging the impugned orders of assessment only by contending that the equal addition made by the Assessing Officer cannot be sustained, since the equal time addition for probable omission is not called for in view of the decision made by this Court in [2015] 79 VST 137 (Mad).

5. The learned counsel for the petitioner after reiterating the contentions raised in the affidavit filed in support of these writ petitions, submitted that the Assessing Officer is not justified in imposing equal addition and also the penalty.

6. On the other hand, the learned Additional Government Pleader submitted that the petitioner is not entitled to canvass the correctness or otherwise of the impugned orders before this Court, since they have not chosen to file any reply to the notices of proposal. The learned Additional Government Pleader also contended that the impugned orders were passed in the month of June 2017, however, the present writ petitions are filed after a period of 1½ years. Therefore, he contended that this Court need not interfere with the impugned orders.

7. There is no dispute to the fact that the petitioner was served with notices of proposal. However, the fact remains that they have not chosen to file any reply. Not filing the reply is sought to be explained as if his clerk, who received the notices of proposals did not bring to the knowledge of the partner so as to enable them to file the objections. This Court, at this stage is not willing to express any view, as admittedly, the petitioner ought to have agitated the matter before the next fact finding authority viz., the Appellate Authority, by filing a regular appeal. In this case, they have not chosen to file such reply. Therefore, this Court is not inclined to entertain these writ petitions. However, the factual aspects of the matter have to be agitated and adjudicated before the next fact finding authority viz., the Appellate Authority. Hence, this Court is inclined to grant liberty to the petitioner to file a statutory appeal as against the impugned orders subject to a condition that the petitioner should pay 50% of the tax liability before the Assessing Officer.

8. Accordingly, all these writ petitions are disposed of, by granting liberty to the petitioner to file statutory appeal before the Appellate Authority, subject to the following terms and conditions:

(a) The petitioner shall pay 50% 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.

(b) On such payment, the petitioner shall file an appeal before the concerned Appellate Authority along with proof of payment within a period of two weeks thereafter.

(c) On receipt of such appeal, the concerned Appellate Authority shall consider the appeal on its own merits and pass orders in accordance with law without reference to the period of limitation.

(d) If the petitioner fails to make the payment of 50% of tax liability for each assessment year, as stated supra, the impugned orders get restored automatically.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

The Commercial Tax Officer
Panruti (Rural) Circle
Panruti
Cuddalore District.

+3ccs to Mr.S.Rajasekar, Advocate, S.R.No.88622 to 88624
+1cc to the Government Pleader, S.R.No.89109

W.P.Nos.33761, 33767 & 33772 of 2018

SSV(CO)
RRS(30/01/2019)