BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.10.2018

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD)Nos.21928 to 21933 of 2018 and
W.M.P.(MD)Nos.19855 to 19860 of 2018

M/s.Aahar Restaurant and Bar,
Rep. by its Proprietor
RM.S.Tamizh Mani
.. Petitioner in WP(MD)Nos.21928 to 21930/18

M/s.Chendoor Residency,
Rep. by its Proprietor
RM.S.Tamizh Mani
.. Petitioner in WP(MD)Nos.21931 to 21933/18

Vs.

The Assistant Commissioner (ST),
Palakkarai – I Assessment Circle,
Trichy – 1.
.. Respondent in all Wps

PRAYER in WP(MD)Nos.21928 to 21930/18: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records in TIN 33913522146/2013-14, 2014-15 & 2015-16, respectively, dated 09.08.2018 issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass assessment order afresh after considering the representation dated 21.09.2018 filed by the petitioner including the opportunity of being heard to the petitioner, within a stipulated time limit.

PRAYER in WP(MD)Nos.21931 to 21933/18: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records in LHT No.2263/2013-14, 2014-15 & 2015-16, respectively, dated 07.08.2018 issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass assessment order afresh after considering the representation dated 21.09.2018 filed by the petitioner including the opportunity of being heard to the petitioner, within a stipulated time limit.

For Petitioners : Mr.S.Karunakar
For Respondent : Mr.D.Muruganantham,
Additional Government Pleader
(In all WPs)

COMMON ORDER

These writ petitions are directed against the impugned proceedings of the respondent, dated 09.08.2018 & 07.08.2018, respectively, in and by which, revised assessment orders for the subject assessment years, being assessment year 2013-14 to 2015-16, came to be passed.

2. Since the issue involved in all these petitions are similar in nature, they are disposed of by way of this common order.

3. The petitioners before this Court are firms and assessees on the file of the respondent. For the subject assessment years, the petitioners had filed their returns in time, which were also accepted and approved by the Department. While so, on 11.08.2015, the premises of the petitioners were inspected by the Enforcement Wing officials, followed by which, respondent's predecessor in office has issued a pre-revision notice dated 27.01.2017, citing some discrepancies. According to the petitioners, their proprietor appeared before the respondent's predecessor in office and submitted all the records, who, in turn, has also agreed with the same. Therefore, they are on the bona fide belief that the revision proposal would be dropped. But, to their shock and surprise, the present impugned proceedings came to be passed and that too, without affording an opportunity of personal hearing to the petitioners. According to the petitioners, there are arguable points on their part and therefore, the learned Counsel for the petitioner prayed for allowing the present writ petitions.

4. Learned Additional Government Pleader, on the other hand, would submit that the petitioners were issued with pre-revision notices dated 27.01.2017, however, they did not respond. Thereafter, two more notices dated 20.12.2017 and 18.05.2018 were issued, calling for their objections. Even for that also, the petitioners did not turn up. Moreover, in the said notices, the petitioners were also informed that they can avail an opportunity of personal hearing. Despite the same, neither objections were filed nor the petitioners appeared before the respondent. Hence, having left with no other option, the respondent, after recording this aspect, has proceeded with the matter and passed the impugned orders dated 09.08.2018 & 07.08.2018. With regard to the appearance of the proprietor of the petitioners' firm before the respondent's predecessor in office, the learned Additional Government Pleader denied the same and would submit that there is nothing on record to substantiate their plea. Therefore, he prays for dismissal of the present writ petitions.

5. Heard the learned Counsel appearing for the petitioners and the learned Additional Government Pleader appearing for the respondent.

6. It is not in dispute that the petitioners were served with

pre-revision notices dated 27.01.2017, inviting objections, but, the petitioners did not respond. But, according to the petitioners, their proprietor appeared in person before the respondent's predecessor in office, however, there is no proof to substantiate the same. With regard to the subsequent notices dated 20.12.2017 & 18.05.2018, it is the stand of the petitioners that due to the ill health of their proprietor and due to the fact that their staff did not bring the same to the knowledge of their proprietor, they failed to respond to the said notices.

7. This Court has perused the said three show cause notices dated 27.01.2017, 20.12.2017 & 18.05.2018. In all the notices, the petitioners were directed to submit their objections within fifteen days. In the said notices, it is also stated that there is an opportunity of personal hearing and the petitioners could also avail the same, however, no specific date was given. For better understanding, that portion from the notice is extracted thus:

> *"Objections if any against the above proposals may be filed in writing with relevant records before the undersigned official within 15 (fifteen) days from the date of receipt of this notice, failing which, orders confirming the above proposals shall be passed without any further notice. <u>You may also avail an opportunity of being heard in person within this above said period</u>."*

8. In the opinion of this Court, the above notice is not in line either with the Circular issued by the Head of the Department or the settled decisions of this Court in affording personal hearing. It is for the authorities to fix a specific date for hearing and not for the parties to choose and pick. As per the circular issued by the Head of the Department, pursuant to the recommendations issued by the **Justice Ramanujam Committee**, it is mandatory to give an opportunity of personal hearing, by specifying the dates of such personal hearing, whether it is asked or not by the assessee.

9. Moreover, failure to submit objection to the pre-assessment notice would not give a right to the Assessing Officer to deny opportunity of personal hearing. In this context, a Division Bench of this Court in an unreported decision in W.A.(MD) No.234 to 240 of 2015 **(G.V.Cotton Mills (P) Ltd., Rep. by its Managing Director Vs. The Assistant Commissioner (CT), Avarayampalayam Assessment Circle Corporation of Shopping Complex, Coimbatore)**, dated 16.03.2018, has held as follows:

> *"10. The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notice. Even if objection was not given, still the assessing authority was expected to post the matter for hearing by issuing notice to the assessee. In case the assessee fail to appear, it is open to the assessment authority to pass order on merits. We make the position clear that the failure to submit objection to the*

pre-assessment notice would not give a right to the Assessment Officer to deny opportunity of personal hearing to the assessee."

10. An assessment should be completed in a proper manner. Therefore, in the opinion of this Court, the matter should be remanded for fresh consideration. Accordingly, the impugned orders in TIN 33913522146/2013-14, 2014-15 & 2015-16, respectively, dated 09.08.2018 and LHT No.2263/2013-14, 2014-15 & 2015-16, respectively, dated 07.08.2018 are set aside and the matter is remitted back to the file of the respondent for fresh consideration.

11. Since the service of pre-revision notices is not in dispute and since the appearance of the petitioners' proprietor before the respondent's predecessor in office is in dispute, the petitioners are hereby directed to make their reply cum objections to the pre-revision notices, if any, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the respondent shall fix a specific date for hearing, within a period of two weeks from the date of receipt of a reply/representation from the petitioners and communicate the same to the petitioners, in advance. On the said date, the petitioners shall appear before the respondent with all relevant records and put forth their contentions and after hearing the petitioners, the respondent, by considering the reply and objections, shall pass appropriate reasoned order, within a further period of four weeks thereafter. Needless to say that if the petitioners do not co-operate in the enquiry or do not avail personal hearing, the respondent shall record the same and pass orders, in accordance with law.

12. These writ petitions stand allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The Assistant Commissioner (ST),
Palakkarai – I Assessment Circle,
Trichy – 1.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 93381
+ 2 CC TO Mr.S.KARUNAKAR, ADVOCATE IN SR Nos. 93206 &93205

GK
TE/SKN/SAR-4 : 05/12/2018 : 4P/5C

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