BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.10.2018
CORAM:
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD)No.18761 of 2018
and
W.M.P.(MD)Nos.16602 & 16603 of 2018

T.Antony .. Petitioner

Vs.

1.The Additional Deputy Commercial Tax Officer,
Kuzhithurai at Kattathurai,
Kanyakumari District.

2.The Deputy Commissioner (CT),
Nagercoil,
Kanyakumari District. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of CERTIORARI, to call for the impugned order dated 08.06.2018 under Reference TIN-33196184222/2012-13 passed by the first respondent and quash the same.

For Petitioner : Mr.S.Palani Velayutham
For Respondents : Mr.D.Muruganantham, Additional Government Pleader

ORDER

This writ petition is directed against the impugned order of the first respondent, dated 08.06.2018, in and by which, revised assessment order for the assessment year 2012-13 came to be passed.

2. According to the petitioner, he is the proprietor of M/s.Jeba Traders - a firm engaged in the business of sale of vehicle accessories and an assessee on the file of the first respondent. For the assessment year 2012-13, the petitioner had filed the returns in time, which was also accepted and approved by the Department. While so, on 12.01.2018, the petitioner was served with a pre-revision notice from the first respondent, citing some discrepancies. According to the petitioner, as the particulars with regard to the assessment year 2012-13 was called for after a period of five years, he was not able to trace out the same immediately and make his reply on time. In the meantime, the impugned order revising the assessment came to be passed and that too, without affording an opportunity of personal hearing to the petitioner. Hence, the present writ petition came to be filed.

3. Learned Additional Government Pleader, on the other hand, would submit that the petitioner was issued with pre-revision notice

dated 12.01.2018. But, the petitioner did not respond. Hence, having left with no other option, the respondent, after recording this aspect, has proceeded with the matter and passed the impugned assessment order dated 08.06.2018. Therefore, he prays for dismissal of the present writ petition.

4. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

5. It is not in dispute that the petitioner was served with a pre-revision notice dated 12.01.2018, inviting objections, but, the petitioner did not respond. But still, it is mandatory on the part of the authorities to post the matter for personal hearing. 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 petitioner. But, in the impugned order, there is no whisper as to the same.

6. 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 that failure to submit objection to the pre-assessment notice would not give a right to the Assessing Officer to deny opportunity of personal hearing and the relevant portion reads thus:

> "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."

7. On this sole ground, this Court is of the view that the matter should be remanded for fresh consideration. Accordingly, the impugned order, dated 08.06.2018, is set aside and the matter is remitted back to the first respondent for fresh consideration.

8. Since the service of pre-revision notice dated 12.01.2018 is not in dispute, the petitioner is hereby directed to make his reply cum objection, if any, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the first 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 petitioner and communicate the same to the petitioner, in

advance. On the said date, the petitioner shall appear before the first respondent with all relevant records and put forth his contentions and after hearing the petitioner, the first 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 petitioner does not co-operate in the enquiry or does not avail personal hearing, the first respondent shall record the same and pass orders, in accordance with law.

9. This writ petition stands allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1.The Additional Deputy Commercial Tax Officer,
Kuzhithurai at Kattathurai,
Kanyakumari District.

2.The Deputy Commissioner (CT),
Nagercoil,
Kanyakumari District.

+1CC to Mr.S.Palani Velayutham, Advocate, SR.No.92411
+1CC to the Special Government Pleader SR.No.92203

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