IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.293 of 2019
and
W.M.P.No.307 of 2019

K.Raghupathy ... Petitioner

vs.

The Assistant Commissioner (ST),
Sembium Assessment Circle,
No.15, 16, Malligai Avenue Extension,
100 Feet Road, Kolathur,
Chennai - 600099. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent proceeding in R.C.No.709/2015/A1 dated 23.10.2018 and quash the same as illegal.

For Petitioner : Mr.M.Desingu

For Respondent : Mr.M.Hariharan
Additional Government Pleader (Tax)

O R D E R

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, this main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 23.10.2018.

3. The main ground of challenge against the impugned assessment order is in two-fold as follows:

(a) The Assessing Authority has erred in issuing the very notice of proposal itself by clubbing two assessment years viz., 2014-2015 and 2015-2016. Consequently, a single assessment order passed, impugned in this writ petition, clubbing both the assessment years, cannot be sustained.

(b) In any event, the request made by the petitioner through the reply to the notice of proposal for affording an opportunity of personal hearing was not considered and given. Thus, the impugned order also violates the principles of natural justice.

4. The learned counsel appearing for the petitioner after reiterating the above contentions submitted that the impugned order is liable to be set aside.

5. The learned Additional Government Pleader fairly submitted that the assessment proceedings cannot be made, by clubbing both the assessment years, by passing a single assessment order. He has also submitted that the Assessing Officer failed to give an opportunity of personal hearing to the petitioner as well.

6. Heard both sides.

7. Perusal of the notice of proposal dated 02.02.2016 clearly indicates that the same was made with certain proposal in respect of both the assessment years viz., 2014-2015 and 2015-2016. It is further seen that the Assessing Officer though issued the notice of proposal by clubbing both the assessment years, has also passed a single order of assessment for both the assessment years. Therefore, on this ground alone, the impugned order is liable to be set aside. Even otherwise, as it is admitted that an opportunity of personal hearing was not afforded to the petitioner before concluding the assessment, the impugned order is also liable to be interfered with on the ground of violation of principles of natural justice. However, this Court is not inclined to remit the matter back to the Assessing Officer to pass fresh order of assessment, after the stage of notice of proposal, since such notice of proposal itself was issued by clubbing both the assessment years, which cannot be done.

8. Therefore, this writ petition is allowed and the impugned order of assessment is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment from the stage of issuance of notice of proposal. Needless to say that the Assessing Officer should follow the principles of natural justice including by granting personal hearing. The whole exercise shall be done by the Assessing Officer from the stage of issuing notice to the stage of passing the order of

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

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sni/mk

To

The Assistant Commissioner (ST),
Sembium Assessment Circle,
No.15, 16, Malligai Avenue Extension,
100 Feet Road,
Kolathur,
Chennai - 600099.

+1 cc to Mr.M.Desingu, Advocate Sr.No.2590
+1 cc to The Special Government Pleader, Sr.No.3513

W.P.No.293 of 2019

SJ(CO)
CSL/04.02.2019