IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.571 of 2019
and
W.M.P.Nos.576 & 578 of 2019

M/s.Sree Andal and Company,
Represented by its Partner
Mr.G.N.Suresh,
No.34, Jones Street,
Chennai - 600 001.

...Petitioner

vs.

1. Commercial Tax Officer,
   Broadway Assessment Circle,
   19, ThambuChetty Street,
   Chennai - 600 001.

2. The Assistant Commissioner (ST),
   Broadway Assessment Circle,
   Chennai - 600 001.

3. The Branch Manager,
   Union Bank of India,
   Armerian Street,
   Chennai - 600 001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent and quash the impugned order in TIN : 33910010428/2013-2014 dated 25.05.2018 with a direction to the first respondent to re-do the assessment based on the documentary evidences available with the petitioner by affording an opportunity of personal hearing.

For Petitioner : Mr.P.Rajkumar
For Respondents : Mr.M.Hariharan
Additional Government Pleader (Tax)
for R1 & R2

O R D E R

Mr.M.Hariharan, learned Additional Government Pleader (Tax) takes notice for the respondents. 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 25.05.2018 relevant to assessment year 2013-2014. It is mainly contended by the learned counsel for the petitioner that an opportunity of personal hearing was not given to the petitioner before concluding the assessment, more particularly, when the penalty has also been imposed by the Assessing Officer. Apart from raising such contention, the petitioner raised very many contentions on merits of the assessment, with which, this Court at this stage is not expressing any view for the simple reason that the petitioner has not replied to the notice of proposal.

3. Needless to say that the petitioner is not entitled to canvass the correctness or otherwise of the impugned order before this Court without filing any reply to the notice of proposal. But, at the same time, as it is seen that the Assessing Officer has imposed the penalty on the petitioner without affording an opportunity of personal hearing, this Court is inclined to remit the matter back to the Assessing Officer for re-doing the assessment after hearing the petitioner and considering their objection, however, subject to the following terms and conditions.

4. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer under the following terms and conditions:

a) The petitioner shall pay 15% of tax liability and furnish the reply to the notice of proposal within a period of two weeks from the date of receipt of a copy of this order.

b) On receipt of such payment of 15% tax liability and reply, the bank attachment made, shall be raised by the respondent and an opportunity of personal hearing shall be given to the petitioner.

c) On completion of such personal hearing, the Assessing Officer shall pass fresh orders of assessment on merits and in accordance with law within a period of six weeks thereafter.

It is made clear that this Court is not expressing any view on the merits of the assessment. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sni/mk

To

1. Commercial Tax Officer
   Broadway Assessment Circle
   19, ThambuChetty Street,
   Chennai - 600 001.

2. The Assistant Commissioner (ST)
   Broadway Assessment Circle,
   Chennai - 600 001.

3. The Branch Manager,
   Union Bank of India,
   Armerian Street, Chennai - 600 001.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.2103

+1cc to the Spl Government Pleader, S.R.No.3506

W.P.No.571 of 2019

NM(CO)
GSP(05/05/2019)