IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:18.01.2019

CORAM
THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

WP.Nos.1037, 1042, 1043, 1050, 1052 & 1058 of 2019
and
W.M.P.Nos.1162, 1167, 1169, 1176, 1179 & 1185 of 2019

M/s.Informatics
Rep. by its Proprietor
Sureshkumar Jain
No.73, Pantheon Road,
Chennai-600 008. ...Petitioner(in all WPs)

vs.

The State Tax Officer
Egmore Assessment Circle
No.88, Mayor Ramanathan Salai
Chennai-600 031. ...Respondent(in all WPs)

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writs of Certiorarified Mandamus to call for the records on the file of the respondent in TIN:33150441948/2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 dated 26.11.2018 and quash the same as illegal, contrary to the law and against the principles of natural justice and fair play and direct the respondent to accept and consider petitioner reply, reconciliation statement supported by documentary evidence.

For Petitioner : Mr.T.Pramodkumar Chopda
(in all Wps)

For Respondent : Mr.V.Haribabu
Additional Government Pleader
(in all WPs)

COMMON ORDER

Mr.V.Haribabu, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, these main 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 26.11.2018 passed in respect of assessment years 2009-2010 to 2014-2015.

3. Heard both sides.

4. In respect of the above assessment years, a notice of proposal was issued individually on 09.11.2017. It is seen that the petitioner immediately sent a reply on 27.11.2017 for all the assessment years by requesting the Assessing Officer to furnish specific invoice-wise/month-wise details of variation/unmatched transaction. In the very same reply, the petitioner also sought time till 31.12.2017 so as to enable them to furnish an appropriate reply along with necessary documentary evidence. However, a further notice dated 13.08.2018 was issued on the petitioner, calling upon them to file their objections within 15 days. In the very same notice, it was informed that the petitioner may avail the opportunity of personal hearing within 15 days time, within which, they have to file their reply. Thereafter, it is seen that the Assessing Officer sent a E-mail dated 24.09.2018 enclosing certain details. However, as the petitioner did not file any reply immediately, the Assessing Officer has chosen to pass the impugned orders on 26.11.2018. Now, it is contended before this Court that the petitioner sought to file their reply on 29.11.2018 with certain details based on the material documents collected by them, but the same was refused to be received by the Assessing Officer on the reason that the assessment orders were already passed.

5. It is contended on behalf of the petitioner that apart from the other issues involving meagre tax liability, the main issue involved in all these assessment years being the mis-match issue, the same ought to have been considered and decided by the Assessing Officer only by following the procedure/guidelines issued by this Court reported in JKM Graphics Solutions Vs. CTO, ([2017] 99 VST 343). It is further contended that even before the petitioner files their reply in pursuant to the E-mail dated 24.09.2018, the Assessing Officer has chosen to pass the impugned orders without providing sufficient opportunity of personal hearing to the petitioner.

6. On the other hand, the learned Additional Government Pleader contended that though the petitioner was given opportunity at three times, they have not utilized the same and therefore, they are not entitled to make the objections against the impugned orders.

7. There is no dispute to the fact that the major issue involved in all these assessment years is mis-match issue. It is seen that the petitioner through their reply dated 27.11.2017 sought certain details from the Assessing Officer viz., specific invoice-wise/month-wise details of variation/unmatched transaction. It is also seen that some of the details were furnished by the Assessing Officer through the E-mail dated 24.09.2018. However, the petitioner seems to have not filed any reply immediately and on the other hand, after collecting certain materials covering up almost 90% to 95% of the alleged

purchase omissions, sought to file their reply on 29.11.2018, by which time, the Assessing Officer has passed the impugned orders on 26.11.2018. Therefore, the petitioner is not entitled to seek for reconsidering the issue, as a matter of right, since they have failed to file their reply even after the receipt of E-mail dated 24.09.2018. However, as it is now stated before this Court that the petitioner has collected all the materials covering up almost 90% to 95% of the alleged purchase omissions and that they have also attempted to make such reply on 29.11.2018, which according to the petitioner was refused to be received by the Assessing Officer and above all, as the mis-match issue has to be dealt with & decided only in accordance with the procedures contemplated in JKM Graphics case, this Court is of the view that one more opportunity may be given to the petitioner to put forth their case before the Assessing Officer for reconsideration the issue once again, however, by putting the petitioner on some terms and conditions.

8. Accordingly, all these writ petitions are allowed and the impugned orders of assessment 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 the tax liability for each assessment year along with their reply within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such reply and 15% of the tax liability within the time stipulated supra, the Assessing Officer shall pass fresh order of assessment, after giving due opportunity of hearing to the petitioner and also by following the procedures/guidelines issued by this Court reported in JKM Graphics Solutions Vs. CTO, ([2017] 99 VST 343), while dealing with mis-match issue.

(c) Such exercise shall be done by the Assessing Officer within a period of eight weeks from the date of receipt of payment along with the reply.

It is made clear that this Court is not expressing any view on the merits of the assessment. It is also made clear that the above payment directed by this Court is without prejudice to the contentions of either parties. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The State Tax Officer
Egmore Assessment Circle
No.88, Mayor Ramanathan Salai
Chennai-600 031.

+1cc to the Government Pleader(Taxes), S.R.No.4291

W.P.No.1037,1042, 1043,
1050, 1052 & 1058 of 2019

AK(CO)

rrs 11/02/2019