IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.1462,1468 & 1469 of 2019
in
W.M.P.Nos.1626,1629 & 1630 of 2019

Tvl.Tyre Flex,
represented by its Proprietrix
Tmt.M.R.Aseena,
... Petitioner in all the W.Ps.

vs.

The State Tax Officer,
Gudalur Circle,
Gudalur. ... Respondent in all the W.Ps.

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the respondent in TIN: 33022581493/2014-15, TIN: 33022581493/2015-16 & TIN: 33022581493/2016-17 respectively dated 23.08.2018 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondents : Mrs.G.Dhana Madhri
Government Advocate

COMMON ORDER

These three Writ Petitions are filed challenging the order of assessment dated 23.08.2018 passed in respect of assessment years 2014-15, 2015-16 and 2016-17.

2. Mrs.G.Dhana Madhri, learned Government Advocate takes notice for the respondents. By consent of the parties, the main writ petitions are taken up for final disposal at the admission stage itself.

3. The petitioner/assessee has chosen to file these writ petitions by challenging the impugned assessment orders, mainly by raising a ground that the Assessing Officer, while passing the impugned orders, failed to follow the procedure/guidelines

issued by this Court in JKM Graphics case reported in 2017(19) VST 343, since the only issue involved before the Assessing Officer is the mismatch issue.

4. Mr.R.Senniappan, learned counsel for the petitioner, thus, contended that the impugned orders, having been passed without following the procedures/ guidelines issued in JKM Graphics case reported in 2017(19) VST 343 cannot be sustained in the eye of law.

5. On the other hand, the learned Government Advocate for the respondents contended that the petitioner is not entitled to raise the objection against the assessment order when they have chosen not to file any reply to the notice of proposal.

6. Heard both sides.

7. These three writ petitions are filed challenging the assessment orders passed in respect of the above three assessment years. It is not in dispute that the issue before the Assessing Officer in respect of all the three assessment years is the mismatch issue. It is also not in dispute that before passing the order of assessment, the petitioner was issued with notice of proposal dated 11.08.2017. It is an admitted fact that the petitioner, having received the said notice has, however, failed to file any reply. Needless to state that it is the duty of the assessee to furnish reply to the notice of proposal and raise all the objections before the Assessing Officer, including the contentions as raised in these writ petitions. But the assessee failed to do so. However, as it is seen that the assessment orders were passed not in line with the directions issued by this Court in JKM Graphics case, more particularly, when the Assessing Officer has dealt with the mismatch issue, this Court is inclined to interfere with the impugned orders and remit the matter back to the Assessing Officer, for redoing the assessment afresh, however, by putting the petitioner on some terms, since they admittedly failed to file any report to the notice of proposal.

8. Accordingly, these writ petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the Assessing Officer for redoing the assessment on the following terms and conditions.

a) The petitioner shall pay 15% of the tax liability for each assessment year along with their 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 the reply, the Assessing Officer shall pass a fresh order of assessment, after following the procedure/guidelines issued in JKM Graphics case including by providing an opportunity of personal hearing.

c) The whole exercise shall be done by he Assessing Officer within a period of twelve weeks from the date of receipt of reply and tax payment from the petitioner as stated supra.

It is made clear that this Court is not expressing any view on the merits of the assessment as it is for the Assessing Officer to consider the same afresh and pass orders accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

vsi/sni
To

The State Tax Officer,
Gudalur Circle,
Gudalur.

+1 CC to Mr.R.Senniappan, Advocate sr 4686.
+1 CC to Spl. Govt. Pleader sr 5094.

W.P.Nos.1462,1468 & 1469 of 2019

SSV(CO)
SP(14/02/2019)