IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.11.2019

CORAM

THE HONOURNABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.2748, 2752, 2756 & 2759 of 2019
and
W.M.P.No.3011, 3013, 3015, 3016, 3019, 3020, 3024 & 3026 of 2019

M.M.Pharma
represented by tis Partner Mr.R.Mohan
aged 42 years
No.16, Pattunoolkara Street,
Ariyalur - 621 704. ...Petitioner in all the W.Ps.

Vs.

The Assistant Commissioner (ST)
Ariyalur Assessment Circle,
Commercial Taxes Buildings,
Ariyalur. ...Respondent in all the W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records of the respondent in TIN 33826283543/2013-2014; TIN 33826283543/2014-2015 TIN 33826283543/2015-2016 & TIN 33826283543/2016-2017 dated 31/12/2018 and quash the order passed therein.

For Petitioner : Mr.M.Ravi

For Respondent : Mr.V.Haribabu,
Additional Government Pleader (T)

C O M M O N O R D E R

These writ petitions are filed challenging the orders of assessment dated 31.12.2018 passed relevant to the assessment years 2013-2014 to 2016-2017.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent.

3. The objections raised by the petitioner against the impugned orders are in two fold as follows:

(a) Insofar as the orders of assessment passed in respect of the assessment years 2013-14 and 2014-15 are concerned, they relate to the alleged transaction taken place from 07.01.2014 to 27.07.2014, while in fact, the petitioner Firm itself came into existence only on 05.08.2014 and got the registration under the Respondent Department only on 11.02.2015. Therefore, it is contended that the assessment made in respect of those two assessment years are not relatable to the petitioner.

(b) It is contended that in respect of the orders passed relevant to the other assessment years, opportunity of personal hearing was not given to the petitioner, even though the Assessing Officer has chosen to impose penalty.

4. Learned counsel for the petitioner, after reiterating the above contentions submitted that the Assessing Officer wrongly referred to certain transactions made from January 2014 to July 2014 without considering the fact that the petitioner Firm was not at all in existence at that relevant point of time. He further contended that no assessment whatsoever was made in respect of those two assessment years as the petitioner Firm was not in existence. Therefore, the question of revising the assessment under the impugned orders does not arise in respect of those two assessment years. In any event, it is the further contention of the learned counsel that had an opportunity of personal hearing is given, the petitioner would have satisfied the authority as to how the conclusion arrived in the impugned order is erroneous.

5. On the other hand, the learned Additional Government Pleader submitted that the Assessing Officer specifically observed in the order of assessment made for the assessment year 2013-14 that the petitioner had effected payment to the tune of Rs.44,29,740/- on 07.01.2014 and failed to deduct TDS at 5%. Likewise, he pointed out that such payment said to have been made by the petitioner were also in respect of other transactions made between 10.04.2014 to 27.04.2014. However, the learned Additional Government Pleader has not disputed the fact with regard to the claim made by the petitioner regarding personal hearing.

6. As stated supra, the petitioner challenged the assessment orders in respect of first two assessment years on the reason that they were not in existence at the relevant point of time. This factual aspect cannot be considered and decided in this writ petition as it has to be agitated only before the fact finding authority, namely Assessing Officer or Appellate Authority. However, since this Court is inclined to remit the matter back to the Assessing Officer only on the ground that the petitioner was not provided with an opportunity of personal hearing, it is open to the petitioner to raise the above

contentions in respect of first two assessment years as well afresh by placing material documents, if any, so as to enable the Assessing Officer to pass fresh order of assessment.

7. Accordingly, these writ petitions are allowed and the impugned orders set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment once again on merits and in accordance with law after providing an opportunity of hearing to the petitioner. Such exercise shall be done by the Assessing Officer within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST)
Ariyalur Assessment Circle,
Commercial Taxes Buildings,
Ariyalur.

+1cc to the Government Pleader sr.97781
+1cc to Mr.M.Ravi, Advocate Sr.97169

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srg 25/11/2019