IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 22.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.9888 & 9889 of 2008
and
M.P.Nos. 1 & 1 of 2008

Tvl.Hotel Yercaud International,
Rep. by S.K.Ganesan,
Director,
Ladies Seat Road,
Jerina Nagar,
Yercaud. ...Petitioner in both WPs

Vs

The Commercial Tax Officer,
Salem (Rural) Assessment Circle,
Salem. ...Respondent in both WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the respondent in L.T.H.04183/04-05 and L.T.H.04183/05-06 dated 25.02.2008 and quash the same.

For Petitioner : Mr.R.Senniappan
(in both WPs)

For Respondent : Mr.V.Haribabu, AGP
(in both WPs)

C O M M O N O R D E R

When the petitioner had challenged the levy of luxury tax in the assessment orders before the Appellate Authority, it was held that if the petitioners have provided accommodation to various persons at different intervals and the rent has been collected separately per bed and the rent is below Rs.200/- per bed, per day, then such collections are not liable for payment of luxury tax. With this observation, the Appellate Authority had found that there were no details in the assessment files in this respect and therefore, had set aside the assessment orders levying luxury tax on the rent received from the dormitory, as well as the penalty and remitted back the matter for fresh consideration by the Assessing Officer.

2. The learned counsel for the petitioner submitted that pursuant to the remand, a summon was issued to them calling for production of relevant records and while producing the records before the Assessing Officer on 12.02.2008, they had also given detailed objections on the same date. The learned counsel would further submit that while the present impugned assessment orders had been passed, neither was any opportunity extended to them, nor was their objections considered in the impugned orders.

3. The learned Additional Government Pleader appearing for the respondent, on the other hand, would submit that the impugned orders also state that the objections were carefully verified and that the Assessing Officer has given his reasons and had passed orders overruling the objections.

4. A perusal of the impugned orders does not reveal the consideration of the objections raised by the petitioner in his reply to the notice dated 14.01.2008. The impugned orders also does not reveal that an opportunity to the petitioner was given before passing the impugned assessment orders. As such, it can be held that the order itself is in violation of the principles of natural justice and therefore, requires to be re-considered once again.

5. In the light of the above observations, the impugned orders dated 25.02.2008, for the assessment years 2004-05 and 2005-06, are set aside and the matters are remanded back to the respondent for fresh consideration, after giving due opportunity of personal hearing to the petitioner. The petitioner is also at liberty to file additional objections, within a period of 15 days from the date of receipt of a copy of this order. The respondent herein shall endeavour to complete the assessment proceedings and pass final orders, as expeditiously as possible, in any event, within a period of 3 months from the date of receipt of a copy of this order.

6. Accordingly, both the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer,
Salem (Rural) Assessment Circle,
Salem.

+1 CC to The Spl. Govt. Pleader(T) sr 72898
+1 CC to Mr.R.Senniappan, Advocate sr 72179.

W.P.Nos.9888 & 9889 of 2008
and
M.P.Nos. 1 & 1 of 2008

SJ(CO)
SP(26/09/2019)