IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.15071 of 2018
and
WMP.Nos.17835 & 17836 of 2018

Spencer and Company Ltd.,
Represented by
Taj Connemara
A unit of the Indian Hotels Company Ltd.,
Rep. by its General Manager Mr.Ahmar Siddiqui
Binny Road, Chennai-600 002. ...Petitioner

vs.

1. The Commissioner
   Greater Chennai Corporation
   Ripon Buildings
   Chennai-600 003.

2. The Revenue Officer Zone-09
   Corporation of Chennai
   Ripon Buildings, Chennai-3.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents in the impugned assessment order/Notice No.10 dated 15.05.2018 read with Order No.Z.O.IX.R.D.C.No.0102/2018 dated 28.04.2018 passed by the first respondent and quash the same and consequently, direct the respondents to forbear from determining the annual letting value and the half yearly tax on the basis of revenue/income and/or room tariff.

For Petitioner : Mr.R.Subramanian
For Respondents : Mrs.Karthikaa Ashok
standing counsel

O R D E R

This writ petition is filed challenging the assessment order/Notice No.10 dated 15.05.2018 read with Order No.Z.O.IX.R.D.C.No.0102/2018 dated 28.04.2018 passed by the first respondent, wherein and whereby the respondent/Corporation fixed a sum of Rs.89,47,580/- as half yearly tax to the petitioner with effect from 1/2009-2010. In other words, the enhancement was made from Rs.6,87,938/- to Rs.89,47,580/-.

2. The learned counsel for the petitioner contended that this writ petition is maintainable, even though an appellate remedy is available to the petitioner against the impugned order, since the impugned order was passed without considering the objections raised by the petitioner, as directed by this Court in the previous round in W.P.Nos.7268/2012 and 18638/2017 dated 14.11.2017. Therefore, he contended that the impugned order is purely an outcome of non-application of mind and thus, the same is liable to be interfered with by exercising the jurisdiction of this Court under Article 226 of the Constitution of India. He further submitted that even on merits, the respondent/Corporation is not justified in arriving at the calculation, as if the rooms are booked for all 365 days without verifying the relevant documents, especially, when the Government Order in G.O.Ms.No.856 Rural Development and Local Administration Department dated 19.04.1972, relied in the impugned order, specifically contemplates that the annual value has to be assessed by taking rental value for lodge portions if all the rooms are occupied throughout the year. Therefore, he wanted to emphasis that it is the duty of the respondent/Corporation to specifically ascertain and calculate as to whether all rooms were occupied throughout the year.

3. On the other hand, the learned standing counsel appearing for the respondent/Corporation submitted that the impugned order was passed by giving reasons, more particularly, by following the guidelines issued in G.O.Ms.No.856 dated 19.04.1972.

4. Heard both sides.

5. There is no dispute to the fact that the very same writ petitioner challenged the previous final assessment order dated 24.01.2012 before this Court in W.P.Nos.7268/2012 and 18368/2017 along with consequential disconnection notices. The said writ petitions were disposed of on 14.11.2017 by observing at Paragraph Nos. 5 & 6 as follows:

> "5. I find from the working sheet that the respondent/Corporation has taken into consideration, the category of rooms, number of rooms, and total rent per day. Further, the tenant usage area, owner usage area and rate for other areas have been taken into consideration. That apart, the size of the rooms has been calculated for arriving at the total area, which, according to the calculation, is 22,595 square feet and the tenant area is 610 square feet. Though the above calculations have been mentioned,

there is no clear indication, as to how, the monthly rental value has been calculated. I find certain multiplication details in the working sheet, but the same does not give a clear picture as to how the half yearly tax has been fixed as Rs.89,47,774/-, as contained in the working sheet whereas in the final assessment notice, half yearly property tax has been determined as Rs.89,47,580.00/-. In order to afford an opportunity to the respondent/Corporation to establish before this Court that there was a speaking order passed prior to issuing a demand, the Court directed the learned Additional Advocate General for the Corporation to produce the files. The document contained in the files does not lend any support to the case of the respondent/Corporation and what has been given in the typed set of documents filed by the respondent/Corporation in this writ petition is what that is contained in the file. Thus, I find that after the objections, which were given by the erstwhile writ petitioner, there is no speaking order passed before issuing the impugned final assessment notice. Thus, this Court is fully satisfied that there has been no due consideration of the objections and there is no speaking order, which is enough to hold that the impugned final assessment notice has been passed in violation of principles of natural justice.

6. For the above reasons, W.P.No.7268 of 2012, is allowed, the impugned final assessment notice is set aside and the matter is remanded to the respondent for fresh consideration. The petitioner viz., Spencer and Company Limited represented by Taj Connemara shall file their fresh objections to the provisional notice dated 29.03.2011, within a period of 30 days from the date of receipt of a copy of this order. On receipt of the objections, it is open to the respondent to conduct an inspection of the petitioner's building if they so desire. In the event, they propose to conduct an inspection, it shall be after prior notice to the petitioner. After the inspection is conducted, the first respondent is directed to afford an opportunity of personal hearing to the authorized representative of the petitioner and pass a speaking order with reasons and then proceed to determine the half yearly property tax for the petitioner's property. Pursuant to the orders passed by this Court, without

> prejudice to the rights of the parties, Rs.20,00,000/- has been paid by the petitioner as half yearly property tax with effect from I/2009-10. This payment shall abide by the final orders to be passed in terms of the above directions."

6. Perusal of the above said order passed by this Court would show that while setting aside the earlier final assessment notice and remitting the matter back to the respondent/Corporation for fresh consideration, this Court has directed the petitioner to file fresh objections to the provisional notice dated 29.03.2011 and further directed the respondent/Corporation to conduct an inspection of the petitioner's building, if they so desire and after inspection, shall afford an opportunity of personal hearing to the petitioner and thereafter to pass a speaking order with reasons.

7. There is no dispute to the fact that in pursuant to the said order, the petitioner has filed their objections on 16.12.2017 and the same was received by the respondent/Corporation on 21.12.2017. Perusal of the said objections would show that the petitioner has raised certain points which according to them, if considered, would not have resulted in passing the impugned order. The respondent/Corporation in the impugned order referred to the receipt of such objections in the reference column. However, perusal of the impugned order does not indicate anywhere as to how those objections raised by the petitioner were dealt with by the first respondent while passing the impugned order. No doubt, that there is an working sheet provided in the impugned order. The said working sheet is disputed by the petitioner by placing reliance on G.O.Ms.No.856 dated 19.04.1972, more particularly, by harping with the term "if all rooms are occupied throughout the year".

8. This Court at this stage is not expressing any view on the merits of the contentions raised by the petitioner, since it is for the first respondent to consider and decide. However, as I find that no such consideration is apparent on the face of the impugned order, I am of the view that the first respondent has to redo the assessment once again by specifically considering the objections raised by the petitioner dated 16.12.2017 and pass a speaking order by dealing with those objections. Since this matter is being prolonged and more particularly, when the assessment is sought to be revised with effect from 1/2009-2010 and the demand is also heavy, it is better for the respondent/Corporation to pass a speaking order by meeting the points raised by the petitioner and give a finding thereafter without any further delay.

9. Accordingly, without expressing any view on the merits of the matter and only in view of the fact that the impugned order was passed without considering the objections raised by the petitioner as directed by this Court in W.P.Nos.7268/2012 and 18368/2017 dated 14.11.2017, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the first respondent for redoing the assessment after considering the objections already filed by the petitioner on 16.12.2017. The first respondent shall pass a speaking order accordingly, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. It is open to the respondent/Corporation to seek for necessary documents from the petitioner for making an effective assessment based on the objections raised by the petitioner. If any such documents are sought for by the respondent/Corporation, the petitioner shall provide the same so as to enable the respondent/Corporation to pass the order within the time stipulated by this Court. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

1. The Commissioner
Greater Chennai Corporation
Ripon Buildings
Chennai-600 003.

2. The Revenue Officer Zone-09
Corporation of Chennai
Ripon Buildings, Chennai-3.

+2cc to Mr.r.Subramanian, Advocate sr.83392
+1cc to Mrs.Karthikaa Ashok, Advocate sr.83558

W.P.No.15071 of 2018

vba(co)
nr 03/10/2019