IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.6416 of 2014
W.M.P.No.1 of 2014

M/s.Abhilasha Jewellers Pvt.Ltd.
Rep.by its Director
No.144, Purasawakkam High Road
Kellys, Chennai 600010 .. Petitioner

--Vs--

The Assistant Commissioner (CT) FAC
Ayanavaram Assessment Circle
Kuralagam Annexe,III Floor
Chennai 600108 ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari, calling for the records on the files of the respondent in TIN:33551001993/2011-12 dated 22.01.2014 and quash the same as illegal beyond the jurisdiction and authority of law.

For Petitioner : Mr.Prithvi Chopda
For Respondents : Mr.Mohammed Shaffiq,
Special Government Pleader

O R D E R

One of the main ground raised by the petitioner, challenging the assessment order passed for the year 2012-13, is that the 'best judgment' assessment has been made arbitrarily and irrationally, since the petitioner's objections were not considered by the Assessing Officer. By relying on the objections raised by the petitioner dated 23.01.2013 and the statements filed before the Assessing Officer on 25.04.2013, the learned counsel for the petitioner would submit that he had raised several grounds substantiating that the 'best judgment' assessment was erroneous. Learned counsel would also submit that by applying the ratio laid down in the decision of Commissioner of Sales Tax, Madhya Pradesh

Vs. H.M.Esufali H.M.Abdulali [32 STC 77 (SC)], the Assessing Officer cannot irrationally pass assessment orders without considering his objections.

2. The learned Special Government Pleader, on the other hand, would oppose such a submission stating that there was a duty cast on the assessee to place all the facts truthfully before the assessing authority and when it is revealed that from his own statement, at the time of inspection, with regard to the stock difference, they cannot go back on such a statement and as such, the order of the Assessing officer cannot be formed fault with.

3. The learned counsel for the petitioner would rely on the decision of the Apex Court in H.M.Esufali H.M.Abdulali (supra) and state that the estimate done on 'best judgment' assessment, though may be an over-estimate or an under-estimate, cannot be a ground for interfering with, as held by the Supreme Court in the said decision.

4. I have given careful consideration to the submissions made by the respective counsels.

5. As rightly pointed out by the learned counsel for the petitioner, pursuant to the notice dated 07.01.2013, the petitioner herein had raised several grounds, substantiating as well as questioning the petitioners' proposal to revise the assessment for the year 2011-12. In the sworn statement dated 25.04.2013 also, the petitioner had reiterated such grounds. A perusal of the impugned order, however, revels that such grounds have not been given due consideration, except to the fact that reliance has been placed on the decision in H.M.Esufali H.M.Abdulali (supra) and thereby justified the 'best judgment' assessment.

6. In my view, such non-consideration may amount to a conclusion which is not on a rational basis. The decision relied on by the Assessing Officer in H.M.Esufali H. M. Abdulali (supra), the Supreme Court had held that in

estimating any escaped turn over, it is inevitable that there is some guess-work. The assessing officer while making the 'best judgment' assessment, no doubt, should arrive at its conclusion without any bias and on rational basis. While that being so, the non-consideration of certain relevant objections of the petitioner may be considered to be an irrational conclusion and thereby, this Court is of the view that the petitioner may be given an opportunity to put forth his objections, once again, before the Assessing Officer.

7. At this juncture, the learned counsel for the petitioner would submit that the entire proceedings arose from the inspection

conducted for the assessment year 2012-13 and that when the petitioner had challenged assessment order, the assessment order came to be set aside by the appellate authority on 05.05.2014 and confirmed by the Tribunal on 01.01.2015, which has become final. If the petitioner is of the view that the setting aside of the assessment order for the year 2012-13 has any relevance to the present proceedings, it is open to him to raise objections by way of additional grounds before the Assessing Officer.

8. In the light of the above observation, the impugned order dated 22.01.2014 is set aside and the matter is remanded back to the respondent for reconsideration by way of fresh proceedings, wherein, the petitioner should be granted due opportunity of personal hearing and also permitted to produce additional documents, which he may rely upon. On receipt of such objections, the Assessing Officer shall pass fresh orders in accordance with law by duly considering all the objections raised by the petitioner herein, as expeditiously as possible. With these terms, the writ petition stands disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

ska
To

The Assistant Commissioner (CT) FAC
Ayanavaram Assessment Circle
Kuralagam Annexe,III Floor
Chennai 600108

+1cc to Mr.T.Pramod kumar , Advocate SR.No. 63166
+1 cc to Spl Government Pleader Sr.No. 63954

W.P.No.6416 of 2014
W.M.P.No.1 of 2014

gp (CO)
A.SK(09/09/2019)