IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.29294 of 2019
and
W.M.P.No.29092 of 2019

Tvl.Sri Lakshmi Traders
Represented by its Proprietor
No.44, Sannathi Street,
Thirukoilur ...Petitioner

vs.

1. The Appellate Deputy Commissioner (CT)
Cuddalore.

2. The Commercial Tax Officer
Tirukoilur. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, calling for the records of the respondent vide his impugned order of assessment in TIN.33904761375/2010-11 dated 31.12.2018 and quash the same as being arbitrary, illegal and unconstitutional and as having been passed in violation of principles of natural justice and to further direct the 2nd respondent to redo the assessment by following the guidelines/directions laid down in W.P.No.105 of 2016 in the case of M/s.JKM Graphics Solutions Private Limited, Chennai-112 Vs. The Commercial Tax Officer, Vepery Assessment Circle, Chennai.

For Petitioner : Mr.N.Chandrasekaran

For Respondents: Mr.M.Hariharan
Additional Government Pleader



O R D E R

The petitioner is aggrieved against the order of assessment dated 31.12.2018 relevant to the assessment year 2010-2011.

2. Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondents. By consent of both the parties, this writ petition is taken up for final disposal at the admission stage itself.

3. Heard both sides.

4. The main ground on which, the present writ petition filed before this Court, is that the Assessing Officer has passed the impugned order without granting time to the petitioner to furnish necessary documents. It is further contended that the present impugned order was passed in pursuant to the remand order dated 18.04.2017 made by the first Appellate Authority and therefore, the Assessing Officer, should have given sufficient opportunity to the petitioner to put forth the materials in support of their claim.

5. The learned counsel appearing for the petitioner contended that the petitioner through the letter dated 12.01.2018, though sought time to furnish documents, the Assessing Officer without informing the petitioner as to whether such request was considered or not, has proceeded to pass the impugned order. Therefore, he contended that, if one more opportunity is given, the petitioner would prove their case before the Assessing Officer by placing all the material documents.

6. Per contra, the learned Additional Government Pleader appearing for the respondents, after inviting this Court's attention to the order impugned, submitted that the petitioner failed to produce any documents before the Assessing Officer even though sufficient time is granted, also by issuing notice dated 05.06.2018 pursuant to the letter of the petitioner dated 12.01.2018.

7. Upon hearing both sides and perusing the materials placed before this Court, it is evident that the issue involved before the Assessing Officer is mis-match issue and it is needless to say that such issue has to be considered and decided by the Assessing Officer by following the procedures/guidelines issued by this Court in JKM Graphics Solutions Vs. CTO, ([2017] 99 VST 343). But at the same time, the conduct of the petitioner in not placing the materials before the Assessing Officer immediately or atleast after receipt of the notice dated 05.06.2018, cannot be brushed aside as irrelevant. Therefore, though this Court is inclined to remit the matter back to the Assessing Officer to give one more opportunity to the petitioner to place all the materials so as to enable him to complete the assessment by following the procedures/guidelines issued in JKM Graphics case, this Court is of the view that the petitioner must be put on some terms for doing such exercise.

8. Accordingly, this Writ Petition is allowed and the impugned order is set aside. The matter is remitted back to the Assessing Officer to redo the assessment by following the procedures/guidelines laid down in JKM Graphics case, however, on a condition that the petitioner shall pay 25% of the tax in

arrears viz., out of Rs.6,54,412/-, along with the reply and the material documents before the Assessing Officer, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such payment and reply with material documents, the Assessing Officer shall consider the same and pass fresh order of assessment on merits and in accordance with law, as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Appellate Deputy Commissioner (CT)
   Cuddalore.

2. The Commercial Tax Officer
   Tirukoilur.

+1cc to Mr.M.F.Shabana, Advocate, S.R.No. 86405
+1cc to the Special Government Pleader(Taxes), S.R.No.86607.

W.P.No.29294 of 2019

PPA(CO)
GN(19/11/2019)