THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

W.P.No.16729 OF 2019

ORDER:
(*Per* Sanjay Kumar, J)

1 The petitioner is aggrieved by the *suo motu* revisionary order dated 05.01.2018 passed by the Deputy Commissioner (CT), Nalgonda Division, State of Telangana, the first respondent herein.

2 The petitioner is a registered dealer and assessee on the rolls of the Commercial Tax Officer, Gadwal. He trades in Castor seeds, Paddy, Redgram, Ground Nut, Bazra, Maize etc. He suffered an assessment order with regard to the business transactions during the period April, 2008 - October, 2013.

3 While so, the first respondent opined that the assessment was prejudicial to the interests of the Revenue and initiated *suo motu* revisionary proceedings under Show Cause Notice dated 08.12.2017. Thereunder he called upon the petitioner to file his objections along with documentary evidence in response to the Revision Show Cause Notice. After receipt of the final Show Cause Notice, dated 22.12.2017, the petitioner submitted his response, vide letter dated 28.12.2017, enclosing copies of the tax invoices and his ledger. He specifically prayed that the Revision Show Cause Notice should be cancelled. However, the revisionary authority recorded in the impugned revisionary order dated 05.01.2018 that the petitioner did not file any objections against the proposed tax and accordingly construed that he did not have any objection to the proposal in the Revision Show Cause Notice. It is on this basis that the revisionary authority confirmed the proposed levy of tax to the tune of Rs.1,23,852/-. Aggrieved by the said order, the petitioner is before this Court by way of this Writ Petition.

4 Though there is delay on the part of the petitioner in assailing the aforestated order dated 05.01.2018, we find from the record that the petitioner's

mother was unwell and a certificate is also placed on record in proof of her treatment in a private hospital at Gadwal. Further, as we are more concerned with the exercise of revisionary power by the authority in the larger context, we are not inclined to non-suit the petitioner on the ground of delay. We may note that when *suo motu* revisionary power is sought to be exercised, the responsibility rests upon such authority to adhere to the due procedure as such an exercise is being undertaken on the ground that the assessment is prejudicial to the interests of the Revenue and the Assessing Authority's order is sought to be set aside or modified *suo motu.* In such situation, the revisionary authority necessarily has to deal with the objections raised by the assessee in response to the Revision Show Cause Notice and explain as to how it sustains its findings if it holds against the assessee.

5 In the case on hand, the facts demonstrate that the petitioner sought cancellation of the Revision Show Cause Notice and also filed copies of documents. However, the revisionary order dated 05.01.2018 manifests that the revisionary authority did not choose to either consider the said documents or deal with the prayer of the petitioner to cancel the Revision Show Cause Notice. Surprisingly, the revisionary authority noted that the petitioner did not file any objections which is not a statement that is borne out by the petitioner's reply dated 28.12.2018 wherein he specifically requested cancellation of the Revision Show Cause Notice. The exercise of revisionary power by the first respondent therefore falls far below the expected standard. On this short ground, we set aside the revisionary order dated 05.01.2018, presently under challenge. The said Revision shall stand restored to the file of the first respondent for consideration afresh on merits and in accordance with law, duly taking into account the reply dated 28.12.2018 filed by the petitioner and the documents enclosed therewith. The revisionary authority shall also afford an opportunity of hearing to the petitioner before passing final orders in the Revision.

6 This Writ Petition is accordingly allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J.

P. KESHAVA RAO, J.

Date: 6th August, 2019.
Kvsn