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W.P.(MD)No.18706 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.18706 of 2023

and

W.M.P.(MD)Nos.15526 & 15527 of 2023

RM.Chellappan
S/o.Ramasamy,
No.153, Chinnakanmai,
CMR Road, Madurai-9.

... Petitioner

vs.

The Madurai Corporation
Rep.by its Assistant Commissioner
Zone-IV, Madurai.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, call for the records of the Impugned confiscation notice affixed by the respondent in



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W.P.(MD)No.18706 of 2023

respect of Assessment No.115/045/900893 dated 17.07.2023 and quash the same and consequently directing the respondent to re-assess the property under Domestic category of the subject property situated in Door No.153, Chinnakanmoi street, CMR Road, Madurai-9.

For Petitioner :Mr.RM.Arun Swaminathan
For respondent :Mr.K.Sivabalan
Standing Counsel

ORDER

This writ petition is filed for *Writ of Certiorarified Mandamus*, to quash the Impugned confiscation notice affixed by the respondent in respect of Assessment No.115/045/900893, dated 17.07.2023 with a consequential direction to the respondent to re-assess the property.



W.P.(MD)No.18706 of 2023

WEB COPY

2. By consent of both the parties, this writ petition is taken up for final disposal. Heard Mr.RM.Arun Swaminathan, the Learned Counsel appearing for the petitioner and Mr.K.Sivabalan, the Standing Counsel appearing for the respondent and perused the material documents available on record.

3. The contention of the petitioner is that he is owner of the property which the petitioner acquired through Settlement Deed, dated 03.03.2008. The Settlement Deed states that the land is a residential property to the extent of 2909.9 square feet. According to the petitioner, he is only having a small Hut and the other portion of the property is vacant site. The petitioner is running a 'Waste Paper Bundling' business. He has paid a sum of Rs.5887/- as property tax, in the year 2016-2017



W.P.(MD)No.18706 of 2023

WEB COPY

for first half year. For the year 2018-2019, the respondents have suddenly increased the property tax to Rs.11,774/-. The learned counsel appearing for the petitioner submitted that the petitioner has paid excess tax and there is no arrears.

4. The contention of the petitioner is that the total extent of land is 2909.9 square feet, but only in the small portion of the land the petitioner has put up hut and the remaining land is only vacant site. The respondent is empowered to assess the tax only for the building portion and the respondent has imposed tax without conducting survey. The contention of the respondent is that the petitioner is having alternative remedy before the Taxation Appeals Committee. Since the petitioner is having only hut in small portion and remaining is only vacant site, then the respondents are bound to survey the land and thereafter impose tax



WEB COPY



W.P.(MD)No.18706 of 2023

for the building alone. For the remaining vacant land, the respondent shall consider to impose tax under vacant site tax.

5. Therefore, this Court is passing the following order:

i. Therefore, the impugned demand notice, dated 17.07.2023 is hereby quashed

ii. The respondent is directed to conduct survey of the land in the presence of the petitioner.

iii. Thereafter tax shall be levied for the building separately.

iii. The respondent shall impose tax for the vacant land separately.

iv. Until the above said process is completed, the petitioner is directed to pay the undisputed amount of Rs.5,887/- for the assessment years.

v. The respondent shall consider the petitioner's plea in accordance with the new Rules i.e., applicable to the petitioner's land and building.



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W.P.(MD)No.18706 of 2023

6. Accordingly, this Writ Petition is allowed. No Costs.

Consequently, W.M.P(MD)No.15526 of 2023 is allowed and
W.M.P(MD)o.15527 of 2023 is closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No

02.08.2023

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W.P.(MD)No.18706 of 2023

To

The Officer,
Office of the Assistant Commissioner,
Income Tax Department,
INT TAXN CIRCLE, MDU,
Madurai.



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W.P.(MD)No.18706 of 2023

S.SRIMATHY, J

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W.P.(MD)No.18706 of 2023

02.08.2023