IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.33171 of 2024
and
W.M.P. Nos.35919, 35922 and 35926 of 2024

Apurhupam Constructions Promoters Pvt. Ltd.
No.A-12, Archana Castle, 4/23,
St.Patrick Church Road,
St.Thomas Mount,
Chennai-600 016,
Represented by its Director,
Vimala Chandrasekar ... Petitioner

Vs.

1.Commissioner of Income Tax (Appeal),
Chennai-19, No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

2.Deputy Commissioner of Income Tax,
Central Circle-2(3),
Investigation Wing, Room No.126,
1st Floor, No.46, Mahatma Gandhi Road,
Chennai-600 034. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records contained in order dated 16.07.2024 bearing ITBA/APL/S/250/2024-25/1066738376(1) passed by the 1st Respondent for AY 2017-18 in PAN:AAMCA1387R and quash the same as arbitrary, illegal and unjust.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondents : Mr.A.N.R.Jayaprathap
Junior Standing Counsel

ORDER

The writ petition is filed challenging the impugned order dated 16.07.2024 passed by the First Appellate Authority on the limited ground that the impugned order has been passed only on the basis of the written submissions filed by the petitioner without affording the petitioner an opportunity of personal hearing which according to the petitioner is a mandate contained in Section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). It may be relevant to extract Section 250 of the Act, which reads as under:

> *"250. Procedure in appeal.—*
>
> *(1) The Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the [Assessing Officer] against whose order the appeal is preferred.*
>
> *(2) The following shall have the right to be heard at the hearing of the appeal—*
>
> *(a) the appellant, either in person or by an authorised representative;*
>
> *(b) the Assessing Officer, either in person or by a representative.*
>
> *(3) The Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.*

(4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the [Assessing Officer] to make further inquiry and report the result of the same to the Commissioner (Appeals).

(5) The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

[(6A) In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A.

(7) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the assessee and to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner."

A bare reading of the above portions would suggest that the petitioner shall have the right to be heard.

2. To a pointed question to the learned Standing Counsel for the Respondents as to whether any personal hearing was granted, the learned counsel was not able to point out that opportunity of personal hearing was granted to the petitioner.

3. In view thereof, this Court is inclined to set aside the impugned order dated 16.07.2024 with a direction to the Appellate Authority to rehear the matter after affording the petitioner a reasonable opportunity of hearing in accordance with law.

4. The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

06.11.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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To:
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Nungambakkam, Chennai-600 034.

2.Deputy Commissioner of Income Tax,
Central Circle-2(3),
Investigation Wing, Room No.126,
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MOHAMMED SHAFFIQ, J.

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