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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	DELIVERED ON
14.11.2024	19.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) Nos.25501 & 25502 of 2024
and W.M.P.(MD).No.21636, 21697, 21761 & 2174 of 2024

M/s.Bee Cee Fireworks Industries
Rep., by its Managing Partner,
Mr.K.Jeyakumar
Having place of business at
7B, Chairman A.Shanmugam Road,
Sivakasi, Sivakasi H.O.,
Virudhunagar, Tamil Nadu – 626 123. ... Petitioner in both W.Ps

/vs./

1.The Principal Chief Commissioner of Income Tax
Member Secretary,
Local Committee on High Pitched Scrutiny Assessment,
121, Mahatma Gandhi Road,
Chennai – 600 034.

2.The Assessment Unit,
Income Tax Department,
Delhi.

3.Income Tax Officer,
Ward 1, Virudhunagar,
Income Tax Office – Virudhunar,
Madura Coats Compound,
Railway Feeder Road,
Virudhunagar, Tamil Nadu – 626 001.

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4.The Commissioner of Income Tax (Appeals)
National Faceless Appeal Centre,
Delhi. ... Respondents in both W.Ps

PRAYER in W.P.No.25501 of 2024: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in PAN AAHFB4726D and quash the impugned order passed in Letter No:CHE/Coord/104/46 (25B1)/2024-25 for the assessment year 2016-17 dated 30.08.2024 and directing the first respondent to treat the assessment as High Pitched Scrutiny Assessment.

PRAYER in W.P.No.25502 of 2024: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in PAN AAHFB4726D and quash the impugned order in Letter No:CHE/Coord/104/46 (25B1)/2024-25 for the assessment year 2019-20 dated 30.08.2024 and on the petition made by the petitioner for High Pitched Scrutiny Assessment and consequently direct the first respondent to treat the assessment High Pitched Scrutiny Assessment.

For Petitioner : Mr.T.Banusekar
Assisted by M/s.Samyuktha Banusekar in both W.Ps

For Respondents : Mr.N.Dilipkumar Standing counsel in both W.Ps

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COMMON ORDER

Challenge in these Writ Petitions are to the orders passed by the Local committee on High Pitched Scrutiny Assessment primarily, on the ground of violation of principles of natural justice as an opportunity of personal hearing was not granted by the said Committee.

2. Heard Mr.T.Banusekar, learned counsel assisted by M/s.Samyuktha Banusekar, learned counsel for the petitioner and Mr.N.Dilipkumar learned Standing Counsel appearing for the Department.

3.The learned counsel for the petitioner would submit that in respect of the Returns submitted for the Assessment years 2016-2017 and 2019-2020, a show cause notice under Section 148(A)(b) of the Income Tax Act was issued stating that the case of the petitioner had been reopened based upon the information available in the Insight Portal indicating that there has been suppression of cash sales. Thereafter, an order under Section 148A(d) of the Act was passed and a notice under Section 148 of the Act was issued. The second respondent on completing the assessment under Section 147 read with 154(b)

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of the Act passed an order of assessment claiming a fanciful figure. Aggrieved against the same, the petitioner had also preferred an appeal before the fourth respondent herein and the same is pending. The petitioner, taking benefit of the circular issued by the CBDT had submitted a grievance petition to the Local Committee for High Pitched Scrutiny Assessment. The petitioner had raised various issues including the violations of principles of natural justice, non-application of mind, reliance placed upon the particulars which had been obtained behind the back of the petitioner, apart from the merits claiming the assessment to be a High Pitch Assessment. However, the first respondent by the impugned order had held that the assessment was not High pitch. He would submit that the first respondent had not considered the claim of the petitioner wherein the petitioner had given the split up of amounts shown as collection from the debtors and cash deposits which contain date-wise details of the amount of collection received from the debtors and also date-wise details of the cash deposits of the bank account. He would submit that no opportunity of hearing had been given to the petitioner which is a gross violation of principles of natural justice. He would submit that there was no fair play, which has severely prejudiced the petitioner. Since, there is no appeal provided against

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such Report, the petitioner had preferred this Writ Petition. He would submit that the impugned orders would have to be set aside solely on the ground of violation of principles of natural justice and therefore, prays this Court to set aside the order and remit the matter back to the first respondent with a direction to the first respondent to provide an opportunity of hearing to the petitioner and thereafter to pass orders.

4. The learned counsel for the petitioner had also relied upon the judgment of the Divison Bench of the Allahabad High Court to contend that an opportunity of personal hearing is mandatory before the Assessing Authority. Similarly, he had also relied upon the judgment of the learned Single Judge of this Court namely in W.P.No.2622 of 2019 dated 05.09.2019 and a judgment made in W.P.No.35612 of 2023 dated 25.09.2024 in support of his contentions.

5. Countering his arguments, Mr.N.Dilipkumar learned Standing Counsel appearing for the respondents 2 & 3 would submit that the CBDT considering the tendency to frame high pitched and unreasonable assessment orders which causes an harassment to the tax payers and which had led to the generation of

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unproductive work for the Income Tax Department as well as the Appellate Authority, had constituted Local Committees to deal with the tax payers grievances on High pitch Scrutiny Assessments. Hence, by a Circular, dated 09.11.2015 instructions were given by constituting Local Committees. The Local Committees was never an alternate to the Appellate Authorities. The said instructions dated 09.11.2015 was subsequently superseded by instructions dated 23.04.2022. He would contend that the Local Committees, on receipt of the grievances from the tax payers would have to examine to ascertain whether there is a prima facie case of High Pitch Assessment, non-observance of principles of natural justice, non-application of mind or gross negligence of the Assessing Officer/ Unit. It had also the power to call for the relevant assessment records, seek inputs from the Directorate of System on system related issues emanating from the grievances raised by the tax payer. Thereafter, the Local Committee would ascertain whether the additions made in the assessment order is whether or not bad by any sound reason or logic, the provisions of law has been grossly misinterpreted or obvious and well established facts on record has outrightly been ignored. In that process, the Local Committee will also look into the allegations of violation of principles of natural justice and thereafter,

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submit a Report either treating the said assessment order to be high pitched or not along with the reasons to the respective Principal Chief Commissioner of Income Tax concerned. On receipt of such Report, the Principal Chief Commissioner of Income Tax may take suitable administrative action in respect of the assessment which are found to be high pitched by calling for an explanation from the Assessing Officer/ Unit or any other administrative action as deemed fit. When an assessment had been found to be a high Pitched assessment, the Local Committee can also advice the Principal Commissioner of Income Tax concerned to prevent any cohersive recovery against the said tax payer concerned. The findings of the Report of the Local Committee will also be shared with by the Principal Chief Commissioner of Income Tax and the National Faceless Appellate Center.

6. He would further submit that the instructions had categorically indicated that the Local Committees cannot be treated as an alternative forum to Dispute Resolution as envisaged under Section 245 MA or an appellate proceedings. Therefore, he would submit that the object of the Local Committees is mainly to have a check on the Assessing Officer/ Unit from

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making a high Pitched assessment. It would also be useful for taking an action against the erring officials in making high Pitched assessments without any basis. He would submit that the said Report of the Committee cannot also be the basis upon which the Appellate Authority can pass orders in the appeals pending before it i.e., the findings of the Local Committee is not binding on the Appellate Authority. He would further submit that the instructions do not envisage that an opportunity of being heard to be given to the assessees who had approached the Local Committee. In that context, he would also rely upon a judgment of the Division Bench of Punjab and Haryana High Court reported in 2024 (164) taxman.com 263 (Punjab and Haryana) and contended that the claim of the petitioner cannot be entertained. He would further submit that against the findings of the Local Committee, a Writ Petition would also not be maintainable as the findings of the Local Committee does not have any binding effect either on the Appellate Authority or even the Department. It was basically issued with a primary object of preventing high pitched assessment at the hands of the Assessing Officer/ Unit which was factually found to be prevalent at that relevant point of time. Hence, he would seek dismissal of the Writ Petition.

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7.I have considered the rival submissions made by the learned counsels appearing for their respective parties and perused the materials available on records.

8. The *lis* that has to be resolved in these Writ Petitions are as to whether the Local Committee which had been constituted primarily to address the grievance of the tax payers as an institutional mechanisam mainly for taking suitable administrative actions wherever required would have to provide an opportunity of hearing before submitting its Report .

9. Originally by instructions dated 09.11.2015, the Local Committees were constituted to find out the genunity of grievance of the tax payers with regard to High Pitched Assessment. If the Local Committee comes to a conclusion that there is an unreasonable and high pitched assessments that had been made, then the Principal Chief Commissioner of Income Tax, after considering the views of the Committee would take suitable administrative action apart from presenting the same before the Appellate Authorities so that the litigations are curtailed. The primary object of such institutional mechanism

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was to have a check and balance with its own officers for them to pass a fair and reasonable assessment orders.

10. The said instructions dated 09.11.2015 was superseded by a fresh instructions on 23.04.2022. The functions of the Local Committees was clearly delineated and the follow-up actions by the concerned Principal Chief Commissioner of Income Tax has also been clearly defined. As per the said instructions, the Principal Chief Commissioner of Income Tax concerned, on receipt of a Report from the Local Committee indicating that the assessment to be high pitched, empowers the Principal Chief Commissioner of Income Tax to take suitable administrative action, also call for explanation from the concerned Assessing Officer/ Unit. The Local Committee can also administratively advice the Principal Commissioner of the Income Tax concerned to prevent any cohersive recovery in cases where it had identified such assessments to be high pitched. There has been a depature in placing the said Report before the Appellate Authority under the old instructions, where such Reports were to be placed before the Appellate Authority to curb the litigations. The same has been left out under the amended instructions. The amended instructions stops with

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sharing the Report with the Appellate Authority namely the National Faceless Assessment Center. It should be noted that both the instructions in clear terms envisaged that the Local Committees should not be treated as alternative forum of disputes resolution/ appeallate proceedings.

11. A reading of the said instructions would clearly indicate that the constitution of Local Committees was to curb unnecessary assessment orders which are made high Pitched by the Assessing Officer/ Assessing Units. The Report of the Local Committee shall not be binding on the Appellate Authorities/ Revisional Authorities. It is also to be noted that it is on the discretion of the Principal Chief Commissioner of Income Tax to take any departmental action based on that Report. Further, there is no instructions for giving an opportunity of hearing by the Local Committee. The Local Committee being neither a quasi judicial authority or a statutory authority is not bound to give an opportunity of hearing to the grieving tax payer. It is primarily an internal mechanism only to curb the high Pitched assessment without any reasons or in violation of law or principles of natural justice.

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12. A learned Single Judge of this Court in *W.P.No.26226 of 2019 dated 05.09.2019* had categorically held that the mechanism provided in constitution of the Local Committee is not in lieu of appellate remedy and that the contentions and the rights of the assessees before the Appellate Authorities can very well be decided by the Appellate Authority not withstanding the fact that the Local Committee had decided otherwise. The learned Judge had also held that the rejection of the petitioner's complaint before the Local Committee will not prejudice the right of the assessee to persue his appellate remedy by raising all grounds available to him. For better appreciation, the relevant paragraph of the said order is extracted hereunder:-

> *9.As rightly pointed out by the learned Senior Standing Counsel for the respondents, the mechanism provided to approach the Local Committee is not in lieu of the appellate remedy and therefore, the rights and contentions of the assessee before the Appellate Authority in their appeal can very well be considered and decided by such Authorities notwithstanding the fact that the complaint filed by the petitioner before the Local Committee has resulted in passing the impugned communication. In other words, the Appellate Authority, being the fact finding Authority, has to consider the entire matter and passed an order on merits and in accordance*

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with law. Therefore, this Court is of the view that the rejection of the petitioner's complaint by the Local Committee will not prejudice the rights of the petitioner to pursue the appeal already pending before the Appellate Authority by raising all the grounds and that all the appeals pending before the Appellate Authority can be disposed of on merits and in accordance with law, after giving due opportunity of hearing to the petitioner.

13. A Division Bench of the Punjab and Haryana High Court in the case of ***Liberty Shows Ltd., vs. Ld., Chairman Central Board of Direct Taxes*** reported in ***[2024] 164 taxmann.com 263 (P&H)*** had held that there is no necessity for granting an opportunity of hearing to an assessee by the Local Committee as there is no provisions laid down in the SOP. For better appreciation, the relevant paragraph of the said order is extracted hereunder:-

6. A perusal of the aforesaid provisions shows that while examining, the Local Committee has to submit a report when the order is to be treated as High-Pitch assessment or not. The petitioner has already been conveyed vide impugned order dated 02.11.2023 that the Local Committee did find their case to be of High-Pitch assessment. The question of giving an opportunity of hearing to the petitioner by the Local Committee, however, does not arise as there is

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no such provision laid down in the SOP. In view thereof, the claim of the petitioner that they should have been heard by the Local Committee is without basis. It may be noticed that if the revised SOP issued on 23.04.2022, the Director, CBDT has also noticed that the purpose of constitution of Local Committee is to be effectively and efficiently dealt with the genuine grievance of the tax payers and help in supporting environment where the assessment order has been passed in a fair and reasonable manner. It is to be noted that the Local Committee cannot be treated an alternative forum to dispute resolution/proceedings. Thus, an assessee cannot force that his case must be necessarily examined and decided by the Local Committee itself even if the Local Committee reached to the conclusion that it is not a case of High-Pitch assessment.

14. The Division Bench of the Allahabad High Coure relied upon by the learned counsel for the petitioner cannot be applied to the facts of the present case, as it had only held that an opportunity of hearing is to be mandatorily given by the Assessing Authority. The Act itself envisages that an opportunity of hearing ought to have been given by the Assessing Authority before passing orders of assessment. Similarly, the judgment made in W.P.No.35612 of 2023, it could be seen that the learned Single Judge had not dealt with the submissions made by the petitioner as in that case, the petitioner himself had submitted that

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it could be suffice to issue necessary directions to the Appellate Authority to consider the petitioners appeal within a time bound manner.

15. For the above reasoning and findings arrived at supra and the law envisaged by the learned Single Judge of this Court and the Division Bench of the Punjab and Haryana High Court, I do not find any merits in the contentions raised by the petitioner.

16. In fine, these Writ Petitions fail and are accordingly dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
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K.KUMARESH BABU, J.

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To

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Member Secretary,
Local Committee on High Pitched Scrutiny Assessment,
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Chennai – 600 034.

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