IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 22.9.2015.

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

T.C.(A) No.654 of 2008

The Commissioner of Income Tax,
Salem. Appellant

vs.

Dr.Aruna Jonathan Respondent

Tax Case (Appeal) against the order of the Income Tax Appellate Tribunal "D" Bench, Chennai dated 30.6.2006 passed in I.T.(SS) A.No.223/Mds/2003.

For appellant : Mr.T.R.Senthilkumar

For Respondents : Mr.M.P.Senthilkumar

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J. )

This appeal, by the Revenue, has been admitted on the following substantial questions of law:-

"i) Whether the assessing officer is entitled to draw presumption of undisclosed income when on money payment evidenced by documents has not been properly explained by the assessee?

ii) Whether the proviso appended to section 113 of the Income Tax Act in respect of levy of surcharge is clarificatory and would apply to block assessment period also?"

2. Heard Mr.T.R.Senthilkumar, learned Standing Counsel for the Department and Mr.M.P.Senthilkumar, learned counsel appearing for the respondent.

3. Insofar as question No.2 is concerned, it is stated by the learned Standing Counsel for the Department that the issue is covered against the Department by decision of the Supreme Court in COMMISSIONER OF INCOME TAX v. VATIKA TOWNSHIP PRIVATE LIMITED ((2014) 367 ITR 466).

4. Insofar as the first question is concerned, the Tribunal has recorded a finding of fact in para 7 to the effect that even in the note made by the assessing officer, he had clearly mentioned that the explanation of the assessee had veracity. The Tribunal found that neither comparative analysis of the market value of the property in the vicinity was undertaken nor any reference made to the Valuation Cell for valuation of the property. Therefore, following the decision of the jurisdictional High Court viz., this court, in COMMISSIONER OF

INCOME TAX v. P.V.KALYANASUNDARAM ((2006) 282 ITR 259), the Tribunal held, on facts, that the Department failed to discharge the burden cast upon it and that on the contrary, the assessing officer was satisfied about the veracity of the claim made by the assessee. It is also stated that the decision of this court in ((2006) 282 ITR 259) cited supra, is confirmed by the Supreme Court in (2007) 294 ITR 49. Hence, the first question is also answered against the Department. The Tax Case (Appeal) is dismissed. No costs.

(V.R.S.,J.) (T.M.,J.)
22.9.2015.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

Income Tax Appellate Tribunal
"D" Bench, Chennai.

V.RAMASUBRAMANIAN, J.
AND
T.MATHIVANAN, J.

Ssk.

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