IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.No.14972 of 2002

M/s.Sree Sivaram Company,
21-A, Avvai Moodhatti Street,
Komarapalayam,
Rep. by its Partner. ...Petitioner

-Versus-

The Deputy Commissioner of Income Tax,
Central Circle-I,
Coimbatore. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Cetiorari fied Mandamus calling for the records of the respondent relating to the proceedings in P.A.No.S-561 dated 21.03.2002 and to quash the above said proceedings and for a consequential direction to the respondent not to levy any surcharge on the block assessment and interest under Section 158BFA(1) of the Finance Act.

For petitioner : Mr.Subbaraya Aiyar Padmanabhan

For respondent : Mr.T.Promodkumar Chopda

ORDER

Challenging the proceedings of the respondent in P.A.No.S-561 dated 21.03.2002 levying surcharge and interest on the tax on the undisclosed income for the block period between 1990-91 to 1999-2000, the petitioner is now before this court with this writ petition.

2. The case of the petitioner in brief is that it is a partnership firm and engaged in the business of Textiles. It is an income tax assessee with the Central Circle-I at Coimbatore, as assessed by the authority in P.A.No.S-561.

3. While so, a search operation was conducted on 02.03.2000 by the authority under Section 132 of the Income Tax Act and during such search operation the authority have seized cash of Rs.14.00 Lakhs and other books of accounts. Thereafter, a notice dated 03.04.2001 came to be issued for the block period consisting of ten assessment years i.e., 01.04.1989 to 02.03.2000.

4. In the mean while, The Finance Act, 1995 has introduced a new Scheme of assessment of undisclosed income found as a result of search. According to the said scheme, undisclosed income detected as a result of search initiated after 30th June, 1995 should be assessed separately as the undisclosed income of a designated period (block) consisting of ten previous years prior to the previous year in which search was conducted and should also include the period of the current year up to the date of search for the purpose of framing the said block assessment. According to the petitioner, such undisclosed income shall be taxed at the flat rate of 60% under Section 113 of the Act and in respect of the same, there could not be any parallel regular assessment with a view to avoid double taxation.

5. While so, the petitioner filed a return of income in Form 2B on 21.11.2000 disclosing the undisclosed income of the block year amount to Rs.77,05,000/- and the same was processed by the respondent. Accordingly, the respondent levied tax on the disclosed income as admitted. However, the respondent in addition to the levy of 60% tax on the undisclosed income, levied surcharge of 10% and interest at 2% for six months and demanded the balance payment by way of impugned proceedings. It is the said proceedings now under challenge in this writ petition.

6. Heard both sides and also perused the records carefully.

7. The challenge in this writ petition is to the levy of surcharge. It is admitted by the petitioner that there was an undisclosed income to the tune of Rs.77,05,000/- for the block period. According to the learned counsel for the petitioner, the levy of surcharge and interest have been challenged, since the proviso inserted by way of amendment to Section 113 of the Finance Act is prospective in operation.

8. The issue involved in this matter is no more res integra. In Commissioner of Income Tax (Central)-I, v. Vatiga Township Private Limited, reported in (2014) 367 ITR 466 (SC), the Hon'ble Supreme Court has held that the proviso inserted to Section 113 of the Finance Act was prospective in operation and the surcharge as leviable under the provision could not be made

applicable to the block assessment in question of an earlier period i.e., the period from 01.04.1989 to 10.02.2000. Following the above proposition, very recently, a Division Bench of this court in Commissioner of Income Tax (Central-1), Chennai v. P.Ramanathan [W.A.No.1453 of 2007 dated 02.02.2015] dismissed the writ appeal preferred by the revenue thereby upholding the order passed by the Tribunal that surcharge is not leviable on tax payable on the block assessment in respect of the case where search conducted prior to the introduction of proviso to Section 113 of the Act.

9. In the light of the above proposition of law enunciated by the Hon'ble Supreme Court and followed by the Division Bench of this court, this writ petition also deserves to be allowed.

10. In the result, the writ petition is allowed and the impugned order levying surcharge and interest on the block assessment (from 01.04.1989 to 02.03.2000) is set aside. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kmk

To

The Deputy Commissioner of Income Tax,
Central Circle-I,
Coimbatore.

1 CC to Mr.R.Venkatnarayanan, Advocate SR.No. 43940

1 CC to Mr.T.Promodkumar Chopda, Advocate SR.No. 43915

W.P.No.14972 of 2002

GGK (CO)
PSI (30.09.2015)