IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.20319 of 2003

The Deputy Director of Small Savings,
Corporation of Chennai,
now re-designated as Assistant Director,
Chennai - 600 003. .. Petitioner

versus

1.The Commissioner of Income Tax,
121 Mahatma Gandhi Road,
Chennai - 600 034.

2. The Deputy Commissioner of Income Tax TDDS-I,
Chennai - 600 006. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of certiorari to call for the records in No.217/TN.I/17/99-2000 dated 02.09.1999 in respect of the Assessment Year 1998-99 issued by the 1st Respondent herein and quash the same.

For Petitioner : Ms.Anita Sumanth

For Respondents : Mr.J.Narayanasamy, SC

O R D E R

Heard Ms.Anita Sumanth, learned counsel appearing for the petitioner and Mr.J.Narayanasamy, learned Standing Counsel appearing for the Revenue.

It is submitted by the learned Standing Counsel for the Revenue that the Department has issued a circular and later has given a written communication to the Standing Counsel on 05.11.2015, which reads as follows:

"....2.The facts of the case are as under:
(i)The AO had levied penalty under Section 271C to an extent of Rs.29,17,792 and charged

interest u/s. 201(1A) to an extent of Rs.2,39,919/- for the A.Y.1998-99. Against the order, the appeals of the assessee before the CIT (A) and subsequent petition u/s. 264 before the CIT were dismissed.

(ii)Aggrieved by the order of the CIT (A), assessee preferred appeal before the ITAT and the ITAT vide its order dated 22.07.1999 has allowed the appeal of the assessee for the AY 1998-99. It appears from the records that no further appeal has been preferred. The Inspector was directed to verify with the Judicial section whether department has filed appeal against the above order and the Inspector has reported that no appeal has been filed against the above ITAT's order.

3. Considering the above, notice u/s. 221(1) dated 06.01.2003 demanding arrears for the A.Y. 1998-99 were probably by over sight and therefore is not sustainable"

In the light of the above stand taken by the Revenue, the petitioner is entitled to succeed. Accordingly, the Writ Petition is allowed and the Impugned Order is set aside. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Income Tax,
121 Mahatma Gandhi Road,
Chennai - 600 034.

2. The Deputy Commissioner of Income Tax TDDS-I,
Chennai - 600 006.

+1cc to M/S.J.Narayanaswamy, Advocate Sr.52271
+1cc to M/S.Dr.Anita Sumanth, Advocate Sr.51820

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srg 28/09/2016