IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.12647 of 2003

V.S.Kathervel .. Petitioner

versus

The Assistant Commissioner of Income Tax,
Central Circle II,
Coimbatore. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the Petitioner on the file of the Respondent in K.707/Central-Circle II/CBE and quash the impugned order dated 21.02.2003 and consequently direct the Respondent not to levy any surcharge on the block assessment.

For Petitioner : Mr.R.Venkat Narayan
For Respondent : Mr.T.Pramodkumar Chopda, SSC

O R D E R

Heard Mr.R.Venkat Narayan, learned counsel appearing for the petitioner and Mr.T.Pramodkumar Chopda, learned Senior Standing Counsel, appearing for the Revenue.

2. The issue involved in this Writ Petition is squarely covered by the decision in favour of the Assessee, based on the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax vs. Vatika Township (P) Ltd. (2014) 109 DTR (SC) 33. The said decision was followed by the Hon'ble Division Bench of this Court in CIT (Central-I), Chennai vs. P.Ramanathan, T.C.(A).No.1453 of 2007, dated 02.02.2015. At this stage, it would be beneficial to refer the operative portion of the order passed by the Hon'ble Division Bench:-

> "..... The issue raised in this appeal was considered by a Constitution Bench of the Supreme Court in Commissioner of Income Tax (Central)-I vs. Vatika Township Private Limited, (2014) 109 DTR (SC) 33. For

better understanding of the issue, the view taken in the order passed by the High Court, which was challenged before the Supreme Court, and the scope of reference to the Constitution Bench are extracted hereunder:

> "7.It is clear from the aforesaid narration that the High Court has taken the view that proviso inserted in Section 113 of the Act by the Finance Act, 2002 was prospective in nature and the surcharge as leviable under the aforesaid proviso 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 in the instant case.
>
> The Reference Order
> 8. It so happened that this very issue about the said proviso to Section 113, viz., whether it is clarificatory and curative in nature and, therefore, can be applied retrospectively or it is to take effect from the date i.e. 01.06.2002 when it was inserted by the Finance Act, 2002, attracted the attention of this Court and was considered by the Division Bench in the case of Commissioner of Income Tax, Central II vs. Suresh N. Gupta, (2008) 4 SCC 362. The Division Bench held that the said proviso is clarificatory in nature. When the instant appeal came up before another Division Bench on 06.01.2009 for hearing, the said Division Bench expressed its doubts about the correctness of the view taken in Suresh N.Gupta and directed the Registry to place the matter before Hon'ble the Chief Justice of India for constitution of a larger Bench."

The Constitution Bench answered the reference in the following manner:

> 38. When we examine the insertion of proviso in Section 113 of the Act, keeping in view the aforesaid principles, our irresistible conclusion is that the intention of the legislature was to make it prospective in nature.
> .....
> 39. The charge in respect of the surcharge, having been created for the first time by the insertion of the proviso to Section 113, is clearly a substantive provision and hence is to

be construed prospective in operation. The amendment neither purports to be merely clarificatory nor is there any material to suggest that it was intended by Parliament. Furthermore, an amendment made to a taxing statue can be said to be intended to remove 'hardships' only of the assessee, not of the Department. On the contrary, imposing a retrospective levy on the assessee would have caused undue hardship and for that reason Parliament specifically chose to make the proviso effective from 01.06.2002.”

In view of the proposition of law enunciated in the above decision, this Court allows the Writ Petition and the impugned order is set aside. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

pvs

To
The Assistant Commissioner of Income Tax,
Central Circle II,
Coimbatore.

+1 CC to M.T. Pramodkuman Chopda, Advocate Sr.No.51735

W.P.No.12647 of 2003

SK (CO)
MD : 06/10/2016