IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2017

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, THE ACTING CHIEF JUSTICE
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case Appeal No.1342 of 2008

The Commissioner of Income Tax
Chennai. .. Appellant

Vs.

T.R.Sabhari Babu .. Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 23.11.2006 in IT(SS)A No.120/Mds/2001.

For Appellant : Mr.T.R.Senthil Kumar
Standing Counsel

For Respondent : Not ready in notice

J U D G M E N T

(Delivered by the Hon'ble Acting Chief Justice)

The Tax Case Appeal filed by the Revenue calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 23.11.2006 in IT(SS)A No.120/Mds/2001, has been admitted on 21.8.2008 for consideration of the following substantial question of law:

"(i) Whether on the facts and in the circumstances of the

case, the Income Tax Tribunal is right in deleting the additions made towards the unexplained credit especially when the onus of proving the genuine business expenditure was not done by the assessee nor any proper books of account were maintained?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in holding that no surcharge is leviable under Section 113 of the Income Tax Act for the block assessments made under Section 158 BC in respect of search conducted prior to 1.6.2002?

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in not considering Article 271 of the Constitution of India which clearly provides for levy of surcharge?

(iv) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in not considering the Annual Finance Act (1999) which mandates the levy of surcharge and the Schedule I thereunder clearly provided that Income Tax levied in terms of Section 113 shall be increased by a Surcharge?"

2. Circular instruction issued by the Central Board of Direct Taxes No.21/2015, dated 10.12.2015 stipulates that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.20 lakhs. In the instant case, the tax effect is

less than the monetary limit imposed and therefore, the learned Standing Counsel for the appellant seeks to withdraw this appeal. Hence, this appeal is dismissed as withdrawn. No costs.

Index : Yes/No (H.G.R., ACJ) (A.S.M.,J.)
Internet : Yes/No 20.02.2017

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THE HON'BLE ACTING CHIEF JUSTICE
and
ANITA SUMANTH,J.

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T.C.No.1342 of 2008.

20.02.2017.