IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Appeal) No.617 of 2008

The Commissioner of Income-tax,
Central-III, Madras. ... Appellant/Respondent

-vs-

M/s.Hindustan Engineering and Training Centre,
40, GST Road, St.Thomas Mount,
Chennai-600 016. ... Respondent/Appellant

Tax Case (Appeal) filed under Section 260A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal 'A' Bench, Chennai dated 29.06.2007 passed in I.T.(SS). A.No.172/Mds/2003 for the block period 1.4.89 to 29.8.99, as against the order of the Commissioner of Income Tax(Appeals) Central II, Chennai made in IT Appeal No.220/2002-2003 dated 30.05.2003 as against the order of the Deputy Commissioner of Income Tax, Central Circle III(2), Chennai 600 034, for the assesment year 01.04.89 to 31.03.1999 & 01.04.99 to 20.08.99 dated 30.08.2002.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel
: assisted by M/s.K.G.Usha Rani,
Junior Standing Counsel

For Respondent : Mr.G.Basker

JUDGMENT

[Delivered by T.S.Sivagnanam, J.]

Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by M/s.K.G.Usha Rani, learned Junior Standing Counsel for the appellant/Revenue and Mr.G.Baskar, learned counsel for the respondent/assessee.

2.This appeal, by the Revenue, is directed against the order passed by the Income-tax Appellate Tribunal 'A' Bench, Chennai dated 29.06.2007 passed in I.T.(SS).A.No.172/Mds/2003 for the block period 1.4.89 to 20.8.99.

3.The above appeal has been clubbed along with another appeal in T.C.(A) No.618 of 2008 and both were admitted by common order dated 04.07.2008 wherein, four substantial questions of law were framed for consideration.

4.The learned Senior Standing Counsel for the Revenue submits that in this appeal, the following three substantial questions of law alone arise for consideration viz.,

> "(a) Whether on the facts and circumstances of the case the Income-tax Appellate Tribunal was right in holding that the surcharge is not applicable to the block period 1.4.89 to 20.8.99 is valid?
>
> (b) Whether on the facts and circumstances of the case the Income-tax Appellate Tribunal was right in law in holding that the surcharge is not applicable to block assessment if search took place prior to the introduction of the proviso to section 113 with effect from 01.06.2002, even though the finance act of different years falling within the block period prescribed levy of surcharge with reference to sec.113 of the Income-tax Act, 1961?
>
> (c) Whether on the facts and circumstances of the case the Income-tax Appellate Tribunal was right in law in holding that surcharge is not leviable on block assessment during the relevant period on the ground that the calculation is complex?"

5.We need not labour much to decide the above issue, as the issue has been decided by the Hon'ble Supreme Court in favour of the assessee and against the Revenue in the case of Commissioner of Income Tax (Central)-I vs. Vatika Township Private Limited reported in (2014) 367 ITR 466 (SC).

6.The question, which was considered by the Hon'ble Supreme Court, is whether levy of surcharge, which was introduced by insertion of proviso to Section 113 of the Income Tax Act, 1961, could be made retrospective. The Hon'ble Supreme

Court held that if the enactment is expressed in language, which is fairly capable of either interpretation, it ought to be construed as prospective only.

7.Thus, following the above decision, the substantial questions of law, framed for consideration, are answered in favour of the assessee and against the Revenue and the appeal filed by the Revenue is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Income-tax,
Central-III, Madras.

2.The Registrar,
Income-tax Appellate Tribunal 'A' Bench, Chennai.

3.The Commissioner of Income-Tax (Appeals) Central-II,
Chennai-34.

+1cc to Mr.T.R.Senthil Kumar, Advocate sr.no.51796
+1cc to Mr.G.Baskar, Advocate sr.no.52209

T.C.(A) No.617 of 2008

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