IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.1571 of 2006
and
W.P.M.P.No.1773 of 2006

M/s.Suguna Charitable Trust
Rep. by its Accountant
Mr.C.Krishnamurthy
No.5/10, Welcome Colony, Anna Nagar
Chennai - 600 101 ...Petitioner

Vs.

1.Union of India
Ministry of Finance
Rep. by its Secretary
Ministry of Law
Justice & Company Affairs
Government of India
Sastri Bhavan
R.P.Marg
New Delhi - 110 002

2.The Central Board of Direct Taxes
Government of India
Ministry of Finance
Department of Revenue
New Delhi
Rep. by its Secretary ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Declaration, declaring that the provisions of Chapter XII-H of the Income Tax Act, 1961, and in particular Section 115 WB thereof as well as Clause (ic) Section 40 as ultra vires.

For Petitioner : Mr.P.Srinivas
For Respondents : Ms.Hema Muralikrishnan
and
Mr.Naveen Durai Babu

ORDER

Heard learned counsel for the parties.

2.The petitioner in this Writ Petition has come forward with this Writ Petition for issuance of Writ of Declaration to declare that the provisions of Chapter XII-H of the Income Tax Act, 1961, and in particular Section 115 WB thereof as well as Clause (ic) Section 40 as ultra vires.

3.The learned counsel for the petitioner as well as the learned counsel for the Revenue submitted that the declaration sought for in this Writ Petition has been now seized of by the Hon'ble Supreme Court and similar Writ Petitions have been transferred to the Hon'ble Supreme Court from the other High Courts as well.

4.Thus, considering the fact that the matter is now seized of by the Hon'ble Supreme Court, this Writ Petition can be disposed of with appropriate directions, leaving it open to the parties i.e. the petitioner as well as the Revenue to abide by the decision of the Hon'ble Supreme Court.

5.The learned counsel for the Revenue expressed an apprehension that in the event the Hon'ble Supreme Court uphold the provisions as being a valid piece of legislation, then the assessees like the petitioner should not plead that the action that may be initiated by the Department or in the process of being initiated, is barred by limitation.

6.The Revenue need not have any apprehension in this regard, as the Court proposes to safeguard the interest of the Revenue by passing the following orders:

> “The petitioner is directed to abide by the decision of the Hon'ble Supreme Court where the challenge to the impugned provisions are pending. It is made clear that in the event the Hon'ble Supreme Court upholds the impugned legislation and the Department initiates action or proceeds with the action already initiated, the petitioner/assessee is not entitled to plead limitation and the period during which this Writ Petition is pending as well as the period till the matter is decided by the Hon'ble Supreme Court, shall stand excluded for computation of limitation”.

7. The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

gpa

To

1.The Secretary
Union of India
Ministry of Finance
Ministry of Law
Justice & Company Affairs
Government of India
Sastri Bhavan
R.P.Marg
New Delhi - 110 002

2. The Secretary
Central Board of Direct Taxes
Government of India
Ministry of Finance
Department of Revenue
New Delhi

+1 CC to Mr.P. Srinivasan, Advocate sr 44472
+1 CC to Mr. Hema Muralikrishnan, Advocate sr 43984.

W.P.No.1571 of 2006 and
W.P.M.P.No.1773 of 2006

NRI(CO)
SP(19/07/2018)