IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 02.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.26270 of 2005
and
W.M.P.No.28704 of 2005

The Federation of Madras Merchants &
Manufacturers Association,
No.7, Rattan Bazaar,
Chennai - 600003.
Rep. by its President J.Sumermal ...Petitioner

Vs

1. Union of India,
Rep. by the Secretary to Government,
Ministry of Finance,
Central Secretariat,
North Block, New Delhi.

2. The Central Board of Direct Taxes,
Central Secretariat,
North Block, New Delhi. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Declaration, striking down the provisions of Chapter XII-H of the Income Tax Act and in particular Section 115WB thereof as well as Clause (ic) of Section 40 as ultra vires.

For Petitioner : Mr.N.Muthukumar

For Respondents: Mrs.Hema Muralikrishnan, SSC

O R D E R

Heard Mr.N.Muthukumar, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, Senior Standing Counsel for the respondents.

2. The learned counsel for the petitioner as well as the learned Senior Standing Counsel for the respondents submitted that the declaration sought for in the present 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.

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

4. The learned Senior Standing Counsel for the respondents 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.

5. 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 petitioners are 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 petitioners/assessees are not entitled to plead limitation and the period during which these Writ Petitions are pending as well as the period till the matter is decided by the Hon'ble Supreme Court, shall stand excluded for computation of limitation."

6. Accordingly, the present writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

hvk

To

1. The Secretary,
Union of India,
Ministry of Finance,
Central Secretariat,
North Block, New Delhi.

2. The Central Board of Direct Taxes,
Central Secretariat,
North Block, New Delhi.

+1 CC to M/s. Mallika Srinivasan, advocate sr 66502.
+1 CC to M/s. Hema Muralikrishnan, Advocate sr 66633.

W.P.No.26270 of 2005
and
W.M.P.No.28704 of 2005

SS(CO)
SP(06/09/2019)