IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 35166 of 2005

Tirupur Exporters' Association,
B2, Appachi Nagar, Tirupur – 641 607.
Represented by its Honorary Secretary,
G. Karthikeyan ... Petitioner

Vs

1. The Government of India,
   Represented by its Secretary,
   Ministry of Finance,
   Shastri Bhavan, R.P. Marg,
   New Delhi - 110 002.

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

3. The Chief Commissioner of Income Tax,
   Race Course Road, Coimbatore – 641 018. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring Sections 115 WA to 115 WL of the Income Tax Act, 1961 as introduced by the Finance Act, 2005 as well as the Rules made under the Income-Tax Rules, 1994 as illegal, unconstitutional and ultra vires Sections 14, 19(1) (g) and 265 of the Constitution of India.

For Petitioner : Ms. A.L. Gandhimathi
For Respondents : Mr. A.P. Srinivas

ORDER

Both the counsel fairly submits that the issue is now covered by the decision rendered by a co-ordinate bench of this Court on 12.09.2007 in W.P. Nos. 35054, 35055, 40812, 40844, 37708, 39349 of 2005. The operative portion of the order reads as under:-

> "2. The petitioners in all these Writ Petitions have come forward with these Writ Petitions for issuance of Writ of Declaration to declare Sections 115 WA(2) and 115 WB(1) and 115 WB(2) of the Income Tax Act, 1961 as introduced by the Finance Act, 2005 ultra vires of Article 14, 19(1)(g) and 265 of the Constitution of India and as beyond the legislative competence of parliament in so far as the petitioners are concerned.
>
> 3. The learned counsel for the petitioners as well as the learned counsel for the Revenue submitted that the declaration sought for in all these Writ Petitions have 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, these Writ Petitions can be disposed of with appropriate directions, leaving it open to the parties i.e. The petitioners 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 petitioners 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 petitioners are directed to abide by the decision of the Hon'ble Supreme Court where the challenged 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”.

7. The Writ Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.”

2. Having regard to the above, this Court is of the view that the above said order will hold good to the present Writ Petition also and accordingly, the present Writ Petition is disposed of in terms of the above order. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To
1. The Secretary, Government of India,
Ministry of Finance,
Shastri Bhavan, R.P. Marg,
New Delhi - 110 002.

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

3. The Chief Commissioner of Income Tax,
Race Course Road, Coimbatore – 641 018.

+1cc to Mr. A.P. Srinivas, Advocate sr.101729
+1cc to M/s.AL.Gandhimathi, Advocate sr.101461

W.P. No. 35166 of 2005

ssd(co)
nr 28/01/2020