IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

Tax Case (Appeal) Nos.175 and 186 of 2010

Thangam Hospital
Dr.Sankaran Road,
Namakkal 637 001
by Partner R.Kulandaivelu

.. Appellant in T.C.(A) No.175 of 2010

Dr.R.Kulandaivelu
29-G, Dr.Sankaran Road,
Namakkal

.. Appellant in T.C.(A) No.186 of 2010

Vs

Assistant Commissioner of Income Tax
Central Circle, Salem.

.. Respondent in the above T.C.(A)s.

COMMON PRAYER :APPELS filed under Section 260A of the Income Tax Act, 1961 against order dated 26.06.2009 in M.P.Nos.21 & 22/Mds/2009 (in I.T.(S.S.) A.Nos.11&23/M/2003.

In both T.C.(A)s

For Appellant : Mr.Niranjan Rajagopalan
for M/s.G.R.Associates

For Respondents : Mr.Karthik Ranganathan
Senior Standing Counsel

COMMON JUDGMENT

(Judgment of the Court was delivered by Dr.ANITA SUMANTH.,J)

This order disposes Tax Case (Appeals) for the period 01.04.1990 to 06.07.2000 in the case of two asseesses in respect of which assessments were framed consequent on a search conducted in terms of the Income Tax Act, 1961 (in short 'Act') on 06.07.2000.

2. The substantial questions of law admitted are as follows:

1. Whether the provision to Sec.113 of I.T. Act providing for surcharge is prospective or retrospective?

2. Is not the decision reported in (2009) 221 CTR (SC) 409 (C.I.T. V. Vatika Township (P) Ltd.) binding on the Tribunal?

3. The Income Tax Appellate Tribunal (in short 'Tribunal'), by way of the impugned order, had decided the issue based on the judgment of the Supreme Court in *CIT V. Suresh N. Gupta* (297 ITR 322), which had held that the amendment to Section 113 of the Act imposing levy of

surcharge in the context of block assessments, was only clarificatory and will hence be treated to be retrospective.

4. The correctness of that judgment was doubted by a subsequent Bench and the issue referred to a larger Bench. Ultimately, a Constitution Bench has decided the issue in *Commissioner of Income Tax, (Central)-I, New Delhi V. Vatika Township (P) Ltd.* (367 ITR 466) holding the amendment to be substantive and, operative prospectively only. The amendment is hence inapplicable to those searches conducted prior to 01.06.2002.

5. The substantial questions of law are answered in favour of the assessee and against the revenue. These Tax Case (Appeals) are allowed. No costs.

[A.S.M., J] [G.A.M., J]
06.11.2024

sl
Index:Yes/No
Speaking order
Neutral Citation:Yes

To

Assistant Commissioner of Income Tax
Central Circle, Salem.

Dr.ANITA SUMANTH,J.
AND
G.ARUL MURUGAN,J.

sl

Tax Case (Appeal) Nos.175 and 186 of 2010

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