IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2024

CORAM :

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

T.C.A.No.284 of 2011

Dr.M.Malliga .. Appellant

vs

The Assistant / Deputy Commissioner of Income Tax,
Central Circle, Salem. .. Respondent

Prayer : Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras, D Bench, Chennai dated 31.08.2009 in IT(SS) A.No.24/Mds/2003.

For Appellant : Mr.Niranjan Rajagopalan

For Respondent : Ms.S.Brindaa
for Mr.Karthik Ranganathan

JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

The substantial questions of law that arise for decision are as follows:-

> *"a) Whether a statement given by a assessee during search is admissible in the absence of any material or evidence found during the search?*
> *b) Whether the provision to Sec.113 of IT Act providing for surcharge is prospective or retrospective?*
> *c) Is not the decision reported in 221 ITR (SC) 409 is binding on the tribunal?"*

2. The search in the appellant's case was conducted on 06.07.2000 and an assessment was framed on 14.09.2011 in terms of Section 158BC read with Section 143(3) of the Income-Tax Act, 1961 (Act).

3. As regards the second issue, in questions 2 and 3 above, the same are covered by a judgment of the Supreme Court in the case of *Commissioner of Income Tax, (Central) I, New Delhi v Vatika Township (P) Ltd* [367 ITR 466] to the effect that surcharge under Section 113 of the Income-Tax Act, 1961 will stand attracted only in respect of searches that have taken place post 01.06.2002. Hence substantial questions of law 2 and 3 are answered in favour of the assessee and against the respondent.

4. As far as substantial question no.1 is concerned, the facts are as follows. The issue in question relates to whether an amount of Rs.9 lakhs may be brought to tax as undisclosed income of the appellant.

5. Admittedly, in the course of search, a statement was recorded from the appellant admitting to a sum of Rs.20 – Rs.25 lakhs having been advanced as loans, to friends & relatives. The assessing authority has recorded the break-up of the amount lent, as follows:-

> *Q.No.1 : In your preliminary statement you have admitted about Rs.20 to 25 lakhs as loans advanced to friends and relatives. Kindly give the breakup figures.*
> *A.No.1 The breakup figures are as under:*

(i)	Mr.Rathinasamy (own brother), Madras	Rs.9,00,000
(ii)	Mrs.Jayanthi(Cousin), Salem	Rs.2,00,000/- (three months

(i)	Mr.Rathinasamy (own brother), Madras	Rs.9,00,000
		back)
(iii)	Mr.Vairamudi (merchant)	Rs.5,00,000(in 1998)
(iv)	Mr.Manivannan(friend)	Rs.2,00,000

The above advances made by me during the past five years."

6. Based on the statement, the assessing authority brings to tax a sum of Rs.9 lakhs. At the outset, it is unclear as to why, when statement refers to a sum of Rs.25 lakhs as loan, the assessing authority has brought to tax only a sum of Rs.9 lakhs. In any event, the order of assessment does not reveal the existence of any incriminating material barring the statement recorded, to confirm on the basis on which the addition could have been made. Section 158BC requires that any addition made as undisclosed income must flow from the incriminating materials found in the course of search.

7. While undisputedly, a statement recorded under Section 132(4) would constitute evidence, and a valuable one at that, it cannot be the sole basis upon which an addition may be made in the context of block assessment. For the aforesaid reasons, the appeal succeeds and substantial question of law qua no.1 is answered in favour of the assessee.

8. This tax case appeal is allowed. No costs.

[A.S.M., J] [G.A.M., J]
21.11.2024

Index:Yes/No
Neutral Citation:Yes
ssm

DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

ssm

To
The Assistant / Deputy Commissioner of Income Tax,
Central Circle, Salem.

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