



\* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on : 18.07.2008

+ **ITA No.7/2008**

**COMMISSIONER OF INCOME** ..... Appellant

**TAX DELHI (CENTRAL)-III**

**versus**

**J.P.M FARMS (PVT.) LTD.** ..... Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr.R.D.Jolly

For the Respondent : Dr.Rakesh Gupta with Ms.Aarti Saini

**CORAM :-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

**BADAR DURREZ AHMED, J (ORAL)**

1. This appeal arises from the order passed by the Tribunal on 3.11.2006 in IT (SS) Appeal No. 58(del) of 2004 and pertains to the block assessment year 1.4.1990 to 19.3.2001. The ground of appeal before the Tribunal was :-



“That the Id. CIT (Appeals) has erred in upholding the levy of surcharge on the tax payable found on the undisclosed income computed in block assessment.”

2. As per the facts indicated in the Tribunal’s order, a search had been carried out on 19.3.2001. The proviso to Section 113 of the Income Tax Act, 1961 was inserted w.e.f 1.6.2002 whereby surcharge was sought to be levied on tax payable on undisclosed income determined in a block assessment. The Tribunal followed the decision of the Special Bench of the Income Tax Appellate Tribunal, Hyderabad in the case of *Merit Enterprises v. DCIT* and came to the conclusion that surcharge was not leviable in the present case and consequently, deleted the surcharge which had been levied by the revenue authorities.

3. In this background, the revenue has proposed the following question:-

“Whether the ITAT was correct in law in holding that the surcharge U/S 113 of the Income Tax Act, 1961 was not leviable in the present case?”

4. Admit.

5. This issue does not require any further investigation on the part of this Court in view of the fact that the same stands



decided by the Supreme Court in the case of *CIT v. Suresh Gupta*; 297 ITR 322 (SC). Consequently, this question is decided in favour of the revenue and against the assessee. The appeal stands allowed.

**BADAR DURREZ AHMED, J**

**RAJIV SHAKDHER, J**

**July 18, 2008**  
**mb**