(2007) 02 MAD CK 0062

In the Madras High Court

Case No : Tax Case (Appeal) No. 523 of 2004

Commissioner of Income Tax — APPELLANT

Vs

Dr. K. Senthilnathan — RESPONDENT

Date of Decision : 07-02-2007

Acts Referred:
Income Tax Act, 1961 — Section 113, 132, 132A, 158BC

Citation : (2007) 291 ITR 30

Hon'ble Judges : P.D. Dinakaran, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : J. Nareshkumar, for the Appellant; Philip George, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—The above tax case appeal is directed against the order of the Income Tax Appellate Tribunal made in IT(SS)A No. 211/Mds/2003, dated 6.1.2004.

2. The facts in brief are: There was a search conducted by the Revenue officials u/s 132 of the Income Tax Act, 1961 in the residence as well as in the business premises of the assessee on 23.11.2000 and it was concluded on 14.3.2001 and a block assessment was framed for the block period 1.4.1990 to 22.11.2000 and an order was passed for the said block period on 28.3.2003 levying a surcharge at 17% on the tax payable on the block assessment. Aggrieved by the said order of block assessment, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who by order dated 10.11.2000, upheld the levy of surcharge. On further appeal by the assessee, the Tribunal held that the proviso to Section 113, whereby it was clarified that surcharge as applicable would be leviable in cases of block assessments, was introduced only with effect from 1.6.2002 and as such, would be applicable only if the search took place after that date. Aggrieved by the said order of the Tribunal, the Revenue has preferred the above appeal raising the following substantial question of law:

Whether in the facts and circumstances of the case, the tribunal was right in holding that surcharge is not applicable to block assessments if the search took place prior to introduction of the proviso to Section 113 with effect from 1.6.2002 ?

3. Heard both sides.

4. With regard to the issue raised, viz., whether surcharge could be levied for the block assessments if the search was conducted prior to the introduction of proviso to Section 113 of the Act, the Punjab & Haryana High Court in Commissioner of Income Tax Vs. Roshan Singh Makker, , after referring to Section 113 and the relevant proviso levying surcharge, held that since the search was conducted on June 1, 2000, i.e., before the insertion of the proviso in Section 113 of the Act, with effect from June 1, 2002, the levy of surcharge envisaged under this proviso will not be attracted. The relevant portion of the said judgment of the Punjab and Haryana High Court in the case cited supra reads as follows:

5. We have perused the order passed by the Tribunal and Section 113 of the Act in which new proviso was inserted with effect from June 1, 2002, by the Finance Act, 2002. The provisions of Section 113 of the Act are as under:

113. Tax in the case of block assessment of search cases.- The total undisclosed income of the block period, determined u/s 158BC, shall be chargeable to tax at the rate of sixty per cent.:

Provided that the tax chargeable under this section shall be increased by a surcharge, if any, levied by any Central Act and applicable in the assessment year relevant to the previous year in which the search is initiated u/s 132 or the requisition is made u/s 132A.

6. The relevant clause of the Notes on Clauses is extracted below (see CWT Vs. Smt. Sujatha Venkateswaran, ,

Clause 41 seeks to amend Section 113 of the Income Tax Act relating to tax in the case of block assessment of search cases.

Under the existing provision of the said section, the total undisclosed income of the block period, determined u/s 158BC, shall be chargeable to tax at the rate of sixty per cent.

It is proposed to insert a proviso in the said section to provide that the tax chargeable under that section shall be increased by a surcharge, if any, levied by any Central Act and applicable in the assessment year relevant to the previous year in which the search was initiated u/s 132 or requisition was made u/s 132A.

This amendment will take effect from June 1, 2002.

7. We have perused Section 113 of the Act, especially the proviso added on June 1, 2002, which provides for levy of surcharge. Counsel could not dispute that the

same has not been given retrospective effect on the language of Clause 41 of the Notes on Clauses is in clear terms.

8. Since the search in the present case was conducted on June 1, 2000, i.e., before the insertion of the proviso in Section 113 of the Act, with effect from June 1, 2002. The levy of surcharge envisaged under this proviso will not be attracted in the present case.

5. Following the above view of the Punjab and Haryana High Court, a Division Bench of this Court, by order dated 07.02.2007 in T.C.(A) No. 46 of 2007 [between Commissioner of Income Tax v. Neotech Company (firm)], in which one of us was a party (P.D. DINAKARAN, J.), confirmed the order of the Tribunal holding that surcharge is not applicable to the block assessments in respect of the search conducted prior to the introduction of proviso to Section 113, viz., prior to 1.6.2002.

6. Admittedly, in the present case also, the search was commenced on 23.11.2000 and concluded on 14.3.2001, which is obviously prior to the introduction of proviso to Section 113. Accordingly, finding no illegality in the order of the Tribunal, we answer the question of law referred to above, in the affirmative, against the Revenue and in favour of assessee. The appeal stands dismissed. No costs.

