(2015) 02 MAD CK 0273

In the Madras High Court

Case No : T.C. (A) No. 1453 of 2007

Commissioner of Income Tax — APPELLANT

Vs

P. Ramanathan — RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:
Finance Act, 2002 — Section 113, 132

Citation : (2015) 02 MAD CK 0273

Hon'ble Judges : S. Vimala, J.;R. Sudhakar, J.

Bench : Division Bench

Advocate : M. Swaminathan, Standing Counsel, for the Appellant; Venkat Narayanan for Subbaraya Aiyar, Advocates for the Respondent

Judgement

R. Sudhakar, J.—The Revenue has filed this appeal assailing the order of the Income Tax Appellate Tribunal ''D'' Bench, Chennai, dated 20.7.2007 made in I.T.(SS)A.No.60/Mds/2004 for the block assessment year 1989-1990 to 1998-1999 and the same was admitted on the following questions of law:

(i) Whether the Tribunal was right in holding that surcharge is not applicable to block period 1989-1990 to 1998-1999?

(ii) Whether 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, even though Finance Acts of different years falling within the block period prescribed levy of surcharge with reference to Section 113 of the Act?

(iii) Whether the Tribunal was right in holding that surcharge is not leviable on block assessments during the relevant period, on the ground that the calculation is complex?

2.1. The facts in a nutshell are as under: The assessee is a broker running a partnership concern named M/s. Shine Well at the Madras Race Club to conduct bets on horse races. There was a search under Section 132 of the Act in the residential and business premises of the assessee on 21.9.1998, which was concluded on 28.1.1999. Based on the materials found during the search, a block assessment was framed for the block period 1989-1990 to 1998-1999 and the block assessment order was passed on 31.1.2001. The Assessing Officer levied surcharge on the tax payable on the block assessment.

2.2. Aggrieved by the said order, the assessee appealed to the Commissioner of Income Tax (Appeals), who confirmed the order passed by the Assessing Officer and upheld the levy of surcharge.

2.3. On further appeal by the assessee, the Tribunal held that since the search in the present case was conducted prior to 1.6.2002, namely, prior to the introduction of proviso to Section 113 of the Act, surcharge is not leviable on tax payable on the block assessment.

2.4. Calling in question the said order, the Revenue has filed this appeal on the questions of law, referred supra.

3. We have heard Mr. M. Swaminathan, learned Standing Counsel appearing for the Revenue and Mr. Venkat Narayanan, learned counsel appearing for the assessee and perused the orders passed by the Tribunal and the authorities below.

4. The issue raised in this appeal was considered by a Constitution Bench of the Supreme Court in Commissioner of Income Tax Vs. Vatika Township Private Limited, . For better understanding of the issue, the view taken in the order passed by the High Court, which was challenged before the Supreme Court, and the scope of reference to the Constitution Bench are extracted hereunder:

"7. It is clear from the aforesaid narration that the High Court has taken the view that proviso inserted in Section 113 of the Act by the Finance Act, 2002 was prospective in nature and the surcharge as leviable under the aforesaid proviso could not be made applicable to the block assessment in question of an earlier period i.e. the period from 01.04.1989 to 10.02.2000 in the instant case.

The Reference Order

8. It so happened that this very issue about the said proviso to Section 113, viz., whether it is clarificatory and curative in nature and, therefore, can be applied retrospectively or it is to take effect from the date i.e. 01.06.2002 when it was inserted by the Finance Act, 2002, attracted the attention of this Court and was considered by the Division Bench in the case of Commissioner of Income Central II Vs. Suresh N. Gupta, . The Division Bench held that the said proviso is clarificatory in nature. When the instant appeal came up before another Division Bench on 06.01.2009 for hearing, the said Division Bench expressed its doubts about the correctness of the view taken in Suresh N. Gupta and directed the Registry to place the matter before Hon''ble the Chief Justice of India for constitution of a larger Bench."

The Constitution Bench answered the reference in the following manner:

38. When we examine the insertion of proviso in Section 113 of the Act, keeping in view the aforesaid principles, our irresistible conclusion is that the intention of the legislature was to make it prospective in nature.

....

39. The charge in respect of the surcharge, having been created for the first time by the insertion of the proviso to Section 113, is clearly a substantive provision and hence is to be construed prospective in operation. The amendment neither purports to be merely clarificatory nor is there any material to suggest that it was intended by Parliament. Furthermore, an amendment made to a taxing statute can be said to be intended to remove ''hardships'' only of the assessee, not of the Department. On the contrary, imposing a retrospective levy on the assessee would have caused undue hardship and for that reason Parliament specifically chose to make the proviso effective from 1.6.2002."

(Emphasis supplied)

In view of the proposition of law enunciated in the decision, referred supra, this appeal is dismissed answering the questions of law raised in this appeal against the revenue and in favour of the assessee. No costs.