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(2007) 08 P&H CK 0141

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax APPELLANT

Vs

Rajiv Bhatara RESPONDENT

Date of Decision : 06-08-2007

Acts Referred:
Income Tax Act, 1961 — Section 113, 154, 260A

Citation : (2007) 212 CTR 77

Hon'ble Judges : M.M. Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Commnr. of Income Tax, Jalandhar-I Vs. Shri Rajiv Bhatara, (2009) 222 CTR 209 : (2009) 310 ITR 105 : (2009) 4 JT 39 : (2009) 3 SCALE 16 : (2009) 13 SCC 315 : (2009) 2 SCR 873 : (2009) 178 TAXMAN 285

M.M. Kumar, J.—The Revenue has filed the instant appeal u/s 260A of IT Act, 1961 (for brevity ''the Act''), challenging order dt. 11th July, 2006, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity ''the Tribunal'') in IT(SS) No. 22/Asr/2005 for block period 1st April, 1990 to 3rd July, 2000. It has been claimed that the following substantive question of law would emerge from the order of the Tribunal:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the CIT(A)''s order directing not to levy surcharge on the tax worked out on the undisclosed income as the case pertains to a search conducted prior to 1st June, 2002.

2. It is undisputed that search in this case took place on 6th April, 2000, and the provision with regard to surcharge was added by way of amendment in Section 113 of the Act on 1st June, 2002. The AO, however, in his order dt. 22nd May, 2002, imposed surcharge and an application u/s 154 of the Act filed by the assessee for rectification was dismissed vide order dt, 17th Sept., 2003 (Annex.

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A. 2) with the observation that the surcharge was levied as per the provisions of Part I of the 1st Schedule appended to Finance Act, 2000. On the ground that there was no mistake apparent on the record, the application u/s 154 of the Act was rejected. However, the Commissioner of Income Tax (Appeals), Ludhiana [for brevity ''the CIT(A)''], reversed the order passed by the AO and took the view that surcharge was not leviable in cases where the search has taken place prior to 1st June, 2002. In that regard, reliance was placed on a Division Bench judgment of this Court in the case of CIT v. Ram Lal Babu Lal 1998 148 CTR P&H 643.

3. On further appeal by the Revenue, the Tribunal upheld the order dt. 12th Sept. 2005, passed by the CIT(A) holding that the search in the present case took place on 6th April, 2000, which was much prior to the date of amendment made in Section 113 of the Act. The amendment was incorporated on 1st June, 2002, by inserting proviso to Section 113 by Finance Act, 2002. It was by the amendment that levy of surcharge on the undisclosed income was specifically provided w.e.f. 1st June, 2002. The provision has not been given retrospective effect and, therefore, the Tribunal held that it applied only to cases where searches were carried out after 1st June, 2002.

4. After hearing learned Counsel for the parties, we find that the question is no longer res integia as a Division Bench of this Court in the case of Commissioner of Income Tax Vs. Roshan Singh Makker, has taken the view that the proviso added to Section 113 by Finance Act, 2002, cannot be considered as retrospective in its effect and therefore would not be applicable to the search conducted on 6th April, 2000. Learned Counsel for the Revenue could not successfully dispute that the instant appeal is covered by the Division Bench judgment of this Court -in the case of Roshan Singh Makkai (supra). It is also appropriate to mention that the Division Bench of this Court has been followed by the Madras High Court in the case of Commissioner of Income Tax Vs. Neotech Company (Firm), and The Commissioner of Income Tax Vs. S. Palanivel, .

In view of the above, the instant appeal fails and same is dismissed.

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