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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.02.2007

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.46 of 2007

Commissioner of Income-Tax
Central Circle-III, Chennai. ... Appellant

Vs.

M/s.Neotech Company (Firm)
Flat No.881/5, Vaigai Colony,
Anna Nagar West
Chennai-40. ... Respondent

The above T.C.(Appeal) is preferred under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, dated 19.6.2006 made in IT(SS)A No.4/Mds/2004 for the block assessment 1988-89 to 1998-99 and from 1.4.1998 to 9.7.1998. against the order of the Commissioner of Income Tax (Appeals) - I made in ITA NO. 131/2000-01 Chennai 34 deated 10.11.2000 against PA NO./GIR NO. 301N dated 24.07.2004 on the file of the Deputy Commissioner of IT, Central Circle III (3) Chennai

For Appellant : Mr.J.Nareshkumar

J U D G M E N T

(Judgment of the Court was made by 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.4/Mds/2004, dated 19.6.2006.

2. The facts in brief are: A search was conducted by the Revenue officials under Section 132 of the Income-tax Act, 1961 in the residential and business premises of the assessee on 9.7.98 and a block assessment was framed for the block period 1988-89 to 1998-99 and from 1.4.1998 to 9.7.1998 and an order was passed for the said block period on 24.7.2000 levying a surcharge at 10% on the tax

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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, allowed the appeal filed by the assessee deleting the levy of surcharge. The Tribunal, on appeal by the Revenue, held that prior to introduction of proviso to Section 113 with effect from 1.6.2002, whereby it was clarified that surcharge as applicable would be leviable in cases of block assessments, the levy would fail, since the search in the present case was prior to 1.6.2002 and hence, surcharge is not imposable. Aggrieved by the said order of the Tribunal, the Revenue has preferred the above appeal raising the following substantial questions of law:

> "1. 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 sec.113 with effect from 1.6.2002 ?
>
> 2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the levy of surcharge prior to introduction of the proviso is riddled with complexity and as such the levy fails ?

3. Heard Mr.J.Naresh Kumar, learned standing counsel appearing for the Revenue.

4. With regard to the issue, 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 v. ROSHAN SINGH MAKKER, [(2006) 287 I.T.R. 160], 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 under section 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

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initiated under section 132 or the requisition is made under section 132A."

6. The relevant clause of the Notes on Clauses is extracted below (see [2002] 254 ITR (St.) 118, 149) :

"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 under section 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 under section 132 or requisition was made under section 132A.

This amendment will take effect from June 1, 2002." (emphasis supplied)"

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."

(emphasis supplied)

5. We are in full agreement with the decision of the Punjab and Haryana High Court rendered in the case cited supra. In the instant case also, the search was conducted on 9.7.98, which is obviously prior to the introduction of proviso to Section 113 levying surcharge on the tax payable. Accordingly, we hold that the Tribunal was right in holding that surcharge is not applicable to block assessments in respect of the search conducted prior to the intorduction of proviso to Section 113. In view of the same, the second question raised in this appeal need not be gone into.

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In view of the above, finding no substantial question of law that arises for consideration, the appeal stands dismissed.
Sra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Besant Nagar, Rajaji Bhavan, III Floor,
Chennai 90

2.The Commissioner of Income Tax
(Appeals), I, Chennai

3.The Deputy Commissioner of Income-tax,
Central Circle - III, (3) Chennai.

4. The Commissioner of Income Tax, Central Circle III Chennai 34

+ one cc to Mr. Pushyasitaraman, Advocate sr no. 8078

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