

(2006) 10 P&H CK 0108

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Lalit Hosiery and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Oct. 18, 2006

Acts Referred:

- Income Tax Act, 1961 - Section 113

Citation: (2009) 221 CTR 692

Hon'ble Judges: Rajesh Bindal, J; A.K. Goel, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This petition seeks quashing of order dt. 23rd Sept., 2004, Annex. P.1 to the extent of holding that surcharge u/s 113 of the IT Act, 1961 (for short, "the Act") was payable for the block period 1st April, 1990 to 24th May, 2000, though the said provision was not in force during the relevant period.

2. Case of the petitioner is that search was conducted in the premises of the petitioner on 24th May, 2000 which was followed by notice u/s 158BC of the Act on 10th Oct., 2000. The petitioner filed return on 13th Feb., 2001 for the block period 1st April, 1990 to 24th May, 2000 declaring undisclosed income. The petitioner also filed an application before the Settlement Commission, which was disposed of on 23rd Sept., 2004 determining total income and also levying surcharge in terms of Finance Act, 2000.

3. Contention raised on behalf of the petitioner is that in Section 113 of the Act, provision for surcharge has been incorporated only with effect from 1st June, 2002, which was prospective and, therefore, surcharge was not leviable. Learned Counsel for the assessee relied upon order passed by this Court in IT Appeal No. 29 of 2006, CIT v. Roshon Singh Makker reported at (2006) 203 CTR 125 decided on 16th May, 2006, dismissing the appeal of the Revenue against the order of the Tribunal to the

effect that surcharge was leviable w.e.f. 1st June, 2002.

4. In the reply filed on behalf of the Revenue, it is submitted that in the present case, assessment year relevant to the year of search was the block period from 1st April, 1990 to 24th May, 2000. Though the provision was incorporated in the Act vide Finance Act, 2002 w.e.f. 1st June, 2002, in the Finance Act, 2000 itself, identical provision was added vide Section 3 of the said Act.

5. We have heard learned Counsel for the parties.

6. Relevant observations in the impugned order are as under:

31. It may be mentioned that even though Section 113 was amended w.e.f. 1st June, 2002, provisions relating to levy of surcharge were there in the Finance Act, 2000 which would be relevant since the date of search falls in the financial year 2000-01. Levy of surcharge is clearly mentioned in the First Schedule for all entities including individuals, HUFs and firms. Accordingly, we hold that surcharge as applicable under the provisions of Finance Act, 2000 is to be further added to the tax payable u/s 113 of the Act.

7. Having regard to the fact that in the Finance Act, 2000, a specific provision has been incorporated, merely because addition in the IT Act has been incorporated only w.e.f. 1st June, 2002, did not affect liability of the assessee to pay surcharge. It is not possible to accept that a provision in a Finance Act, could not be given effect to unless the same was incorporated in the main IT Act.

8. As regards the order of this Court in Roshan Singh Makker's case (supra), we find that provisions of Finance Act, 2000 were not brought to the notice of the Tribunal nor the same were brought to the notice of this Court by the learned Counsel for the Revenue in that case and do not find mention in the order of the Tribunal which has been extracted in the order of this Court. This Court only interpreted the effect of proviso to Section 113 added w.e.f. 1st June, 2002, without taking into account the provisions of the Finance Act, 2000 which has been relied upon in the impugned order. The said order cannot, thus, be taken to be an authority for the proposition that irrespective of a provision in the Finance Act, levy of surcharge was not permissible on the ground that proviso to Section 113 of the Act was added only w.e.f. 1st June, 2002.

9. In view of the above, we do not find any merit in the writ petition and the same is dismissed.