

COMMNR. OF INCOME TAX, JALANDHAR-I

V.

SHRI RAJIV BHATARA

Civil Appeal No. 1121 of 2009

FEBRUARY 19, 2009

**[DR. ARIJIT PASAYAT AND DR. MUKUNDKAM  
SHARMA, JJ.]**

Income Tax Act, 1961 :

*s.113, proviso, s.158BA r/w s.4 and s.158BC – Block assessment – Search conducted on 6-4-2000 – Levy of surcharge on assessed tax – Insertion of proviso to s.113 vide Finance Act, 2002 w.e.f 1-6-2002 – Effect of, on cases booked before 1-6-2002 – Held: In the various Finance Acts, the Parliament sought to levy surcharge on tax in case of block assessment – Even without the proviso to s.113, the Finance Act, 2001 was applicable to block assessment under Chapter XIV-B in relation to search initiated on 6-4-2000 and accordingly surcharge was leviable on the tax.*

**The present appeal filed by the Department concerns levy of surcharge on assessed tax in cases of block assessment and the effect of insertion of proviso to s.113 vide Finance Act, 2002 w.e.f 1-6-2002 on cases booked before 1-6-2002.**

**Allowing the appeal, the Court**

**HELD:1. As a general concept, income tax includes surcharge. Reading Section 2(1) of the Finance Act, 2001, it is clear that the term 'income tax' as used in Section 2(1) and proviso to Section 2(3) of the said Act did not include the amount of surcharge. Surcharge was a separate item of taxation, different from income tax. [Para 10] [878-G]**

**2. Section 158-BA(2) read with Section 4 of the Act**

A looks at Section 113 for the imposition rate at which tax  
has to be imposed in the case of block assessment. That  
rate is 60%. That rate is fixed by the Act itself. That rate  
has been stipulated by Parliament not with a view to oust  
the levy of surcharge but to make the levy cost effective  
and easy. Therefore, a flat rate is prescribed. The difficulty  
B in block assessment is that one has to correlate the  
undisclosed income to different years in which income is  
earned, hence, Parliament has fixed a flat rate of tax in  
Section 113. [Para 11] [879-B]

C 3. Though Parliament was aware of rate of tax  
prescribed by Section 113 and yet in the various Finance  
Acts, Parliament has sought to levy surcharge on the tax  
in the case of block assessment. In the present case, the  
assessing officer has applied the rate of surcharge at 17%  
D which rate finds place in Para A of Part I of Schedule I to  
the said Finance Act of 2001, therefore, surcharge leviable  
under Finance Act was a distinct charge, not dependent  
for its leviability on the assessee's liability to pay income  
tax but on assessed tax. [Para 12] [879-D]

E 4. Even without the proviso to Section 113 (inserted  
vide Finance Act, 2002 w.e.f. 1.6.2002), Finance Act, 2001  
was applicable to block assessment under Chapter XIV-  
B in relation to the search initiated on 6.4.2000 and  
accordingly surcharge was leviable on the tax. [Para 13]  
F [879-E-F]

G 5. According to the assessee, prior to 1.6.2002, the  
position was ambiguous as it was not clear even to the  
Department as to whether surcharge was leviable with  
reference to the rates provided for in Finance Act of the  
year in which the search was initiated or the year in which  
the search was concluded or the year in which the block  
assessment proceedings under Section 158 BC were  
initiated or the year in which block assessment order was  
passed. To clear that doubt precisely, the proviso has  
H been inserted in Section 113 by which it is indicated that

Finance Act of the year in which the search was initiated would apply. Therefore, it has to be held that the proviso to Section 113 was clarificatory in nature. It only clarifies that out of the four dates, Parliament was opted for the date, namely the year in which the search was initiated, which date would be relevant for applicability of a particular Finance Act. Therefore, the proviso has to be read as it stands. [Para 14] [879-G; 880-A]

*CIT v. Ram Lal Bahu Lal* 148 CTR 643; *CIT v. Roshan Singh Makkar* (2006) 287 ITR 160; *CIT v. Neotech Company* [(2007) 291 ITR 27] and *CIT v. S. Palanivel* [(2007) 291 ITR 33; *Commissioner of Income Tax, Central II v. Suresh N. Gupta* [2008(4) SCC 362 – referred to.

**Case Law Reference**

148 CTR 643	referred to	Para 3	D
(2006) 287 ITR 160	referred to	Para 3	
(2007) 291 ITR 27	referred to	Para 3	
(2007) 291 ITR 33	referred to	Para 3	
2008(4) SCC 362.	referred to	Para 3	E

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1121 of 2009

From the Judgement and Order dated 06.08.2007 of the High Court of Punjab & Haryana at Chandigarh in Income Tax Appeal No. 587 of 2006.

Harish Chandra, Sanjiv Bhardwaj, Gaurav Agarwal, Pankaj Kapoor and B.V. Balaram Das, for the Appellant.

The Judgement of the Court was delivered by

**DR. ARIJIT PASAYAT, J**

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division

A Bench of the Punjab and Haryana High Court dismissing the appeal filed under Section 260(A) of Income Tax Act, 1961 (in short the 'Act'). In the said appeal, challenge was to the order dated 01.7.2006 passed by the Income Tax Appellate Tribunal Amritsar Bench, Amritsar (in short the 'Tribunal'). The dispute related to the block period 1.4.1990 to 3.7.2000. The question which arose for consideration is as follows:

C "Whether, on the facts and in the circumstances of the case, the ITAT 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 period to 1.6.2002?"

3. Factual position in a nutshell reads as follows :

D Search was conducted on 6.4.2000. The Assessing Officer in his order dated 22.5.2002 imposed surcharge and an application under Section 154 of the Act filed by the assessee for rectification was dismissed vide order dated 17.9.2003 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 under Section 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 Assessing Officer and took the view that surcharge was not leviable in cases where the search has taken place prior to 1.6.2002. In that regard, reliance was placed on a Division Bench judgment of this Court in the case of *CIT v. Ram Lal Bahu Lal* (148 CTR 643).

G On further appeal by the Revenue the Tribunal upheld the order dated 12.9.2005 passed by the CIT (A) holding that the search in the present case took place on 6.4.2000 which was much prior to the date of amendment made in Section 113. The amendment was incorporated on 1.6.2002 by inserting proviso to Section 113 by Finance Act, 2002. It was by the amendment H that levy of surcharge on the disclosed income was specifically

provided w.e.f. 1.6.2002. 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 1.6.2002. A

The High Court dismissed the appeal relying on its decision in the case of *CIT v. Roshan Singh Makkar* (2006) 287 ITR 160 and also referred to two other decisions of the Madras High Court in *CIT v. Neotech Company* [(2007) 291 ITR 27] and *CIT v. S. Palanivel* [(2007) 291 ITR 33]. B

4. Learned counsel for the appellant submitted that the case at hand is squarely covered by a decision of this court in *Commissioner of Income Tax, Central II v. Suresh N. Gupta* [2008(4) SCC 362]. C

5. The power to levy a surcharge on income tax is traceable to Article 271 read with Entry 82 of List I of Schedule VII to the Constitution of India, 1950 (in short the 'Constitution'). That power is not traceable to Section 4 of the Act. Every year the Finance Act is enacted by Parliament to give effect to the financial proposals of the Central Government. The rate at which a charge on the total income of the previous year is imposed under Section 4(1) of the Act is not laid down in the Income Tax Act and, therefore, the said Section provides that the charge has to be fixed by the Central Act. It is because of this, that income tax is levied at different rates under the Finance Act. D E

6. In order that the charge should be a legal charge under Section 4, it must be a tax on the income of the assessee. If the charge is the tax on anything else, then it would not be a valid charge. That is the only limitation upon the power or authority of Parliament to fix any rate it pleases. So long as the charge is on 'total income' of the previous year, there is no limitation upon the power or authority of Parliament to fix any rate if pleases. G  
The Income Tax Act, therefore, contains an elaborate machinery for ascertaining "total income" of an assessee. Section 4(1) prescribes the subject matter of the tax and the rate of that tax is prescribed by the legislature, either under the Act as in the case of Section 113 or vide the Finance Act. H

A 7. The purpose of Chapter XIV is to lay down a special  
B procedure for assessment of surcharge cases with a view to  
C combat tax evasion and also to expedite and simplify  
D assessments in search cases. Undisclosed incomes have to  
be related in different years in which income was earned under  
block assessment. This is because in such cases, the "block  
period" is for previous years relevant to 10/6 assessment years  
and also the period of the current previous year up to the date  
of the search. The essence of this new procedure, therefore, is  
a separate single assessment of the "undisclosed income",  
detected as a result of search and this separate assessment  
has to be in addition to the normal assessment covering the  
same period. Therefore, a separate return covering the years  
of the block period is a prerequisite for making block  
assessment. Under the said procedure, Explanation is inserted  
in Section 158-BB, which is computation Section, explaining  
the method of computation of "undisclosed income" of the block  
period.

E 8. If the "block period", as defined in Section 158-B(a),  
comprises previous years relevant to 10/6 assessment years  
is treated by Parliament as one unit of time for assessment  
purposes, one has to correlate "undisclosed income" to each  
of the years in which income was earned by the assessee.

F 9. Section 158-BB is required to be read with Section 4 of  
the Act, then the relevant Finance Act of the year concerned  
would automatically stand attracted to the computation under  
Chapter XIV-B. Section 158-BB looks at Section 113. That  
Section fixes the rate of tax.

G 10. In the present case undisputedly Para A was applicable  
at the given point of time. As a general concept, income tax  
includes surcharge. Reading Section 2(1) of the Finance Act,  
2001, it is clear that the term 'income tax' as used in Section  
2(1) and proviso to Section 2(3) of the said Act did not include  
the amount of surcharge. Surcharge was a separate item of  
taxation, different from income tax. This was made clear vide  
H

Section 2(1)(a), proviso to Section 2(3) and Para A of Part I to Schedule I. A

11. Section 158-BA(2) read with Section 4 of the Act looks at Section 113 for the imposition rate at which tax has to be imposed in the case of block assessment. That rate is 60%. That rate is fixed by the Act itself. That rate has been stipulated by Parliament not with a view to oust the levy of surcharge but to make the levy cost effective and easy. Therefore, a flat rate is prescribed. The difficulty in block assessment is that one has to correlate the undisclosed income to different years in which income is earned, hence, Parliament has fixed a flat rate of tax in Section 113. B C

12. Though Parliament was aware of rate of tax prescribed by Section 113 and yet in the various Finance Acts, Parliament has sought to levy surcharge on the tax in the case of block assessment. In the present case, the assessing officer has applied the rate of surcharge at 17% which rate finds place in Para A of Part I of Schedule I to the said Finance Act of 2001, therefore, surcharge leviable under Finance Act was a distinct charge, not dependent for its leviability on the assessee's liability to pay income tax but on assessed tax. D E

13. Therefore, even without the proviso to Section 113 (inserted vide Finance Act, 2002 w.e.f. 1.6.2002), Finance Act, 2001 was applicable to block assessment under Chapter XIV-B in relation to the search initiated on 6.4.2000 and accordingly surcharge was leviable on the tax. F

14. According to the assessee, prior to 1.6.2002, the position was ambiguous as it was not clear even to the Department as to whether surcharge was leviable with reference to the rates provided for in Finance Act of the year in which the search was initiated or the year in which the search was concluded or the year in which the block assessment proceedings under Section 158 BC were initiated or the year in which block assessment order was passed. To clear that doubt precisely, the proviso has been inserted in Section 113 G H

- A by which it is indicated that Finance Act of the year in which the search was initiated would apply. Therefore, it has to be held that the proviso to Section 113 was clarificatory in nature. It only clarifies that out of the four dates, Parliament was opted for the date, namely the year in which the search was initiated, which
- B date would be relevant for applicability of a particular Finance Act. Therefore, the proviso has to be read as it stands.

15. The above position was highlighted in *Suresh N. Gupta's Case* (supra).

- C 16. There is no appearance on behalf of the Assessee-respondent in spite of service of notice.

- D 17. In view of what has been stated in the aforesaid case the inevitable result is that the appeal deserves to be allowed, which we direct. The impugned order of the High Court in Tax Appeal No.587 of 2006 is set aside and the departmental Civil appeal is allowed with no order as to costs.

B.B.B.

Appeal allowed.