

Cit Vs. Devi Dass Malhan

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SooperKanoon Citation : sooperkanoon.com/715744

Court : Delhi

Decided On : Feb-23-2007

Reported in : [2009]315ITR231(Delhi)

Judge : Madan B. Lokur and; V.B. Gupta, JJ.

Appellant : Cit

Respondent : Devi Dass Malhan

Disposition : Appeal dismissed

Judgement :

ORDER

1. The revenue is aggrieved by an order dated 23-6-2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'D' in I TA No. 558/Delhi/2003 relevant for the block assessment period 1-4-1989 to 27-7-1999.
2. The block assessment in respect of the assessed under Section 158BC of the Income Tax Act, 1961 was completed on 31-8-2001. At that time, surcharge was not levied.
3. Subsequently, by an order dated 7-1-2003, the assessing officer rectified the block assessment order in exercise of powers conferred under Section 154 of the Act and levied a surcharge. This was apparently done in view of the incorporation of a proviso to Section 113 of the Income Tax Act, 1961 with effect from 1-6-2002

by the Finance Act, 1999.

4. The assessed was aggrieved by the imposition of surcharge and, therefore, filed an appeal before the Commissioner of Income-tax(Appeals). It was contended that the levy of surcharge can only be with effect from 1-6-2002 when the proviso to Section 113 of the Act was incorporated and did not have any retroactive effect.

5. The Commissioner was of the view that the matter was debatable and, therefore, surcharge could not have been levied by passing an order under Section 154 of the Act which dealt with rectification. Against the order of the Commissioner, the revenue preferred an appeal before the Tribunal.

6. The Tribunal held, and in our view rightly, that apart from the fact that the issue is debatable and no such order could have been passed in rectification proceedings under Section 154 of the Act, even on merits the proviso to Section 113 of the Act did not have any retroactive effect. The proviso was inserted with effect from 1-6-2002 by virtue of the Finance Act, 1999 and there is nothing to indicate that it would operate from retroactively.

7. Learned Counsel for the revenue contended that since the search in this case was conducted on 27-7-1999, the proviso would operate with effect from that date, We are of the view that this is a complete mis-reading of the proviso and this interpretation, which is sought to be given is intended to give a retrospective effect to the proviso which even the Parliament did not intend.

8. We are of the opinion that no substantial question of law arises. Dismissed.