

ITEM NO.12

COURT NO.4

SECTION IIIA

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGSPetition(s) for Special Leave to Appeal (Civil) No...../2008
[CC 16923/2008](From the judgement and order dated 17/04/2007 in ITA No.375/2007
of the HIGH COURT OF DELHI AT NEW DELHI)

COMMR.OF INCOME TAX-I,NEW DELHI

Petitioner(s)

VERSUS

VATIKA TOWNSHIP P.LTD.

Respondent(s)

[With I.A.No.1 - appln(s). for c/delay in filing & refiling SLP and
office report]

Date: 06/01/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA

For Petitioner(s) Mr. Mohan Parasaran,ASG

Ms. Aruna Gupta,Adv.

Mr. B.V. Balaram Das, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
ORDER

Delay condoned.

The question which fell for consideration before the High Court was as to whether the proviso appended to Section 113 of the Income Tax Act is clarificatory and/or curative in nature. The said provision had come into force with effect from 1.6.2002. It reads as under:

"Provided that the tax chargeable under this section shall be increased by a surcharge, if any, levied by any

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Central Act and applicable in the assessment year relevant to the previous year in which the search is initiated under Section 132 or the requisition is made under Section 132-A."

In this case, the search and seizure took place on 6.10.2001. An order of block assessment in terms of Section 158BC was made in respect of the assessment years 1984 to 2003. The surcharge was levied on 30.6.2003.

In support of its contention that the said proviso was retrospective in nature, the learned Additional Solicitor General relies upon a Division Bench decision of this Court in Commissioner of Income Tax, Central II vs. Suresh N. Gupta, [(2008) 4 SCC 362] wherein it has been held:

"37. According to the assessee, prior to 1.6.2002, the position was ambiguous as it was not clear even to the Department as to which year's FA would be applicable. To clear this doubt precisely, the proviso has been inserted in Section 113 by which it is indicated that FA of the year in which the search was initiated would apply. Therefore, in our view, the said proviso was clarificatory in nature. In taxation, the legislation of the type indicated by the proviso has to be read strictly. There is no question of retrospective effect. The proviso only clarifies that out of the four dates, Parliament has opted for the date, namely, the year in which the search is initiated, which date would be relevant for applicability of a particular FA. Therefore, we have to read the proviso as it stands.

38. There is one more reason for rejecting the above submission. Prior to 1.6.2002, in several cases, tax was prescribed sometimes in the 1961 Act and sometimes in FA and often in both. This made liability uncertain. In the present case, however, the rate of tax in case of block assessment at 60% was prescribed by Section 113 but the year of FA imposing surcharge was not stipulated. This resulted in the above four ambiguities. Therefore, clarification was needed. The proviso was curative in nature. Hence, the proviso inserted in Section 113 merely clarifies that out of the above four dates, the relevant date for applicability of FA would be the year in

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which the search stood initiated under Section 158-BC."

As the said proviso was introduced with effect from 1.6.2002, i.e. with prospective effect and by reason thereof, tax chargeable under Section 135 of the Income Tax Act is to be increased by surcharge levied by a Central Act, we are of the opinion that keeping in view the principles of law that the taxing statute should be construed strictly and a statute, ordinarily, should not be held to have any retrospective effect, it is necessary that the matter be considered by a larger Bench.

We, while issuing notice, direct the Registry to place the matter before Hon'ble the Chief Justice for constitution of a larger Bench.

(A.S. BISHT)
COURT MASTER

(PUSHAP LATA BHARDWAJ)
COURT MASTER