

GIB/DL/VATIKA TOWNSHIP/15-09-2014/SC-4**Supreme Court Category :** INTEREST**State :** Delhi**Order No.:** GIB/DL/VATIKA TOWNSHIP/15-09-2014/SC-4**Name of Entry :**
VATIKA TOWNSHIP PVT. LTD.**Date :** 15-04-2014**Breif Issue :****Fact & Issues Involved:**

In these batch of appeals, most of which are preferred by the Commissioner(s) of Income Tax (hereinafter referred to as 'the Department'), with the exception of few appeals filed by the assesseees, the question of law which has fallen for consideration is as to whether the proviso appended to Section 113 of the Income Tax Act (hereinafter referred to as 'the Act') which was inserted in that Section by the Finance Act, 2002 is to operate prospectively or is clarificatory and curative in nature and, therefore, has retrospective operation.

It so happened that this very issue about the said proviso to Section 113, viz., whether it is clarificatory and curative in nature and, therefore, can be applied retrospectively or it is to take effect from the date i.e. 01.06.2002 when it was inserted by the Finance Act, 2002, attracted the attention of this Court and was considered by the Division Bench in the case of Commissioner of Income Tax, Central II v. Suresh N. Gupta[1]. The Division Bench held that the said proviso is clarificatory in nature.

Decision of Advance Ruling Authority :**Decision:**

Finance Act, 2003, again makes the position clear that surcharge in respect of block assessment of undisclosed income was made prospective. Such a stipulation is contained in second proviso to sub-section (3) of Section 2 of

“Provided further that the amount of income-tax computed in accordance with the provisions of section 113 shall be increased by a surcharge for purposes of the Union as provided in Paragraph A, B, C, D or E, as the case may be, of Part III of the First Schedule of the Finance Act of the year in which the search is initiated under section 132 or requisition is made under section 132A of the income-tax Act.”

The charge in respect of the surcharge, having been created for the first time by the insertion of the proviso to Section 113, is clearly a substantive provision and hence is to be construed prospective in operation. The amendment neither purports to be merely clarificatory nor is there any material to

suggest that it was intended by Parliament.

On the contrary, imposing a retrospective levy on the assessee would have caused undue hardship and for that reason Parliament specifically chose to make the proviso effective from 1.6.2002.

As a result of the aforesaid discussion, the appeals filed by the Income Tax Department are hereby dismissed. Appeals of the assessee are allowed deleting the surcharge levied by the assessing officer for this block assessment pertaining to the period prior to 1st June,2002.