# Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Pvt. Ltd.

*Whether proviso to Section 113 of the Income Tax Act (levy of surcharge on block assessment) is retrospective or prospective*

**Date of Order:** September 15, 2014
**Case Law No:** GIB-SC-2014-01
**Source:** GST INDIA Biz (www.gstindia.biz)

## CASE DESCRIPTION / SUMMARY

**Facts :**
A search and seizure operation was conducted on the assessee, followed by block assessment determining undisclosed income. The Assessing Officer later sought to levy surcharge through rectification and revision proceedings. The assessee challenged the levy, contending that the proviso to Section 113 (inserted in 2002) could not apply to earlier block periods. The Tribunal and High Court held the proviso to be prospective, leading to appeal before the Supreme Court.

**Court Decision:**
The Supreme Court held that the proviso to Section 113 is prospective and not clarificatory. It ruled that prior to insertion of the proviso, levy of surcharge on block assessment was ambiguous and uncertain, particularly regarding the applicable Finance Act and rate. Since the proviso imposed an additional tax burden, it could not be applied retrospectively in absence of clear legislative intent. The Court also emphasized the principle that taxing statutes are presumed to be prospective unless expressly stated otherwise, and rejected the earlier view in *Suresh N. Gupta* treating the proviso as clarificatory.

**Cases Referred:**

- *Commissioner of Income Tax v. Suresh N. Gupta*
- *Commissioner of Income Tax v. Sanjiv Bhatara*
- *Govinddas v. Income Tax Officer*
- *Controller of Estate Duty v. M.A. Merchant*
- *CIT v. Scindia Steam Navigation Co. Ltd.*
- *Govindasaran Gangasaran v. Commissioner of Income Tax*
- *Keshavlal Jethalal Shah v. Mohanlal Bhagwandas*
- *Government of India v. Indian Tobacco Association*

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- *Vijay v. State of Maharashtra*
- *Phillips v. Eyre*
- *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd.*

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