

Commissioner of Income Tax Central II v. Suresh N. Gupta

Civil Appeal No. 32 of 2008

[2008] 1 SCR 157 | 2008-01-07

Whether Finance Act, 2001 authorized 17% surcharge on the historical block-assessment tax for a search on 17 January 2001, and whether the section 113 proviso inserted from 1 June 2002 was clarificatory. The contrary 2008 result was expressly overruled by the Constitution Bench in Vatika Township.

4(1) | 113 | 132 | 158B | 158BA(2) | 158BB | 158BC | 158BH

Two judges | S.H. Kapadia, J. | B. Sudershan Reddy, J.

Assessment years: 1991-92, 1992-93, 1993-94, 1994-95, 1995-96, 1996-97, 1997-98, 1998-99, 1999-00, 2000-01

Expressly overruled on pre-2002 block-assessment surcharge

Gupta's 2008 decision allowed pre-1 June 2002 surcharge and treated the section 113 proviso as clarificatory/curative. The five-judge Constitution Bench in Vatika Township (15 September 2014) expressly overruled that conclusion and held the proviso prospective, also rejecting its supporting section 4 charging approach. Do not use Gupta to support pre-amendment surcharge. The original appeal result is historical. Comprehensive later treatment, current law and Income-tax Act, 2025 mapping remain not_verified.

01 FACTS OF THE CASE

A search under section 132 on 17 January 2001 at the individual assessee's premises disclosed unexplained household valuables of Rs. 65,000 and marriage expenses of Rs. 97,427. The Assessing Officer assessed undisclosed income of Rs. 1,62,427 and tax at 60%, reported as Rs. 97,456. The officer also levied 17% surcharge, which the report repeatedly states as Rs. 16,504. That surcharge figure is arithmetically inconsistent with the printed tax base; it is preserved as reported rather than silently recalculated (physical 7-8/SCR 163-164, the two paragraphs numbered 2; physical 23 and 28, paragraphs 18 and 23).

The stated block covered previous years relevant to AYs 1991-92 to 2000-01 and the current partial period 1 April 2000 to 17 January 2001. In its later illustration, paragraph 16 explains that household valuables of Rs. 2,70,000 were reduced by Rs. 75,000 and the balance allocated among three brothers, producing this assessee's Rs. 65,000 addition for AY 2001-02. The dispute before the Court was the surcharge, not a fresh decision on valuation or those additions (physical 7-8 and 22-23/SCR 163-164, 178-179).

The assessee succeeded on surcharge before the Commissioner (Appeals), Tribunal and Gujarat High Court. Revenue appealed from the High Court's 13 February 2006 judgment in Tax Appeal 1042/2005. The Court granted leave and framed two questions: whether Finance Act, 2001 applied to this block assessment, and whether the Finance Act, 2002 proviso to section 113 was clarificatory (physical 7-9/SCR 163-165, paragraphs 1-5).

Source: [reported judgment / paragraphs Two paragraphs numbered 2, paragraph 3 and paragraphs 16-18 / PDF pages 7, 8, 22, 23 / judicial text](#)

02 DISCUSSION BY THE HON'BLE COURT

This section records the 2008 Court's historical reasoning, not the presently usable surcharge rule. The assessee argued that Chapter XIV-B was self-contained: section 158BA supplied the charge, section 158BB computation, section 158BC procedure, and section 113 a fixed 60% rate. In that view section 4(1)'s ordinary previous-year charge and annual Finance Act rates did not authorize surcharge before 1 June 2002; the proviso to section 4(1) accommodated a different charging period (physical 8-9 and 18/SCR 164-165, 174, paragraphs 4-5 and 12).

The Court rejected that construction. It located Parliament's power to levy surcharge in Article 271 with List I, Entry 82, distinguished that constitutional power from section 4, and treated section 4 as supplying the income-tax subject matter while Parliament prescribed the rate in the 1961 Act or the annual Finance Act. This was part of the surcharge reasoning; the judgment did not decide a separate challenge striking down or sustaining an enactment on constitutional grounds (physical 9-11/SCR 165-167, paragraphs 6-8).

After reproducing the historical Chapter XIV-B provisions and section 113 before and after the 2002 proviso, the Court emphasized that a block assessment aggregated income of the relevant previous years and computed the difference between search-based total incomes and the returned or assessed aggregates. It reasoned that Chapter IV computation and the concepts of previous year and total income survived, while section 158BH applied other provisions unless displaced. It therefore read section 158BB with section 4 and drew the relevant Finance Act into the block-assessment scheme even before 1 June 2002 (physical 12-22/SCR 168-178, paragraphs 9-16). Vatika later rejected reliance on section 4 as the charging foundation for this surcharge result; the historical explanation must not be severed from that adverse treatment.

The Court then read section 2(1), the first proviso to section 2(3), and Paragraph A of Part I of the Finance Act, 2001 First Schedule. Paragraph A's applicability was undisputed. It held that the statutory 60% income-tax rate did not exclude the additional 17% surcharge on the assessed tax and that Finance Act, 2001 applied to this 17 January 2001 search even without the later section 113 proviso. Its use of surcharge as a distinct addition to assessed tax did not create a new 17% tax directly on the undisclosed-income base (physical 23-28/SCR 179-184, paragraphs 17-23).

Having answered the first question for Revenue, the Court said it was not strictly necessary to reach the second, but expressly addressed it. It considered the uncertainty over four possible dates: search initiation, search completion, initiation of block-assessment proceedings and the assessment order. The Court regarded the 2002 proviso's selection of the search-initiation year as clarificatory and curative, citing Allied Motors on remedial provisos. It rejected the argument that the express 1 June 2002 commencement prevented application to the earlier search (physical 29-30/SCR 185-186, paragraphs 24-27). This is the precise conclusion expressly overruled by Vatika Township, not a merely questioned or pending-reference proposition.

02 DISCUSSION BY THE HON'BLE COURT

Source: [reported judgment / paragraphs Paragraphs 5-8, constitutional power and section 4 / PDF pages 9, 10, 11 / judicial text](#); [reported judgment / paragraphs Paragraphs 9-16, statutory extracts and computation/charge reasoning / PDF pages 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 / judicial text](#); [reported judgment / paragraphs Paragraphs 17-23, Finance Act 2001 surcharge / PDF pages 23, 24, 25, 26, 27, 28 / judicial text](#); [reported judgment / paragraphs Paragraphs 24-27, curative/clarificatory reasoning / PDF pages 29, 30 / judicial text](#)

03 JUDICIAL DECISION

In its 2008 disposition, the Court answered the surcharge issue for Revenue, set aside the Gujarat High Court judgment dated 13 February 2006 in Tax Appeal 1042/2005 and allowed the Department's single civil appeal, with no order as to costs. No remand was directed. The later Vatika overruling of the legal rule is separately recorded; this note does not claim a later recall, refund or reopening order in Gupta's own assessment (physical 28/SCR 184, paragraph 23; physical 30/SCR 186 G, paragraph 28).

Source: [reported judgment / paragraphs Paragraphs 23 and 28 / PDF pages 28, 30 / judicial text](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue in the historical 2008 appeal; the controlling surcharge proposition was subsequently overruled in favour of the assessee's position in Vatika Township

Civil Appeal 32/2008 allowed; impugned Gujarat High Court judgment set aside; no order as to costs

Final historical surcharge merits determination; expressly overruled on the pre-1 June 2002 surcharge/clarificatory-proviso issue by the 2014 Constitution Bench

The 2008 procedural result is reported as historical fact. It must not be presented as authority currently permitting pre-1 June 2002 surcharge. No subsequent personal assessment/refund disposition for Gupta is established, and no claim is made that Vatika rejected every unrelated general proposition mentioned in Gupta.

Source: [reported judgment / paragraphs Single appeal identity and paragraph 28 / PDF pages 7, 30 / judicial text](#)

05 AKHB REVIEW POINT

The essential editorial treatment is adverse, not neutral. In Commissioner of Income Tax (Central)-I v. Vatika Township Private Limited, 15 September 2014, the five-judge Constitution Bench identified section 158BA(2) as the charge within the self-contained historical block-assessment scheme and declined the Department's section 4 route. It independently applied the presumption against retrospective burdens. The uncertain date and rate were essential defects in the pre-proviso surcharge claim; the express 1 June 2002 commencement, legislative materials and subsequent Finance Act wording supported prospective operation. It held the proviso substantive rather than clarificatory or curative and expressly overruled Gupta's contrary conclusion (Vatika physical 24-43/SCR 1060-1079, paragraphs 27-41, especially 28-29, 38-40).

This is wider than a warning that only Gupta's final discussion of retrospective wording is doubtful: Vatika also addresses the supporting charging analysis and rejects the pre-amendment surcharge result. It is narrower than a claim that every observation in Gupta about computation, Article 271 or statutory interpretation has been independently overruled for every other purpose. Cite Vatika for the controlling historical surcharge issue and use Gupta to explain the earlier position and the dispute that produced the larger-bench decision. Vatika's actual disposition dismissed Revenue appeals and allowed assessee appeals deleting the surcharge in that batch; it was not merely an unanswered reference.

The statutory checks are deliberately bounded. The retained 2011 compilation confirms the then section 113 proviso and historical section 158BI cutoff. A departmental page explicitly selected as 2024 (No. 2) records later changes to section 113, including omission of the search-year wording from 1 September 2024. Neither that selected page nor the 2011 compilation establishes today's complete law, transitional application or an Income-tax Act, 2025 mapping. Comprehensive later treatment, current-law applicability and Income-tax Act, 2025 mapping remain unverified.

Source: [reported judgment / paragraphs Original SCR paragraphs 23-28, subsequently overruled surcharge reasoning / PDF pages 28, 29, 30 / judicial text; later constitution bench direct overruling bounded / paragraphs Paragraphs 17-29; Gupta's two issues and charging premise / PDF pages 20, 21, 22, 23, 24, 25, 26, 27 / judicial text; later constitution bench direct overruling bounded / paragraphs Paragraphs 31-41; prospectivity and express overruling, including 38-41 / PDF pages 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 / judicial text; official government hosted historical compilation bounded / paragraphs Selected 2011 section 113/footnotes 37-38 and section 158BI/footnote 79 / PDF pages 590, 758 / historical statutory compilation](#)

DETAILED DISPOSITION AND CONNECTED GROUPS

Proceeding outcomes

1.

Case number: Civil Appeal No. 32 of 2008

Outcome: Revenue appeal allowed in 2008; High Court judgment set aside; no costs order

Costs: No order as to costs

HISTORICAL BLOCK PERIOD AND SOURCE LIMITS

Previous years relevant to AYs 1991-92 to 2000-01 plus 1 April 2000 to 17 January 2001, as printed in the opening paragraph 2; no unprinted commencement date inferred.

SEARCH DATE IDENTIFIED IN THE SOURCE

2001-01-17

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

The actual dispute is surcharge on the tax under historical section 113, not proof of unexplained income, an independent constitutional validity challenge, or a free-standing ruling on every provision reproduced in the judgment. The contrary surcharge result and its supporting charging/clarificatory reasoning must be read subject to Vatika's express overruling.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.H. Kapadia, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961, historical Chapter XIV-B and section 113; Finance Act, 2001 surcharge provisions; Finance Act, 2002 section 113 proviso

SPECIFIED STATUTORY CHECKS AND THEIR LIMITS

Status: historical and selected version only

Checks

1.

Source url: [Open cited source](#)

Pdf pages: 590; 758

Finding: 2011 compilation records the section 113 proviso inserted from 1 June 2002 and historical section 158BI restriction for searches/requisitions after 31 May 2003.

2.

Source url: [Open cited source](#)

Pdf pages:

Finding: Selected 2024 (No. 2) CMS section 113 footnotes 42-43 record later omissions effective 1 September 2024. This establishes changed statutory text only, not complete present applicability.

Limits: No 2025 mapping, complete transitional analysis or current-law certification.

SPECIFIED LATER TREATMENT CHECKS AND THEIR LIMITS

1.

Case: Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited

Case id: sc-2014-09-15-vatika-township

Decision date: 2014-09-15

Relationship: expressly overruled on pre 2002 section 113 surcharge

Result: Constitution Bench holds section 113 proviso prospective from 1 June 2002; rejects the section 4 charging route for this issue; expressly overrules Gupta's contrary conclusion. Revenue appeals dismissed and assessee appeals allowed in the Vatika batch.

Source pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 25; 26; 27; 33; 34; 35; 36; 41; 42; 43

Paragraphs: Paragraphs 27-29, 38-41

Source role: judicial text

Limits: Direct adverse treatment only; not proof of later personal relief for Gupta or a complete audit of every general proposition in either judgment.

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Finance Act, 2001, section 2(1), first proviso to section 2(3), and Part I, Paragraph A of First Schedule; Finance Act, 2002 insertion of section 113 proviso from 1 June 2002; Finance Act, 2000 mentioned in supporting reasoning; Constitution of India, Article 271 read with List I, Entry 82; Sections 32(2), 68, 69, 69A, 69B, 69C, 139, 142, 143, 144, 147, 148, 158BE, 158BFA and 245D only in quoted statutory scheme or background, not separately adjudicated claims

DATED OFFICIAL STATUTORY HTML COMPARISONS AND READING LIMITS

1.

Kind: official departmental statutory html bounded

Title: Income Tax Department section 113 presentation, selected 2024 (No. 2) version

Url: [Open cited source](#)

Selected version: 2024(No.2)

Filename: Not stated in the reviewed record

Sha256: Not stated in the reviewed record

File bytes: Not stated in the reviewed record

Pdf pages: Not stated in the reviewed record

Physical text pages read:

Physical image pages read:

Full relevant section text read: True

Full document text read: False

Read bounds: Complete displayed section 113, year/Act heading and footnotes 42-43 read. Hindi navigation with English statutory body. Only the existence of the selected-version changes is relied on: omission of undisclosed and the search-year wording from 1 September 2024.

Provenance: Successful web open on 5 October 2026. Departmental CMS reproduction, not an independently authenticated Gazette or current-law certificate. No PDF pagination/hash invented.

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 30 PDF pages; SHA-256
88c92551293996d171a9a970e7788cb487ed4765bf29f8cb52dbdc218abba670. Original bytes preserved.

Open cited source rendition

full primary text read: True; all primary page images reviewed: False; source integrity verified: True; actual statutory scope verified: True; later treatment comprehensive: not_verified; current law status: not_verified; statutory mapping 2025: not_verified

Printed SCR identity, date and bench verified against the first-page image. Frozen catalogue INSC identifier is not separately authenticated in this rendition.

Physical 7 and 8 both print a paragraph numbered 2: the opening issue/block-period paragraph and the separate Facts paragraph. Pins distinguish them rather than renumbering the source.; The headnote on physical 2 prints 17 January 2006, but the judicial body repeatedly states 17 January 2001. The latter governs the case chronology; no second search is inferred.; The source repeatedly prints 17% surcharge on tax of Rs. 97,456 as Rs. 16,504.17% of the printed base is Rs. 16,567.52, so the stated amount cannot be independently reconciled. The note preserves the reported amount and does not invent an alternative operative demand.; Physical 30 paragraph 26 refers to search initiated under section 158BC, while the facts and statutory proviso identify section 132 search and section 158BC as block-assessment procedure. That printed label is not promoted into a search-power rule.; The source's ten-year block description and its current partial-year addition are kept separate. Paragraph 16 identifies AY 2001-02 for the household-valuables addition; the listed ten assessment years alone are not the full temporal description.; Judicial paragraph 24 says the second issue is not strictly necessary after the first answer but then expressly reasons through it. Vatika expressly overrules the contrary conclusion and rejects the supporting charging approach; the note must not preserve the first answer as an effective independent escape from Vatika.; Finance Act 2001 quotations, Allied Motors and Govind Saran are reviewed as reproduced in the primary judgment, not as separately authenticated complete originals. The statutory quotation includes historical forms and is not a present-law text.; The bounded Vatika read is auxiliary only. Its distinct source remains owned by the existing Vatika note; no duplicate 2014 note is created and no later personal disposition in Gupta is inferred.; Vatika's rendition uses different paragraph numbering when reproducing Gupta material. Gupta pins in this note use its own original SCR paragraphs 25-26, not the 37-38 labels cited in other renditions.

Opening judicial paragraph 2 identifies the block by previous years relevant to AYs 1991-92 through 2000-01, plus the partial current period 1 April 2000 to 17 January 2001. Paragraph 16 expressly places the household-valuables addition in AY 2001-02. This is a historical block assessment, not eleven independently decided ordinary assessments.

Single Revenue appeal from Gujarat High Court Tax Appeal 1042/2005, judgment dated 13 February 2006; leave granted.

STATUTORY SCOPE

No Income-tax Act, 2025 crosswalk or automatic carryover. Full amendment history, commencement, savings and case-specific present applicability have not been verified.

LATER TREATMENT

Source checked 2026-10-05. Direct Constitution Bench overruling verified from the retained original. Comprehensive later treatment, including unrelated Gupta propositions and any later personal assessment/refund proceedings, remains not_verified.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 30](#)

SHA-256: 88c92551293996d171a9a970e7788cb487ed4765bf29f8cb52dbdc218abba670

[later constitution bench direct overruling bounded - PDF pages: 43](#)

SHA-256: 4892de497ff80aa17d11d66c23196f4ea79d62857d8a872213f2b312aaa20a24

[official government hosted historical compilation bounded - PDF pages: 1251](#)

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

[Income Tax Department section 113 presentation, selected 2024 \(No. 2\) version](#)

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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