

K.L. Swamy v. The Commissioner of Income Tax & Anr.

Civil Appeal No. 3704 of 2012 / Civil Appeal No. 3706 of 2012 / Civil Appeal No. 3705 of 2012 / Civil Appeal No. 3707 of 2012 / Civil Appeal No. 3708 of 2012 / Civil Appeal No. 3709 of 2012

[2023] 1 S.C.R. 689 | 2023-01-13

Whether interest under section 158BFA(1) was chargeable for delayed filing of a block return by a person served with a section 158BD notice but no separate section 158BC notice, including for the period before 1 June 1999; and whether the historical block assessment could bear surcharge under the proviso to section 113.

158BC | 158BD | 158BFA(1) | 140A | 113 proviso

Two-judge bench | M. R. Shah, J. | C. T. Ravikumar, J.

Assessment years: See the source-scope notes; no year inferred.

01 FACTS OF THE CASE

Six connected assessee appeals concerned late-return interest and surcharge in block assessments. The Court used Civil Appeal 3706/2012 as the factual lead. The appellant in that narrative was an individual and director/partner in Khoday Group concerns. A section 132 search was conducted at family members' residential premises with a warrant in the name of Khoday India Ltd. The appellant received a section 158BD notice for the block period 1 April 1986 to 13 February 1997 and returned undisclosed income of Rs 45 lakh. Paragraph 4.2 records a notice dated 28 November 1997 and a return filed on 19 January 1999. The Assessing Officer imposed section 158BFA(1) interest; paragraph 4.1 reports Rs 7,12,296, a tax base of Rs 27,49,600, and 2% per month for 13 months from 18 January 1998 to 19 January 1999. These are the source's figures, not a reconciled computation. CIT(A) upheld interest, but the Tribunal allowed the assessee's appeal because section 140A did not then require self-assessment tax with the block return. The Karnataka High Court reversed the Tribunal on interest and also sustained surcharge relying on Suresh N. Gupta. The assessee challenged both conclusions. Their objections based on absence of a section 158BC notice and the 1999 and 2002 amendments were submissions, not findings adopted by the Supreme Court.

Source: [reported rendition / paragraphs 1-4.5 / PDF pages 7, 8, 9 / judgment](#); [reported rendition / paragraphs 7.1 / PDF pages 12, 13 / Revenue submission](#); [official signed judgment / paragraphs 3-4.5 / PDF pages 2, 3, 4, 5, 6, 7 / judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

On surcharge, the Court followed the Constitution Bench decision in CIT v. Vatika Township Pvt. Ltd., (2015) 1 SCC 1. That decision treated the section 113 proviso, effective from 1 June 2002, as creating a substantive prospective charge and overruled Suresh N. Gupta on its retrospective/clarificatory treatment. The Court therefore held the assesseees not liable for surcharge in these appeals (paragraphs 9-9.2). The Revenue had conceded this point in paragraph 7.11.

On interest, the Court treated the historical Chapter XIV-B scheme as self-contained machinery for separately assessing undisclosed income for the block period, in addition to normal assessments. A separate block return was required. It accepted that before 1 June 1999 neither section 158BC nor section 158BFA required payment of tax with that return and section 140A did not yet apply to it. That did not extinguish the independent liability for delayed filing under section 158BFA(1). The Finance Act 1999 amendment to section 140A brought block-return assesseees into the self-assessment-payment requirement; it did not create the earlier late-return liability (paragraphs 10-10.3). Paragraph 10.3 distinguishes the section 158BFA filing-delay interest, which stops when the return is filed, from the independently operating payment consequences considered under section 140A.

For a person other than the searched person, a section 158BD notice was sufficient for the issue decided; a separate section 158BC notice was not necessary to sustain late-return interest. The Finance Act 2002 insertion of the words 'under section 158BC' in section 158BD was clarificatory of the procedure already applicable under Chapter XIV-B. The Court relied on the Notes on Clauses and rejected a reading that would make section 158BD ineffective for this purpose (paragraphs 10.4-10.7). It specifically distinguished the section 158BC notices to Khoday India Ltd. and Khoday Breweries Ltd. from the section 158BD notice to K.L. Swamy. This reasoning does not hold that all statutory notices or other jurisdictional conditions can be dispensed with, and it does not decide liability under every later search-assessment regime.

Source: [reported rendition / paragraphs 9-9.2 / PDF pages 16, 17, 18, 19, 20, 21, 22 / judgment](#); [reported rendition / paragraphs 10-10.3 / PDF pages 22, 23, 24, 25, 26, 27 / judgment](#); [reported rendition / paragraphs 10.4-10.7 / PDF pages 28, 29 / judgment](#); [official signed judgment / paragraphs 9.1-9.2 / PDF pages 32, 33 / judgment](#); [official signed judgment / paragraphs 10.1-10.3 / PDF pages 38, 39, 40, 41, 42 / judgment](#); [official signed judgment / paragraphs 10.4-10.7 / PDF pages 42, 43, 44, 45, 46 / judgment](#)

03 JUDICIAL DECISION

The appeals succeeded in part. The High Court judgment and the assessment order were set aside insofar as they imposed surcharge under the proviso to section 113. The High Court was confirmed on section 158BFA(1) interest: persons other than the searched persons remained liable for delayed filing of the block return despite the absence of a separate section 158BC notice, including for the period before 1 June 1999. The appeals were disposed of on those terms, with no order as to costs. There was no remand and no fresh numerical interest computation in the operative order.

Source: [reported rendition / paragraphs 9.2; 10.7; 11 / PDF pages 22, 29, 30 / judgment](#); [official signed judgment / paragraphs 9.2; 10.7; 11 / PDF pages 32, 33, 45, 46, 47 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Mixed: assessees on surcharge; Revenue on late-return interest

Assessees' appeals partly allowed; surcharge component set aside; interest ruling affirmed; no costs

Both common questions decided on merits

Applies to the historical block-assessment provisions and facts adjudicated. A section 158BD notice was present; the decision does not dispense with all notice requirements, decide section 158BFA(2) penalty, or certify the result under later legislation.

Source: [reported rendition / paragraphs 11 / PDF pages 29, 30 / judgment](#); [official signed judgment / paragraphs 11 / PDF pages 46, 47 / judgment](#)

05 AKHB REVIEW POINT

Keep the surcharge issue and the interest issue separate in a legacy block-assessment file. Record the search date, identity of the searched and other persons, notice provision and service date, time allowed for the return, actual filing date, assessed undisclosed income and tax base. A pre-1 June 1999 absence of a duty to pay self-assessment tax with the return does not, under this decision, remove late-return interest. Equally, the Court's treatment of the 2002 section 158BD amendment as clarificatory does not make the section 113 surcharge amendment retrospective. Use the assessment record to reconcile the figures: paragraph 4.1's stated tax base, rate and 13-month period do not arithmetically produce its stated interest amount, and the judgment does not resolve that difference. Do not turn the absence of a separate section 158BC notice into a general exemption from notice safeguards. Check the governing historical text and later treatment before reliance; no automatic mapping to the Income-tax Act, 2025 is made.

Source: [reported rendition / paragraphs 4.1-4.2; 9.2; 10.1-10.7; 11 / PDF pages 7, 8, 22, 25, 26, 27, 28, 29, 30 / judgment](#)

HISTORICAL BLOCK PERIOD

From: 1986-04-01

To: 1997-02-13

Basis: Court narrative, paragraph 4.1

Assessment year span as submitted by revenue: 1987-88 to 1997-98

Span source role: Revenue submission, paragraph 7.1

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

132; 158BA(2); 158BB; 139; 142; 148; 234A

SOURCE & VERIFICATION

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

Identified source rendition: 30 PDF pages; SHA-256

1fa6a25868eb0edf5450428baca7efc642fbaa49f0e79320293b0d57e4435a0b. Original bytes preserved.

[Open cited source rendition](#)

The common judgment selects Civil Appeal 3706/2012 as the factual lead despite the K.L. Swamy cover caption and Civil Appeal 3704/2012. The note does not silently attribute every lead-case figure to the cover appeal.

SCR physical page 6 prints Civil Appeal 3074/2012; SCR cover and official original cover print 3704/2012. The PDF internal title metadata also mentions 2022, but the visible covers and official date control.

Paragraph 4.1 in both renditions reports interest Rs 7,12,296 on tax Rs 27,49,600 at 2% per month for 13 months. Direct multiplication gives Rs 7,14,896, a Rs 2,600 difference. The source figures are preserved and no numerical correction or consequential computation is asserted.

The historical block dates are distinguished from AY descriptions in party submissions and from the different facts inside long quotations from Vatika Township.

SCR pages 1-6 contain editorial material, not fresh findings. The judicial text begins on physical page 7 and ends on page 30; no neighbouring judgment contaminates this asset.

The surcharge-rate table inside the quotation from Vatika Township is present as an image on SCR physical page 18 and absent from extracted text; it was visually inspected. Its historical rates are not offered as current compliance guidance.

Paragraph 10.1 prints section 140 while the surrounding reasoning addresses section 140A; quoted passages also contain obvious section-number typographical slips. The note states the actual section 140A issue without reproducing those slips as independent propositions.

Suresh N. Gupta was overruled on the surcharge point by Vatika Township, not newly overruled by this two-judge decision. Hotel Blue Moon and Mathuram Agrawal appear in assessee submissions; P.P. Umerkutty appears in Revenue submissions.

The index neutral citation 2023INSC28 remains metadata-only and unverified; the verified displayed citation is [2023] 1 S.C.R. 689.

SCR citation verified on physical PDF page 1. The source index additionally records 2023INSC28; the neutral citation is not printed in either inspected judgment PDF and is not represented here as independently verified.

This is a block assessment, not a single annual assessment. The Court records 1 April 1986 to 13 February 1997 in paragraph 4.1. The Revenue describes the block as 1987-88 to 1997-98 in paragraph 7.1; that year span is attributed to the submission rather than converted into separate annual assessments. Dates from Vatika Township passages quoted in paragraphs 9 and 10 are not facts of these appeals.

The cover identifies Civil Appeal 3704/2012. Paragraph 3 expressly selects connected Civil Appeal 3706/2012, arising from Karnataka High Court ITA 277/2004, as the factual lead. The SCR jurisdictional preface on physical PDF page 6 prints 3074/2012, inconsistent with its first page and the official original cover; that apparent typographical transposition is not adopted.

STATUTORY SCOPE

Historical provisions and 1999/2002 amendments as examined by the judgment; no independent consolidated current-statute audit

No automatic mapping to the Income-tax Act, 2025 or any later search-assessment scheme.

LATER TREATMENT

Source checked 2026-10-04. Subsequent appeals, review proceedings, stays, reversals and later judicial treatment have not been comprehensively checked. This note is not a citator status certificate.

IDENTIFIED SOURCE LINKS

[reported rendition - Physical PDF page 1 / SCR page 689 - PDF pages: 30](#)

SHA-256: 1fa6a25868eb0edf5450428baca7efc642fbaa49f0e79320293b0d57e4435a0b

[official signed judgment - PDF pages: 47](#)

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