

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

Before Shri Duvvuru RL Reddy, Vice-President (KZ)

**I.T.A. No. 1919/KOL/2024
Assessment Year: 2023-2024**

***Badamtam Welfare Trust,.....Appellant
'Camellia House',
14, Gurusaday Road, Kolkata-700019
[PAN:AAATB4560C]***

-Vs.-

***Deputy Director of Income Tax,.....Respondent
CPC, Bengaluru,
Centralized Processing Centre,
Income Tax Department, Bengaluru,
Karnataka, PIN-560500***

Appearances by:

*Shri Soumik Ray, A.R., appeared on behalf of the
assessee*

*Shri L.N. Dash, JCIT, Sr. D.R., appeared on behalf of the
Revenue*

**Date of concluding the hearing: December 10, 2024
Date of pronouncing the order: December 31, 2024**

O R D E R

The present appeal is directed at the instance of assessee against the order of Id. Addl./JCIT(Appeals), Madurai dated 6th August, 2024 passed for Assessment Year 2023-24.

2. The assessee is a Welfare Trust. This Trust was registered in the Office of the Additional Registrar of Assurances, Kolkata on

09.09.20000. The Trust was created with the charitable objects such as to provide financial help to the deserving persons towards any medical expenses, treatment, education, training etc., donations for public and private charitable purposes or organizations. The assessee is a regular assessee and assessed as an AOP not registered under section 12A/12AA of the Act. The surplus, if any, arising in any previous year after meeting the charitable expenses was offered to tax at the maximum marginal rate. The assessee filed its return of income on 15.11.2023 declaring income of Rs.1,27,100/-. The tax liability computed in the return was Rs.40,655/- and after adjustment of TDS of Rs.43,200/-, the appellant claimed refund of Rs.2,545/-. The ld. Assessing Officer accepted the return of income of Rs.1,27,100/- and the tax payable thereon at Rs.38,130/- including the interest under section 234F, but increased the tax liability from Rs.40,655/- to Rs.56,171/- erroneously by including surcharge of Rs.14,108/- and increasing the Health and Education Cess by Rs.565/-.

3. Being aggrieved, the assessee preferred an appeal before the ld. CIT(Appeals). The ld. Addl./JCIT(Appeals) after considering the written submission of the assessee, dismissed the appeal filed by the assessee.

4. Being aggrieved, the assessee preferred an appeal before the ITAT and raised the following grounds:-

(1) That on the facts and in the circumstances of the case and in law, the Learned Addl./JCIT(A), Madurai, erred in confirming the addition of surcharge @ 37% to the total tax

liability of Rs.38,130/-, amounting to Rs.14,108/-, as surcharge is not applicable in the appellant's case, as its total income was Rs. 1,27.100/- only and surcharge is not leviable upto an income of Rs.50.0 lakhs in case of AOP/BOI.

(2) That on the facts and in the circumstances of the case and in law, the Learned Addl./JCIT(A), Madurai, erred in confirming the computation of Health and Education Cess at Rs.2,090/- as against Rs. 1,525/- computed in its return of income thereby increasing the tax liability.

(3) That on the facts and in the circumstances of the case and in law, the Learned Addl./JCIT(A), Madurai, erred in confirming the computation of Interest under sections 234A, 234B and 234C of the Income Tax Act, 1961, as against Nil interest liability computed in its return of income thereby increasing the tax liability.

(4) That the appellant craves leave to add, alter, amend, cancel, supplement or otherwise modify the grounds stated above, before or at the hearing of the appeal as it may deem fit.

5. I have heard both the sides. It was the submission of the assessee that the surcharge is not applicable in the assessee's case as its total income was Rs.1,27,095/- only and surcharge is not leviable upto income of Rs.50 lakhs in case of AOP. He further submitted that the surcharge is applicable on income chargeable to tax at special rates of non-residents specified fund and foreign institutional investors. He further submitted that in respect of assessment year 2022-23, the surcharge was calculated from the intimation under section 143(1) dated 16.03.2023. The assessee preferred an appeal before the ld. CIT(Appeals) and ld. Addl./JCIT(Appeals) deleted the addition made by the ld. Assessing Officer vide its order dated 16.12.2023. He further submitted that this issue was squarely covered by the decision of ITAT, Mumbai Benches and Hyderabad Benches. Section 115AD

deals with tax on income of foreign institutional investors or a specified fund. The assessee does not fall either in the category of foreign institutional investors or specified fund within the meaning assigned to it in clause (c) of the Explanation to Clause 4(D) of section 10 for the assessment year 2022-23. The assessee preferred an appeal on the same issue and the appeal was allowed by deleting the surcharge so charged and directed to calculate the correct tax liability of the appellant. But this year again, they have levied the tax. He pleaded to delete the surcharge and calculate the correct tax liability of the appellant.

6. On the other hand, Id. D.R. relied on the orders passed by the revenue authorities. He further submitted that Income Tax Act defines “maximum marginal rate” as rate of income tax (including surcharge on income tax, if any) applicable in relation to the highest slab of income relatable to which status the appellant belongs. He further submitted that the CPC has charged tax according to section 2(29C) of the Income Tax Act, 1961 on the highest slab applicable to the member of the AOP/Joint Venture, tax on individual/AOP/Company, Association of persons with income above five crores, plus surcharge. He, therefore, pleaded to uphold the orders passed by the revenue authorities.

7. I have perused the material available on record. It is an admitted fact that the assessee filed the return of income declaring total income of Rs.1,27,095/-. After considering the submissions and facts brought on record, I find that the assessee is aggrieved for levy of surcharge, surcharge on come including interest under

section 234F. The reason given by the Id. Addl./JCIT(Appeals) is that the tax liability of the assessee has to be computed by maximum marginal rate and, therefore, surcharge is applicable as per section 2(29(c) of the Act.

8. For the sake of better clarity, I am reproducing the Section 2(29C), which reads as under:-

:29C)-“maximum marginal rate” means the rate of income tax (including surcharge on income tax, if any) applicable in relation to the highest slab of income in the case of an individual, association of persons, or ,as the case may be, body of individuals as specified in the Finance Act of the relevant year.

Therefore, maximum marginal rate is rate of income tax, which includes surcharge if any, applicable in relation to the highest slab of income in the case of individual/AOP/Company as specified in the Finance Act. Hence, the tax rate on surcharge is applicable on the basis of slab rate provided under the Finance Act.

9. Thus, the tax rate and surcharge are applicable on the basis of slab rate provided under the Finance Act of the relevant year. The first schedule to the Finance Bill, 2022, which is applicable in the present case in hand, which provides for rate of income tax for the year on the persons including the HUF/AOP/Company/individual or association of persons, wherein slab rates for levy of tax of rate have been provided. However, **surcharge on income tax is applicable on the income which are exceeding slab rate of Rs.50 lakhs and above,** wherein different rates of surcharge have been provided. Therefore,

the surcharge is leviable only when the amount of income tax is computed where the total income exceeds Rs.50 lakhs. But in the case on hand, the return of income is only Rs.1,27,095/-, so on this income, income tax shall be charged at maximum marginal rate in terms of section 164 of the Income Tax Act. For levying the surcharge, it is necessary that the slab of income, which is chargeable to tax is exceeding Rs.50 lakhs and above. Therefore, I am of the considered view that the view taken by the Id. Addl./JCIT(Appeals) is against the law and cannot be sustained. Therefore, I direct the Id. Assessing Officer that there could not be any surcharge levied on the income tax since income of the assessee is less than Rs.50 lakhs. Hence, the grounds raised by the assessee are allowed.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 31/12/2024.

Sd/-

(Duvvuru RL Reddy)

Vice-President (KZ)

Kolkata, the 31st day of December, 2024

*Copies to :(1) Badamtam Welfare Trust,
'Camellia House',
14, Gurusaday Road, Kolkata-700019*

*(2) Deputy Director of Income Tax,
CPC, Bengaluru,
Centralized Processing Centre,
Income Tax Department, Bengaluru,
Karnataka, PIN-560500*

(3) Addl/JCIT(Appeals), Madurai;

- (4) CIT - , Kolkata;
- (5) The Departmental Representative;
- (6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.