

IN THE INCOME TAX APPELLATE TRIBUNAL “K(SMC)” BENCH, MUMBAI

**BEFORE HON’BLE JUSTICE (RETD.) C V BHADANG, PRESIDENT,
SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI B R BASKARAN, ACCOUNTANT MEMBER**

ITA No. 4272/Mum/2024
(Assessment Year: 2023-24)

Araadhya Jain Trust 31, Benzer Terraces, Abdul Gaffar Khan Road, Worli, Mumbai-400 018	Vs.	Income Tax Officer, Ward 22(1)(6) Piramal Chambers, Lalbaug, Mumbai-400 012
PAN/GIR No. AAITA 2310 B		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Mihir Naniwadekar, Advocate Shri Rohan Deshpande
Respondent by	:	Shri Kiran Unavekar, Sr. DR

INTERVENERS :

Sr. No.	ITA Nos.	Name of party	Advocate/CA S/Shri
1	403/Mum/2025	NIK Family Trust	Shri Dharan Gandhi
2	1258/Pun/2024	Anu Aga Family Discretionary Trust	Shri Mihir Naniwadekar, Advocate & Shri Rohan Deshpande
3	1793/Pun/2024	Hreyansh Vasundhara Family Trust	
4	1884 & 1885/Pun/2024	ADPR & Associates	Shri Devendra Jain
5	2781/Pun/2024	Ashok Patni Family Trust	Shri Mihir Naniwadekar, Advocate & Shri Rohan Deshpande

Date of Hearing	:	17.03.2025
Date of Pronouncement	:	09.04.2025

ORDER

Per Saktijit Dey, VP:

This Special Bench has been constituted by the Hon’ble President, in terms of section 255(3) of the Income Tax Act, 1961 (‘the Act’ for short), to decide the following issue:

“Whether, in the case of private discretionary trusts whose income is chargeable to tax at maximum marginal rate, surcharge is chargeable at the highest applicable rate or at a slab rates?”

2. Before we proceed to deal with the aforesaid substantive issue, it is necessary to provide a brief factual backdrop leading to the constitution of Special Bench.

3. The assessee-appellant – Araadhya Jain Trust, a Private Discretionary Trust, filed its return of income for the assessment year (A.Y. for short) 2023-24, declaring income of Rs.4,85,290/-. In terms with the provision contained u/s. 164 read with section 2(29C) of the Act, the assessee paid tax at the ‘maximum marginal rate’. While processing the return of income filed by the assessee, the Centralized Processing Centre (CPC) levied highest rate of surcharge on the maximum marginal rate at which the tax was computed.

4. Being aggrieved with the levy of surcharge, the assessee preferred an appeal before the first appellate authority.

5. Before the first appellate authority, assessee’s contention, in sum and substances, was to the effect that levy of surcharge for the relevant financial year is applicable in terms with the Finance Act, in case the total income of the assessee exceeds Rs.50 lacs. Whereas, in assessee’s case total income is to the tune of Rs.4,85,290/-. Hence, no surcharge is leviable. However, the aforesaid submission of the assessee did not find favour with the first appellate authority. Referring to section 164 of the Act, which provides for computation of tax at the maximum marginal rate, as also, the definition of maximum marginal rate u/s. 2(29C) of the Act r.w.s. 2 of Finance Act, 2023, the first appellate authority held that in terms with the definition of ‘maximum marginal rate’, the highest

rate of surcharge would be applicable on the tax computed at maximum marginal rate. The first appellate authority held that the use of word 'if any' u/s. 2(29C) would mean, 'if levy of surcharge is at all available under the Finance Act or not'. Thus, ultimately, the first appellate authority upheld the levy of surcharge at the maximum rate.

6. Being aggrieved with the decision of the first appellate authority, the assessee filed an appeal before the Tribunal.

7. Post filing of appeal, assessee's appeal for A.Y. 2022-23, involving identical issue was heard and disposed of by the Tribunal vide order dated 07.10.2024 in ITA No. 2197/Mum/2024. While deciding the appeal, the Bench expressed the view that in case of Private Discretionary Trust, where provisions of sections 164 and 167B are applicable, the rate of surcharge would be the highest rate of surcharge provided under the Finance Act, irrespective of the quantum of income. Finding that there are decisions of the Tribunal holding contrary view, the assessee on 22.10.2024 furnished an application before the Hon'ble President requesting to constitute a Special Bench for deciding the issue under reference. Upon considering the application of the assessee, Hon'ble President, in the administrative side, passed order dated 14.11.2024, constituting the Special Bench to decide the issue under reference. Subsequently, five more assessee's filed applications seeking to join as interveners. Their applications to join as intervenors were allowed in due course. When the matters came up for hearing, Id. Counsels appearing for the appellant-assessee as well as the interveners advanced exhaustive arguments, which would be dealt by us hereinafter.

8. The learned Departmental Representative ('ld. DR' for short) also submitted his counter to the arguments advanced by the assessee. Shri Mihir Naniwadekar, Advocate, who appeared in the lead matter, i.e., Araadhya Jain Trust, Mumbai and on behalf of interveners nos. 2, 3 and 5 submitted that as per section 164 and 167B of the Act, tax in case of a Private Discretionary Trust is to be charged at the maximum marginal rate. He submitted, the maximum marginal rate is defined u/s. 2(29C) of the Act, to mean the rate of income tax applicable in relation to highest slab of income as specified in the Finance Act of the relevant year with reference to an individual, association or body of individual and such tax is to be increased by applicable surcharge, if any. He submitted, the rate of income tax in force for a relevant year is provided u/s. 2(1) of the Finance Act, 2023 read with its schedule. However, he submitted, sub-section (1) to section 2 of Finance Act, 2023 is subject to sub-sections (2) and (3). Drawing our attention to sub-section (3) of section 2 of Finance Act, 2023, he submitted, as per the said provision, in case of a Private Discretionary Trust, tax is charged as per the provision of section 164/167B of the Act, i.e., at the maximum marginal rate. However, he submitted, sub section (3) to section 2 of Finance Act, 2023 does not make mention of any surcharge. Thus, he submitted, the main charge of section 2(1), which is at slab rates, is modified by sub-sections (2) and (3) only as regards the rate of tax and not as regards the surcharge. Elaborating further, he submitted, as per section 2(1) of Finance Act, 2023, the tax and surcharge would be charged as per the First Schedule, subject to the provisions of sub-sections (2) and (3), unlike the legal fiction created u/s.164/167B of the Act, which purport to levy income tax at the highest rate.

9. He submitted, if one refers to the First Schedule of Finance Act, it would become clear that there is difference between the 'rates of income tax' and 'surcharge', as the Finance Act speaks of 'rates of income tax' and 'surcharge', rather than 'rates of surcharge'. Surcharge is simply an amount added to the income tax. Proceeding further, he submitted, rate of income and surcharge are two different connotations not only under the Act but also under Article 271 of the Constitution of India. Drawing our attention to Article 271, he submitted, surcharge is recognized as a separate category and its collection is treated differently than the income tax levied at the specified rates. In support of such proposition, he relied upon the following decision:

Commissioner Of Income Tax, Kerala v. K. Srinivasan [1972] 83 ITR 346 (SC)

10. Referring to sub-section (3) of section 2 of Finance Act, 2023, he submitted, it only refers to charge of income tax for the purpose of section 164/167B of the Act and does not refer to the charge of surcharge. He submitted, insofar as, surcharge is concerned, the charging provision is specifically provided u/s. 2(1) of Finance Act, 2023, which refers to the First Schedule and provides for levy of surcharge at slab rates, meaning thereby, the highest rate of surcharge at 37% can be made applicable only when the income exceeds Rs.5 crores. Thus, he submitted, unless the threshold limit of Rs.5 crores is reached, surcharge at the highest rate of 37% cannot be levied. He submitted, when assessee's income is returned at Rs.4,85,290/-, though, the applicable rate of income tax would be at 30%, being the maximum marginal rate, however, no surcharge would be leviable, as the quantum of income is less than Rs.50 lacs. In support of such contention, Id. Counsel relied upon the following decisions:

1. *ITO vs. Tayal Sales Corporation* [2003] 1 SOT 579 (Hyd.)
2. *Lintas Employees Professional Development Trust vs. ITO* (ITA No. 4791/Mum/2023 decided on 29.05.2024)
3. *Sriram Trust, Hyderabad vs. ITO* (ITA Nos. 439, 440 & 441/Hyd./2024, decided on 19.06.2024)
4. *Ujjwal Business Trust vs. CPC* (in ITA No. 602/Mum/2024 decided on 28.06.2024)
5. *Lintas Employees Holiday Assistance Trust vs. CPC* (ITA No. 1796/Mum/2024 decided on 26.07.2024)
6. *Jitendra Gala Navneet Trust vs. DDIT and Dilip Sampat Navneet Trust vs. DDIT* (ITA Nos. 2484 & 2485/Mum/2024 decided on 22.10.2024)
7. *Lintas Employees Holiday Assistance Trust vs. ITO* (ITA No. 3949/Mum/2024 decided on 20.01.2025)
8. *V. Meera Charitable Trust vs. ITO* (ITA No. 2140/Chny/2024 decided on 07.02.2025)

11. Again drawing our attention to the definition of ‘maximum marginal rate’ u/s.2(29C) of the Act, he submitted, the words “including surcharge on income-tax, if any”, since are placed in round brackets within the definition clause, the term must be interpreted as connoting extra information separate from the main context of the definition itself and as such, it would be incorrect to levy surcharge at the highest rate. In support of such contention, he relied upon the following decision:

Fuerst Day Lawson Ltd vs Jindal Exports Ltd 2011 (8) SCC 333

12. Insofar as the decisions expressing contrary view, Id. Counsel submitted that the decision rendered in case of *Anant Bajaj Trust vs. Deputy Director of Income Tax* (in ITA No. 1995/Mum/2024 vide order dated 26.08.2024) was subsequently recalled while allowing a Miscellaneous Application filed by the assessee. He submitted, in case of *Kapur Family Trust vs. ITO* (in ITA Nos. 3834 & 3835/Mum/2024 order dated 30.10.2024), the

Bench had followed the decision of *Anant Bajaj Trust* (supra), which was subsequently recalled. Thus, he submitted, the decision in case of *Kapur Family Trust* (supra) does not have any precedentiary value. Insofar as, the decision rendered in assessee's own case for A.Ys. 2020 to 2023 in ITA No. 2197/Mum/2024 vide order dated 07.10.2024, Id. Counsel submitted, the bench while deciding the issue had placed reliance upon the following decisions:

1. *CIT vs. C V Divakaran Family Trust* [2002] 122 Taxmann 405 (Kerala)
2. *Gosar Family Trust vs. CIT* [1995] 81 Taxman 146 (SC)
3. *CIT vs J.K. Holdings* [2003] 133 Taxman 443 (Bom)

13. He submitted, in none of these decisions the issue of levy of surcharge at the maximum marginal rate was in dispute before the Hon'ble Courts. Thus, he submitted, these decisions cannot be considered to be laying down the proposition that as per the definition of 'maximum marginal rate' u/s. 2(29C), levy of surcharge would also be at the maximum marginal rate. Thus, he submitted, the rate of surcharge has to be determined in terms with the rate prescribed under the schedule to section 2(1) of relevant Finance Act and not at the maximum marginal rate, irrespective of the quantum of income or the rates provided under the schedule.

14. Shri Dharan Gandhi, Id. Counsel appearing for intervener no. 1 submitted, as per section 4 of the Act, income-tax for a particular assessment year has to be charged on the total income at the rate or rates specified in the Finance Act of the relevant year, subject to the provisions of the Act. He submitted, as per section 2(1) of the Finance Act, tax is to be levied at the rate specified in the schedule and the tax so levied is to be increased by a surcharge calculated in the manner provided in the Finance Act. He submitted, Paragraph

A, Part (I) of First Schedule to the Finance Act-2023, provides for computation of income tax in accordance with the rates prescribed in the slabs given or as per the provisions of sections 110, 11A, 112, 112A of the Act and such income tax shall be increased by a surcharge collected for the purposes of Union and calculated in the manner provided therein.

15. Thus, he submitted, as per the provisions of Finance Act, firstly, normal or basic income-tax is to be computed on the total income by applying the rate of tax, either as prescribed in the Finance Act or at special rates prescribed in the Income-tax Act, to total income. Thereafter, surcharge is added to basic/normal tax, after such basic/normal tax is computed. He submitted, surcharge is computed on the amount of income tax at the rate prescribed under the Finance Act and rate of surcharge is not applied to the total income. He submitted, certain provisions in the Income Tax Act provide for levy of tax at the maximum marginal rate, which amongst others include sections 164, 164A and 167B of the Act. Drawing our attention to the provisions contained u/s. 164 and 167B of the Act, Id. Counsel submitted that these provisions only deal with the levy of tax and not surcharge. He submitted, as per these provisions, for levy of normal/basic tax, instead of applying the slab rates prescribed under the relevant finance Act, the maximum marginal rate is to be applied. However, as far as surcharge is concerned, after the determination of the basic/normal tax by applying maximum marginal rate, surcharge is computed at the applicable rate based on the quantum of basic/normal tax in the manner provided in Paragraph A, Part (I) of First Schedule to the Finance Act-2023.

16. Thus, he submitted, maximum marginal rate merely replaces the basic/normal rate of tax and has nothing to do with increase of income tax by surcharge. In other words,

section 2(29C) of the Act neither can play any role nor can guide, the mode and manner of computation of surcharge, as it is exclusively provided under the Finance Act. He submitted, the use of word 'if any' succeeding the words 'including surcharge on income tax', presupposes, if surcharge is at all applicable in terms with Paragraph A, Part (I) of First Schedule to the Finance Act-2023. Drawing our attention to the relevant provisions of the Finance Act, Id. Counsel submitted, surcharge is leviable once the income exceeds the threshold limit. He further submitted that depending on the quantum of income, slab rate of surcharge has been fixed, starting from 10% to maximum of 37% of the basic income-tax. He submitted, as per the terms of the Finance Act, for certain categories of income and assessee's maximum rate of surcharge prescribed under the Finance Act is 15%. Thus, he submitted, as per the Finance Act, surcharge cannot be levied at the maximum rate, irrespective of, quantum of income, nature of income or nature of assessee's, as it would lead to an absurd outcome. He submitted, to avoid the absurdity, in fitness of the scheme of rate of tax provided under the Finance Act, it would be appropriate to levy basic tax at the maximum marginal rate provided in the Finance Act and thereafter add surcharge to such income-tax based on the quantum of income, nature of income and status of an assessee in terms with Paragraph A, Part (I) of First Schedule to the Finance Act-2023.

17. He submitted, the use of words 'unless the context otherwise' in section 2 of Income Tax Act, presupposes that the definition clauses have to be given contextual interpretation. Therefore, if the interpretation leads to an absurdity, such interpretation has to be eschewed by adopting a different contextual interpretation. For such proposition, he relied upon the decision of Hon'ble Supreme Court in the case of *CIT vs. J H Ghotla* [1985] 156 ITR 323 (SC). Without prejudice, Id. Counsel submitted, where there are conflicting views available

on a particular issue, the view favorable to the assessee should be preferred, when the issue under consideration is the basic charging provision and provision dealing with levy of tax. Referring to the decision of the co-ordinate bench in the case of *Araadhya Jain Trust* (supra), Id. Counsel submitted that though the decisions of the co-ordinate bench were available, however, they have been distinguished by the Bench by wrongly relying upon certain decisions which are clearly distinguishable on facts and do not at all deal with the issue at hand, i.e., whether surcharge has to be levied at the maximum rate. Thus, he finally submitted that the definition of maximum marginal rate as provided u/s. 2(29C) of the Act has to be read in conjunction with section 2(1) of the Finance Act and along with its schedule provided under Paragraph A, Part (I) of First Schedule to the Finance Act-2023.

18. Shri Devendra Jain, Id. Counsel appearing for intervener no.4, supplemented the submissions made by other Id. Counsels appearing for the assessee. He submitted, the object behind levy of surcharge can be gathered from the budget speech of Hon'ble Finance Minister, Government of India. In this context, he drew our attention to the speech of Hon'ble Finance Minister delivered on 05.07.2019, while presenting the budget for the year 2019-20. He submitted, the object behind introducing surcharge in the Finance Act is to augment nations developmental activities by generating additional fund through levy of surcharge on assessee in the highest income brackets as they are required to contribute more for nation building. He submitted, section 2(1) of the Finance Act provides that surcharge on income tax shall be calculated in the manner provided therein. Thus, he submitted, levy of surcharge as well as the rate at which it has to be levied, have a direct nexus to the quantum of income earned by the assessee. He submitted, for this purpose a threshold limit has been fixed for levy of surcharge. He submitted, surcharge cannot be

levied by giving a complete go bye to the threshold limit of income for the purpose of levy of surcharge as well as the rate at which surcharge is to be levied. Thus, he submitted, the definition of 'maximum marginal rate' u/s. 2(29C) of the Act cannot be interpreted in a manner to hold that the rate of tax at maximum marginal rate also requires levy of surcharge at the maximum rate.

19. In a common counter reply to the submissions made on behalf of the assessee, the learned Departmental Representative ('ld. DR' for short) submitted, as per the scheme of Act, to compute maximum marginal rate for a particular year, the rate of tax provided under the relevant Finance Act, needs to be referred to. In this context, he referred to sub-section (3) of section 2 of Finance Act, 2023. Thus, he submitted, to find out the maximum marginal rate, the Finance Act of every year is relevant for knowing the highest slab rate of tax and surcharge. Drawing our attention to memorandum explaining the provisions in the Finance (No.2) Bill, 1980, he submitted that in case of Discretionary Trusts, to curb the avoidance of tax, it was decided to levy tax at the maximum marginal rate on the total income which will also include the surcharge. Thus, he submitted, the memorandum explaining the provisions of Finance Bill, makes it clear that not only the rate of income-tax, but surcharge is also to be fixed at the rate applicable to the highest slab of income. He submitted, this is so because, maximum marginal rate was introduced as a measure of countering tax avoidance. In this context, he drew our attention to the following observations of Hon'ble Supreme Court in the case of *Gosar Family Trust* (supra) "we must say that the policy of law as disclosed from Section 164(1) is to discourage discretionary trusts by charging the income of such trusts in the hands of trustees at the maximum marginal rate except in certain specified situations."

20. Proceeding further, he submitted, the intention of the legislature in charging tax and surcharge at the maximum rate is further visible from the use of word 'if any' in section 2(29C) of the Act. He submitted, the words 'if any' would mean whether the levy of surcharge is introduced in the Finance Act of the relevant assessment year or not. If the Finance Act provides for levy of surcharge, then surcharge has to be levied at the highest rate provided under the Finance Act. In case, the levy of surcharge is not at all available under the relevant Finance Act, then no surcharge will be leviable. Thus, the words 'if any' used in section 2(29C) of the Act, merely indicates whether the Finance Act provides for levy of surcharge at all or not. In this context, he submitted that the Finance Act for A.Ys. 2010-11 and 2011-12 did not provide for levy of surcharge at all. Therefore, for the aforesaid two assessment years, the maximum marginal rate would not include any surcharge. He submitted, if the different rate of tax and surcharge for different kinds of assessee with different slab of income provided under the Finance Act is to be applied to maximum marginal rate, it was not required to be mentioned in section 2(29C) of the Act. Therefore, he submitted, while calculating the maximum marginal rate, surcharge has to be taken at the rate prescribed for highest slab of income. He submitted, the different rates of surcharge provided under the Finance Act for normal category of income is not applicable to maximum marginal rate. Thus, he submitted, in case of discretionary trusts, in terms with section 164 and 167B of the Act, r.w.s. 2(29C) of the Act, tax and surcharge has to be computed at the highest rate, irrespective of the quantum of income. In support of his contentions Id. DR relied upon the following decisions:

1. *Anant Bajaj Trust vs. DDIT* (in ITA No. 199/Mum/2024 vide order dated 26.08.2024)
2. *Araadhya Jain Trust vs. ITO* (in ITA No. 2197/Mum/2024 order dated 07.10.2024)
3. *Kapur Family Trust vs. ITO* (in ITA Nos. 3834 & 3835/Mum/2024 vide order dated 30.10.2024).

21. We have given a thoughtful consideration to the rival submissions and perused materials on record. We have also applied our mind to the judicial precedents cited before us. The short issue arising for consideration before us is, ‘whether the definition of maximum marginal rate in terms with section 2(29C) of the Act can be interpreted in a manner to suggest that not only the rate of tax on the total income of assessee would be at the highest rate, but even the surcharge to be computed on such tax would be at the highest rate’.

22. Before we proceed to deal with the issue, let us understand what is meant by a ‘Private Discretionary Trust’. A ‘Discretionary Trust’ is generally a Trust registered under the Indian Trusts Act, 1882, whereunder, the Trustees hold the power to decide the class of beneficiaries who can receive either capital or income from the Trust at the discretion of the Trustees. However, no one beneficiary has an absolute entitlement either to income or capital. In other words, in a discretionary trust, distribution of all capital and income is completely at the discretion of the Trustees. Generally speaking, in these kind of trusts not only the beneficiaries but even the shares of beneficiaries remain indeterminate. These Trusts/Association of Persons/Body of individuals are covered either u/s.164 or 167B of the Act. These provisions provided that the income of such Trusts/AOPs/BOIs are brought to tax at the maximum marginal rate. The expression “maximum marginal rate” has been defined u/s.2(29C) of the Act as under:

“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;

23. A plain reading of the aforesaid definition clause would indicate that the ‘maximum marginal rate’ would mean the rate of income tax, including surcharge on income tax, if

any, applicable to the highest slab of income of an individual, association of person or body of individual as specified in the Finance Act of the relevant year. In other words, at the first instance, the tax on the total income of the discretionary trust has to be determined by applying the maximum marginal rate, as applicable to the highest slab of income relating to an individual, association of person or body of individual specified in the Finance Act of the relevant year. Thereafter, the surcharge, if any, has to be computed on such income-tax.

24. As could be seen from a conjoint reading of sections 164/167B of the Act, these provisions provide for computation of income-tax at the maximum marginal rate. However, in these provisions there is no reference to levy of surcharge. Whereas, the definition of 'maximum marginal rate' u/s. 2(29C) of the Act refers to surcharge. But, this definition clause by itself does not fix the rate of tax, instead, refers to the rate prescribed under the Finance Act of the relevant year. Thus, what should be the maximum marginal rate of income-tax is to be determined based on the rate of income-tax provided in Finance Act of the relevant year. The rates of income tax is provided u/s.2 of the Finance Act. A reference to section 2 of Finance Act, 2023, makes it clear that as per sub-section (1) of section 2, for the A.Y. 2023-24 income-tax shall be charged at the rate specified in Paragraph A, Part (I) of First Schedule to the Finance Act-2023 and such tax shall be increased by a surcharge, collected for the purposes of the Union, calculated in each case in the manner provided therein. Of-course, sub section (1) of section 2 is subject to the provisions of sub-sections (2) and (3). Sub section (2) of section 2 speaks of an assessee having net agricultural income exceeding five thousand rupees, in addition to total income, hence, is not relevant for our purpose. However, sub section (3) of section 2 of Finance Act

provides that in case of assessee's covered under Chapter XII or XII-A or section 115JB or section 115JC or Chapter XII-FA or Chapter XII-FB or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act, the tax chargeable shall be determined as provided in those Chapters or sections, and with reference to the rates imposed by sub-section (1) or the rates as specified in that Chapter or section, as the case may be. Thus, sub section 2(1) of Finance Act, which is subject to the provisions of sub-section (3), though, provides that income-tax shall be charged at the rate specified in Part 1 of the specified schedule, however, sub-section (3) carves out an exception in case of certain class of income or assesseees by providing that the chargeable tax shall be determined in terms with those Chapters or sections, and with reference to the rates imposed by sub-section (1) or the rates as specified in that Chapter or section, as the case may be.

25. In case of discretionary trusts, sections 164/167B of the Act, do not by themselves specify the rate of tax. They only say that tax on total income is to be determined at the maximum marginal rate. The definition of 'maximum marginal rate' u/s.2(29C) of the Act, in turn, refers to the rate of income-tax applicable to the highest slab as provided under the Finance Act of the relevant year. Thus, for determining the maximum marginal rate of tax, one has to revert back to the rate prescribed in Paragraph A, Part (I) of First Schedule to the Finance Act-2023. Sub-section 2(1) of the Finance Act, further provides that the tax so determined shall be increased by a surcharge collected for the purposes of Union, calculated under each case in the manner provided in the First Schedule. For ease of reference, Paragraph A, Part (I) of First Schedule to the Finance Act-2023, which is relevant for our purpose, is reproduced hereinunder:

THE FIRST SCHEDULE

(See section 2)

PART I

INCOME-TAX

Paragraph A

(I) In the case of every individual other than the individual referred to in items (II) and (III) of this Paragraph or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

- (1) where the total income does not exceed Rs. 2,50,000 Nil;
- (2) where the total income exceeds Rs. 2,50,000 but does not exceed Rs. 5,00,000 5 per cent of the amount by which the total income exceeds Rs. 2,50,000;
- (3) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000 Rs.12,500 plus 20 per cent of the amount by which the total income exceeds Rs. 5,00,000;
- (4) where the total income exceeds Rs. 10,00,000 Rs. 1,12,500 plus 30 per cent of the amount by which the total income exceeds Rs.10,00,000.

(II) In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year,—

Rates of income-tax

- (1) where the total income does not exceed Rs. 3,00,000 Nil;
- (2) where the total income exceeds Rs. 3,00,000 but does not exceed Rs. 5,00,000 5 per cent of the amount by which the total income exceeds Rs. 3,00,000;
- (3) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000 Rs.10,000 plus 20 per cent of the amount by which the total income exceeds Rs. 5,00,000;
- (4) where the total income exceeds Rs. 10,00,000 Rs. 1,10,000 plus 30 per cent of the amount by which the total income exceeds Rs.10,00,000.

(III) In the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year,—

Rates of income-tax

- (1) where the total income does not exceed Rs. 5,00,000 Nil;
- (2) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000 20 per cent of the amount by which the total income exceeds Rs. 5,00,000;
- (3) where the total income exceeds Rs. 10,00,000 Rs. 1,00,000 plus 30 per cent of the amount by which the total income exceeds Rs. 10,00,000.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or the provisions of section 111A or section 112 or section 112A or the provisions of

section 115BAC of the Income-tax Act, shall be increased by a surcharge for the purposes of the Union, calculated, in the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act,—

- (a) *having a total income (including the income by way of dividend or income under the provisions of section 111A, section 112 and section 112A of the Income-tax Act) exceeding fifty lakh rupees but not exceeding one crore rupees, at the rate of ten per cent of such income-tax;*
- (b) *having a total income (including the income by way of dividend or income under the provisions of section 111A, section 112 and section 112A of the Income-tax Act) exceeding one crore rupees, but not exceeding two crore rupees, at the rate of fifteen per cent of such income-tax;*
- (c) *having a total income (excluding the income by way of dividend or income under the provisions of section 111A, section 112 and section 112A of the Income-tax Act) exceeding two crore rupees but not exceeding five crore rupees, at the rate of twenty-five per cent of such income-tax;*
- (d) *having a total income (excluding the income by way of dividend or income under the provisions of section 111A, section 112 and section 112A of the Income-tax Act) exceeding five crore rupees, at the rate of thirty-seven per cent of such income-tax; and*
- (e) *having a total income (including the income by way of dividend or income under the provisions of section 111A, section 112 and section 112A) exceeding two crore rupees but is not covered under clauses (c) and (d), shall be applicable at the rate of fifteen per cent of such in-come-tax:*

Provided that in case where the total income includes any income by way of dividend or income under the provisions of section 111A, section 112 and section 112A of the Income-tax Act, the rate of surcharge on the amount of income-tax computed in respect of that part of income shall not exceed fifteen per cent:

Provided further that in case of an association of persons consisting of only companies as its members, the rate of surcharge on the amount of Income-tax shall not exceed fifteen per cent:

Provided also that in the case of persons mentioned above having total income exceeding,—

- (a) *fifty lakh rupees but not exceeding one crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of fifty lakh rupees by more than the amount of income that exceeds fifty lakh rupees;*
- (b) *one crore rupees but does not exceed two crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax and surcharge on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees;*
- (c) *two crore rupees but does not exceed five crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax and surcharge on a total income of two crore rupees by more than the amount of income that exceeds two crore rupees;*
- (d) *five crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax and surcharge on a total income of five crore rupees by more than the amount of income that exceeds five crore rupees.*

26. On going through Paragraph A, Part (I) of First Schedule to the Finance Act-2023, it becomes very much clear that under Item (1), the rates of income tax applicable to individuals, Hindu undivided family or association of persons or body of individuals have

been provided. As could be seen from the rates of income-tax for different income brackets, if the total income does not exceed Rs.2,50,000/-, the rate of income tax is Nil. If the total income exceeds Rs.2,50,000/-, but does not exceed Rs.5,00,000/-, the rate of income tax is 5% of the amount by which the total income exceeds Rs.2,50,000/-. Where the total income exceeds Rs.5,00,000/- but does not exceed Rs.10,00,000/-, the rate of income tax is Rs.12,500 plus 20% of the amount by which the total income exceeds Rs.5,00,000/- and lastly, where the total income exceeds Rs.10,00,000/-, then the rate of tax is Rs.1,12,500/- plus 30% of the amount by which the total income exceeds Rs.10,00,000/-. Thus, as per the rates of income tax prescribed in Item (1), the highest slab of income is Rs.10 lacs and above and the applicable rate of income tax is 30%. Thus, in terms with section 2(29C) of the Act, the maximum marginal rate of tax will be 30% as applicable to the highest slab of income.

27. The expression 'slab' is not mentioned either in sub-section (1) of section 2 or even under Paragraph A, Part (I) of First Schedule to the Finance Act-2023. However, as per the materials placed before us, it is observed that in Press Note dated 01.12.1965 issued by Government of India, copy of which is placed at pg. no. 45 of the Paper Book, submitted in case of NIK Family Trust, the expression 'slab' refers to 'income' and not the tax. In fact, even section 2(29C) of the Act refers to highest slab of income. Even Circular No. 2/2018 (F.No. 370142/15/2017-TPL] containing Explanatory Notes to Provisions of Finance Act, 2017, a copy of which is placed at pg. no. 47 of the Paper Book filed by the NIK Family Trust, refers the expression 'slab' to the various categories of income. Thus, in terms with sections 164/167B r.w.s. 2(29C) of the Act, tax as per maximum marginal

rate would mean ‘the rate of tax applicable to the highest slab of income’ under Item (1) of Paragraph A, Part (I) of First Schedule to the Finance Act-2023.

28. Under the head ‘Surcharge on income-tax’ appearing in Paragraph A, Part (1), First Schedule it has been provided that the amount of income-tax computed as per the rate of income-tax under Item (1), (2) and (3) or under the provisions of section 111A or section 112 or section 112A or the provision of section 115BAC of the Income Tax Act, shall be increased by a surcharge, for the purposes of the Union, calculated in the case of particular class of assessee in the manner provided therein. As could be seen from items (a) to (e), provided under the head ‘Surcharge on income-tax’, there are different rates of surcharge on income tax, depending upon the categories of income. The rate of surcharge starts from minimum of 10% to the maximum of 37% on income-tax. The maximum rate of surcharge at 37% on income-tax is applicable in case of assessee having total income, exceeding Rs.5 crores. It further emanates that the minimum rate of surcharge @ 10% on the income-tax is applicable only when the income of the assessee is above Rs.50 lacs, but less than Rs.1 crore. Thus, as per Paragraph A, Part (I) of First Schedule to the Finance Act-2023, the threshold limit for applicability of surcharge is when total income is Rs.50 lacs and above. In other words, if the total income is below the threshold limit of Rs.50 lacs, there would be no surcharge. Even the first *proviso* under the heading ‘Surcharge on income-tax’ carves out an exception regarding the rate of surcharge by stating that in case where assessee’s total income includes dividend income or income under the provisions of section 111A, 112A and section 112A of the Act, the rate of surcharge on the amount of income-tax computed on that part of income shall not exceed 15%. In other words, if the total income of an assessee includes any income by way of dividend or income under certain

provisions of the Act, the rate of surcharge on tax computed on such part of income under no circumstances would exceed 15%.

29. If we accept the contention of the Revenue that, irrespective of the nature or quantum of income, as per the definition of maximum marginal rate u/s.2(29C) of the Act, surcharge has to be computed at the highest rate of 37% applicable to the highest income bracket of Rs.5 crores and above, then the exception provided under the first *proviso* under the heading 'Surcharge on income-tax' would become otiose. Even, the different rates of surcharge on income-tax provided under clause (a) to (e) applicable to the different slabs of income would become meaningless so far as discretionary trusts are concerned. In our view, such an interpretation would lead to absurdity, hence, is unworkable. In our view, once the definition of 'maximum marginal rate' refers to the rate of income-tax and surcharge provided under the Finance Act of the relevant year, then the rates of income-tax and applicable rate of surcharge as provided under Paragraph A, Part (I) of First Schedule to the Finance Act-2023, would apply. Any other interpretation, in our view, would lead to undesirable consequences and would be discriminatory. In our view, the expression 'including Surcharge on income-tax, if any', within the bracketed portion of section 2(29C) of the Act, would mean the surcharge as provided in the computation mechanism under the heading 'surcharge on income tax' finding place in Paragraph A, Part (I) of First Schedule to the Finance Act-2023.

30. The Revenue has taken a line of argument that the words 'if any' succeeding the words 'including surcharge on income tax' appearing in the definition of maximum marginal rate u/s. 2(29C) of the Act are only for the purpose that when levy of surcharge is specifically provided under the Finance Act of the relevant year, it would be included in

income-tax computed at the highest rate, otherwise, not. Though, at first blush this argument of the department sounds attractive, however, on deeper analysis it is found to be superfluous, for the following reasons. As discussed earlier, Article 271 of the Constitution of India, empowers the Union to impose surcharge for the purposes of Union. Whereas, Article 265 of the Constitution of India mandates that no tax can be collected without authority of law. Therefore, levy of surcharge has to be preceded by a law enacted by the parliament authorizing such levy. Thus, in absence of any law authorising levy of surcharge, it cannot be collected. This legal position is as clear as daylight, hence, does not require further clarification with the use of words 'if any' to mean whether the Finance Act of a particular year, if at all, provides for levy of surcharge or not. Though, in our view, there is no conflict between provisions contained u/s. 164/167B, 2(29C) of the Income Tax Act and section 2 of the Finance Act, however, even assuming that there are some conflicts, a harmonious construction has to be made to avoid absurdity and make the provisions workable. Thus, in our view, the expression 'if any' used in section 2(29C) has to be read not *de hors* but in conjunction with the computation mechanism provided under the heading 'surcharge on income tax' provided in section 2 of Finance Act. This view of ours is further fortified by the object for which levy of surcharge was introduced to the Finance Act - to augment the Revenue of the Union for developmental work by asking persons in the highest income bracket to contribute little more than the other citizens, for nation building.

31. As we find, the Revenue has placed strong reliance upon the decision of the co-ordinate bench in case of *Araadhya Jain Trust* (supra) and couple of other decisions, which are on similar line. Pertinently, the decision rendered in case of *Anant Bajaj Trust vs. DDIT* (in ITA No. 199/Mum/2024 vide order dated 26.08.2024) was subsequently recalled. Whereas, the bench has followed the decision of *Anant Bajaj Trust* (supra) while deciding

the appeal of *Kapur Family Trust vs. ITO* (in ITA Nos. 3834 & 3835/Mum/2024 vide order dated 30.10.2024). Therefore, the decision rendered in case of *Kapur Family Trust* (supra) has lost its relevance. Insofar as the decision of the co-ordinate bench in the case of *Araadhya Jain Trust* (supra) is concerned, in our view, the bench has drawing its conclusion, primarily relying upon certain decisions of Hon'ble Kerala High Court and Hon'ble High Court of Bombay. As discussed elsewhere in the order.

32. However, upon carefully going through these decisions, we are of the considered view that the issue arising in the present case never fell for consideration before the Hon'ble Courts. The issue in dispute in those cases was primarily concerning what should be the maximum marginal rate and its applicability. The issue 'whether the rate of surcharge would also be at the highest rate while computing tax at maximum marginal rate' was never the issue before the Hon'ble Courts. Thus, in our view, the view expressed by the co-ordinate benches in decisions referred to in Paragraph 10(supra) lay down the correct proposition of law. Thus, in the ultimate analysis, we hold, in case of Private Discretionary Trusts, whose income is chargeable to tax at maximum marginal rate, surcharge has to be computed on the income tax having reference to the slab rates prescribed in the Finance Act under the heading 'surcharge on income tax' appearing in Paragraph A, Part 1, First Schedule, applicable to the relevant assessment year. Hence, reference is decided in favour of the assessee. The records may be returned back to the respective benches for deciding the appeals accordingly.

Order pronounced in the open court on 09.04.2025

Sd/-
B R BASKARAN
(Accountant Member)
Mumbai; Dated : 09.04.2025

Sd/-
SAKTIJIT DEY
(Vice President)

Sd/-
JUSTICE (RETD.) C V BHADANG
(President)

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai