



IN THE INCOME TAX APPELLATE TRIBUNAL

"K (SMC)" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.4272/MUM/2024

Assessment Year : 2023-24

Araadhya Jain Trust,

31 Benzer Terraces,
Abdul Gaffar Khan Road, Worli,
Mumbai - 400018

..... Appellant

v/s

ITO, Ward – 22(1)(6)

Pirmal Chambers, Lalbaug,
Mumbai – 400012
PAN: AAITA2310B

..... Respondent

Assessee by : Shri Rohan Deshpande
Shri Vihit Shah

Revenue by : Shri Bhagirath Ramawat, Sr.DR

Date of Hearing – 16/06/2025

Date of Order – 18/06/2025

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 28/06/2024, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Additional / Joint Commissioner of Income Tax (Appeals), Panchkula, [*"learned Addl./Joint CIT(A)"*], for the assessment year 2023-24.

2. In this appeal, the assessee has raised the following grounds: -

"In the fact and the circumstances of the case, and in law, the learned Addl/Joint Commissioner of Income-tax (Appeals) - Panchkula, erred in confirming the variance in the intimation u/s 143(1) made by CPC in respect of the rate of surcharge and erred:

- 1. In confirming and concluding that since the appellant is liable to pay tax at maximum marginal rate (MMR), the surcharge applicable will be surcharge for highest slab only and surcharge @ 37% is integral part of MMR and therefore MMR will be 42.74% for AY 2023-24.*
- 2. In not appreciating that since the total income of the appellant is Rs. 4,85,290/- viz. less than Rs. fifty lakhs, surcharge is not applicable as per Paragraph A of Part I to the First Schedule of the relevant Finance Act.*
- 3. In concluding that surcharge is a part of the rate of tax and not appreciating that the tax is required to be increased by surcharge, as applicable, and hence it is a separate charge other than tax.*
- 4. In concluding that maximum marginal rate in section 2(29) covers not only maximum rate of income-tax but also maximum rate of surcharge automatically.*
- 5. In not appreciating that the words "rate of income-tax (including surcharge on income-tax, if any)" in section 2(29) denotes two separate levies.*
- 6. In confirming that the AO CPC has power to vary the rate of surcharge while processing the return u/s 143(1)."*

3. During the hearing, the learned Authorised Representative ("learned AR"), at the outset, submitted that the only issue that arises in the present appeal, i.e., whether surcharge shall be levied at the maximum rate instead of levying the same as per the slab rates provided in the Finance Act for the relevant year, was referred for the consideration of the Special Bench in this very appeal. The learned AR by placing on record the copy of the decision of the Special Bench rendered in *Araadhya Jain Trust vs. ITO*, reported in (2025) 212 ITD 1 (Mumbai – Trib.) (SB), submitted that the Special Bench of the Tribunal has held that in case of Private Discretionary Trust, whose income is chargeable to tax at maximum marginal rate, surcharge has to be computed

on income tax having reference to the slab rates prescribed in the Finance Act under the heading "surcharge of income tax".

4. From the perusal of the aforesaid decision, we find that the following issue came up for consideration before the Special Bench of the Tribunal: -

"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?"

5. We find that after considering the relevant provisions of the Act and also the divergent views of the coordinate benches of the Tribunal on this issue, the Special Bench of the Tribunal vide its order dated 09/04/2025, observed as follows: -

"29. 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 coordinate 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 (supra) was subsequently recalled. Whereas, the bench has followed the decision of Anant Bajaj Trust (supra) while deciding the appeal of Kapur Family Trust (supra). 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 coordinate 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."

6. Therefore, in light of the decision of the Special Bench of the Tribunal, we do not find any merit in the findings of the learned Addl./Joint CIT(A) in upholding the levy of the surcharge at the highest slab rate. Accordingly, the impugned order is set aside and the jurisdictional Assessing Officer is directed to levy the surcharge, in light of the decision of the Special Bench of the

Tribunal, i.e., having reference to the slab rates prescribed in the Finance Act for the relevant year under the heading “*surcharge on income tax*”. As a result, Grounds No. 1-5 raised in assessee’s appeal are allowed for statistical purposes.

7. Ground No.6 was not pressed during the hearing. Therefore, the same is left open.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 18/06/2025

Sd/-

**OM PRAKASH KANT
ACCOUNTANT MEMBER**

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 18/06/2025
Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai