

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.1679/Mum/2023
(Assessment Year :2017-18)**

M/s. Dhamandas Dodeja Family Trust 101, Said Sharan Kalyani Res, Goal Maidan Nr. Madhuban Hotel Mumbai – 421 001	Vs.	DCIT-CPC (AO- Ward) 3(1) Thane
PAN/GIR No.AABTD6921E		
(Appellant)	..	(Respondent)

Assessee by	Shri Bhupendra Shah
Revenue by	Ms. Kakoli Ghosh
Date of Hearing	31/07/2023
Date of Pronouncement	31/07/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 08/05/2023 passed by NFAC Delhi in relation to the adjustment made u/s.143(1) for the A.Y.2017-18.

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

“1. The Learned Assessing Officer (DCIT CPC) erred in assessing the Appellant trust at maximum marginal rate @ 30% u/s. 164 (1) instead of rates applicable under the proviso (ii) to Sec. 164(1).

2. In the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax (A) NFAC erred in confirming the above addition without passing a speaking order though Assessing Officer (DCIT - CPC) has assessed the Assessee at normal rate of tax in for subsequent years for AY 19-20 to AY 22-23.

3. In the facts and circumstances of the case and in law, the Assessing Officer erred in charging interest u/s 234.

3. The facts in brief are that assessee is a discretionary trust created under Will dt.20/09/2010 of Late Dhemandas Dodeja vide Trust Deed dt. 25/03/2012 and the said trust is known as Dhamandas Dodeja Family Trust which is only trust under Will of Late Dhamandas Dodeja. The assessee had filed return of income for the above year declaring taxable income of Rs. 10,23,640/- on 05/08/2017. Vde intimation u/s. 143(1) dt. 06/05/2018 the CPC, Bangalore has assessed the assessee trust at maximum marginal rate of Income Tax u/s 164 of Income Tax Act along with tax demand of Rs. 2,15,067/-.

4. Before the ld. CIT (A) assessee had filed detailed submission stating that no adjustment could have been made for levying maximum margin of rate of tax without even appreciating that *proviso* to Section 164(1) specifically carves out exception that income is part of relevant income receivable under a trust declared by any person by will and such trust is the only trust so declared by him, then it will not be charged at maximum

marginable rate. It was also brought on record that the CPC, Bangalore for the four years i.e. from A.Y.2019-20 to 2022-23 has assessed the trust at normal rate of income tax as applicable to individual. However, the ld. CIT(A) held that appeal itself is not maintainable and the grounds raised by the assessee were dismissed.

5. After hearing both the parties and on perusal of the submissions and documents placed before us, we find that it is not in dispute that assessee is a discretionary trust related under the will had been filing taxable income mostly from interest income and paying taxes with the normal rate. The CPC had made adjustment holding that tax should be applied at the maximum marginal rate u/s.164(1). However, Section 164(1) reads as under:-

164(1). "Subject to the provisions of sub-sections (2) and (3), where any income in respect of which the persons mentioned in clauses (ii) and (iv) of sub-section (1) of section 160 are liable as representative assesses or any part thereof is not specifically receivable on behalf or for the benefit of any one person or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are Indeterminate or unknown (such income, such part of the income and such persons being hereafter in this section referred to as "relevant income" part of relevant income and "beneficiaries" respectively, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.

Provided that in a case where-

(i) None of the beneficiaries has any other income chargeable under this Act exceeding the maximum amount not chargeable to

tax in the case of an association of persons or is a beneficiary under any other trust; or

(ii) The relevant income or part of relevant income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him.”

6. From the perusal of the aforesaid section, it is clear that the proviso to Section 164(1) clearly carves out exception that when the income is received or receivable under the trust declared by any person by will and such trust is the only trust so declared by him, then the assessee shall not be charged at a maximum marginal rate. Thus, CPC was not justified in taxing the income at maximum marginable rate. Apart from that in subsequent four years, the CPC has assessed the assessee at normal rate of an individual then without any reason we are unable to appreciate as to why in this particular year only and without assigning any reason assessee's income has been subjected to tax at maximum marginable rate. Accordingly, we direct the ld. AO to apply normal rate applicable to the individual on the income declared by the assessee and rate of tax of maximum marginal rate is not applicable in the case of the assessee. Accordingly, the appeal of the assessee is allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced on 31st July, 2023.

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Mumbai; Dated 31/07/2023
KARUNA, sr.ps

Sd/-

(AMIT SHUKLA)

JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai