

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SMT. RENU JAUHARI, ACCOUNTANT MEMBER**

**ITA No.4791/M/2023
Assessment Year: 2021-22**

M/s. Lintas Employees Professional Development Trust, 13 th Floor, Express Towers, Nariman Point, Mumbai - 400021 PAN: AAATL0326J	Vs.	Income Tax Department, ITO Ward 26(1)(1), Kautilya Bhavan, Centralized Processing Center, Bengaluru – 560 500
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Prakash Jotwani, A.R.

Revenue by : Shri C.T. Mathews, Sr. DR

Date of Hearing : 22 . 05 . 2024

Date of Pronouncement : 29 . 05 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 06.11.2023, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2021-22.

2. In this case, the assessee, being an association of persons created for the benefit of the employees of Lintas Group, had shown its total income at Rs.14,33,440/- by filing its return of income on 23.03.2022 which was processed under section 143(1) of the Act whereby the income of the assessee was assessed at Rs.67,27,280/- and the additions of Rs.51,03,393/- and Rs.1,91,442/- were made respectively on account of business income and capital gains.

3. The assessee, being aggrieved, preferred a rectification application which resulted into passing the rectification order dated 30.01.2023 by the CPC whereby total income of the assessee was computed at Rs.16,24,880/- in place of Rs.14,33,440/- as declared by the assessee. As per rectification order, the amount of Rs.1,73,278/- on account of surcharge has also been levied which was subsequently disputed by the assessee before the Ld. Commissioner by claiming that as per section 2(29C) of the Act , where the total income earned is less than Rs.50 lakhs then no surcharge is liable to be levied. It is enumerated in the 1st Schedule of the Act introduced vide Finance Act, 2021, the monetary limit of total taxable income has been prescribed i.e. exceeding Rs.50 lakhs for levy of surcharge. Further by introducing Finance Act, 2023 chapter 1, sub section 3(a) again charging of surcharge has been clarified. For clarity the provisions of first schedule introduced vide Finance Act, 2021 which are reproduced herein below for better clarity and ready reference:

*“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 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 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 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 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 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 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 and section 112A of the Income-tax Act) 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 income-tax:

4. We observe that though the Ld. Commissioner in the impugned order duly taken into consideration the additional ground qua levy of surcharge @ 30% to the tune of Rs.1,73,278/-, however, in the order failed to decide the same. Considering the peculiar facts and circumstances, as the income of the assessee did not exceed the monetary limit of Rs.50 lakhs and therefore levy of surcharge is not warranted as per First schedule introduced vide Finance Act, 2021, hence the surcharge levied to the tune of Rs.1,73,278/- by the CPC and affirmed by the Ld. Commissioner is deleted.

5. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 29.05.2024.

**Sd/-
(RENU JAUHARI)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT,
Mumbai.