

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "SMC", HYDERABAD**

**BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

आ.अपी.सं / ITA No.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
439/Hyd/2024	2021-22	Sriram Trust, Hyderabad [PAN: AADTS0298M]	Income Tax Officer, Exemptions Ward-1(4), Hyderabad
440/Hyd/2024	2022-23		
441/Hyd/2024	2023-24		

निर्धारिती द्वारा/Assessee by: Shri EV Sri Krishna, AR  
राजस्व द्वारा/Revenue by: Shri M. Naveen Kumar, DR

सुनवाई की तारीख/Date of hearing: 13/06/2024  
घोषणा की तारीख/Pronouncement on: 19/06/2024

**आदेश / ORDER**

Aggrieved by the order(s) dated 11/03/2024 passed by the Addl/JCIT(A)-3, Ahmedabad ("Ld. CIT(A)"), in the case of Sriram Trust ("the assessee") for the assessment years 2021-22, 2022-23 & 2023-04, assessee preferred these appeals.

2. Assessee is a registered private a Trust. It filed the return of income for the assessment years 2021-22, 2022-23 and 2023-24 declaring income less than Rs. 50 lakhs and according to the assessee the return preparation

Excel utility provided by the Department accepted the return submitted by the assessee without calculating any surcharge on the income tax.

3. CPC, however, while processing the return under section 143(1) of the Income Tax Act, 1961 (for short "the Act") levied surcharge on the tax payable. Assessee preferred appeal before the learned CIT(A), challenging the levy of surcharge, but the learned CIT(A) dismissed the appeal, observing that if there is no surcharge as per the Finance Act, then the same is not leviable, but if the Finance Act mandates the levy of surcharge, then the same is levied at the maximum rate, irrespective of quantum of income fixed by the Finance Act. For this purpose, learned CIT(A) referred to the commentary by Sampath Iyengar relating to the assessment year 1980-81.

4. Aggrieved by such findings of the learned CIT(A), assessee preferred these appeals, contending that even if the tax rate is chargeable at a maximum rate, the applicable surcharge rate should be applied as specified in the Finance Act depending upon the net taxable income and it is incorrect to hold that the rate of surcharge should also be levied at maximum rate, when the tax is leviable at maximum marginal rate.

5. Learned AR referred to section 2(29C) read with section 164/167B of the Act and also to the provisions of the relevant Finance Act. He also placed reliance on the decision of a Co-ordinate Bench of the Tribunal in the case of ITO vs. Tayal Sales Corporation [2003] 1 SOT 579 (Hyd). Learned DR heavily relied upon the impugned order.

6. I have gone through the record in the light of the submissions made on either side. There is no dispute for all these three years the assessee

filed the returns of income, declaring the income less than Rs. 50 lakhs. It is also not in dispute that the maximum marginal rate is applicable to the assessee. Only question that needs resolution is whether surcharge is applicable to the case of the assessee in terms of 2(29C) read with section 164/167B of the Act? in terms of section 2(29C) of the Act, “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.

7. Proviso to section 2 of the Finance Act, says that in respect of any income chargeable to tax under section 115A, 115AB, 115AC, 115ACA, 115AD, 115BA, 115BB, 115BBA, 115BBC, 115BBF, 115BBG, 115BBH, 115BBI, 115E, 115JB or 115JC of the Income Tax Act, the amount of income tax computed under this sub-section shall be increased by a surcharge, for the purpose of the Union, calculated, in the case of association of persons, having a total income exceeding Rs. 50 lakh, but not exceeding Rs. 1 crore @10% of such income tax etc. It does not contemplate surcharge at any rate on the income less than Rs. 50 lakhs. In the case of ITO vs. Tayal Sales Corporation (supra), the Co-ordinate Bench of the Tribunal took the view that under section 2(29C) of the Act, maximum marginal rate means, the rate of income tax including surcharge on income tax, if any applicable in relation to the highest slab of in the case of an individual and it does not say that the maximum marginal rate shall include surcharge on income tax irrespective of the highest slab of income, but it has a relationship with the highest slab of income.

8. In these circumstances, I am of the considered opinion that the view taken by the learned CIT(A) in all these three matters cannot be sustained and while respectfully following the view taken by the Co-ordinate Bench of the Tribunal in the case of ITO vs. Tayal Sales Corporation (supra), I direct that no surcharge could be levied on the income tax, if the income of the assessee is less than Rs. 50 lakhs. Grounds are allowed accordingly.

9. In the result, all these appeals are is allowed.

Order pronounced in the open court on this the 19<sup>th</sup> day of June, 2024.

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 19/06/2024

TNMM

Copy forwarded to:

1. Sriram Trust, Flat No. 101, 1<sup>st</sup> Floor, Vaishnavi Naren Residency,  
1-8-522/23 & 24, Chikkadpally, Hyderabad.
2. Income Tax Officer, Exemptions Ward-1(4), Hyderabad.
3. The Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD