

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

**BEFORE: SHRI AMIT SHUKLA JUDICIAL MEMBER  
&  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.602/MUM/2024  
(Assessment Year : 2022-23)**

Ujjwal Business Trust 71, 2 <sup>nd</sup> Floor Udyog Kshetra, Mulund Goregaon Link Road, Mulund West, Mumbai-400080	Vs.	Income Tax CPC Exem Ward 2(4), 1 <sup>st</sup> Floor, Prestige Alpha No 48/1 48/2, Beratenaagrahara Begur, Hosur Rd, Uttarahalli Hobli, Bengaluru 560100
<b>PAN/GIR No. AAATU9725G</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri. Sanjay Parikh
Revenue by	Shri. R. R. Makwana- Sr. DR
<b>Date of Hearing</b>	<b>19/06/2024</b>
<b>Date of Pronouncement</b>	<b>28/06/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 11/01/2024 passed by Addl./JCIT(A)-1, Coimbatore in relation to intimation u/s.143(1) for the A.Y.2022-23.

2. The assessee is aggrieved by incorrect levy of surcharge amounting to Rs.3,959/- despite the total income was less than Rs.50,00,000/-. Secondly, assessee has also challenged incorrect levy of additional interest u/s.234B amounting to Rs.719/-.

3. The brief facts are that assessee is irrevocable private discretionary Trust. Accordingly, the tax liability of the assessee trust was to be computed at maximum marginal rate in accordance with the provision of Section 164 of the Act. The assessee filed its return of income u/s.139(1) on 29/07/2022 declaring total income of Rs.36,930/-. The CPC while processing the return had raised demand of Rs.3,860/- by way of levy of surcharge and consequential increase in the amount of education cess, interest u/s.234B.

4. Aggrieved by the levy of surcharge charged, assessee preferred the appeal before the Id. CIT(A), however, assessee could not file any written submission in response to the notices. The Id. CIT(A) had dismissed the assessee's ground observing as under:-

*“5.4 The appellant is admitting that The appellant is an Irrevocable Private Discretionary Trust formed under the Indian Trust Act, 1882. The tax liability of the Appellant is computed at the maximum marginal rate in accordance with the provisions of Section 164 of the Income Tax Act, 1961.*

*5.5 The Income Tax Act defines maximum marginal rate as rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income relatable to which status the appellant belongs. The CPC has charged tax according to Section 2(29C) of the Income Tax Act, 1961 and is correct and in*

*order. The interest charged is also as per the ACT. The grounds raised by the appellant are dismissed.”*

5. After considering the submissions and facts brought on record, we find that assessee is aggrieved by levy of surcharge of income of Rs.36,930/-. The reason given by the Id. CIT(A) and the tax liability of the assessee has to be computed by maximum marginal rate and therefore, surcharge is applicable.

6. Section 2(29C) reads as under:-

*“[(29C) "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;]”*

Thus, the maximum marginal rate is the rate of income tax which includes surcharge if any applicable in relation to the higher slab of income in the case of individual, AOP, BOI as specified in the Finance Act of the relevant year. Thus, the tax rate and surcharge is applicable on the basis of slab rate provided under the Finance Act of the relevant year. The first schedule to the Finance Bill 2022 which is applicable in the case of the assessee which provides for rates of income tax for various persons including the individual, HUF, AOP, BOI or artificial juridical person wherein slab rate for levy of tax of rates have been provided. However, the surcharge of income tax is applicable on the income which are exceeding slab rate of Rs.50,00,000/- and above, wherein different rate of surcharge

have been provided. The surcharge leviable on income tax as provided in the Finance Act, 1992 reads as under:-

*“Surcharge on income-tax*

*The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, of the provisions of section 111A or section sec 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 provision 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 provision of section 111A and section 112A of the Income-tax Act) exceeding five crore rupees, at the rate of thir five per cent. of such income-tax; and*

*(e) having a total income (including the income by way of dividend or income under the provision of section 111A and section 112A) exceeding two crore rupees but is not covered under clauses (c) and shall be applicable at the rate of fifteen per cent of such income-tax:*

*Provided that in case where the total income includes any income by way of dividend or income chargeable under section 111A and section 112A of the Income-tax Act, the rate of surcharge on 1 amount of income-tax computed in respect of that part of income shall not exceed fifteen per cent. Provided further 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 or total income of fifty lakh rupees by more than the amount of income that exceeds fifty lakh rupee*

*(b) one crore rupees but does not exceed two crore rupees, the total amount payable 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 exceeds one crore rupees;*

*(c) two crore rupees but does not exceed five crore rupees, the total amount payable income-tax and surcharge on such income shall not exceed the total amount payable as incon tax and surcharge on a total income of two crore rupees by more than the amount of income 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 f crore rupees by more than the amount of income that exceeds five crore rupees.”*

7. Thus, the surcharge is leviable only when amount of income tax is computed where the total income exceeds Rs.50,00,000/- and so on. Here in this case, the return of income is only Rs.36,930/- so on this income, taxes shall be charged at a maximum marginal rate in terms of Section 164 of the Act. Even after the trust is taxed at maximum marginal rate but for levying the surcharge, it is necessary that the slab of income which is chargeable to tax is exceeding Rs.50,00,000/- and above. Thus, the interpretation and the observation of the ld. CIT(A) is

ostensibly against the law. If CPC which is computer assisted programme has made a mistake, then at least ld. CIT(A) should have seen the law in correct perspective; or something should have been brought on record that there is any notification or interpreting the slabs provided in the Finance Act that even if income is less than Rs.50,00,000/-, surcharge is leviable in case of AOP. Accordingly, the surcharge levied by the CPC is deleted. Consequentially, interest u/s.234B has also got reduced.

**8. In the result, appeal of the assessee is allowed.**

Order pronounced on 28.06.2024.

**Sd/-**  
**(RATNESH NANDAN SAHAY)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 28/06/2024  
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**