

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E (SMC)", MUMBAI

BEFORE SHRIAMARJIT SINGH, ACCOUNTANT MEMBER AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A No.2873/Mum/2024  
(Assessment Year: 2021-22)

<b>Executors of the Estate of</b> Shanti Karsandas Thakker, Room No.9, 3 <sup>rd</sup> Floor, Laxmi Niwas 22, Kashibai Navrange Road, Gamdevi, Mumbai-400 007 <b>PAN : AAAJE1300K</b>	<b>vs</b>	<b>DCIT-Circle 19(3), Mumbai</b> Piramal Chamber,Lalbaug, Mumbai- 400 012
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : ShriSanjay R Parikh  
Respondent by : ShriP.D. Choughule (All.CIT) SR DR  
  
Date of hearing : 25/07/2024  
Date of pronouncement : 29/ 07/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the assessee was filed against the order of the Learned Commissioner of Income-tax, Addl/JCIT (A)-4, Bengaluru [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2021-22, date of order 25.03.2024. The impugned order was

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emanated from the order of the Learned CPC, Bangaluru (in short, 'the A.O.')

passed under section 143(1)of the Act, date of order 11/11/2022.

2. The assessee has taken the following grounds of appeal:-

*"1. (a) The Ld. ADDL/JCIT(A) erred in law and facts in passing an order by treating the appellant as AOP/AJP taxable at maximum marginal rate (MMR). (b) He failed to appreciate that the appellant being executors of the estate of deceased person should be taxed as per normal rate as applicable to a deceased individual.*

*2. The Ld. ADDL/JCIT (A) also erred in observing (on page 7 of the order) that taxable income is more than Rs. 10 lacs which falls under 30% slab and therefore it is taxable at flat rate of 30% instead of taxing the same as per the normal slab rate as specified in Part I-A of First Schedule to the Finance Act, 2021.*

*3. The Ld. ADDL/JCIT (A) also erred in not considering the decision which was a part of the submissions made before him, wherein on the similar facts, it was held that income should be taxed at normal slab rate and not at MMR.*

*4. The Appellant prays that the income of the appellant to be taxed as per the normal slab rate specified in Part I-A of First Schedule to the Finance Act, 2021.*

*5. The Appellant craves to leave, add, amend or alter any of the above grounds of appeal, If need be."*

3. The brief facts of the case are that the assessee is Executors of Estate of late Shanti Karsandas Thakkar. Smt. Shanti K. Thakkar has expired on 18/03/2020. Her sons, Mr. Udyan K Thakkar and Mr. Sanjay K Thakkar are executors of the

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estate. The return of the assessee was filed in status 'Artificial Juridical Person' (in short AJP). During impugned assessment year the total income declared amount to Rs.22,01,435/- and computed the tax at normal rate applicable to AJP. The total income includes Short Term Capital Gain (in short STCG) amount to Rs.1,32,245/- taxable @15%. The total tax liability computed by the appellant was amount to Rs.4,92,768/- excluding cess. Since the total income is only amount to Rs.23,33,680/- which is below the threshold limit of Rs.50 lakhs, the surcharge is not applicable. The return was processed under section 143(1) and the Id.AO computed the tax at maximum marginal rate (in short MMR) and the tax was levied amount to Rs.6,80,270/- instead of Rs.4,92,768/- and also added the surcharge. The aggrieved assessee filed an appeal before the CIT(A). The Ld.CIT(A), after hearing the assessee's plea deleted the surcharge amount to Rs.2,51,700/- but the tax was calculated at MMR. The appeal of the assessee was partly allowed. Being aggrieved, the assessee filed an appeal before us.

4. We heard the rival submission and considered the documents available in the record. Both the rival parties argued and the Ld.AR filed a written submission, which is kept in record (in short, 'APB'). The tax of the AJP was calculated during the filing of the return at the normal rate of tax. Considering the observation of the Id.CIT(A), the relevant part of the appeal order is reproduced as below:-

***"My Observation:***

*On perusal of the intimation order u/s 143(1) it is observed that the AO,CPC has taxed on the normal income @30%, and income chargeable to tax at special rate @15% only.*

*The computation of tax based on the slab rate mentioned above, is as under: -*

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Total taxable income including short term capital gain	Rs.23,33,680/(includes ) Rs.1,32,245)	
Income chargeable at normal rate	Rs.22,01,435 30% of 2201435=Rs.660430	Rs.6,60,430/ -
Income chargeable at speciate rate	Rs.1,32,245 15% of Rs.1,32,245 = 19836	Rs. 19,836/-
<b>Total tax liability</b>		<b>Rs.6,80,269/</b> -

From the above calculation, it is very much clear that AO, CPC has computed the tax at the normal slab rate @30% for income above Rs.10 lakhs as prescribed for A.Y. 2021-22 for AOP/BOI/Any other Artificial Juridical Person.

The only mistake found in the intimation order is that the enhanced surcharge @ 37%. The AO, CPC while processing the return of income has wrongly charged the surcharge on the tax payable which needs to be deleted as the income chargeable to tax is below the threshold limit i.e less than Rs. 50 Lakhs.

By the action of the AO, CPC the appellant has jumped to the conclusion that the AO, CPC has computed tax on Maximum marginal rate and then has levied surcharge over and above.

I would like to state here that "where income of any member of AOP/AJP exceeds the maximum amount which is not chargeable to income-tax (i.e., basic exemption limit), the AOP/AJP shall be taxed at Maximum Marginal Rate i.e., 30 per cent plus surcharge and HEC as applicable".

In the instant case the taxable income itself is more than Rs. 10 lakhs which comes under the purview of 30% slab rate, hence, the AO, CPC has rightly computed the tax @30%.

Further, I direct the Assessing officer to delete the surcharge of Rs. 2,51,700/- levied on the computed tax, which is wrongly computed on the tax liability.

Thus the ground raised by the appellant on this issue is partially allowed."

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The assessee has a total income of Rs.22,33,680/- including the STCG amount of Rs.1,32,245/- which is below the Rs.50 lakhs. The marginal rate was applied by the Id. AO which contravenes the Finance act, 2021 as the slab is designated by the CBDT. The relevant part of the Finance Act, 2021, the first Schedule is reproduced as below:-

*“THE FIRST SCHEDULE**(See section 2)**PART I**INCOME-TAX**Paragraph A*

*(I) In the case of every individual other than the individual referred to in items (II) and (III) of this Paragraph 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, not being a case to which any other Paragraph of this Part applies,—*

*Rates of income-tax*

- |     |  |   |
|-----|--|---|
| (1) | <i>Where the total income does not Exceed Rs.2,50,000</i>                          | <i>Nil;</i>   |
| (2) | <i>where the total income exceeds Rs.2,50,000 but does not exceed Rs.5,00,000</i>  | <i>5 per cent. of the amount by which the total income exceeds Rs.2,50,000;</i>                     |
| (3) | <i>where the total income exceeds Rs.5,00,000 but does not exceed Rs.10,00,000</i> | <i>Rs.12,500 plus 20 per cent. of the amount by which the total income exceeds Rs.5,00,000;</i>     |
| (4) | <i>where the total income exceeds Rs.10,00,000</i>                                 | <i>Rs.1,12,500 plus 30 per cent. of the amount by which the total Income exceeds Rs.10,00,000.”</i> |

We find there is no reason to apply the MMR and entire income was taxed @30%. The Id.DR argued and did not make any contrary submission against the

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submission of the Ld.AR. In our considered view, the application of MMR in assessee's case is unjustified. The tax will be calculated at normal rate as per the slab mentioned in the First Schedule of the Finance Act, 2021. So, the calculation of tax amount to Rs.4,72,931/- related to total income amount to Rs.22,01,435/- and the STCG @15% on the income amount to Rs.1,32,245/- which works out amount to Rs.19,837/- are accepted by the bench. Accordingly, the calculation of tax at MMR amount to Rs.6,80,270/- is deleted.

8. In the result, appeal of the assessee bearing **ITA 2873/Mum/2024** is allowed.

Order pronounced in the open court on 28<sup>th</sup> day of July, 2024.

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER  
Mumbai, दिनांक/Dated: 28/07/2024  
Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,  
(Asstt. Registrar), ITAT, Mumbai