

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.1796/M/2024  
Assessment Year: 2022-23**

M/s. Lintas Employees Holiday Assistance Trust, 13 <sup>th</sup> Floor, Express Towers, Nariman Point, Mumbai - 400 021 <b>PAN: AAATL0321R</b>	Vs.	Centralized Processing Centre, Income Tax Department, Bengaluru-560 500 ITO-26(1)(1), Kautilya Bhavan, Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by  
Revenue by

: Shri Prakash Jotwani, A.R.  
: Ms. Dhivya Ruth J., Sr. D.R.

Date of Hearing : 16 . 07 . 2024  
Date of Pronouncement : 26 . 07 . 2024

**O R D E R**

**Per : Satbeer Singh Godara, Judicial Member:**

This assessee's appeal for assessment year 2022-23 arises against the Commissioner of Income Tax (Appeals), Ahmedabad's DIN & order No.ITBA/APL/S/250/2023-24/1061746974(1) dated 29.02.2024, in proceedings under section 143(1) of the Income Tax Act, 1961 (in short 'the Act').

2. Heard both the parties at length. Case file perused.
3. The assessee pleads the following substantive grounds in the instant appeal:

*“1. The Ld. CIT(A) has erred by levying surcharge of 37%, on the Maximum Marginal Rate (MMR) of Tax being 30%, which already includes any/all types of surcharges. The AO ought to have only applied a blanket/flat rate of MMR being 30% on the taxable income of the assessee irrespective of the income of the assessee.*

*2. Without prejudice, even if such surcharge was applicable, the same can be levied only where the income of the assessee exceeds Rs. 50,00,000. In the present case since the assessee's income was less than Rs. 50,00,000, the CIT(A) has erred by confirming the levy and adding additional surcharge to the basic tax.”*

4. Coming to sole substantive issue raised at the assessee's behest in the instant appeal regarding levy of surcharge @ 30% on maximum marginal rate of tax @ 30%, we sought to know the necessary clarification regarding the its taxable income determined herein so as to be exigible to the foregoing levy, learned departmental representative submits very fairly that the income assessed herein is indeed less than the foregoing threshold limit of Rs.50 lakhs. That being the case, we note

that this tribunal's learned co-ordinate bench's order in assessee's group concern case M/s. Lintas Employees Professional Development Trust vs. ITO, ITA No.4791/M/2023 dated 29.05.2024 has accepted the very contention as under:

*“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 1<sup>st</sup> 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. We adopt judicial consistency to accept the assessee’s instant sole substantive ground in very terms. Ordered accordingly.

6. This assessee’s appeal is allowed in above terms.

**Order pronounced in the open court on 26.07.2024.**

**Sd/-**  
**(OMKARESHWAR CHIDARA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SATBEER SINGH GODARA)**  
**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.