

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

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.1221/M/2024
Assessment Year: 2021-22**

Tata Education Trust Bombay House, 24 Homi Mody Street, Fort, Mumbai- 400001. PAN: AAATT9835A	Vs.	Deputy Commissioner of Income Tax Circle- 26(1) Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai- 400051.
(Appellant)		(Respondent)

Present for :

Assessee by : Shri P. J. Pardiwala/ Shri. Sukhsagar Syal & Shri
Atul Suraiya, A.R.

Revenue by : Shri P. D. Chougule (Addl. CIT) SR. D.R.

Date of Hearing : 10 . 07 . 2024

Date of Pronouncement : 08 . 08 . 2024

ORDER

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short] vide DIN & Order No. ITBA/APL/S/250/2023-24/1060013057(1) Dated 23/01/2024 for the Assessment Year 2021-22.

2. Following grounds of appeal have been raised by the appellant:

1. *“A) On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) [‘Ld CIT(A)’] erred in dismissing the appeal of the Appellant challenging Intimation u/s.143(1) of the Income-tax Act, 1961 (‘Act’) despite the fact that the said Intimation u/s.143(1) of the Act erroneously calculates:*
 - a) *Tax at maximum marginal rate of 30% on the total income of the Appellant resulting into a total tax of Rs.2,07,63,609/- instead of Rs.2,05,76,109/- returned by the Appellant at slab rates specified by Finance Act 2021 resulting into additional tax of Rs1,87,500/-;*
 - b) *Surcharge on the increased tax amount of the Appellant amounting to total surcharge of Rs.31,14,541/- instead of Rs.30,86,416/- returned by the Appellant resulting into additional demand of Rs.28,125/-;*
 - c) *Cess at higher level consequent to increase in tax and surcharge, merely due to technical glitches of the income tax department software without appreciating that the Appellant does not lose its character of being a public charitable trust once the registration u/s 12A of the Act is surrendered.*
- B) In doing so, the Ld CIT(A) erred, in law and in fact, in disregarding the judgement in case of sister Trust, Tata Social Welfare Trust (TSWT) for A.Y.2020-21, on similar facts, which squarely covers the Appellants case.*
2. *On the facts and under the circumstances of the case, and in law, the Ld. CIT (A) erred in not adjudicating the Appellants ground challenging adjustment of refund for subject A.Y. 2021-22 against demand of A.Y. 2015-16 without issuance of Intimation u/s 245 of the Act, even where the case of the Appellant for A.Y. 2015-16 is covered by Instruction No 1914 dated*

21/03/1996 read with Office Memorandum F.No.404/72/93-ITCC dated 29/02/2016 read with Office Memorandum F.No. 404/72/93-ITCC dated 31/07/2017. The Ld. CIT(A) erred in not directing to reverse the said adjustment being bad in law, illegal and which is required to be quashed.

Each of the above ground are mutually exclusive, independent and without prejudice to each other.

The Appellant craves leave to add, alter, modify or amend any of the ground(s) / sub ground(s) of appeal.”

3. The facts of the case, in brief, are that the Tata Education Trust (in short ‘the Trust’ or ‘the Appellant’), established in 1990, is a Public Charitable Trust registered under the Maharashtra Public Trust Act, 1950. The Trust had obtained registration under section 12A of the Act on 10th December, 1990. However, the Trust surrendered the aforesaid registration vide letter dated 19th February, 2015. The Trust filed its return of income on 18th November, 2021 offering interest, dividend and other income to tax amounting to Rs.19,35,71,532/-. It claimed deduction u/s. 80G of the Act of Rs.12,43,59,500/- resulting into a total income of Rs.6,92,12,030/-.

4. In its return of income filed by the Trust:

a) Tax on total income was calculated at slab rates at Rs.2,05,76,109/-.

b) Surcharge was calculated at the rate of 15% amounting to Rs.30,86,416/-.

c) Cess was calculated at 4% amounting to Rs.9,46,501/-.

However, the CPC after processing the return issued Intimation Order u/s. 143(1) of the Act dated 5th December, 2022 in which it was noticed by the Trust that while processing its return the taxes were calculated as under:

- a) The taxes were computed at Maximum Marginal Rate ('MMR' in short) of 30% instead of slab rates;
- b) Consequentially, cess at the rate of 4% also got increased.

Credit for taxes deducted at source and advance tax was granted which resulted in the refund of Rs.2,09,20,144/- i.e., short granted by Rs.2,24,246/-. Consequentially, the Interest u/s 244A of the Act has also been short granted at Rs.21,96,611/-. The refund, so determined for the AY 2021-22, was adjusted against the demand for AY 2015-16 without giving any intimation to the Trust as required u/s. 245 of the Act. In A.Y 2015-16 the Trust has already preferred an appeal before the Ld. CIT (Appeals) after paying 20% of the demand following CBDT Instruction No. 1914 dated 21/03/1996.

5. Aggrieved by the said Intimation Order passed u/s. 143(1) of the Act dated 5th December, 2022, the assessee preferred appeal before the Ld. CIT (A). During the appellate proceedings before Ld. CIT(A), the appellant made ground wise submissions which are reproduced as under:
- "Ground # 1: Charge of tax at maximum marginal rates instead of slab rates

"On the facts and under the circumstances of the case, and in law, the Intimation order u/s 143(1) of the Act erroneously calculates tax at maximum marginal rate of 30% on the total income of the Appellant resulting into a total tax of Rs.2,07,63,609/- instead of Rs.2,05,76,109/- returned by the Appellant at slab rates resulting into additional tax of Rs.1,87,500/-"

In respect of the aforesaid ground, the Trust submits as follows:

2.1. Sections 11 to 13 of the ITA are self-contained code for those assessees offering their income to tax u/s 11 of the ITA by virtue of registration u/s 12A/12AA of the ITA.

2.2. Section 164(2) of the ITA reads as under

"Section 164 - Charge of tax where share of beneficiaries unknown.

(2) In the case of relevant income which is derived from property held under trust wholly for charitable or religious purposes, or which is of the nature referred to in sub- clause (iia) of clause (24) of section 2, or which is of the nature referred to in sub- section (4A) of section 11, tax shall be charged on so much of the relevant income as is not exempt under section 11 or section 12, as if the relevant income not so exempt were the income of an association of persons:

Provided that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (c) or clause (d) of sub-section (1) of

section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate."

2.3 As per the proviso to section 164(2) of the ITA, where the income of the assessee claiming exemption u/s 11 of the ITA, is not exempt by virtue of section 13(1) (c) or 13(1) (d) of the ITA, tax shall be charged on the relevant income at maximum marginal rate.

2.4 As stated above, the Trust reiterates the fact that the Trust has surrendered its registration to the CIT (A) vides letter dated 19.02.2015. The Hon'ble ITAT in ITA No. 7241/Mum/2019 dated 24.03.2021 (enclosed as Annexure 3) has held that the date of cancellation of registration should be treated as 20.03.2015.

2.5 Thus, for AY 2021-22, the Trust has offered its income to tax under normal provisions of the ITA i.e., at slab rates and not u/s 11 of the ITA. Consequently, the provisions of section 11 to 13 of the ITA are not applicable to the Trust and so the provisions of section 164(2) of the ITA are also not applicable.

2.6 Hence, the Trust shall be chargeable to tax as an "individual" and slab rates applicable to "individuals" shall apply to the Trust.

2.7 As per Paragraph A(I) of the First Schedule to Finance Act 2021, where the total income exceeds Rs.10,00,000/- the taxes are calculated at Rs.1,12,500/- plus 30 percent of the amount by which

the total income exceeds Rs.10,00,000/-. Relevant extract from the same is reproduced hereunder:

"FIRST SCHEDULE (See section 2) Part I INCOME-TAX Paragraph A 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

2.8 In AY 2021-22, the total income of the Trust is determined at Rs.6,92,12,030/- and hence the tax on total income arrives at Rs.2,05,76,109/- as against Rs.2,07,36,609/- calculated in the Intimation u/s 143(1) of the ITA at the MMR i.e., 30% on total income of Rs.6,92,12,030/-.

2.9 The Trust draws your Honour's kind attention to the recent judgement of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre in case of Tata Social Welfare Trust ('TSWT') for AY 2020-21 dated 09.05.2023 (copy enclosed as Annexure 6). In this case, the primary ground of appeal raised by TSWT is reproduced hereunder:

"1. On the facts and under the circumstances of the case, and in law, the learned Assessing Officer erred charging tax at maximum marginal rate of 30% on the income of the Appellant excluding dividend resulting into a tax at normal rates of Rs.3,77,949/- instead of Rs.1,90,449/- returned by the Appellant at slab rates.

(Emphasis Supplied)

The NFAC has disposed the above ground holding as under.

"5...Ground No 1 charging of tax at maximum marginal rate of 30% Sections 11 to 13 of the ITA are self-contained code for those assesses offering their income to tax u/s 11 of the ITA by virtue of registration u/s 12A/12AA of the ITA. As per the proviso to section 164(2) of the ITA, where the income of the assessee claiming exemption u/s 11 of the ITA, is not exempt by virtue of section 13(1) (c) or 13(1) (d) of the ITA, tax shall be charged on the relevant income at maximum marginal rate.

As stated by the appellant, the Trust had surrendered its registration to the CIT (E) vide letter dated 19.02.2015. The Honorable ITAT in ITA No. 7237/Mum/2019 dated 24.03.2021 have held that the date of cancellation of registration should be treated as 20.03.2015.

Thus, for AY 2020-21, the Trust has offered its income to tax under normal provisions of the ITA and not u/s 11 of the ITA. Consequently, the provisions of sections 11 to 13 of the ITA are not

applicable to the Trust and so the provisions of section 164(2) of the ITA are also not applicable.

On the basis of details filed and submission made, the AO is directed to verify the factual position and charge tax as per law.

Ground No 2 to 3 are consequential in nature and requires no separate adjudication."

2.10 As can be seen from the above, the Trust draws inference that NFAC has accepted TSWT's contention. NFAC has categorically observed that TSWT has offered its income under normal provisions of the ITA and not u/s 11 to 13 of the ITA. Consequently, provisions of section 164(2) of the ITA (with respect to charge of tax at MMR) are not applicable to TSWT. Hence, the income and taxes of TSWT ought to be calculated as returned at slab rates applicable to Individual/AOP.

2.11 The Trust places reliance on the aforesaid judgement as it is based on similar facts as that of the Trust.

2.12 Further, the Trust draws your Honour's attention to the fact that on similar facts, the scrutiny assessment u/s. 143(3) of the ITA in following cases (including Trust's own case for AY 2015-16) were concluded considering the slab rate of tax.

Sr No., Name of Trust, Assessment Year, Assessment order with notice of demand and computation sheet enclosed as

1. *Tata Education Trust 2015-16 Annexure 7*
2. *Jamsetji Tata Trust 2016-17 Annexure 8*
3. *Tata Social Welfare Trust 2016-17 Annexure9*
4. *NavajbaiRatan Tata Trust 2016-17 Annexure 10*

Should your Honour desire any further information/ document, the Trust shall be happy to provide.

2.13 In view of the above, the Trust submits that the taxes ought to be calculated at slab rates as per the computation of total income enclosed as Annexure 5 and not maximum marginal rate.

Ground #2: Consequential increase in surcharge charged

"On the facts and under the circumstances of the case, and in law, the Intimation order u/s 143(1) of the Act erroneously calculates surcharge on the increased tax amount of the Appellant amounting to total surcharge of Rs.31,14,541/- instead of Rs.30,86,416/- returned by the Appellant resulting into additional demand of Rs.28,125/- In respect of the aforesaid ground, the Trust submits as follows:

2.14 This ground is consequential to the above ground. Surcharge has been calculated at 15%.

2.15 However, consequent to increase in tax, surcharge has been calculated at 15% on the amount of increased tax at MMR and not on taxes at slab rates.

2.16 *The Trust submits that the surcharge ought to be calculated at 15% on the correct amount of tax of Rs.2,05,76,109/- thus arriving at Rs.30,86,416/- instead of Rs.31,14,541/-.*

Ground # 3: Consequential increase in cess charged

"On the facts and under the circumstances of the case, and in law, the Intimation order u/s 143(1) of the Act erroneously calculates cess at higher level consequent to increase in tax and surcharge at Rs.9,55,126/- instead of Rs.9,46,501/- returned by the Appellant resulting into additional demand of Rs.8,625/-"

In respect of the aforesaid ground, the Trust submits as follows:

2.17 *This ground is consequential to the above grounds. Cess has been calculated at the rate of 4%.*

2.18 *However, consequent to increase in tax and surcharge, cess has been calculated 4% on the amount of increased tax and surcharge at MMR and not on T.A.*

2.19 *The Trust submits that the cess ought to be calculated at 4% on the correct amount of tax and surcharge of Rs.2,36,62,522/- thus arriving at Rs.9,46,501 /- instead of Rs.9,55,126/-.*

2.20 *In view of the above submission against Ground 1 to 3, the Trust submits that the Trust be granted a refund of Rs.2,11,44,390/- with appropriate interest u/s 244A of the ITA.*

Ground # 4: Refund adjusted against demand without prior intimation u/s 245 of the ITA

"On the facts and under the circumstances of the case, and in law, the Intimation order u/s 143(1) of the Act erred in adjusting refund of AY 2021-22 against the demand for AY 2015-16 without issuing a prior Intimation u/s 245 of the Act to the Appellant and hence the said action of adjustment is bad in law, illegal and required to be quashed.

"In respect of the aforesaid ground, the Trust submits as follows:

No Intimation u/s 245 of the ITA issued to the Trust

2.21 Section 245 of the ITA read as under:

"Where under any of the provisions of this Act, a refund is found to be due to any person, the Assessing Officer, Deputy Commissioner (Appeals), Commissioner (Appeals) or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section."

2.22 *As per section 245 of the ITA, the Assessing officer may in case of refund, set off the amount of refund against the demand, if any, remaining payable after giving a prior intimation in writing to such assessee of the proposed adjustment.*

2.23 *As stated above, the Trust reiterates the fact that the Trust was not given any prior intimation before the refund so determined was adjusted against the demand for AY 2015-16 even though it is stated so in the Intimation u/s 143(1) of the ITA that the due process u/s 245 of the ITA has been followed prior to the adjustment of the refund.*

2.24 *To support Trusts proposition that the prior intimation u/s 245 of the ITA is required to be issued before making any adjustment, the Trust places reliance on the judgement of the jurisdictional Bombay High Court in case of Greatship (India) Ltd. vs. ACIT (2022) (143 taxmann.com 171 Bom.) wherein, on similar facts, it has been held that where revenue adjusted refund payable to assessee for assessment year 2008- 09 against alleged outstanding demands from assessee for AYs 2014-15 and 2015- 16, since assessee was not given any prior intimation about proposed adjustment of refund in terms of section 245 of the ITA, impugned adjustment was unjustified and same was to be set aside. A copy of the said judgement is enclosed as Annexure 11.*

2.25 A similar proposition was upheld in the following judgements of the Bombay High Court:

a) *Jet Privilege (P.) Ltd. vs. Deputy Commissioner of Income Tax-5(2) (1), Mumbai, [2021] 131 taxmann.com 119 (Bombay) (Enclosed as Annexure 12)*

b) *Bharat Petroleum Corporation Ltd. v. Assistant Director of Income Tax, Bang., [2021] 133 taxmann.com 320 (Bombay) (Enclosed as Annexure 13)*

2.26 Hence, the Trust objects to the adjustment of the refund for AY 2021-22 against the demand for AY 2015-16.

Without prejudice, the Trust submits the Intimation order erred in adjusting the refund against the demand for AY 2015-16

2.27 In AY 2015-16, the demand of Rs.5,16,98,436/- had arisen out of Assessment Order u/s 143(3) of the ITA dated 29th December, 2017.

2.28 The Trust preferred an e-appeal before Hon'ble CIT (A)-28 dated 31st January 2018, against the aforesaid assessment order from which the outstanding tax demand emanates.

2.29 The Trust has already paid Rs.1,29,24,734/- on 15.02.2018 being 25% of the original demand amount of Rs.5,16,98,436/-. A copy of the challan for payment of 25% of original tax demand is enclosed at Annexure 14.

2.30 *As the appeal for the relevant assessment year u/s 246A of the ITA is pending for disposal before Hon'ble CIT (A) and Trust has already paid more than 20% of the demand raised, the Trust has requested for stay of demand. As per Office Memorandum No 404172/93-ITCC dated 31.07.2023, the Trust is entitled to complete stay of demand.*

2.31 *Even on merits, the Trusts in under a bonafide belief that the Trust's appeal before your Honour shall be disposed in favour of the Trust. The key issues in the said appeal are disposed in favour of Trust in Trusts own case/ sister Trust as under:*

a) *With respect to surrender of registration u/s 12A of Act by the Trust and its non- applicability of registration in AY 2015-16, the Trusts case is held in favour of the Trust by the Honorable ITAT in Trust's own case in ITA No 7241/Mum/2019 dated 24.03.2021 wherein it has been held that the Trust's registration has been cancelled with effect from 20.03.2015 (thus not in existence for AY 2015-16) and*

b) *With respect to allowance of deduction u/Chapter VIA of the Act, an order has been passed by the National Faceless Appeal Centre on similar issue, which is held to be in favour of a sister Trust in case of R. D. Tata Trust ("RDTT") for AY 2017-18. A copy of the said order has been enclosed as Annexure 15.*

Hence, the Trust firmly believes that no demand would remain payable by the Trust for AY 2015-16.

Thus, the Trust requests to release the refund adjusted against the demand for AY 2015-16.

2.32 In view of the above the Trust submits that the said adjustment of refund of Captioned year against the demand of AY 2015-16 is bad in law, illegal and is required to be quashed.

Kindly take the above submission on record and oblige. Should your Honour require any further clarifications, the Trust shall be glad to provide the same. In case your Honour is inclined to take an adverse view, kindly grant the Trust an opportunity of being heard."

6. The Ld. CIT(A) considered the submissions of the appellant, made as above, and held as under:

"The appellant has questioned the taxation of the income of the Trust at MMR. The appellant has stated that section 164(2) is not applicable as the surrendered its registration u/s 12 to the CIT (E) vides letter dated 19.02.2015. This is correct and section 164(2) is not applicable and section 164(1) is applicable. Section 164(1) states that

164. (1) Subject to the provisions of sub-sections (2) and (3), where any income in respect of which the persons mentioned in clauses (iii) and (iv) of sub-section (1) of section 160 are liable as representative assessee or any part thereof is not specifically

receivable on behalf or for the benefit of any one person or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown (such income, such part of the income and such persons being hereinafter in this section referred to as "relevant income", "part of relevant income" and "beneficiaries", respectively), tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate:

Provided that in a case where-

- i. none of the beneficiaries has any other income chargeable under this Act exceeding the maximum amount not chargeable to tax in the case of an association of persons or is a beneficiary under any other trust; or*
- ii. the relevant income or part of relevant income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him; or*
- iii. the relevant income or part of relevant income is receivable under a trust created before the 1st day of March, 1970, by a non-testamentary instrument and the Assessing Officer is satisfied, having regard to all the circumstances existing at the relevant time, that the trust was created bona fide exclusively for the benefit of the relatives of the settlor, or where the settlor is a Hindu*

undivided family, exclusively for the benefit of the members of such family, in circumstances where such relatives or members were mainly dependent on the settlor for their support and maintenance; or

- iv. the relevant income is receivable by the trustees on behalf of a provident fund, superannuation fund, gratuity fund, pension fund or any other fund created bona fide by a person carrying on a business or profession exclusively for the benefit of persons employed in such business or profession, tax shall be charged on the relevant income or part of relevant income as if it were the total income of an association of persons:*

Provided further that where any income in respect of which the person mentioned in clause (iv) of sub-section (1) of section 160 is liable as representative assessee consists of, or includes, profits and gains of business, the preceding proviso shall apply only if such profits and gains are receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him.

5.2 Thus according to section 164(1) a Trust which is an AOP/BOI/AJP where the individual shares of the persons on whose behalf or for

whose benefit such income or such part thereof is receivable are indeterminate or unknown is to be taxed at MMR

If the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are determinate or known, then the following questions are to be answered

Whether any beneficiaries have any other income chargeable under this Act exceeding the maximum amount not chargeable to tax? If the answer is yes, then it is to be charged at MMR. Otherwise, at normal rates for individual.

5.3 The ITR has questions regarding this and the answer given by the appellant against the relevant questions are as under

- 1. Whether you are a business trust? **NO***
- 2. Whether total income of any member of the AOP/BOI/executor of AJP (excluding his share from such association or body or Executor of AJP) exceeds the maximum amount which is not chargeable to tax in the case of that member? **NO***
- 3. Particulars of persons who were partners/members in the firm/AOP/BOI or settlor/trustee/beneficiary in the trust or executors in the case of estate of deceased / estate of insolvent as on 31st day of March, 2021 or date of dissolution*

1. RATAN NAVAL TATA

2. KRISHNAKUMAR KUTTAMBALLY RAYAROTH

3. VIJAY SINGH

4. VENU SRINIVASAN

4. To be filled in case of persons referred to in section 160(1)(iii)
or (iv)

1. Whether shares of the beneficiary are determinate or known? **Blank**

2. Whether the person referred in section 160(1)(iv) has Business Income? **Blank**

3. Whether the person referred in section 160(1)(iv) is declared by a Will and/or is exclusively for the benefit of any dependent relative of the settlor and/or is the only trust declared by the settlor? **Blank**

4. Whether all the beneficiaries have income below basic exemption limit? **Blank**

5. Whether the relevant income or any part thereof is receivable under a trust declared by any person by will and such trust is the only trust so declared by him? **Blank**

6. Whether the trust is non-testamentary trust created before 01-03-1970 for the exclusive benefit of relatives/member of HUF of the settlor mainly dependent on him/Family? **Blank**

7. *Whether the trust is created on behalf of a provident fund, superannuation fund, gratuity fund, pension fund or any other fund created bona fide by a person carrying on Business or profession exclusive for the employees in such Business or Profession? **Blank***

5.4 *The software of the CPC works the applicable tax rates considering the answers to the above questions. If in the case of a Trust which is an AOP/BOI/AJP if the answers given prove that shares of beneficiaries are determinate and none of the beneficiaries have taxable income and the Trust is not doing any business activity, then the software of the CPC works the applicable tax rates as individual rate. If the answers to any of these questions are 'yes' or is given as "blank" the software of the CPC works the applicable tax rates as MMR. The software of the CPC has followed the answers given by the appellant that shares of beneficiaries are not determinate and hence MMR is applied.*

5.5 *The appellant has declared income under other sources and has no business Income. The appellant has not claimed any expenses and the whole income are offered for taxation. The utilization of income is not known as per ITR. The claim of the appellant is that it is charitable trust which performs activities for the benefits of the general public at large (i.e. it is a public charitable trust), but is not registered u/s 12A*

of the Income Tax Act, 1961 and hence the persons/individuals for whom the trust is created do not have any "vested share" in the income of the trust, therefore, the question of the share being indeterminate or unknown does not arise. The question is a logical one but this becomes a Trust in which the beneficiaries are unknown and indeterminate only. According to the Act the taxation can be based on share of beneficiaries are determinate or indeterminate and whether section 11/12 is applicable. In this classification only Trusts with shares of beneficiaries' determinate and none of the beneficiaries having taxable income are to be taxed at individual rates. All other Trust/ AOP/BOI/AJP including taxable income of Trusts with 12A registration are to be taxed at MMR. The CPC has followed the provisions of the ACT only and the order u/s 143(1) is correct and requires no interference. Ground 1 is dismissed. Ground 2 and 3 are consequential in nature and as ground 1 is dismissed these grounds are also dismissed.

5.6 Ground 4 is against Refund adjusted against demand without prior intimation u/s 245 of the IT ACT. The refund is determined u/s 143(1) and the adjustment is done u/s 245 after the refund is determined. The orders appealable orders before Joint Commissioner (Appeals) are given in section 246 as under:

246. 1) Any assessee aggrieved by any of the following orders of an Assessing Officer (below the rank of Joint Commissioner) may appeal to the Joint Commissioner (Appeals) against-
- a. an order being an intimation under sub-section (1) of section 143, where the assessee objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 or section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;
 - b. an order of assessment, reassessment or re computation under section 147;
 - c. an order being an intimation under sub-section (1) of section 200A;
 - d. an order under section 201;
 - e. an order being an intimation under sub-section (6A) of section 206C;
 - f. an order under sub-section (1) of section 206CB;
 - g. an order imposing a penalty under Chapter XXI; and
 - h. an order under section 154 or section 155 amending any of the orders mentioned in clauses (a) to (g):

Provided that no appeal shall be filed before the Joint Commissioner (Appeals) if an order referred to in this sub-section is passed by or with the prior approval of, an income-tax authority above the rank of Deputy Commissioner.

- 2) Where any appeal filed against an order referred to in sub-section (1) is pending before the Commissioner (Appeals), the Board or an income-tax authority so authorized by the Board in this regard, may transfer such appeal and any matter arising out of or connected with such appeal and which is so pending, to the Joint Commissioner (Appeals) who may proceed with such appeal or matter, from the stage at which it was before, it was so transferred.*
- 3) Notwithstanding anything contained in sub-section (1) and sub-section (2), the Board or an income-tax authority so authorized by the Board in this regard, may transfer any appeal which is pending before a Joint Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending, to the Commissioner (Appeals) who may proceed with such appeal or matter, from the stage at which it was before, it was so transferred.*

- 4) *Where an appeal is transferred under the provisions of sub-section (2) or sub-section (3), the appellant shall be given an opportunity of being reheard.*
- 5) *For the purposes of disposal of appeal by the Joint Commissioner (Appeals), the Central Government may make a scheme, by notification in the Official Gazette, so as to dispose of appeals in an expedient manner with transparency and accountability, by eliminating the interface between the Joint Commissioner (Appeals) and the appellant, in the course of appellate proceedings to the extent technologically feasible and direct that any of the provisions of this Act relating to jurisdiction and procedure for disposal of appeals by the Joint Commissioner (Appeals), shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.*
- 6) *For the purposes of sub-section (1), the Board may specify that the provisions of that sub-section shall not apply to any case or any class of cases.*

Explanation - For the purposes of this section, "status" means the category under which the assessee is assessed as "individual", "Hindu undivided family" and so on.]

5.7 Order u/s. 143(1) is appealable and the decision on this is given above. The adjustment done u/s 245 is not an appealable order and the appellant can file a grievance against this or can go to Court under writ jurisdiction. The judgement of the jurisdictional Bombay High Court in case of Greatship (India) Ltd Vs ACIT (2022) (143 taxmann.com 171) (Bom.) is in WP. No. 1476 of 2022 dt. 18-7-2022 and the decision in writ petition. The Supreme Court's writ jurisdiction is governed by Article 32 of the Constitution, and the High Courts' writ jurisdiction is governed by Article 226. Writ jurisdiction of the Supreme Court can only be invoked if there is an infringement of a fundamental right. In contrast, the High Courts' writ jurisdiction is more expansive. According to Article 226, High Courts can issue writs for "any other" purpose, in addition to protecting fundamental rights. Therefore, it is not necessary that the breach is of a fundamental or constitutional right to invoke a writ petition under Article 226. For issuance of a writ, any harm caused by the State or a State institution in violation of ordinary law would be sufficient. In a writ petition the Court gives a factual finding/decision on the relevant case and is not a universal interpretation of law. Hence no decision is given on Ground 4 and the appellant is at liberty to approach the appropriate authorities for settlement of the grievance.”

In the result the appeal is dismissed.”

7. Aggrieved by the impugned order of the Ld. CIT (A), this appeal has been preferred before us. During the appellate proceedings before us, the appellant, in addition to its detailed submissions made in the form of Paper Book, placed reliance on the order of the Hon'ble ITAT Mumbai 'F' Bench in appellant's own case in ITA No.7241/Mum/2019 dated March 24, 2021 for the assessment year 2019-20 wherein the Hon'ble Bench has considered the decision taken by the coordinate bench in the case of Navajbai Ratan Tata Trust vs PCIT in ITA No. 7238/Mum/2019 and held that the observations made in Navajbai Ratan Tata Trust vs PCIT will apply mutatis mutandis in the case of the appellant as well. The conclusions drawn by the coordinate bench in Navajbai Ratan Tata Trust are given as under:

“68. In view of the above discussions, as also bearing in mind the entirety of the case, we are of the considered view that the impugned order of cancellation of registration granted to the assessee under section 12A must be held to be effective from the date on which the hearing on first show-cause notice was concluded and the show cause notice issued by the Commissioner was formally acquiesced by the assessee in the said hearing, i.e., 20th March 2015, since, without disposing of the said matter, the Commissioner, or his successors, could not have started other

parallel proceedings for cancellation of registration obtained under section 12A. The registration having been "obtained" under section 12A was in the nature of a benefit to the assessee, and it was, therefore, entirely at the option of the assessee. In our considered view, an assessee unwilling to avail the "benefit" of registration "obtained" under section 12A cannot be, directly or indirectly and by actions or by inactions, compelled by the revenue authorities, to continue with the said registration "obtained by the assessee, particularly when it pertained to the registration obtained in a period prior to the insertion of section 12AA. The present cancellation of registration under section 12A must, therefore, be held to be effective from 20th March 2015. To this limited extent, we uphold the plea of the assessee.

69. *We have noted that many other peripheral issues, with regard to the conduct of the assessee trust and compliance with the statutory provisions under section 11 to 13 are raised in the course of the impugned proceedings. In our humble understanding, there is no need to deal with these aspects so far as our adjudication, on the core issue requiring our adjudication in this appeal, is concerned. All these issues so raised by the revenue authorities are left open for adjudication at the appropriate stage such as in the assessment, or any other related, proceedings, if and so necessary.*

Our observations hereinabove have no bearing, or should be construed as having any bearing, on these issues.

70. The admission of additional ground of appeal is also an academic issue in the light of the above conclusions arrived by us, and there is no need to deal with that aspect of the matter either. As we have decided this appeal on the short issue about the date from which the impugned order must be held to be effective, we refrain from dealing with all other issues, including the additional ground of appeal, at this stage. There are many other facets of arguments advanced before us and the grievances raised before us. However, we see no need to deal with all these aspects of the matter at this stage.”

8. So what is coming out of the above order is that cancellation of registration granted to the assessee under section 12A must be held to be effective from the date on which the hearing on first show-cause notice was concluded and the show cause notice issued by the Commissioner was formally acquiesced by the assessee in the said hearing, i.e., 20th March 2015. Meaning thereby that once the registration of the Trust is cancelled w.e.f 20th March 2015, the Trust has lost its status of a registered trust and, therefore, tax on total income has to be calculated at slab rates and not at MMR. Similarly,

surcharge and cess have to be calculated at prevailing rate. We hold it accordingly.

9. In Ground No. 2, the appellant has raised objection that the adjustment of refund for A.Y. 2021-22 was made against demand of A.Y. 2015-16 without giving any intimation in writing as required u/s 245 of the Act. We have considered this issue and direct the AO to calculate the tax on total income at slab rates and charge cess and surcharge at the prevailing rate as per schedule. The adjudication of the issue of giving intimation in writing before adjustment of refund against outstanding demands, if any, is, therefore, premature.

10. In the result, the appeal is allowed.

Order pronounced in the open court on 08.08.2024.

**Sd/-
PAVAN KUMAR GADALE
JUDICIAL MEMBER**

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

Mumbai, Dated: 08.08.2024.

Snehal C. Ayare, Stenographer

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.