

**IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH,  
MUMBAI**

**BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER  
&  
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.619/MUM/2024  
(A.Y. 2022-23)**

<b>Executor to Estate of Amirali J. Dossa</b> 1, Sukhmani Niwas, 187 A. S. V. Road, Andheri (West) -400058.	v/s. बनाम	<b>ITO 23(1)(1)</b> Matru Mandir, 1 <sup>st</sup> Floor, Nana Chow, Maharashtra- 400007.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAAE7270P</b>		
<b>Appellant/अपीलार्थी</b>	<b>..</b>	<b>Respondent/प्रतिवादी</b>

Appellant by :	Shri Mayur A. Shah (Executor)
Respondent by :	Shri Dharamveer D. Yadav – Sr. D.R.

Date of Hearing	10.10.2024
Date of Pronouncement	14.10.2024

**आदेश / ORDER**

**PER RENU JAUHRI [A.M.] :-**

The present appeal has been filed against the order of the Learned Commissioner of Income-tax (Appeals), ADDL/JCIT (A)-1, Vishakhapatnam [hereinafter referred to as “Addl. CIT(A)”] passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 19.01.2024 for Assessment Years [A.Y.] 2022-23.

2. The assessee has raised following grounds of appeal:

- 1) *“The CIT(A) NFAC erred in holding that the AO was justified in taxing the appellant to tax at the maximum marginal rate applicable to an AOP as against his obligation to charge the AOP to tax as an Individual. It is prayed that the AO be directed to tax the appellant at the rates applicable to an individual and delete the tax charged in excess at Rs.2,51,070/-*
- 2) *The CIT(A)/NFAC erred in holding that the AO CPC was justified in charging interest u/s.234B at Rs.17,661/- as against interest chargeable at NIL. It is prayed that the interest charged in excess at Rs.17,661/- be directed to be deleted.*
- 3) *The CIT(A) NFAC erred in holding that the AO CPC was justified in charging interest u/s.234C at Rs.12,741/- as against interest chargeable at NIL. It is prayed that the interest charged in excess at Rs.12,741/- be directed to be deleted.*
- 4) *The appellant craves leave to amend, alter or modify any of the above grounds of appeal or to add fresh grounds of appeal, if found necessary.”*

3. The brief facts of the case are that the assessee is a trust formed as per the will of late Mr. Amirali J. Dossa who expired on 14/11/2013, to manage and administer his estate. The trust left behind by the assessee is a specific trust giving direction for the bequest of his properties among his three legal heirs i.e. his two wives and a minor son. The inheritance in favour of the first two legal heirs is complete. Since, the third legal heir was a minor and some funds were left behind, therefore, the estate account continued for the sole beneficiary, being minor son of the late Mr. Amirali J. Dossa. The CPC applied maximum marginal rate on AOP u/s. 143(1) of the Income Tax Act against which the assessee filed the appeal before Ld. CIT(A) vide order dated 19.01.2024, Ld. CIT(A) dismissed the appeal of the assessee.



4. Before us, the Ld. A.R. has submitted that the shares of the three legal heirs were determinate and the estate account continued only for the sole beneficiary who has also become a major three years prior to the assessment year under consideration. It was further pointed out that for A.Y.2021-22, the Ld. CIT(A) had allowed the assessee's appeal on similar issue.
5. We have heard the rival submissions and it is clear that shares of the beneficiaries are determinate and therefore, the rates applicable to an individual are to be applied in this case.
6. Moreover, the application of maximum marginal rate by the CPC is beyond the scope of prima facie adjustments. Accordingly, we hold that the contention of the assessee deserves to be accepted. Ld. AO is directed to apply the rates applicable to an individual in this case.
7. In the result, the appeal is allowed.

Order pronounced in the open court on 14.10.2024 .

Sd/-

**BEENA PILLAI**

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

**RENU JAUHRI**

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai  
दिनांक/Date 14.10.2024.  
snehal c. ayare, stenographer



ITA No.619/MUM/2024  
(A.Y. 2022-23)  
Executor to Estate of Amirali J. Dossa

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai