

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

**BEFORE MS. KAVITHA RAJAGOPAL, JM AND
SHRI RATNESH NANDAN SAHAY, AM**

ITA Nos. 2484 & 2485/Mum/2024
(Assessment Years: 2023-24 & 2022-23)

Jitendra Gala Navneet Trust Navneet Bhavan, Bhavani Shankar Road, Shardasharm Society, Dadar (W), Mumbai-400 028	Vs.	Dy. Director of Income Tax Ward-22(1)(6) Piramal Chambers, Dr. S S Rao Marg, Parel, Mumbai-400 012
PAN/GIR No. AABTJ 6272 C		
(Assessee)	:	(Respondent)

ITA No. 2486/Mum/2024
(Assessment Year : 2022-23)

Dilip Sampat Navneet Trust Navneet Bhavan, Bhavani Shankar Road, Shardasharm Society, Dadar (W), Mumbai-400 028	Vs.	Dy. Director of Income Tax Ward-22(1)(6) Piramal Chambers, Dr. S S Rao Marg, Parel, Mumbai-400 012
PAN/GIR No. AABTD 7242 G		
(Assessee)	:	(Respondent)

Assessee by	:	Shri Sanjay Parikh
Respondent by	:	Shri R. R. Makwana

Date of Hearing	:	25.07.2024
Date of Pronouncement	:	22.10.2024

ORDER

Per Kavitha Rajagopal, J M:

The captioned appeals have been filed by the assessee Trust, challenging the order of the learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Years ('A.Y.' for short) 2023-24 & 2022-23.

2. As the facts are common in all the appeals, we hereby take ITA No. 2485/Mum/2024 for A.Y. 2022-23 as a lead case.

ITA No. 2485/Mum/2024 for A.Y. 2022-23

3. The grounds of appeal raised by the assessee reads as under:

Ground No. 1: Validity of the adjustments made in the Intimation u/s 143(1)

1. *The learned CIT(A) erred in not quashing the impugned intimation order passed under section 143(1) of the Income Tax Act, 1961 as no opportunity of being heard was provided to the Appellant before levying surcharge and additional interest.*

Ground No. 2: Incorrect levy of surcharge amounting to Rs.74,768/- despite total income being less than 50 lakhs

1. *The learned CIT(A) erred in not appreciating that surcharge on tax is not applicable as the total income of the Appellant is below the threshold limit of Rs 50 lakhs.*

2. *The learned CIT(A) failed to appreciate that the surcharge on tax is applicable only if the total income is above 50 lakhs as outlined in the First Schedule to Finance Act, 2021.*

3. *Your Appellant prays that the surcharge of Rs.74,768/- levied in the impugned intimation order is incorrect, bad in law and hence the same may please be deleted.*

4. The brief facts are that the assessee company is an irrecoverable private Discretionary Trust incorporated in 2012 under the Indian Trust Act, 1882. The assessee Trust had filed its return of income dated 16.07.2022, declaring total income at Rs.6,73,590/- and the same was processed u/s. 143(1) of the Act.

5. The learned Assessing Officer (ld. A.O. for short)/CPC issued intimation u/s. 143(1) of the Act dated 16.03.2023, levying a surcharge of Rs.74,768/- @ 37%, as against Nil computed by the assessee and thereby issuing a refund of Rs.1,80,670/- as against the refund claimed of Rs.2,48,010/-.

6. The assessee was in appeal before the first appellate authority, challenging the said intimation of the ld. A.O/CPC.

7. The Id. CIT(A) vide order dated 29.03.2024 upheld the surcharge levied by the Id. A.O./CPC on the ground that the maximum marginal rate is applicable in the case of the assessee, for which the surcharge @ 37% is attracted for maximum marginal rate @ 42.74% for the year under consideration.
8. Aggrieved the assessee is in appeal before us, challenging the order of the Id. CIT(A).
9. The learned Authorised Representative (Id. AR for short) for the assessee stated that the ground no. 1 which is challenging the validity of the adjustment made in intimation u/s. 143(1) of the Act, was not pressed by the assessee and proceeded to ground no. 2, challenging the levy of surcharge made by the Id. A.O. and upheld by the Id. CIT(A). The Id. AR contended that surcharge on tax is applicable only for total income exceeding Rs.50 lacs, as per the first schedule to Finance Act, 2022, which proposition has been upheld by the decision of co-ordinate bench in the case of *Ujjwal Business Trust vs. ITO* (in ITA No. 602/Mum/2024 vide order dated 28.06.2024) and *Alwar vs. ITO* (in ITA No. 1401/Mum/2024 vide order dated 09.07.2024). The Id. AR prayed that the surcharge levied on the assessee be deleted.
10. The learned Departmental Representative (Id. DR for short) relied on the order of the lower authorities.
11. We have heard the rival submissions and perused the materials available on record. The only issue that requires adjudication is whether surcharge could be levied where the total income is less than Rs.50 lacs. The Id. CIT(A) has contended that since the assessee's tax liability would fall under the maximum marginal rate, surcharge would

be applicable in the case of assessee as per section 2(29) of the Act. The assessee's contention that as per the Finance Bill, 2022 surcharge could be applicable only when the assessee in case of Individual, Hindu Undivided Family or Association of Person or Body of individuals having a total income, exceeding Rs.50 lacs of such income tax. The relevant extract of the same is cited herein under:

Surcharge on income-tax

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-five 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) 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:*

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 the 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 on a total income of fifty lakh rupees by more than the amount of income that exceeds fifty lakh rupees;*
- (b) one crore rupees but does not exceed two 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 one crore rupees by more than the amount of income that exceeds one crore rupees;

(c) two crore rupees but does not exceed 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 two crore rupees by more than the amount of income that 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 five crore rupees by more than the amount of income that exceeds five crore rupees.

12. From the above, it is observed that only when the total income exceeds Rs.50 lacs then surcharge is leviable, where the rate of surcharge is fixed according to the slab of income. During the year under consideration, the income of the appellate was assessed by the Id. A.O./CPC at Rs.6,73,590/- which is less than Rs.50 lacs and, therefore, levying of surcharge would not be applicable for the same. We, therefore, direct the Id. A.O. to delete the surcharge levied in the hands of the assessee Trust. Ground no. 2 raised by the assessee is hereby allowed.

13. The findings applied in ITA No. 2485/Mum/2024 will apply *mutatis mutandis* to Ground no. 2 of ITA No. 2484/Mum/2024 and 2486/Mum/2024.

14. Ground no.3 raised by the assessee in ITA No. 2484/Mum/2024 and ground no. 4 in ITA No. 2486/Mum/2024 pertains to the levy of additional interest u/s. 234B and 234C of the Act. The Id. A.O. is directed to recompute the interest u/s. 234B and 234C of the Act consequentially as per the relief granted in ground no. 2.

15. Ground no. 3 of ITA No. 2486/Mum/2024 relates to the mismatch in tax payable and the net amount payable where the demand resulted in increase by Rs.23,195/-. As this ground requires factual verification, we remand this issue to the Id. A.O. to verify the same and determine the actual demand accordingly.

16. In the result, all the appeals filed by the assessee are allowed.

Order pronounced in the open court on 22.10.2024.

Sd/-

(Ratnesh Nandan Sahay)
Accountant Member

Mumbai; Dated : 22.10.2024
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai