

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

**SHRI BR BASKARAN, ACCOUNTANT MEMBER
AND
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA Nos.3834 & 3835/M/2024
Assessment Years: 2022-23 & 2023-24**

M/s. Kapur Family Trust, 8 The Cliff, Pochkhanawala Road, Worli, Maharashtra - 4000 030 PAN: AACTS7653P	Vs.	ITO Ward 22(2)(1), Piramal Chamber, Mumbai - 400012 Maharashtra
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Jayesh Dadia, A.R.
Revenue by : Shri G. Santosh Kumar, Sr. A.R.

Date of Hearing : 17.10.2024
Date of Pronouncement : 30.10.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

These appeals have been preferred by the Assessee against the orders even dated 28.06.2024, impugned herein, passed by the Ld. Addl/Joint Commissioner of Income Tax (Appeals) (in short "Ld. Addl./Joint Commissioner") under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2022-23 & 2023-24.

2. As the issue involved in both the appeals under consideration is exactly same, hence for the sake of brevity, we are inclined to decide these appeals by passing this composite order and by taking into consideration **ITA No.3834/M/2024** as a lead case and result of the same shall apply mutatis mutandis to both the appeals under consideration.

3. ITA No.3834/M/2024

In this case the Assessee is a family trust and has earned income from house property, business and profession, capital gain and from other sources. The Assessee during the year under consideration, has earned total income of Rs.10,14,87,030/- out of which the amount of Rs.5,60,81,538/- was shown as capital gain taxable @ special rate u/s 111A & 112A of the Act and rest of the income qua dividend income and the remaining amount of Rs.4,54,05,499/- has been shown as taxable at the normal rate, by filling its return of income.

4. The return was processed by the CPC on 30.10.2023 u/s 143(1) of the Act and resulted into determining the refund of Rs.2,14,480/- as against the refund claimed to the tune of Rs.18,08,567/- by the Assessee by filing its return of income.

5. The Assessee has submitted that while processing the return, the CPC has considered the dividend income of Rs.58,25,173/- and normal income of Rs.4,54,05,499/- at MMR which is not in dispute. However, the CPC charged surcharge @ 37% which is not in accordance with law. Where the income is less than Rs.5,00,00,000/- then rate of surcharge would be 25% but not 37% as per Finance Act, 2021. Further the surcharge on the dividend income would be applicable @ 15% but not 37% and therefore the surcharge on the dividend income of Rs.58,25,173/- was to be restricted to 15% and further the surcharge on the normal income of Rs.4,54,05,499/- was to be restricted to 25%. However, both the authorities below held contrary and therefore the Assessee has preferred these appeals.

6. On the contrary, the Ld. D.R. refuted the claim of the Assessee by submitting that once the Assessee has opted for MMR

and according to definition as prescribed in the provision of section 2(29c) r.w.s. 164 or 167B of the Act, the income tax includes surcharge meaning thereby the income tax including surcharge is to be levied at MMR and therefore the surcharge cannot be segregated and/or cannot be applied by taking refuge of other provisions of law.

6. We have heard the parties and perused the material available on record. It is not in controversy that the maximum marginal rate is applicable to the Assessee's declared income, on which the CPC has levied the surcharge @ 37% which has been affirmed by the Ld. Addl./Joint Commissioner. It is also admitted fact that according to the definition as prescribed u/s 2(29C) of the Act, maximum marginal rate is specified, which means the rate of tax (**including surcharge on income tax, if any**) applicable in relation to the highest slab of tax.

6.1 The Assessee has claimed before us that where the income is less than Rs.5,00,00,000/- then rate of surcharge would be 25% but not 37% as per Finance Act, 2021. Further the surcharge on the dividend income would be applicable @ 15% but not 37% and therefore the surcharge on the dividend income of Rs.58,25,173/- is liable to be restricted @ 15% and further the surcharge on the normal income of Rs.4,54,05,499/- is to be restricted to 25%.

6.2 We observe that recently the Hon'ble Co-ordinate Bench of the Tribunal in various cases including in **Anant Bajaj Trust Vs Dy. Director of Income Tax** {ITA No. 1995/Mum/2024 decided on 26-08-2024} has also come across with the identical issue/situation and the Hon'ble Co-

ordinate Bench of the Tribunal has analyzed the factual aspects as well as relevant provisions of law and ultimately affirmed the levy of surcharge @ 37% where the MMR was applicable. For completeness and ready reference, the conclusion drawn by the Hon'ble Co-ordinate Bench of the Tribunal in the case of **Anant Bajaj Trust Vs Dy. Director of IncomeTax** (supra) is reproduced herein below:

08. *We have carefully considered rival contentions and perused the orders of the learned lower authorities.*
09. *In the present appeal, there is no dispute between the parties that the assessee should be taxed at the maximum marginal rate. The issue is how to calculate the maximum marginal rate.*
10. *The assessee has computed maximum marginal rate by taking the income tax rate applicable in relation to the highest slab of income in case of an individual. This is also not in dispute. Both the parties agreed that the income tax rate should be considered in relation to the highest slab of income in case of individual.*
11. *But the dispute is what should be the rate of surcharge applicable. According to the assessee the rate of surcharge shall be the surcharge applicable to the assessee according to the income slab of the assessee and should not be at the highest rate of surcharge provided in the finance act. According to the revenue, the surcharge rate should also be the highest rate of surcharge applicable in case of an individual. Section 2 (29C) defines the maximum marginal rate as under: -*

[(29C) "maximum marginal rate" means the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income in the case of an individual ⁹, association of persons or, as the

case may be, body of individuals] as specified in the Finance Act of the relevant year;]

12. *According to the provisions of section 2 (29C) the maximum marginal rate means the rate of income tax (including surcharge on income tax, if any), applicable in relation to the highest slab of income in the case of an individual as specified in the finance act of the relevant year. Thus, when an assessee is to be taxed at the maximum marginal rate, Maximum Marginal rates is to be arrived at by adding Highest slab of tax and Highest slab of surcharge applicable in case of an individual. This is also the opinion expressed in the Commentary of Chaturvedi & Pithisaris as well as of Vinod Singhania. The Id. CIT (A) has also quoted it extensively. We tend to agree with this view.*
13. *Language of law is also clear that maximum Marginal rate shall be Maximum rate of tax which is tax and surcharge of the highest rate in case of an individual.*
14. *If the surcharge was to be charged according to the slab rates of the assessee, it was not required to be mentioned in section 2 (29C) of the Act. There would not have been any need to mention surcharge u/s 2 (29C) of the act because it would have been then computed under the finance Act as per slab applicable to income of the assessee. Thus, the purpose of mentioning surcharge in that section is to tax MMR as the Highest rate of tax for tax and surcharges. We should not read the section in the manner that word 'surcharge' mentioned in section 2 (29C) becomes redundant.*
15. *It is immaterial whether the CPC in one of the years accepted the ROI filed by the assessee, but when the issues are raised before us, we cannot hold that unsustainable view of revenue is in accordance with the law.*
16. *Honorable Kerala High court in case of C.V. Divakaran Family Trust[2002] 122 Taxman 405 (Kerala)/[2002] 254 ITR 222 (Kerala) held as under :-*

"2. We have heard Sri P.K.R. Menon, senior counsel for the

revenue, and Sri P. Balachandran, counsel for the assessee. Sri Menon contended that the definition of

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obtained in Explanation 2 to section 164(3) is free from doubt. The counsel for the assessee contended that the interpretation placed by the Tribunal based on another decision of the Tribunal is correct. It is his contention that 'maximum marginal rate' is not the maximum rate as rightly held by the Tribunal.

2. Explanation 2 to section 164(3) which is the subject-matter of these references is as follows :

"Explanation 2.— In this section, 'maximum marginal rate' means the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income in the case of an association of persons as specified in the Finance Act of the relevant year."

There is no dispute that section 164 is the relevant section under which the assessee has to be assessed. It is the charging section by itself and all that it says is that the 'maximum marginal rate' of tax is to be applied on the computed income. 'Maximum marginal rate' is defined as the rate of tax applicable in relation to the highest slab of income provided for association of persons in the relevant Finance Act. We feel that the definition is not capable of any doubt, and the only meaning that it admits is that the rate on the maximum slab of income for association of persons is to be treated as the maximum marginal rate of tax for the purpose of section

164. The Finance Act for each year prescribes various slabs for each category of assessee and the corresponding rates of tax applicable. We find that the rate of tax on the highest slab for association of persons under the relevant Finance Act is 55 per cent and, therefore, the Assessing Officer rightly levied the same. The interpretation placed by the Tribunal for providing marginalization is against the definition contained in Explanation 2 to section 164(3). When the statute says that the 'maximum marginal rate' is the rate applicable on the highest slab of income, there is no scope for enquiry into the meaning of 'marginal' and we feel the Tribunal committed an error by assigning a literal interpretation to the definition clause contained in Explanation 2. We, therefore, find that the Assessing Officer has rightly applied the 'maximum marginal rate' at 55 per cent which was the rate applicable on the highest slab of income for association of persons under the relevant Finance Act. We find that the Calcutta High Court in *Surendranath Gangopadhyaya Trust v. CIT* [1983] 142 ITR 149¹ and the Madhya Pradesh High Court in *Piarelal Sakseria Family Trust v. CIT* [1982] 136 ITR 583 have taken a similar view in the matter. In view of our interpretation, the questions have necessarily to be answered in favour of the revenue and against the assessee and we do so."

17. Honourable supreme court in case of *Gosar Family Trust, Jamnagar and Ors. Vs. Commissioner of Income Tax, Rajkot and*

Ors.(28.04.1995 - SC) : MANU/SC/0316/1995
has held that

“12. We must say that the policy of law as disclosed from Section 164(1) is to discourage discretionary trusts by charging the income of such trusts in the hands of trustees at the maximum marginal rate except in certain specified situations. The trust deed concerned herein is a discretionary trust of an extremely unusual type.”

18. *Thus, Levy of maximum marginal rate on Trust is a specific anti avoidance rule and therefore should be given a strict interpretation. Law prescribes that tax shall be charged on the whole of the income in respect of which such person is so liable at the maximum marginal rate. There is no intention to charge the assessee a bit lower than the rates of tax and surcharge applicable to an individual of maximum rate. We draw strength to hold so from the decision of Honorable Bombay high court in case of CIT V J K Holdings [270 ITR 593]*
19. *Though we are aware about several decision of ITAT on this issue Namely (1) Lintas Employees Holiday Assistance [ITA No 1796 /MUM/2024 dated 26-07- 2024], (2) Ujjwal Business Trust Bombay V CPC ITA 602 / M/2024 dt 28-06-2024] (3) Tayals Sales Corporation 1 SOT 579 (HYD) , however as none of those decisions have considered the decision of honorable Supreme court and Honorable high courts and also the authoritative commentaries were also not placed before benches, we tend to follow the decisionof Honorable High courts.*
20. *In the result, we confirm the order of the ld. CIT (A) holding that maximum marginal rate is Correctly computed by the CPC taking the Maximum rates of Income tax and maximum rates of surcharge applicable in case of an individual for the AY.*
21. *Appeal of the assessee is dismissed.”*

6.3 As the issue involved in the instant case is identical to the issue decided by the Co-ordinate Bench of the Tribunal in the aforesaid case, hence respectfully following the same, we are inclined to dismiss the instant appeal of the Assessee, thus the same is dismissed.

7. Consequently, both the appeals filed by the Assessee are dismissed.

Order pronounced in the open court on 30.10.2024.

**Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
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.