

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "J(SMC)" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.4101/Mum/2024
Assessment Year 2023-24

Shree Siddhivinayak Trust, 6-D, Prem Kutir, Marine Drive, Mumbai PAN : AAJPM7805N	vs.	The Income Tax Officer- 26(2)(1), Kautilya Bhavan, BKC,Bandra East, Mumbai
(Appellant)		(Respondent)

For Assessee :	Shri Haresh Shah
For Revenue :	Shri Asif Karmali, Sr.DR

Date of Hearing :	25-09-2024
Date of Pronouncement :	18-11-2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dt. 20-06-2024 passed by the Ld. Addl./JCIT(A)-4, Kolkata [‘Ld.CIT(A)’] and it relates to AY. 2023-24. The only issue urged in this appeal is related to the rate of surcharge that could be levied on the income tax computed in the hands of the assessee.

2. The assessee is a private discretionary trust, in which the shares of beneficiaries are not determined. Hence in terms of section 164 of the Income Tax Act, 1961 (‘the Act’), the assessee is liable to pay income tax at maximum marginal rate. The maximum marginal rate of Income tax was 30% for the year under consideration. The assessee declared a total

income of Rs.38,60,000/-, being dividend income received from the Indian companies. The assessee computed tax on the above said income by applying maximum marginal rate of 30%. However, the assessee did not compute surcharge thereon, apparently on the reasoning that the surcharge is not leviable on the total income of less than Rs.50.00 lakhs.

3. The CPC, while processing the return of income of the assessee u/s. 143(1) of the Act, levied surcharge on the income tax @37%. Since, according to the assessee no surcharge is leviable in this year, it preferred an appeal before the Ld CIT(A). The First Appellate Authority (FAA) did not accept the contentions of the assessee. However, the Ld.CIT(A) restricted the rate of surcharge to 15% on the income tax determined in the hands of the assessee. Still aggrieved, the assessee has filed this appeal.

4. We heard the parties and perused the record. The question is whether the “Maximum Marginal Rate” as defined in sec.2(29C) of the Act would mandate computation of both tax and surcharge by applying tax rates applicable to highest slab of income or not. We notice that the Co-ordinate Bench of the Tribunal in the case of Anant Bajaj Trust vs. DDIT in ITA No. 1995/Mum/2024, dt. 26-08-2024 has examined an identical question and has taken the view that the surcharge is also leviable at the maximum rate prescribed for highest slab of income. In this regard, the Co-ordinate Bench of the Tribunal has placed reliance on the decision rendered by the Hon’ble Kerala High Court in the case of CIT vs. C.V.Divakaran Family Trust [2002] (254 ITR 222)and also the decision rendered by the Hon’ble Supreme Court in the case of Gosar Family Trust, Jamnagar vs. CIT MANU/SC/0316/1995. Thus, we notice that the levy of tax at maximum marginal rate is not linked to quantum of income.

5. In the instant case, even though the CPC levied surcharge at the maximum rate of 37%, the Ld.CIT(A) has restricted it to 15%. In view of the interpretation of law discussed above, we are unable to accept the contention of the assessee that the surcharge could not be levied in its hands, as the total income was less than Rs.50.00 lakhs. Accordingly, we do not find any reason to interfere with the order passed by the Ld.CIT(A).

6. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 18-11-2024

Sd/-
[PAVAN KUMAR GADALE]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 18-11-2024

TNMM

Copy to :

1.	The Appellant
2.	The Respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "J(SMC)" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Dy./Asst. Registrar,
ITAT, Mumbai