

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE DR. BRR KUMAR, VICE PRESIDENT
SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER**

I.T.A. No.1719/Ahd/2024
(Assessment Year: 2021-22)

Ria Zaveri Trust, Opp. Ranmuteshwar Mahdev, Hansol, Ahmedabad-382475.	Vs.	Assistant Commissioner of Income Tax, CPC Bangalore (Present Jurisdiction: ITO, Ward 7(12)(1), Ahmedabad.
[PAN No. AACTR3406K]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Vartik Chokshi, A.R.
Respondent by:	Shri Rignesh Das, Sr. DR

Date of Hearing	09.12.2024
Date of Pronouncement	11.12.2024

ORDER

PER: DR. BRR KUMAR, VICE PRESIDENT:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, vide order dated 31.07.2024 passed for the Assessment Year 2021-22.

2. The Assessee has taken the following ground of appeal:-

In law and in the facts and circumstances in the case of appellant the Ld. CIT(A) has grossly erred in applying surcharge at the rate 37% without appreciating that appellant has rightly levied surcharge at 10% in the return of income.

3. Both the parties fairly agreed that the issue before us mentioned in the grounds of appeal stands squarely covered by the orders of the Tribunal in the cases of Ujjwal Business Trust Vs. ITO, CPC in ITA No. 602/Mum/2024, M/s. Lintas Employees Holiday Assistance Trust Vs. CPC in ITA No. 1796/Mum/2024, Shriram Trust Vs. ITO in ITA No. 439-441/Hyd/2024 and ITO Vs. Tayal Sales Corporation [2003] 1 SOT 579 (Hyd.).

For the sake of ready reference, the order in the case of Ujjwal Business Trust (cited supra) is reproduced hereunder:-

6. Section 2(29C) reads 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, association of persons or, as the case may be, body of individuals] as specified in the Finance Act of the relevant year;]"

Thus, the maximum marginal rate is the rate of income tax which includes surcharge if any applicable in relation to the higher slab of income in the case of individual, AOP, BOI as specified in the Finance Act of the relevant year. Thus, the tax rate and surcharge is applicable on the basis of slab rate provided under the Finance Act of the relevant year. The first schedule to the Finance Bill 2022 which is applicable in the case of the assessee which provides for rates of income tax for various persons including the individual, HUF, AOP, BOI or artificial juridical person wherein slab rate for levy of tax of rates have been provided. However, the surcharge of income tax is applicable on the income which are exceeding slab rate of Rs.50,00,000/- and above, wherein different rate of surcharge have been provided. The surcharge leviable on income tax as provided in the Finance Act, 1992 reads as under:-

"Surcharge on income-tax The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, of the provisions of section 111A or section sec 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 provision 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 provision of section 111A and section 112A of the Income-tax Act) exceeding five crore rupees, at the rate of thir five per cent. of such income-tax; and

(e) having a total income (including the income by way of dividend or income under the provision of section 111A and section 112A) exceeding two crore rupees but is not covered under clauses (c) and 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 1 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 or total income of fifty lakh rupees by more than the amount of income that exceeds fifty lakh rupee

(b) one crore rupees but does not exceed two crore rupees, the total amount payable 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 exceeds one crore rupees;

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

7. Thus, the surcharge is leviable only when amount of income tax is computed where the total income exceeds Rs.50,00,000/- and so on. Here in this case, the return of income is only Rs.36,930/- so on this income, taxes shall be charged at a maximum marginal rate in terms of Section 164 of the Act. Even after the trust is taxed at maximum marginal rate but for levying the surcharge, it is necessary that the slab of income which is chargeable to tax is exceeding Rs.50,00,000/- and above. Thus, the interpretation and the observation of the ld. CIT(A) is ostensibly against the law. If CPC which is computer assisted programme has made a mistake, then at least ld. CIT(A) should have seen the law in correct perspective; or something should have been brought on record that there is any notification or interpreting the slabs provided in the Finance Act that even if income is less than Rs.50,00,000/-, surcharge is leviable in case of AOP. Accordingly, the surcharge levied by the CPC is deleted. Consequentially, interest u/s.234B has also got reduced.”

In the absence of any change in the legal proposition, respectfully following the orders of the co-ordinate benches of the Tribunal, the appeal of the assessee is allowed.

This Order pronounced in Open Court on 11.12.2024

Sd/-

**(TR SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad; Dated 11.12.2024
Manish, Sr. PS

Sd/

**(DR. BRR KUMAR)
VICE PRESIDENT**

TRUE COPY

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad