

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

**BEFORE MS. KAVITHA RAJAGOPAL, JM
AND
SHRI. GAGAN GOYAL, AM**

ITA No. 3949/Mum/2024
(Assessment Year: 2023-24)

Lintas Employees Holiday Assistance Trust 13 th Floor, Express Towers, Nariman Point, Mumbai – 400021.	Vs.	ITO, Ward, 22(2)(1) Piramal Chamber, Mumbai – 400012.
PAN/GIR No.		
(Assessee)	:	(Respondent)

Assessee by	:	Shri. Prakash Jotwani
Respondent by	:	Ms. Rajni Rani Roy, SR. AR

Date of Hearing	:	28.10.2024
Date of Pronouncement	:	20.01.2025

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ADDL/JCIT (A)-1 Ahmedabad ('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 Year ('A.Y.' for short) 2023-24.

2. The solitary issue involved in this appeal is levy of surcharge @ 37% amounting to Rs. 49,169/- which according to the assessee was not leviable for the reason that as per Section 2(29C) of the Act, MMR includes surcharge and that without prejudice claims that the 'Maximum Marginal Rate' would be applicable in assessee's case for which

surcharge is not to be levied when the income is below the threshold limit of Rs. 50 lacs.

3. The assessee has raised the following grounds of appeal:

“1. The learned CIT(A) erred in not deleting a sum of Rs. 49,169/- made by AO/CPC in the Intimation Order u/s 143(1), arising on account of levy of 37% surcharge on the tax.

2. The CIT(A) failed to take into consideration that the Appellant is an AOP and as a result the rate of tax applicable to it is the 'Maximum Marginal Rate' and surcharge is not included in it. The learned CIT(A) failed to consider that under section 2(29C) of the Income Tax Act, 1961, the term "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 body of individuals as specified in the Finance Act of the relevant year.

3. Without prejudice, the Ld. CIT(A) failed to take into consideration that the income is below the limit of Rs. 50 lakhs prescribed under the Act and therefore the Surcharge is not leviable, as the assessed income was disclosed at Rs. 4,42,959/-.

4. The Hon'ble ITAT in the following 2 cases, has considered this issue of not levying Surcharge if the Total Income does not exceed Rs. 50 lakhs and has allowed the appeal in favour of the Assessee and has deleted the surcharge that had been incorrectly levied.

(i) Lintas Employees Holiday Assistance Trust (ITA No. 1796/Mum/2024), for AY. 2022-23, vide Order dated 26-07-2024.

(ii) Lintas Employees Professional Development Trust (ITA No. 4791/Mum/2023), for AY. 2021-22, vide Order dated 29-05-2024.”

4. Brief facts of the case are that the assessee is an Association of Person (AOP) created for the benefit of the employees of the Lintas Group. The assessee filed its return of income dated 20.07.2023, declaring total income at Rs. 4,42,960/-. The same was processed u/s. 143(1) of the Act and the Centralized Processing Centre (‘CPC’ for short)/learned Assessing Officer (‘ld. AO’ for short) vide intimation dated 16.03.2023 accepted the return of income filed by the assessee but had raised the demand of Rs. 52,600/- towards the surcharge @ 37% on the taxable income.

5. Aggrieved the assessee was in appeal before the first appellate authority, who vide order dated 13.06.2024 dismissed the appeal filed by the assessee on the ground that the assessee is liable to be taxed at the 'Maximum Marginal Rate' (MMR) along with surcharge @ 37% on income from other sources.
6. Aggrieved the assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).
7. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that surcharge should not be levied over and above the MMR of 30%, for the reason that Section 2(29C) of the Act provides that MMR rate shall include surcharge on the income tax payable by the assessee. The Id. AR further contended that if the assessee was liable to be levied surcharge, then the same has already been included in the MMR @ 30% which is inclusive of the rate of the tax to be paid by the assessee. The Id. AR also stated that there was no surcharge levied in the assessee case for A.Y. 2018-19 to 2020-21 and relied on the principles of consistency and prayed that the same ought to be deleted. The Id. AR placed his reliance on the decisions of the coordinate benches in the case of *ITO vs. Tayal Sales Corporation [2003] 1 SOT 579 (HYD.)*, the assessee's case for A.Y. 2021-22 and 2022-23 and in the case of *Ujwal Business Trust vs. Income Tax CPC, Exem Ward 2(4), ITA No. 602/Mum/2024, for A.Y. 2022-23, order dated 28.06.2024*, where the coordinate benches, on this issue, has decided this issue in favour of the assessee.
8. The learned Departmental Representative ('Id. DR' for short) on the other hand controverted the said fact stating that the 'Maximum Marginal Rate' (MMR) has to be in addition to the surcharge and the same is inevitable. The Id. DR further stated that

the lower authorities have rightly charged 42.74% which is the highest slab as per MMR and relied on the orders of the lower authorities.

9. We have heard the rival submissions and perused the materials available on record. The arguments enhanced by the Id. AR is two-fold where the following issues are to be adjudicated: -

- a. Whether as per Section 2(29C) of the Act, 'Maximum Marginal Rate' include surcharge (i.e., MMR @30% + 4% cess) or as per the revenue which is (MMR @ 30%+ surcharge @37%+ cess @ 4%)?
- b. If surcharge is in addition to the MMR rate, then whether it would be applicable to income which does not exceed Rs. 50,00,000/-?

10. With regard to the first issue in dispute, the assessee has contended that MMR @30% include any/all types of surcharges and that the Id. AO ought to have applied only 30% on the taxable income and the same has to be extensively dealt with, for which, it is relevant to extract the provisions of Section 2(29C) of the Act hereinunder for ease of reference:

Sec. 2(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;)"

11. It is not a disputed fact that the assessee as an AOP would squarely fall under the bracket of MMR for taxing its income, the above said provision defines MMR to be rate of income-tax applicable to the highest slab of income, here in this case is 30%, 'including surcharge on income-tax if any' is what requires interpretation. The Id. AR vehemently argued that the 'surcharge' has already been included in the income-tax payable by the

assessee. For this purpose, the Finance Bill, 2022 which is relevant to the impugned year has to be considered alongside for better understanding. It is trite to reproduce the same hereinunder for consideration:

(3) In cases to which the provisions of Chapter XII or Chapter XII-A or section 115JB or section 115JC or Chapter XII-FA or Chapter XII-FB or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act, 1961, (hereinafter referred to as the Income-tax Act) apply, the tax chargeable shall be determined as provided in that Chapter or that section, and with reference to the rates imposed by sub-section (1) or the rates as specified in that Chapter or section, as the case may be:

Provided that the amount of income-tax computed in accordance with the provisions of section 111A or section 112 or section 112A of the Income-tax Act shall be increased by a surcharge, for the purposes of the Union, as provided in Paragraph A, B, C, D or E, as the case may be, of Part I of the First Schedule, except in case of a domestic company whose income is chargeable to tax under section 115BAA or section 115BAB of the Income-tax Act or in case of co-operative society whose income is chargeable to tax under section 115BAD of the Income-tax Act:

Provided further that in respect of any income chargeable to tax under section 115A, 115AB, 115AC, 115ACA, 115AD, 115B, 115BA, 115BB, 115BBA, 115BBC, 115BBD, 115BBF, 115BBG, 115E, 115JB or 115JC of the Income-tax Act, the amount of income-tax computed under this sub-section shall be increased by a surcharge, for the purposes of the Union, calculated, —

(a) 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, not having any income under section 115AD of the Income-tax Act,

—
(i) having a total income exceeding fifty lakh rupees but not exceeding one crore rupees, at the rate of ten per cent. of such income-tax;

(ii) having a total income exceeding one crore rupees, but not exceeding two crore rupees, at the rate of fifteen per cent. of such income-tax;

(iii) having a total income exceeding two crore rupees, but not exceeding five crore rupees, at the rate of twenty-five per cent. of such income-tax; and

(iv) having a total income exceeding five crore rupees, at the rate of thirty-seven per cent. of such income-tax;

12. From the above, it is evident that the proviso categorically state that the amount of income-tax computed in accordance with provisions of Section 111A, 112, 112A, 115A, 115AB, etc. “shall be increased by a surcharge” and further enumerates the rate of percentage for each slab of income. It is quite apparent that the MMR rate has to be in addition to the surcharge and therefore is not inclusive of surcharge. The coordinate bench in the case of *Tayal Sales Corporation, 2003 (1) SOT 579 (Hyd.)*, held that the provisions of Section 2(29C) is worded in such a way that surcharge is to be included along with ‘Maximum Marginal Rate’ and by no stretch of imagination is MMR inclusive of surcharge. This proposition has been reiterated in various decisions of the Tribunal. Thus, we are not in agreement with the ld. AR’s argument on the first issue that ‘Maximum Marginal Rate’ includes surcharge as the same is not in accordance with the provisions of the Act.
13. With regard to the second issue that surcharge is applicable only to income which surpasses the threshold limit, here in this case, it begins with the threshold limit of income exceeding Rs. 50 lacs but not exceeding Rs. 1 Crore would be 10% of such income tax and 15% for income exceeding Rs. 1 crore but not exceeding Rs. 2 Crore and thereon, it is evident that there is no surcharge leviable when the total income does not exceed Rs. 50 lacs and in the present case, the returned income is only Rs. 4,42,960/- which is very much below the predetermined threshold limit. The intention of the legislature was to extend marginal relief on the surcharge on income tax for various class of persons intended to reduce the tax burden on individuals and other classes of persons. It is also a settled position of law that no surcharge is leviable on the income tax, which is lesser than Rs. 50 lacs as the same has been reiterated by various decisions

of the Tribunal as relied upon by the Id. AR. Notably, in the case of the assessee in *ITA No. 1796/Mum/2024*, for A.Y. 2022-23, the Tribunal deleted the surcharge levied on income, where the monetary limit of Rs. 50 lacs has not been exceeded. As this issue is no longer *res-integra* and by taking a consistent view, we direct the Id. AO to delete the surcharge levied in the case of the assessee.

14. In the result, the appeal filed by the assessee is allowed as per above terms.

Order pronounced on 20th January, 2025, under rule 34 of the Income Tax (Appellate Tribunal Rules, 1963).

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated: 20.01.2025
Karishma J. Pawar (Stenographer)

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