

**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, AM.**

&

DIESH MOHAN SINHA, JM

आयकरअपीलसं./ITA No. 715/RJT/2024

(निर्धारणवर्ष / Assessment Year: (2018-19))

(Hybrid Hearing)

Shri K.M. Modi Kautaumbic Trust Shri K. M. Modi Kautaumbic Trust Pratish, Station Road, Porbandar 360575	Vs.	The ADIT, CPC Income Tax Office, Aayakar Bhavan, Race Course Ring Road, Rajkot-360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABTS8458H		
(Appellant)		(Respondent)

Appellant by : Shri Ankit Anadkat, Ld. AR,
Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR
Date of Hearing : 24/12/2024
Date of Pronouncement : 24/01/2025

आदेश / ORDER

PER DINESH MOHAN SINHA, JM:

Captioned appeal filed by the assessee is directed against the order passed by the National Faceless Appeal Centre [(in short "NFAC/Ld. CIT(A)"] vide order dated 23.07.2024, which in turn assessment order passed by Assessment Unit, Income Tax Department / Assessing Officer under section 154 of the Income Tax Act, 1961 (in short "the Act").

2. Grounds of appeal raised by the assessee are as followed:

1) The Learned Commissioner of Income tax (Appeals) Income Tax Department, Government of India Ministry of Finance Income Tax Department National Faceless Appeal Centre (NFAC) Delhi erred in Law and on facts and circumstances of the case for charging the income at AOP rate Le maximum marginal rate of income instead of normal rate of individual and demanded Rs. 67,980/- as against refund of Rs. 26,110/-levying by the assessee officer on the facts and circumstances of the case.

2) That the appellant craves to and/or to amend to and/or to alter and/or to substitute to all or any of the grounds of appeal up to the hearing of the appeal.

3. Facts of the case that the appellant is a trust and Smt. Kumudben Manilal Modi has made a will on 28.04.1999 in which she has created a private Discretionary Trust for the benefits of daughters of her son Pratish Manilal Modi and also for his future wife and children with a Trust fund of Rs. 4,00,000/- and trustees being her husband Manilal Khimji Modi, her son Shri Pratish Manilal Modi and her daughters Nitaben and Shilpaben. This was the only trust created by her in her will. And shares of beneficiaries were unknown-not specified. Trustees as required can be distributed any amount to any beneficiaries in future as required. After death of Smt. Maniben Manilal Modi that trust has come into existence on 20.10.1999 transferring the trust fund of Rs. 4,00,000/- in that trust as per her will.

4. For the assessment year under consideration appellant has filed its return of income declaring total income of Rs. 2,73,160/- on 14.07.2018.

5. As per section 164 of the Act, 1961 as being a only trust created by will, means income of the trust has to tax normal rate and tax payable worked out at Rs. 1193/- and there was a TDS of Rs. 27,301/- refund of Rs. 26.110/- was claimed.

6. According to the assessee tax has to be charged at normal rate of taxes. However Income Tax Processing Center per intimation u/s 143(1) dated

13.05.2019 has calculated tax at maximum marginal rate and demanded total Rs. 67,980/- as against refund of Rs. 26.110/-.

7. The appellant had filed an application u/s 154 of the Act on 08.02.2020. That application was also rejected and instead of charging the income at normal rate has again charged tax at maximum marginal rate and demanded total Rs. 67.980/- as against refund of Rs. 26,110/- as per return of income.

8. The assessee filed an appeal before the Ld. CIT(A) against the order of the Ld. CPC dated 14.02.2020. The Ld. CIT(A) has issued 7 notices to the assessee to present its case but the assessee had filed an adjournment application in all the hearings before the Ld. CIT(A). Therefore, the Ld. CIT(A) has dismissed the appeal of the assessee and to uphold the order of the Ld. AO.

9. The assessee filed an appeal before us, against the impugned order passed by the Ld. CIT(A) dated 22.07.2024.

10. The AR of the assessee submitted, we have filed return on income declaring total income of Rs. 2,73,160/- and the same taxed at Rs. 1193/- by normal rate, the CPC proceed the return of income and accepted the return. However the income taxed at special rate amounting to Rs. 95.284/-(Including interest). The Ld. AR requested an opportunity should be given to the assessee to explain the case before the lower authority on income to be taxed at normal rate.

11. The Ld. Sr. DR for the revenue had not objected if the case is remitted back to the Ld. AO.

12. We have heard both the parties and perused the material on record we note that Ld. CPC Bangalore has taxed the income at maximum marginal rate without all the material available. The Ld. AR has submitted that due to misunderstanding with the assessee. Assessee could not comply with the notices and we note that one opportunity should be given to the assessee. Therefore, we are of the view that one more opportunity should be given to the assessee to present his case before the Ld. AO. We set aside the order of Ld. AO and remit the matter back to the file of Ld. AO for fresh adjudication on merit after giving due opportunity to the assessee of being heard.

In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 24/01/2025

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Rajkot

दिनांक/ Date: 24/01/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot