

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष  
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2140/Chny/2024  
निर्धारण वर्ष /Assessment Year: 2022-23

V. Meera Charitable Trust,  
4, Geethalaya Building,  
Chairman Shanmugam Road,  
Sivakasi, Virudhunagar-626123.  
[PAN: AAATV 0582C]

The Income Tax Officer,  
Exemption Ward,  
Madurai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Shri H. Yeshwanth Kumar, C.A  
: Shri P.K. Senthil Kumar, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 13.11.2024

घोषणा की तारीख /Date of Pronouncement

: 07.02.2025

**आदेश / ORDER**

**PER JAGADISH, A.M :**

Aforesaid appeal filed by the assessee for Assessment Year (AY) 2022-23 arises out of the order of Learned Commissioner of Income Tax, Appeal, Addl/JCIT(A)-3, Delhi [hereinafter "CIT(A)"] dated 26.06.2024.

: - 2 - :

2. The only ground of appeal in this appeal of assessee is against confirming the levy of surcharge of Rs.1,16,126/- in the intimation u/s. 143(1) issued by CPC, Bengaluru.

3. The assessee is an AOP (Trust) and has filed its return of income of Rs.10,46,180/-. The CPC, Bengaluru vide intimation u/s. 143(1) of the Act has computed tax at maximum marginal rate and further levied surcharge of Rs.1,16,126/-. Aggrieved, the assessee has filed appeal against the levy of surcharge on the ground that the the income is below the prescribed limit and therefore, surcharge was not leviable. However, the Ld. CIT(A) relying on the Section 2(29)(C) of the Act has held that surcharge is leviable on the AOP as the tax has been charged at the maximum marginal rate.

4. The Ld. Authorized Representative (AR) of the assessee before us has argued that assessee's income is only Rs. 10,46,180/- and therefore, surcharge is not leviable. The Id. AR relied on the decision of ITAT, Mumbai in the case of Jitendra Gala Navneet Trust v. DDIT in ITA Nos.2484 & 2485/Mum/2024 dated 22.10.2024, wherein the Hon'ble Tribunal on identical facts has adjudicated that surcharge is not leviable, if the income is below Rs.50 Lakhs.

:- 3 -:

5. On the other hand, the Ld. Departmental Representative, vehemently supported the orders of the authorities below.

6. We have heard the rival submissions, and perused the materials available on record. The Ld. CIT(A) has confirmed the levy of surcharge as the assessee's income has been computed at maximum marginal rate. The Ld. CIT(A) has relied on Section 2(29)(C) of the Act for levy of surcharge. This issue has come before Hon'ble ITAT, Mumbai in the case of Jitendra Gala Navneet Trust v. DDIT, supra, and the Hon'ble bench has held as under:

*"11. We have heard the rival submissions and perused the materials available on record. The only issue that requires adjudication is whether surcharge could be levied where the total income is less than Rs.50 lacs. The Id. CIT(A) has contended that since the assessee's tax liability would fall under the maximum marginal rate, surcharge would be applicable in the case of assessee as per section 2(29) of the Act. The assessee's contention that as per the Finance Bill, 2022 surcharge could be applicable only when the assessee in case of Individual, Hindu Undivided Family or Association of Person or Body of individuals having a total income, exceeding Rs.50 lacs of such income tax. The relevant extract of the same is cited herein under:*

*Surcharge on income-tax*

*The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or the provisions of section 111A or section 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*

*:- 4 -:*

*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 provisions 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 incometax;*

*(d) having a total income (excluding the income by way of dividend or income under the provisions of section 111A and section 112A of the Income-tax Act) exceeding five crore rupees, at the rate of thirty-five per cent. of such income-tax; and*

*(e) having a total income (including the income by way of dividend or income under the provisions of section 111A and section 112A) exceeding two crore rupees but is not covered under clauses (c) and (d), shall be applicable at the rate of fifteen per cent. of such incometax:*

*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 the 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 on a total income of fifty lakh rupees by more than the amount of income that exceeds fifty lakh rupees;*

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

*(c) two crore rupees but does not exceed five crore rupees, the total amount payable as incometax and surcharge on such*

**: - 5 - :**

*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 that 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 five crore rupees by more than the amount of income that exceeds five crore rupees.*

*12. From the above, it is observed that only when the total income exceeds Rs.50 lacs then surcharge is leviable, where the rate of surcharge is fixed according to the slab of income. During the year under consideration, the income of the appellate was assessed by the Id. A.O./CPC at Rs.6,73,590/- which is less than Rs.50 lacs and, therefore, levying of surcharge would not be applicable for the same. We, therefore, direct the Id. A.O. to delete the surcharge levied in the hands of the assessee Trust. Ground no. 2 raised by the assessee is hereby allowed."*

7. We are in complete agreement with the order of Hon'ble ITAT, Mumbai, in the case of Jitendra Gala Navneet Trust v. DDIT, supra. We therefore hold that the assessee is not liable for the levy of surcharge because assessee's income has not breached Rs.50 Lakhs. In view of the above, the appeal filed by the assessee is allowed.

8. In the result, the appeal filed by the assessee is allowed.

*Order pronounced on 07<sup>th</sup> February, 2025.*

**Sd/-**  
**(एबी टी. वर्की)**  
**(ABY. T. Varkey)**

**न्यायिक सदस्य / Judicial Member**

**Sd/-**  
**(जगदीश)**  
**(Jagadish)**

**लेखा सदस्य / Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 07<sup>th</sup> February, 2025.

EDN/-

:- 6 -:

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF