

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"G" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.1375/MUM/2025**  
**(Assessment Year : 2022-23)**

**ITA No.1376/MUM/2025**  
**(Assessment Year : 2023-24)**

**Sanjiv Trust,**

2<sup>nd</sup> Floor Bajaj Bhawan,  
Jamnalal Bajaj Marg,  
Nariman Point,  
Mumbai - 400021  
PAN : AAUTS5740B

..... Appellant

v/s

**Dy.CIT, Circle – 26(1)**

Kautilya Bhawan,  
Mumbai - 400051

..... Respondent

Assessee by : Shri Vasanti B. Patel, Advocate

Shri M. A. Gohel, CA

Revenue by : Dr. Kishor Dhule, CIT-DR

Date of Hearing – 21/04/2025

Date of Order - 22/04/2025

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The assessee has filed the present appeals against the separate impugned orders dated 10/01/2025 and 17/01/2025, passed under section 250 of the Income Tax Act, 1961 ("the Act") by the learned additional/joint Commissioner of Income Tax (Appeals), Udaipur, ["learned Add./Joint CIT(A)"], for the assessment years 2022-23 and 2023-24, respectively.

2. Since in both the appeals the assessee has raised similar grounds arising out of a similar factual matrix, these appeals were heard together as a matter of convenience and are being decided by way of this consolidated order. With the consent of the parties, the appeal by the assessee for the assessment year 2022-23 is taken up as a lead case, and the decision rendered therein shall apply *mutatis mutandis* to the appeal for the assessment year 2023-24. As in both the appeals, the assessee has raised similar grounds, the grounds raised in the assessee's appeal for the assessment year 2022-23 are reproduced hereunder for ready reference: –

*"Ground-1 ADJUSTMENT / LEVY OF TAX UNDER SECTION 143(1) OF THE ACT*

*The learned Assessing Officer i.e., the Deputy Director of Income Tax (CPC), Bengaluru (the AO) erred in levying Surcharge at a higher rate under Section 143(1) of the Act. It is submitted that the adjustment has been made without affording to the appellant any opportunity of being heard and the same is in gross violation of principles of natural justice as well as the provisions of Section 143(1) of the Act and hence bad in law. The Appellant prays that the adjustment made is illegal, unwarranted and contrary to the law and may therefore be kindly struck down/ deleted.*

*Ground-2 ERRONEOUS RATE OF SURCHARGE*

*The learned AO erred in levying the surcharge at the rate of 37% on Income other than Dividend Income instead of 15% in the case of the Appellant while processing the Return of Income filed for the above year. The learned AO failed to appreciate that the Total Income of the Appellant for the above year work out to Rs. 54,64,40,570/- (including the income by way of dividend or income under the provisions of Section 111A and 112A of the Act of Rs. 53,36,80,420/-). Thus, the Other Income for the above year works out to Rs. 1,04,72,709/-, exceeds Rs. 1 crore but not Rs. 2 crores. Therefore, such other income is not covered by either Clause (iii) or clause (iv) of the Paragraph (3) of Part-I of First Schedule to the Finance Act. Therefore, the rate of surcharge applicable on income other than dividend income is 15%. As a result of such erroneous surcharge, Interest under Section 234C has also been levied at Rs. 10,118/-."*

3. During the hearing, the learned Authorised Representative (*"learned AR"*) wishes not to press Ground No.1 raised in both appeals. Accordingly, the said ground is left open.

4. The issue arising in Ground No. 2, raised in assessee's appeal, pertains to the levy of surcharge at the maximum rate instead of levying the same as per the slab rates provided in the Finance Act for the relevant year.

5. The brief facts of the case are that the assessee is a Private Discretionary Trust assessed to tax as an Association of Persons. For the assessment year 2022-23, the assessee filed its return of income on 16/07/2022, declaring a total income of Rs. 54,64,40,570. The return filed by the assessee was processed vide intimation dated 20/09/2023 issued under section 143(1) of the Act assessing the total income of the assessee at Rs. 54,64,40,570, and raising a demand of Rs. 3,93,400 after levying surcharge at the rate of 37% on the income other than dividend income as against the refund of Rs. 3,15,010 claimed by the assessee in its return of income.

6. The learned Addl./Joint CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the levy of surcharge at the rate of 37% on the basis that once the assessee is taxable at the maximum marginal rate the applicable surcharge will also be the surcharge for the highest slab only. In support of the aforesaid conclusion, the learned Addl./Joint CIT(A) placed reliance upon the decision of the coordinate Mumbai bench of the Tribunal in Anant Bajaj Trust. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned AR submitted that the Special Bench of the Tribunal vide recent decision dated 09/04/2025 has decided this issue in favour of the assessee and held that in case of Private Discretionary Trusts, whose income is chargeable to tax at maximum marginal rate, surcharge has to be computed on income tax having reference to slab rates prescribed in Finance Act under heading '*surcharge on income tax*'.

8. On the other hand, the learned Departmental Representative vehemently relied upon the order passed by the lower authorities.

9. Having considered the submissions of both sides and perused the material available on record, we find that the following issue came up for consideration before the Special Bench of the Tribunal in Araadhaya Jain Trust v/s ITO, in ITA No. 4272/Mum./2024: -

*"Whether, in the case of private discretionary trusts whose income is chargeable to tax at maximum marginal rate, surcharge is chargeable at the highest applicable rate or at a slab rates?"*

10. We find that after considering the relevant provisions of the Act and also the divergent views of the coordinate benches of the Tribunal on this issue, including in the case of Anant Bajaj Trust v/s DCIT, in ITA No. 1995/Mum./2024, order dated 26/08/2024, the Special Bench of the Tribunal vide its order dated 09/04/2025, observed as follows: -

*"29. .... In our view, once the definition of 'maximum marginal rate' refers to the rate of income-tax and surcharge provided under the Finance Act of the relevant year, then the rates of income tax and applicable rate of surcharge as provided under Paragraph A, Part (I) of First Schedule to the Finance Act-2023, would apply. Any other interpretation, in our view, would lead to undesirable consequences and would be discriminatory. In our view, the*

expression 'including Surcharge on income-tax, if any', within the bracketed portion of section 2(29C) of the Act, would mean the surcharge as provided in the computation mechanism under the heading 'surcharge on income tax' finding place in Paragraph A, Part (I) of First Schedule to the Finance Act-2023.

30. The Revenue has taken a line of argument that the words 'if any' succeeding the words 'including surcharge on income tax' appearing in the definition of maximum marginal rate u/s. 2(29C) of the Act are only for the purpose that when levy of surcharge is specifically provided under the Finance Act of the relevant year, it would be included in income-tax computed at the highest rate, otherwise, not. Though, at first blush this argument of the department sounds attractive, however, on deeper analysis it is found to be superfluous, for the following reasons. As discussed earlier, Article 271 of the Constitution of India, empowers the Union to impose surcharge for the purposes of Union. Whereas, Article 265 of the Constitution of India mandates that no tax can be collected without authority of law. Therefore, levy of surcharge has to be preceded by a law enacted by the parliament authorizing such levy. Thus, in absence of any law authorising levy of surcharge, it cannot be collected. This legal position is as clear as daylight, hence, does not require further clarification with the use of words 'if any' to mean whether the Finance Act of a particular year, if at all, provides for levy of surcharge or not. Though, in our view, there is no conflict between provisions contained u/s. 164/167B, 2(29C) of the Income Tax Act and section 2 of the Finance Act, however, even assuming that there are some conflicts, a harmonious construction has to be made to avoid absurdity and make the provisions workable. Thus, in our view, the expression 'if any' used in section 2(29C) has to be read not de hors but in conjunction with the computation mechanism provided under the heading 'surcharge on income tax' provided in section 2 of Finance Act. This view of ours is further fortified by the object for which levy of surcharge was introduced to the Finance Act - to augment the Revenue of the Union for developmental work by asking persons in the highest income bracket to contribute little more than the other citizens, for nation building.

31. As we find, the Revenue has placed strong reliance upon the decision of the coordinate bench in case of *Araadhya Jain Trust (supra)* and couple of other decisions, which are on similar line. Pertinently, the decision rendered in case of *Anant Bajaj Trust (supra)* was subsequently recalled. Whereas, the bench has followed the decision of *Anant Bajaj Trust (supra)* while deciding the appeal of *Kapur Family Trust (supra)*. Therefore, the decision rendered in case of *Kapur Family Trust (supra)* has lost its relevance. Insofar as the decision of the co-ordinate bench in the case of *Araadhya Jain Trust (supra)* is concerned, in our view, the bench has drawing its conclusion, primarily relying upon certain decisions of Hon'ble Kerala High Court and Hon'ble High Court of Bombay. As discussed elsewhere in the order.

32. However, upon carefully going through these decisions, we are of the considered view that the issue arising in the present case never fell for consideration before the Hon'ble Courts. The issue in dispute in those cases was primarily concerning what should be the maximum marginal rate and its applicability. The issue 'whether the rate of surcharge would also be at the highest rate while computing tax at maximum marginal rate' was never the issue before the Hon'ble Courts. Thus, in our view, the view expressed by the

*coordinate benches in decisions referred to in Paragraph 10(supra) lay down the correct proposition of law. Thus, in the ultimate analysis, we hold, in case of Private Discretionary Trusts, whose income is chargeable to tax at maximum marginal rate, surcharge has to be computed on the income tax having reference to the slab rates prescribed in the Finance Act under the heading 'surcharge on income tax' appearing in Paragraph A, Part 1, First Schedule, applicable to the relevant assessment year. Hence, reference is decided in favour of the assessee. The records may be returned back to the respective benches for deciding the appeals accordingly."*

11. Therefore, respectfully following the decision of the Special Bench of the Tribunal, we do not find any merit in the findings of the learned Addl./Joint CIT(A) in upholding the levy of the surcharge at the highest slab rate. Accordingly, the impugned order is set aside. As regards the computation of the applicable surcharge, we direct the jurisdictional Assessing Officer to levy the surcharge, in light of the decision of the Special Bench of the Tribunal in *Araadhaya Jain Trust (supra)*, i.e., having reference to the slab rates prescribed in the Finance Act for the relevant year under the heading '*surcharge on income tax*'. As a result, Ground No. 2 raised in assessee's appeal is allowed for statistical purposes.

12. In the result, the appeal by the assessee for the assessment year 2022-23 is allowed for statistical purposes.

13. As in its appeal for the assessment year 2023-24, the assessee has raised similar grounds. Accordingly, our findings/conclusions as rendered in assessee's appeal for the assessment year 2022-23 shall apply *mutatis mutandis* to the assessee's appeal for the assessment year 2023-24. As a result, Ground No.1 raised in the assessee's appeal is left open, while Ground No. 2 raised in the assessee's appeal is allowed for statistical purposes.

14. In the result, the appeal by the assessee for the assessment year 2023-24 is allowed for statistical purposes.

15. To sum up, both appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 22/04/2025

**Sd/-**  
**NARENDRA KUMAR BILLAIYA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 22/04/2025**

*Prabhat*

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai