



आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.639/PUN/2025
निर्धारण वर्ष / Assessment Year: 2023-24

Sameera Benara Family Trust, S.No.1A, F-1, Irani Market Compound, Yerawada, Pune – 411006. Maharashtra.	V s	The Asst./Dy.Commissioner of Income Tax, Circle-7, Pune.
PAN: AAPTS3312J		
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Kiran Sanmane – AR
Revenue by	Shri Ratnakar Shelake – Addl.JCIT(DR)
Date of hearing	29/04/2025
Date of pronouncement	29/04/2025

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the assessee is against the order of Id.Addl/Joint Commissioner of Income Tax(Appeals)-1, Delhi passed under section 250 of the Income Tax Act, 1961, dated 29.01.2025 for Assessment Year 2023-24. The Assessee has raised the following Grounds of Appeal :

“In the fact and the circumstances of the case, and in law, the learned Addl/Joint Commissioner of Income tax (Appeals)-(A)1 Delhi, erred in



confirming the variance in the intimation u/s 143(1) made by CPC in respect of the rate of surcharge and erred

1. in holding that the surcharge is to be applied at the highest rate specified for the highest slab of income when MMR provisions are invoked under section 1678 and the argument that surcharge should vary according to the quantum of income or income thresholds under the Finance Act does not align with the legislative intent or judicial interpretation of section 2(29C) and section 1678

2. In holding that the surcharge computed by the CPC at 37% is in accordance with the law and judicial principles

3. In not appreciating that the words "rate of income-tax (including surcharge on income-tax, if any)" in section 2(29C) denotes two separate levies and hence MMR does not automatically include higher rate of surcharge.

4. In not appreciating that the total income of the appellant of Rs.30,04,830/- is less than Rs.50 lakhs and thus surcharge is not leviable as per Paragraph A of Part I of the First Schedule to the Finance Act, 2023.

-The Appellant craves leave to add to, withdraw or modify any of the grounds of appeal at the time of hearing."

Submission of ld.AR :

2. Ld.AR for the Assessee submitted that the issue of surcharge has been decided by Special Bench of ITAT in favour of Assessee. Ld.AR filed copy of the decision.

Submission of ld.DR :

3. Ld.DR for the Revenue supported the order of the ld.CIT(A)

Findings & Analysis :

4. We have heard both the parties and perused the records. In this case, assessee had filed Return of Income on 11.07.2023 for



A.Y.2023-24. An order u/s.143(1) was passed on 27.05.2024, wherein surcharged was levied at 37%. Aggrieved by the order u/s.143(1), assessee filed appeal before the Id.CIT(A).

5. The Ld.CIT(A) held as under :

“Considering the facts of the case and the judicial precedents, the computation of surcharge at 37% by the CPC is found to be legally valid. The appellant’s claim for applying nil surcharge is not sustainable under the law.

In conclusion, it is held that the surcharge computed by the CPC at 37% is in accordance with the law and judicial principles. The appellant’s appeal does not merit acceptance on this issue.”

5.1 This issue has been decided by ITAT Special Bench Mumbai in the case of Araadhya Jain Trust Vs. ITO in ITA No.4272/PUN/2024 vide order dated 09.04.2025.

5.2 The impugned issued is decided by Special Bench of ITAT Mumbai in favour of assessee in ITA No.4272/Mum/2024. The ITAT Mumbai Special Bench held as under :

“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.

5.3 Respectfully following the decision of Special Bench of ITAT Mumbai (supra), we hold that surcharge is not to be charged at Maximum Marginal Rate, but 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". Accordingly, we direct the Assessing Officer to recomputed surcharge in above terms. Accordingly, grounds of appeal raised by the assessee are allowed.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 29th April, 2025.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DIPAK P.RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 29th April, 2025/ SGR



आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, “एसएमसी” बेंच, पुणे / DR, ITAT, “SMC” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.