

IN THE INCOME TAX APPELLATE TRIBUNAL PANAJI BENCH
PANAJI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI G D PADMAHSHALI ACCOUNTANT MEMBER

I T A. Nos.134/PAN/2024
(A.Y. 2021-22)

Shri.Laxminarayan alias Balaji Devastan, Vithal Deo Galli Shahapur, Belgaum-590003, Karnataka.	Vs .	ADIT, CPC, Bangalore. . .
PAN .No. AABAS4995A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Smt.Pratibha.AR
Revenue by	Smt.Rijula Uniyal.Sr.DR

सुनवाई की तारीख/Date of Hearing	26.06.2025
घोषणा की तारीख/Date of Pronouncement	30.06.2025

ORDER

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the assessee against the order of the ADDL/JCIT (A)-4 Kolkata passed u/sec 143(1) and u/sec 250 of the Act. The assessee has raised the grounds of appeal challenging the order of the CIT(A) sustaining the levy of surcharge @37% by the Assessing Officer/CPC.

2. The brief facts of the case are that, the assessee is a AOP. The assessee has filed the return of income for A.Y.2021-12 on 11-03-2022 disclosing a total income of Rs.1,76,72,890/- and computed the tax on total income

@30% and surcharge computed@15% on tax payable. Subsequently the return of income was processed under section 143(1) of the Act by the CPC accepting the returned income but the Surcharge was computed at Maximum Marginal Rate (MMR)@37% on the total tax payable and determined demand payable of Rs.14,47,420/- vide order dated 2-11-2022.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts, and submissions but has confirmed the levy of surcharge @37% by the AO/CPC and dismissed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in confirming the action of the Assessing Officer/CPC on the applicability of surcharge rate overlooking the facts and submissions of the assessee in the proceedings. The Ld.AR mentioned that where the total income is chargeable to tax at Maximum Marginal Rate (MMR), the surcharge has to be computed on the income tax in reference to slab rates prescribed in the finance act. The Ld.AR also submitted that the assessee has a good case on merits and shall substantiate with the material evidences and prayed for an opportunity to explain before

the lower authorities and relied on the judicial decisions and factual paper book. Per Contra, the Ld.DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld.DR that the CIT(A) has erred in confirming the levy of surcharge @37% by the AO/CPC and sustaining the action of the A.O though the assessee has supported the submissions with the documentary evidences and explanations dealt at para5 of the order. Further the evidences in respect members of A.O.P, were uploaded and none of the members have taxable income in the A.Y.2021-22. Evidences play a important role in decision making in the adjudicating proceedings which was not considered. The Ld.AR relied on the on the decision of the Honble Tribunal in I.T.A no.4272/Mum/2024 dated 9.04.2025 on similar issue, where the total income is chargeable to tax at Maximum Marginal Rate (MMR), the surcharge has to computed on the income tax in reference to slab rates prescribed in the finance act. The return of income was processed u/sec 143(1) of the Act and details with respect to taxable income of members are not verified. Therefore we considering the facts, circumstances, evidences and to meet the ends of justice, for limited purpose restore the disputed issue to the file of the Assessing Officer to adjudicate afresh on merits and the assessee should be provided adequate opportunity of hearing and shall

cooperate in submitting the information. And, we allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30.06.2025.

Sd/-
(GD PADMAHSHALI)
ACCOUNTANT MEMBER

Panaji Dated: 30/06/2025

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT,
6. Guard file.

//True Copy//

BY ORDER,
(Asstt. Registrar)ITAT,
Panaji

		Date	<u>Initial</u>	
1.	Draft dictated on			PS
2.	Draft placed before author			PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			