

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**  
**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER**  
**ITA Nos. 3427 & 3428/MUM/2025 (AY : 2021-22 & 2022-23)**  
*(Physical hearing)*

|   |    |  |
|---|----|--|
| Shree PiyushpaniSthapatyaSangrahalay<br>Trust, 66, SanghaniSadan,<br>2 <sup>nd</sup> Floor, Panjrapole Lane,<br>C.P. Trank,Mumbai-400004.<br>[PAN No. AAATS0035M] | Vs | Deputy Director CPC,<br>Bengaluru / ITO Exemption<br>Ward – 2(3), Mumbai |
| Appellant / Assessee  |    | Respondent / Revenue   |

|                               |                             |
|-------------------------------|-----------------------------|
| Assessee by                   | Shri Piyush Chaturvedi, CA  |
| Revenue by                    | Shri Surendra Mohan, Sr. DR |
| Date of institution of appeal | 15.05.2025                  |
| Date of hearing               | 24.07.2025                  |
| Date of pronouncement         | 24.07.2025                  |

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. These two appeals by assessee are directed against the separate orders of Id. CIT(A)/ADDL/JCIT(A)-1 both dated 29.03.2024 for A.Y. 2021-22 & 2022-23. In both the years, the assessee has raised certain common grounds of appeal, fact in both the years are similar, thus, with the consent of parties both the appeals were clubbed, heard together and are decided by common order. For appreciation of facts, facts in appeal for A.Y. 2021-22 in ITA No. No. 3427/M/2025 is treated as lead case. The assessee has raised following grounds of appeal:

"1. The Ld. CIT(A) [Faceless] failed to grant a personal hearing through video conferencing despite a specific and timely request made by the appellant. This denial of an opportunity to be personally heard renders the appellate order unjust, arbitrary, and violative of the principles of natural justice. Consequently, the impugned order deserves to be quashed on this ground alone.

2. The Ld. CIT(A), NFAC erred in not following the specific and binding directions of the Hon'ble ITAT, by failing to adjudicate Ground Nos. 4 and 5 as raised in the original appeal, thereby violating the mandate under section 254(1) of the Income-tax Act, 1961.
  3. The Ld. CIT(A), NFAC erred in not deleting the disallowance of 29,33,920/- made by the AO/CPC towards establishment and property-related expenditures incurred for the trust.
  4. The Ld. CIT(A), NFAC erred in not deleting the disallowance of ₹8,26,896/- made by the AO/CPC in respect of expenditures incurred towards the objects of the trust.
  5. The CIT(A), NFAC failed to appreciate that the above adjustments (in Grounds 3 and 4), being factual and debatable, without verification of facts, could not have been made while processing the return under section 143(1)(a).
  6. The Ld. CIT(A), NFAC failed to appreciate that the assessee had relied on the binding judgment of the Hon'ble ITAT, Mumbai Bench in the case of Parab Maratha Samaj (ITA No. 7137/Mum/2019), and ought to have followed the same in its true letter and spirit, as per judicial discipline.
  7. Without prejudice to the above grounds, the Ld. CIT(A) NFAC failed to appreciate that the maximum marginal rate should not have been applied while calculating the tax on taxable income.
  8. The Appellant Company craves leave to add, withdraw, amend, or alter any grounds of appeal as and when advised."
2. Rival submissions of both the parties have been heard and record perused.
- The learned Authorised Representative (Id. AR) of the assessee submits that assessee is a trust, registered with Charity Commissioner, Mumbai. The assessee is also having registration under section 12A/12AB. For the year under consideration, the return of income under section 139(1) was not filed in time; however, the same was filed as per section 139(8) on 24.03.2023. Before filing return of income, the assessee filed / uploaded Form 10B. Non-filing return of income in time was due to the differences on account of

interferences by one of the person in day to day activities who was appointed only for certain specific activities, and he was responsible for filing return, however on intervention of the Highest Jain Priest is stepped down and accounts were finalised and the return was filed. In the return of income, the assessee has not claimed benefit of section 11 of Income Tax Act. However, claimed only expenses incurred towards property and establishment of the trust. The CPC made adjustment for delay in filing Form 10B. Aggrieved by the adjustment/action of CPC, the assessee filed appeal before Tribunal vide ITA No. 3103 & 3104/M/2024. The Tribunal restored the matter back to first rat appellate authority and directed the Id. CIT(A)/Addl/Joint CIT(A) to decide the mistake apparent in the record after allowing opportunity to the assessee. The assessee made email communication to Addl/Joint Commissioner (Appeal), Bangalore to give effect of the order of Tribunal and also made communication with jurisdiction assessing officer i.e. ITO (Exemption) 2(3), Mumbai, to initiate proceeding in compliance of direction of Tribunal. The Id. CIT(A) dismissed the appeal of assessee again by holding that as per decision of Hon'ble Supreme Court in Wipro Limited Civil Appeal No. 1449 of 2022, wherein it was held that requirement of filing a declaration within a timeline is mandatory as per language of the provision. Thus, no inconsistency was filed in the rectification application. The Id. AR of the assessee submits that assessee is not seeking benefit of section 11, rather only seeking allowance of various expenses which is otherwise allowable. The Id. AR further submits that assessee is taxed at Maximum Marginal Rate (MMR). Section 164(2) is not applicable in case assessee as it references only

certain income which was not exempt under section 11 & 12 which is charitable to tax at MMR that is tax will be charged on the relevant income of the trust which is not exempt. The Id. AR of the assessee pray that he has two folds submission, firstly assessee be allowed expenses incurred toward establishment and property of trust and it should not be taxed at MMR.

3. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of lower authorities.
4. I have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. I find that in the return of income, the assessee has not claimed benefit of section 11. The assessee is seeking only allowance of expenses, therefore, I find merit in the submission of Id. AR of the assessee that embargo, if any, non-filing Form 10B is only for seeking benefit of section 11. The assessee has already filed return of income under section 139(8) and once, the legislature has allowed filing of return with levy of certain penalty, which the assessee has paid. Therefore, the assessee is eligible for all the expenses incurred on its establishment and activities. Further, I also find merit that even in treating the assessee as AoP, the income of assessee is to be taxed at slab rate as has been held by Special Bench of Tribunal in Araadhya Jain Trust in ITA No. 4272/M/2024 dated 09.04.2025 wherein it has been held that in case private discretionary trust whose income is chargeable at maximum marginal rate, surcharge is chargeable at respective slab and not the highest rate. Thus, both the prayer of Id. AR of the assessee is accepted. In the result, ground of appeal of assessee is allowed.

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

**ITA No. 3428/Mum/2025 for AY 2022-23**

6. As recorded above, the assessee has raised similar grounds of appeal as raised in appeal for AY 2021-22, facts in the this assessment year is also similar except variation of figure of addition. Considering the fact that appeal for A.Y. 2021-22 is allowed, therefore this appeal is also allowed similar direction. In the result, this grounds of appeal of assessee is also allowed.
7. In the result, boththe appeals of the assessee are allowed.

Order was pronounced in the open Court on 24/07/2025.

**Sd/-**

**PAWAN SINGH  
JUDICIAL MEMBER**

MUMBAI, Dated:24/07/2025  
*Biswajit*

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