

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE
SHRI SUDHIR KUMAR, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.1410/Del/2025
(ASSESSMENT YEAR 2022-23)

Tulsi Trust B-60/61, C/o Bajaj Auto Limited, Naraina Industrial Area Phase-II, New Delhi-110028 PAN-AAATT0503H	Vs.	Dy. CIT, Circle-49(1), New Delhi.
(Appellant)		(Respondent)

Assessee by	Shri Mahender Gohel, AR (Virtual)
Department by	Shri Om Prakash, Sr. DR
Date of Hearing	21/08/2025
Date of Pronouncement	28/08/2025

ORDER

PER MANISH AGARWAL, AM:

This appeal is filed by the assessee against the order of the Ld. Addl./ Jt. Commissioner of Income Tax (Appeals)-Hyderabad [CIT(A) in short], dated 26.03.2025 in Appeal No. Addl. / JCIT-(A) - 4 Hyderabad/10061/2022-23 passed u/s 250 of the Income Tax Act, 1961 (the Act, in short) for Assessment Year 2022-23.

2. Brief facts of the case are that the assessee is a trust and filed its return of income on 21.07.2022 declaring total income of Rs.5,67,53,750/-. The return was processed u/s 143(1) by the CPC

wherein the assessee was charged tax at a flat rate of 30% and surcharge as applicable as against the normal rate of tax as per the slab provided in the act paid by the assessee. Against the said order, the assessee filed an appeal before the Ld. CIT(A) who dismissed the appeal of the assessee.

3. Aggrieved by the said order, the assessee is in appeal before the Tribunal by taking following grounds of appeal:

I. RATE OF TAX:

- 1.1 On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) [CIT(A)] erred in confirming the Tax levied by the learned Assessing Officer at flat rate of 30% i.e. Maximum Marginal Rate (MMR), instead of normal slab rates applicable in the case of the appellant.*
- 1.2 The learned CIT (Appeals) and the learned Assessing Officer failed to appreciate that the appellant is a charitable trust/Association of Persons (AOP) not enjoying benefits of Section 11 of the Act and is liable to pay tax at the slab rates applicable in the case of an Individual, etc.*
- 1.3 The learned CIT(Appeals) failed to appreciate the explanations/submissions furnished by the Appellant. The learned CIT(Appeals) failed to consider and deal with various Appellate Order of NFAC, New Delhi and the Order of the ITAT, New Delhi, in the case of Associate Trusts of the Appellant and on the identical facts.*

The appellant prays that the learned Assessing Officer may kindly be directed to re-compute the tax liability of the appellant as explained above and reduce the same accordingly.

II. ERRONEOUS LEVY OF SURCHARGE:

- 2.1 The learned CIT (Appeals) erred in confirming surcharge levied by the learned Assessing Officer at the rate of 37% on tax relating to "Other Income" in the case of the Appellant as against the applicable rate of surcharge @15%.*

2.2 *The learned CIT(Appeals) and the learned Assessing Officer failed to appreciate that the Total Income of the appellant is Rs. 5,67,53,750/- (i.e. above Rs. 5 crores) and comprises of Dividend income (Rs. 5,45,55,600/-) and Other Income (Rs. 21,98,149/-). Therefore, the Appellant is liable to pay surcharge at the rate of 15% on entire income. However, the learned Assessing Officer has levied surcharge @37% on tax relating to "Other Income - Rs. 21,98,149/-" of Rs. 6,59,445/- as against the rate of 15% applicable thereon.*

2.3 *The learned CIT(Appeals) failed to appreciate the explanations/submissions furnished by the Appellant. The learned CIT(Appeals) failed to consider and deal with various Appellate Order of NFAC, New Delhi and the Order of the ITAT, New Delhi, in the case of Associate Trusts of the Appellant and on the identical facts.*

The appellant prays that the Surcharge levied erroneously at a higher rate may kindly be deleted as the said levy is illegal and bad in law and hence invalid.

The appellant hereby reserves the right to add to, alter or amplify the above grounds of appeal.

4. Before us, the Ld. AR of the assessee submits that assessee is a trust and is engaged in the charitable activities for the benefit of public at large. The assessee has not claimed any benefit u/s 11 of the Act and is assessed to tax as per the rates prescribed normal slab rate, however, it was assessed at Maximum Marginal Rate (MMR) by treating the same as if AOP/BOI. He submits that in the case of the assessee itself for subsequent assessment years, the Ld. CIT(A) had allowed to be taxed at slab rates applicable for AOP. The relevant copies of the orders are placed in the PB. Further, he placed reliance on the judgments of the Co-ordinate Bench of the Tribunal in the case of Vindhya Trust vs. DCIT in ITA No.131/Del/2025 and Rose Trust in

vs. DCIT in ITA No.3036/Del/2024. The Ld. AR also filed a written submission which is reproduced herein below for convenience.

5. On the other hand, the Ld. Sr. DR supports the orders of lower authorities and requested for the confirmation of the same.

6. Heard both the parties and perused the materials available on record. It is seen that the appellate society is a charitable trust and does not for claim any benefit of exemption u/s 12A of the Act. As the assessee, the CBDT Circular No. 320 dated 11.01.1982 [F.No.131(31)/81-TP (Pt.)] deals with this issue. The said Circular is reproduced as under:

"Circular: No. 320 [F. No. 131(31)/81-TP (PL)], dated 11-1-1982-SECTION 167A ASSESSMENT WHERE SHARES OF MEMBERS UNKNOWN) 911. Whether the section is applicable to income received by trustees on behalf of provident funds created exclusively for the benefit of employees

1. A reference is invited to paragraph 15.1 to 15.7 of the Explanatory Notes on the provisions relating to direct taxes in the Finance Act, 1981 [Circular No. 308, dated 29-6-1981] which explain the scope and ambit of section 167A, as inserted by the Finance Act, 1981.

2. A question has been raise whether the provisions of section 167A of the Income tax Act which provide for charging of tax at the maximum marginal rate on the total income of an association of persons where the individual shares of members in the income of such association are indeterminate or unknown would also apply to income receivable by trustees on behalf of provident funds, superannuation funds, gratuity funds, pension funds, etc., created bona fide by persons carrying on business or profession exclusively for the benefit of the persons employed in such business. The Board have been advised that cases where income received by the trustees on behalf of a recognized provident fund, approved superannuation fund and approved gratuity fund is governed by section 10(25) of the Income-tax Act, the question of their being charged to tax does not arise

So far as cases where income is receivable by the trustees, on behalf of an unrecognized provident fund or an unapproved superannuation fund, gratuity fund, pension fund or any other fund created bona fide by a person

*carrying on a business or profession exclusively for the benefit of persons employed in such business or profession are concerned, they will continue to be charged to tax in the manner prescribed by section 164(1)(iv) of the Income-tax Act, as hitherto. **Similarly, in the cases of registered societies, trade and professional associations, social and sports clubs, charitable or religious trusts. etc., where the members or trustees are not entitled to any share in the income of the association of persons, the provisions of new section 167A will not be attracted and, accordingly, tax will be payable in such cases at the rate ordinarily applicable to the total income of an association of persons and not at the maximum marginal rate".***

As stated above, the Appellant has carried on charitable activities by granting donations to the extent of Rs. 20,00,000/- to eligible trusts/institutions and has not claimed the benefits of Section 11 of the Act. Accordingly, the above referred Circular clearly applies and the tax is to be levied at the normal slab rates. In view of the above, the Appellant prays Your Honour to kindly direct the learned Assessing Officer to apply rate of tax correctly as explained above and re-work the tax payable by the Appellant and oblige."

7. Since, the assessee has fulfilled the condition of the said circular and thus is eligible to charge tax at the slab rates prescribed for AOP for Assessment Year 2022-23. Accordingly, we hold that the tax should be charged in the case of the assessee as per normal slab rate of AOP and, therefore, the appeal of the assessee is allowed with the aforesaid directions.

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

Order pronounced in the open court on 28.08.2025.

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 28.08.2025

PK/PS

Copy forwarded to:

1. Appellant

2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI