

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 1995/MUM/2024
Assessment Year: 2022-23**

Anant Bajaj Trust 2 nd Floor, Bajaj Bhavan, Jamnalal Bajaj Marg, Nariman Point, Mumbai – 400021 (PAN: AAGTA3192B)	Vs.	Deputy Director of Income Tax, Bengaluru
(Appellant)		(Respondent)

Present for:

Assessee : Ms. Vasanti Patel, Advocate
and Shri M. A. Gohel, CA

Revenue : Shri Aditya M. Rai, Sr. DR

Date of Hearing : 24.06.2025

Date of Pronouncement : 28.08.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), ADDL/JCIT (A)-1, Jaipur, vide order no. ITBA/APL/S/250/2023-24/1063457190(1), dated 27.03.2024 passed against the intimation order by Additional Income Tax, Central Processing Centre, Bengaluru, (CPC), u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 20.09.2023 for Assessment Year 2022-23.

2. Grounds taken by the assessee are as under:

“1. ADJUSTMENT/LEVY OF TAX U/S. 143(1) OF THE ACT:

1.1 On the facts and in the circumstances of the case and in law, the ld. Commissioner of Income-Tax (Appeals) [CIT(A)] failed to appreciate that the ld. Deputy Director of Income Tax, CPC (The Assessing Officer) erred in resorting to levy of surcharge at a higher rate while processing the Return of Income u/s. 143(1) of the Act.

1.2 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 principle of natural justice and also not in accordance with the provisions of Section 143(1)(a) of the Act. Hence, the said adjustments may kindly be struck down/set aside.

1.3 It is submitted that the issue involved is a highly debatable question of law and the same cannot be ground for adjustment u/s. 143(1)(a)/ 143(1) of the Act. The ld. Assessing Officer has resorted to the adjustments without complying with the provisions of Section 143(1) of the Act.

The Appellant prays that the adjustment made is illegal, unwarranted and contrary to the law and may therefore be kindly struck down/ deleted.

II. ERRONEOUS RATE OF SURCHARGE ON INTEREST INCOME AND CAPITAL GAIN RS. 1,26,26,157/-

2.1 On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in confirming levy of surcharge by the ld. Assessing Officer (CPC) on Interest income (Rs. 97,09,652/-) and Capital gain other than that covered u/s. 111A and 112A of the Act (Rs.29,16,505/-) at the maximum rate of 37% in the case of the Appellant.

2.2 The ld. AO failed to appreciate that the applicable rate of surcharge, as prescribed under the Part-1 of the First Schedule to the Finance Act for the Total Income excluding Dividend Income and income covered under the provisions of Section 111A/112A of the Act Rs. 1,26,26,157/- is 15% and not @ 37%. Therefore, the rate of surcharge applicable on the entire income including income by way of Interest income or income under the provisions other than Section 111A/ 112A of the Act etc is 15%.

The Appellant prays that the rate of Surcharge levied erroneously may kindly be revised as the said levy is illegal and bad in law and hence invalid.

The Appellant prays that the erroneous levy confirmed by the ld. CIT(Appeals) may kindly be revised at 15%.”

3. This appeal is a recalled matter by way of an order dated 04.02.2025 passed in the Miscellaneous Application No. 226, Mumbai 2024 filed by the assessee, for adjudicating ground No. 1 of this appeal. The observation and finding given by the Coordinate Bench in Para 3 while allowing the Miscellaneous Application, is reproduced below for ready reference:

“3. In our considered opinion, we find that the Bench inadvertently overlooked Ground No. 1 raised before it, which pertains to the adjustment of income u/s. 143(1) without providing the assessee an opportunity of being heard. Accordingly, we recall the order dated 26/08/2024 passed by the ITAT to adjudicate Ground No. 1 raised by the assessee. The appeal is restored to its original number, and the registry is directed to schedule the appeal for hearing in due course.”

3.1. From the above, it is noted that Coordinate Bench observed that the appeal was disposed, inadvertently overlooking ground No. 1 which pertains to adjustment of income u/s. 143(1) without providing the assessee an opportunity of being heard. Miscellaneous Application filed by the assessee was allowed by stating that the order is recalled to adjudicate ground No. 1 raised by the assessee. Thus, the scope in this appeal before us, is limited to adjudication of ground No.1, as to whether the adjustment made was without providing reasonable opportunity to the assessee.

3.2. On this very limited scope, brief facts are that assessee is a private discretionary trust which is not recognised u/s. 12A and is assessed to tax in the status of AOP. There is no dispute regarding the applicability of maximum marginal rate (MMR) to the assessee. It filed its return of income on 16.07.2022, reporting total income at Rs. 68,72,26,170/-. The said return was processed by the CPC u/s. 143(1), whereby the total income returned by the assessee was accepted as such and was processed at the same total income as reported by the assessee. The

intimation u/s 143(1) was issued on 20.09.2023 whereby a demand of Rs.5,58,160/- was raised as against the claim of refund of Rs.3,14,020/- in the return filed by the assessee.

3.3. Assessee submitted that surcharge has been levied at a rate of 37% on income other than dividend income instead of 15%. According to the assessee, since the total income exceeds Rs.5 crores, it is covered under clause (v) of paragraph (3) of Part 1 of 1st Schedule to the Finance Act whereby the surcharge is to be levied at a rate of 15%. Since surcharge has been levied at a higher rate, it has an impact on the interest charged u/s. 234C also.

4. To delve on the issue raised in ground no. 1, we refer to the contents of Section 143(1) which are reproduced below.

"143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(a) the total income or loss shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the return;

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure ⁶⁸[or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under ⁶⁹[section 10AA or under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes", if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:]

Provided also that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;

(b) the tax, interest and fee, if any, shall be computed on the basis of the total income computed under clause (a);”

4.1. From the above, it is noted that in clause (a), there are six adjustments listed which are permissible to be made by CPC while processing the return. First proviso to sub-section (1) states that no such adjustment shall be made unless an intimation is given to the assessee of such adjustments either, in writing or in electronic mode. It is noted that the adjustments are for the purpose of computing the total income or loss as mentioned in clause (a). Thus, when an adjustment is required to be made for computing the total income or loss, the assessee is to be issued an intimation before making such adjustments. In the present case, admittedly, there is no adjustment made to the total income of the assessee.

5. It is a fact on record that returned income of the assessee has been processed as such by CPC with no variation therein. The dispute has arisen only on account of levy of surcharge at a different rate as against claimed by the assessee. CPC has levied surcharge at the rate of 37% whereas claim of the assessee is that of 15%. Admittedly, no

adjustment has been made in sub-clause (a) to the total income reported by the assessee. On the above consideration of facts and the provision contained in the Act and in terms of ground no. 1.2, the issue which needs to be adjudicated is whether an intimation is required to be given to the assessee when no such adjustment has been made as listed from (i) to (vi) in clause (a) of section 143(1).

5.1. We find that in the given set of facts and the provision as discussed above, it is not a case where any adjustment has been made to the total income of the assessee as evident from the intimation itself. Thus, claim of the assessee that no reasonable opportunity was given and there is a gross violation of principles of natural justice does not find its place in the section 143(1), so as to accept its plea made before the Tribunal by ground no.1.2.

5.2. We also take note of the entry made in the order sheet for the hearing held on 07.05.2025 whereby ld. DR had sought time for verification of records to ascertain the claim of the assessee that no opportunity was provided before making the adjustment. On this, ld. DR has placed on record an email received from Deputy Director of Income Tax, Unit 4, CPC, Bengaluru wherein in paragraph 2, it is stated that there is no requirement to provide prior opportunity to assessee for levy of surcharge at MMR as it does not fall under any of the instances specified in section 143(1)(a) of the Act and hence no notice is issued prior to passing intimation u/s. 143(1). Accordingly, the first proviso to clause (a) which requires issuing an intimation to the assessee before making any adjustment was not applicable in the case of the assessee.

5.3. We also refer to clause (b) of section 143(1) which mentions that tax, interest and fee, if any, shall be computed on the basis of total income computed under clause(a). In view of this clause (b), we find that CPC was well within its right to compute the tax on the basis of total income arrived at in clause (a) which is nothing but the same as income reported by the assessee in its return, without giving a prior intimation.

5.4. Considering the overall factual matrix, provision contained in section 143(1)(a) and (b) and clarification placed on record by the Id. DR as received from CPC, Bengaluru, we do not find any reason to accept the claim of the assessee that an opportunity ought to have been given by issuing an intimation before making an adjustment in respect of levy of surcharge. Accordingly ground No.1.2 raised by the assessee is dismissed.

6. By way of ground no. 1.3, assessee is contesting that the issue involved is a highly debatable question of law and cannot be the ground for adjustment u/s 143(1). It is important to note that on merits of the case vide ground no. 2 on erroneous rate of surcharge applied by CPC, it was held against the assessee. While adjudicating ground no. 1.3, we need to look only in the legal aspect of whether the issue on rate of surcharge is a debatable one or not and hence, whether it falls within the purview of section 143(1).

6.1. The dispute is what should be the rate of surcharge applicable. According to the assessee, the rate of surcharge shall be the surcharge applicable to the assessee according to the income slab of the assessee and should not be at the highest rate of surcharge provided in the Finance Act. According to the revenue, the surcharge rate should also

be the highest rate of surcharge applicable in case of an individual. This issue was referred before the Hon'ble Special Bench constituted u/s 255(3) of the Act in the case of Aradhya Jain Trust [2025] 173 taxmann.com 343 (Mum) (SB), dated 09.04.2025 for Assessment Year 2023-24. The issue before the Hon'ble Special Bench was “*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?*”

6.2. Finding that there are decisions of the Tribunal holding contrary view, the assessee in the case of Aradhya Jain Trust (supra) furnished an application before the Hon'ble President of Income Tax Appellate Tribunal (ITAT) requesting to constitute a Special Bench for deciding the issue under reference. Upon considering the application of the assessee, Hon'ble President, in the administrative side, passed order constituting the Special Bench to decide the issue under reference. Subsequently, five other assesseees also filed applications seeking to join as interveners. Their applications to join as intervenors were allowed in due course. When the matters came up for hearing before the Hon'ble Special Bench, ld. Counsels appearing for Aradhya Jain Trust (supra) as well as the interveners advanced exhaustive arguments, which were dealt by the Special Bench. Contentions of the Revenue were also deliberated upon.

6.3. In para 12 of the decision of Hon'ble Special Bench, case of the present assessee i.e. Anant Bajaj Trust is also taken note of for which it is stated as, “*Insofar as the decisions expressing contrary view, ld. Counsel submitted that the decision rendered in case of Anant Bajaj Trust v. Deputy Director of Income Tax [IT Appeal No.1995 (Mum.) of*

2024, dated 26-8-2024] was subsequently recalled while allowing a Miscellaneous Application filed by the assessee.” Thus, fact relating to the present case was before the Hon'ble Special Bench.

6.4. From the above, it is gathered that the issue involved relating to rate of surcharge was a debatable issue, more particularly, when there were decisions of the ITAT holding contrary view as observed by the Hon'ble Special Bench in para 7 of its order. Hon'ble Special Bench, in the ultimate analysis held that *“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.”*

6.5. For us to adjudicate on ground no. 1.3 as to whether it was within the powers of CPC to raise a demand on the assessee by dealing with the issue which was a debatable one and was before the Hon'ble Special Bench owing to contrary views of the Tribunal. Admittedly, fact of the matter is that present issue was referred to Hon'ble Special Bench. Case of the assessee was also referred to and discussed before the Hon'ble Special Bench. The issue of rate of surcharge when the tax is charged at MMR was a debatable one on which two opinions existed by way of contrary decisions of Tribunal which led to reference for constitution of Special Bench. It is a settled position of law that debatable issues are out of the purview of processing of returns by the CPC. Accordingly, CPC was not within its jurisdiction in altering the rate of surcharge to 37% from what was charged by the assessee in its return at 15%,

though no adjustment was made to the income returned by the assessee. On this ground no. 1.3 alone, the assessee succeeds.

7. In the result, appeal of the assessee is partly allowed.

Order is pronounced in the open court on 28th August, 2025

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 28th August, 2025

MP, Sr.P.S.

Copy to :

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- 2 The Respondent
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BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai