



सत्यमेव जयते



**IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, GOA  
BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER  
AND**

**SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER**

**ITA Nos. 75 & 76/PAN/2025**

**Assessment Year : 2021-22 & 2022-23**

Shri Rampurush Mandir Society  
Veroda, Cuncolim,  
Salcete, Goa-403703.  
PAN : AADAS9268E

..... *Appellant*

V/s

Asstt. Director of Income Tax,  
CPC, Bengaluru.

..... *Respondent*

**Appearances**

Assessee by : Mr Narcinva Lotlikar ['Ld. AR']

Revenue by : Mr Ish Gupta ['Ld. DR']

Date of conclusive Hearing : 25/08/2025

Date of Pronouncement : 26/08/2025

**ORDER**

**PER G. D. PADMAHSHALI;**

The twin appeals of the appellant assessee impugns separate DIN & Orders both dt. 10/03/2025 passed by the Addl./Jt. Commissioner of Income Tax, Appeals(2), Kolkata ['Ld. CIT(A)/NFAC' hereinafter] u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] which in turn emanated out of respective summary assessment dt. 23/09/2022 & 16/03/2023 passed u/s 143(1) of the Act by the National Faceless e-Asstt Centre ['Ld. AO' hereinafter] anent to assessment years 2021-22 & 2022-23 ['AYs' hereinafter].



2. Since facts, circumstances and matter of dispute brought in this twin appeals are identical, upon rival party's common request and for the sake of brevity these appeals are heard together for being disposed-off by a consolidated & common order.

3. **Tersely stated common facts of the twin cases are that;** the assessee is a society, which filed its return of income ['ITR' hereinafter] for AY 2021-22 on 28/09/2021 declaring total income of ₹4,12,580/- and for AY 2022-23 on 27/07/2022 declaring total income of ₹4,62,590/- respectively. These returns of income were separately processed summarily u/s 143(1) of the Act on 23/09/2022 & 16/03/2023 whereby the income returned by the assessee were charged to tax @ maximum marginal rate ['MMR' hereinafter] and further with maximum surcharge on such income tax computed at MMR. Aggrieved by the application of MMR as against rates applicable to 'Individual' the assessee filed separate appeals u/s 246A of the Act before the Ld. CIT(A). Being unsuccessful in first appeal, the assessee came in present twin appeals denying to be taxed at MMR & maximum surcharge with following common grounds;



- 1. The order of the Hon. CIT(A) is bad in law and is void-ab-initio.***
- 2. The intimation passed by the ld. AO and sustained by the Hon. CIT(A) is without jurisdiction, misconceived and without following the principle of natural justice.***
- 3. The ld. CIT(A) has erred in not appreciating the fact that the appellant is a society registered under the Societies Registration Act, 1860 and the provisions of section 167B of the Income Tax Act 1961 are applicable to the appellant case.***
- 4. The ld. AO and ld. CIT(A) has erred in applying the maximum marginal rate of tax on the total income of the appellant without considering the facts and the submission made by the appellant.***
- 5. The Hon. CIT(A) and the ld. AO has erred in applying maximum marginal rate of tax on the total income of the appellant under presumption and surmise.***
- 6. With these and such other grounds that may be argued at the time of hearing the appellant prays for relief sought for.***



4. During the course of physical hearing, the Ld. AR Lotlikar concededly pleaded that, the sole & substantive issue in the present twin appeals relates to application of MMR as against rates of taxation applicable to an individual. Therefore all common submissions & arguments to be laid in the course of hearing are directed towards inapplicability of MMR, hence these appeals are to be adjudicated accordingly without referring to individual ground raised in the appeal memo. Recording the same, we advanced accordingly. It was submitted that, the only issue for our consideration is that, the appellant AOP filed its return claiming rate of taxation applicable to it as were applicable to 'individual' and whereas the Revenue invoking provisions of section 164 r.w.s. 167B r.w.s. 2(29C) taxed the assessee's income @ MMR with highest rate of surcharge. Placing reliance on the order of Ld. Co-ordinate bench in '*KMR Education Society Vs ACIT*' [ITA No. 1300/Hyd/2014] the appellant contended that, neither section 164 nor 167B of the Act applies to it, therefore rate prescribed u/s 2(29C) cannot be made applicable. On the other hand pressing into service the Ld. Special Bench's decision rendered in '*Araadhya Jain Trust Vs ITO*' [2025,



173 taxmann.com 343 (Mum) & the subsequent decision in case of ‘ITA No. 4272/Mum/2024’, the appellant also contended that, without prejudice to former submission & plea, even where MMR is applied, the applicability of surcharge shall be according to the slab prescribed and in no case the Revenue can apply surcharge at the highest rate ignoring the specific slabs prescribed by the Finance Act.

5. *Au contraire*, the Ld. DR at the outset candidly solidified the applicability of decision of Ld. Special Bench decision rendered in ‘*Araadhya Jain Trust*’ (supra) insofar as the issue of rate of surcharge to be applied in case of the appellant is concerned. The Ld. Dr Gupta however vehemently supported the order of tax authorities in applying MMR rate of taxation in case of appellant AOP. To buttress the action of tax authorities, the Ld. DR sought our attention to the provisions of section 164/167B r.w.s. 2(29C) of the Act and submitted that, since the individual share of member of the appellant society is unknown & indeterminate therefore s/s (2) of section 167B and section 164(2) comes into play which triggers application of MMR on the income to be taxed in the hands of the appellant society.



6. We have heard the rival parties and subject to rule 18 of ITAT-Rules 1963 perused material placed on record, considered the facts in the light of settled legal position.

7. We note that, the appellant is a society registered under Societies Registration Act 1860 vide Regn No. 105/Goa/1988. The Appellant assessee maintain a Temple at Veroda, Cuncolim, Salcete Village of South Goa District in the State of Goa. The society predominantly is meant for 'Kaundinnya Gotri Daivadnya Lotlikar Kulpurush' family exclusively. It is also an admitted fact that, the appellant society neither has or anytime had any certificate of registration u/s 12/12A of the Act nor it holds (or held anytime earlier) certificate u/s 80G of the Act. The activities of the society is limited to maintaining of Temple Property held under Trust for the sole benefit of Lotlikar Family. The appellant derived its income from Temple property in threefold forms viz; (i) entry fees on admission (ii) voluntary donations/offerings to Temple by devotee-visitors including members and (iii) interest on deposits which were made out of surplus after meeting regular expenses in maintaining temple property.



8. Further inquiry into rules & regulation of the appellant society revealed that; there is only '*one class of life membership*' to the society and the membership is exclusively open for the member of Lotlikar family namely; 'Daivadnya Braman Lotlikar'. The membership is subject to age of 21 years and payment of entry fee of ₹100/-. From the page-125 of member list produced in the course of hearing indisputably submitted by the Ld. AR that no person other than 'Lotlikar Family' was admitted to the membership of the society. The individual share of such admitted member of the appellant society is indeterminate & unknown. From the clause 6 of bye-laws placed on record (Pg 24 of p/b) it was also admitted that, member admitted to the society shall carry no right or privilege to any benefits arising out of such membership. Insofar as the income of the appellant society is concerned the bye-laws specifically states (Pg 27 of P/B) that; *entrance fees charged on admission to membership and donation constitutes the main income of the society*. In nutshell the appellant is a discretionary entity whose membership is restricted to specific family and where individual share of beneficiary members are unknown or indeterminate for the purpose of the Act.



9. Now in this factual background the twin questions arises for our adjudication viz;

(a) *‘as to whether provisions of section 164 or section 167B of the Act applies to the appellant society for taxing its income @ MMR in terms of section 2(29C) of the Act?’*

(b) *‘as to whether surcharge at the highest rate applies to the appellant society when its income is charged to tax @MMR owing to application of provisions of section 164/167B r.w.s 2(29C) of the Act?’*

10. We shall first test the applicability of provisions of section 167B of the Act which verbatimly reads as under;

*Charge of tax where shares of members in association of persons or body of individuals unknown, etc.*

**167B.** (1) *Where the individual shares of the members of an association of persons or body of individuals (other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India) in the whole or any part of the income of such association or body are indeterminate or unknown, tax shall be charged on the total income of the association or body at the maximum marginal rate:*

**Provided** that, *where the total income of any member of such association or body is chargeable to tax at a rate which is higher than the maximum marginal rate, tax shall be charged on the total income of the association or body at such higher rate.*



(2) Where, in the case of an association of persons or body of individuals as aforesaid [not being a case falling under sub-section (1),—

(i)	<i>the total income of any member thereof for the previous year (excluding his share from such association or body) exceeds the maximum amount which is not chargeable to tax in the case of that member under the Finance Act of the relevant year, tax shall be charged on the total income of the association or body at the maximum marginal rate;</i>
(ii)	<i>any member or members thereof is or are chargeable to tax at a rate or rates which is or are higher than the maximum marginal rate, tax shall be charged on that portion or portions of the total income of the association or body which is or are relatable to the share or shares of such member or members at such higher rate or rates, as the case may be, and the balance of the total income of the association or body shall be taxed at the maximum marginal rate.</i>

*Explanation.—For the purposes of this section, the individual shares of the members of an association of persons or body of individuals in the whole or any part of the income of such association or body shall be deemed to be indeterminate or unknown if such shares (in relation to the whole or any part of such income) are indeterminate or unknown on the date of formation of such association or body or at any time thereafter.*

**11.** The bare reading of former provisions plainly suggest two scenarios where MMR to be applied for taxing income of any association of persons or body of individuals [‘AOP/BOI] whether or not incorporated. The s/s (1) of section 167B of the Act deals with a scenario where individual share of a beneficiary member is indeterminate or unknown **whereas** s/s (2) (supra) outlines the



situation of other cases such as ‘where individual share of a beneficiary member is either determinate or known’ etc. thus not cases falling within the provisions of s/s (1). It shall be worthy to note further that, the s/s (1) while taxing the income of AOP/BOI @ MMR where the beneficiary members shares are indeterminate, it excludes three classes of AOP/BOI from its ambit. Such exclusions namely are; (i) a company (ii) a co-operative society and very notably **(iii) a society registered under the provisions of Societies Act 1860**. Thus any AOP/BOI which is registered either (i) as company under the provisions of Companies Act or otherwise, or (ii) a co-operative society under the applicable laws or (iii) a society registered under the provisions of societies Registration Act, 1860, is falls out of categories of AOP/BOI to which s/s (1) of section 167B of the Act applies. Admittedly, for twin years under consideration the appellant assessee is a society registered under the provisions of Societies Act, 1860 therefore falls within the exclusion carved out from applicability of s/s (1) of section 167B of the Act, therefore the provisions of section 167B(1) r.w.s. 2(29C) of the Act cannot be made applicable for taxing the income of the appellant @MMR.



12. Now coming to applicability of s/s (2) of section 167B of the Act. There was much less to be convinced with the argument of the Ld. Gupta that, s/s (2) applies blanketly to all AOP/BOI. It is misconceived by the Revenue that, the provisions of s/s (2) covers the cases other than cases falls in s/s (1) of section 167B of the Act, thus the appellant AOP is exigible to tax @MMR. We say so because, the s/s (2) also verbatimly defines the class of AOP/BOI to which it applies with the words *where, in the case of an association of persons or body of individuals as aforesaid*'. The word *'as aforesaid'* is sacrosanct to former defined class to which s/s (1) of section 176B of the Act is to be applied. That the class of AOP/BOI to which the provisions of s/s (2) applies is *ad-idem* to class pre-defined in s/s (1) of the Act. What deviates the applicability of s/s (2) of section 167B of the Act is that, the cases *'not being a case falling under subsection (1)'*. This precisely means the cases where the individual share of beneficiary member is determinate or known. Thus the distinct class of AOP/BOI not falling within s/s (1) of section 167B of the Act with a beneficiary member whose shares are either determinate or known.



**13.** In the instant case, for the twin years under consideration, the shares of the individual members belonging to Lotlikar family who were admitted to the membership of the appellant society were admittedly indeterminate or unknown for both the year under consideration. Therefore the s/s (2) of section 167B of the Act which pre-supposes the individual share of beneficiary members of AOP/BOI as determinate or known for the purpose of taxing the income of such AOP/BOI @MMR cannot be extended to class of AOP/BOI whose member's beneficiary interest is indeterminate or unknown. This view finds fortified in the decision of Ld. Co-ordinate benches in catena of cases including; '*KMR Education Society Vs ACIT*' [2015, 68 SOT 164 (Hyd)], '*Mahakavi Edasseri Smaraka Vs ITO*' [2024, 162 taxmann.com 44 (Cochin)], '*National Association of Interlocking Surgeons Vs ITO*' [2025, 172 Taxmann.com 9 (Pune)] etc. The Revenue could hardly place decision of the higher court to controvert the case laws relied upon by the appellant to drive home the relief for normal taxation on account of inapplicability of provisions of s/s (2) of section 167B of the Act. This in results leads to allowing of ground number 3 in favour of appellant.



**14.** Now coming to applicability of provisions of section 164 of the Act. Without reproducing loose stock & barrel of former provisions of the Act it shall suffice to state that, by virtue of provisions of s/s (2) of section 164 of the Act, any income which is derived from property held under trust or which is of the nature referred to in sub-clause (iia) of clause (24) of section 2 of the Act, or which is of the nature referred to in s/s (4A) of section 11 of the Act, tax shall be charged on so much of the relevant income as is not exempt under section 11 or section 12, as if the relevant income not so exempt were the income of an association of persons. The said provision however also provides that, in a case where the whole or any part of the relevant income is not exempt u/s 11 or u/s 12 by virtue of operation of clause (c) or clause (d) of s/s (1) of section 13 of the Act, tax shall be charged @MMR on the relevant income of AOP.

**15.** As noted previously hereinbefore, the appellant assessee society is an AOP and established wholly with a purpose of maintaining a Religious Temple and its activities are exclusively directed against maintaining its property which are held under trust for the benefit



closely associated members of Lotlikar Village/Family. Undeniably for the assessment years under consideration the appellant derived its income (i) *from property held under trust in the form of entrance fees and interest on deposit held with banks/financial institution etc.*, and (ii) *from voluntary donation* which were of the nature of income referred to in sub-clause (iia) of clause (24) of section 2 of the Act. In the absence of registration u/s 12/12A of the Act, the said income so derived by the appellant AOP for the years under consideration was neither exempt u/s 11 nor u/s 12 of the Act, hence rightfully offered to taxation by the appellant in its respective return but applying normal rate of taxation. The aforestated *entrance fees charged to the members* and the *interest income* since admittedly derived from properties held under Trust by the appellant society for the benefit of Lotlikar members and the voluntary donation received since were in the nature of 2(24)(iia) of the Act, therefore in our considered view such income clearly attracts the provisions of s/s (2) of section 164 of the Act, thus disentitles the appellant AOP from claiming normal rate of taxation in respect to part of former income returned by it in the respective assessment years.



16. In case of '*CIT Vs Army Wives Welfare Association*' [2020, 185 DTR 395 (All-HC)] the Hon'ble Allahabad High Court decided the issue taxing the total income of AOP @MMR by confirming the application of provisions of s/s (2) of section 164 of the Act for taxing entire income (including addition made owing to provisions of section 13) of AOP @MMR where such AOP found not entitled to exemption u/s 11 or u/s 12 of the Act. The relevant para 19 of the judgement reads as under;

***19. The last substantial question of law is regarding maximum marginal rate. The maximum marginal rate was not applied on the total income despite the fact that the assessee was not found entitled to the exemption under section 11 of the Act of 1961. A reference of section 164(2) of the Act of 1961 would be relevant for the aforesaid. If the assessee was not entitled to the exemption under section 11, the maximum marginal rate should have been applied on the total income and not on the addition . . . .***

***(Emphasis supplied)***



17. By the landmark decision the Hon'ble Apex Court in the case of '*CIT Vs SK Patel Family Trust*' [2017 TaxPub 1099 (SC)] settled issue of taxation @MMR on whole of the income of the discretionary AOP/Trust where member/beneficiary shares in such AOP/Trust are indeterminate or unknown. Similarly the Hon'ble Gujarat High Court in case of '*CIT Vs Kantilal Hiralal Family Trust*' [2015, 230 Taxman 317 (Guj)] following the decision of Hon'ble Calcutta High Court in '*Surendranath Gangopadhyaya Trust Vs CIT*' [1983, 142 ITR 149] and of Hon'ble Madhya Pradesh High Court in '*Piarelal Sakseria Family Trust Vs CIT*' [1982, 136 ITR 583] have reiterated the ratio laid in '*CIT Vs CV Divakaran Family Trust*' [2002, 122 Taxman 405 (Ker)] and held that the income of AOP where shares of beneficiary members are unknown is to be taxed @MMR as contemplated in explanation 2 to section 164 which means the rate applicable in relation to highest slab of income provided for AOP in relevant Finance Act. Further in '*Basil Mendes Memorial Educational & Charitable Trust Vs ITO*' [2018, 98 taxmann.com 474 (Bang)] the Ld. Co-ordinate bench while dealing with a similar matter where trust was not registered u/s 12/12A of the Act and was filing its return as



AOP, therefore was held liability to tax @MMR on whole of the income under the provisions of section 164 of the Act.

**18.** The facts of the present twin cases are identical, therefore respectfully following the rule of consistency & judicial discipline and the view taken by co-ordinate benches in the cases cited supra, we hold that the income of the assessee was taxable @MMR. Accordingly, upheld the impugned order on this score and dismissed all the contentions raised in relation to Ground Number 1, 2 & 4, 5.

**19.** Next comes to applicability of surcharge on such income tax computed @MMR. It is an admitted fact, the Revenue in addition to taxing appellant's returned income @MMR for both the years under consideration had also levied 'surcharge' @ highest rates ignoring the slabs prescribed therefore in the relevant Finance Act. The issue as to whether 'surcharge' is to be applied according to slabs prescribed under the relevant Finance Act or to be applied correspondingly at the highest rate with applicable MMR is no more *res-integra* in view of the decision of Ld. Special Bench in the case of '*Araadhya Jain Trust Vs ITO*' [2025, 173 Taxmann.com 343 (Mum)]. The ratio laid therein



that, where any income of an assessee is charged to tax @MMR, the surcharge (if any) to be charged thereon shall be computed on the income tax having reference to the slab rates prescribed in the relevant Finance Act under the heading ‘surcharge on income tax’ appearing in Paragraph A, Part 1, First Schedule, as applicable to the relevant assessment year. The Revenue could hardly place decision of higher judicial forum to decay the applicability of former decision (supra). In view therefore without multiplying the authority on the subject matter respectfully following the special bench decision we vacate the application of incorrect ‘surcharge’ and direct to apply the ‘surcharge’ (if any) according to prescribed applicable slabs. The relevant contention raised in ground no 6 thus stands allowed.

**20. These twin appeal in result stands PARTLY ALLOWED.**

In terms of rule 34 of ITAT Rules, 1963 the order pronounced in the open court on date mentioned herein before.

**-S/d-  
PAVAN KUMAR GADALE  
JUDICIAL MEMBER**

**-S/d-  
G. D. PADMAHSHALI  
ACCOUNTANT MEMBER**

Panaji/Dt: 26th August, 2025.

**Copy of the Order forwarded to :**

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|-------------------|--------------------------------|------------------------------|
| 1. The Appellant. | 2. The Respondent.             | 3. The CIT(A)/NFAC Concerned |
| 4. PCIT Concerned | 5. DR, ITAT, Panaji Bench, Goa | 6. Guard File                |

By Order,  
Sr. Private Secretary / AR ITAT, Panaji.