

आयकरअपीलीयअधिकरण,राजकोटन्यायपीठ,राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTNT MEMBER &
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBR

आयकर अपील सं./ITA No.164/RJT/2025
(निर्धारण वर्ष / Assessment Year: (2024-25)
(Physical Hearing)

Manjar Discretionary Family Trust, 21, Bhomeshwar Society, Street No. 7, Jamnagar Road, Rajkot-360001	बनाम/ Vs.	Income Tax Officer, Ward-1(1)(1), Rajkot
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAATM3394F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी ओर से/ Appellant by	Shri Himanshu Shah, AR
प्रत्यर्थी की ओर से/ Respondent by	Shri Abhimanyu Singh Yadav, Sr. DR
सुनवाई की तारीख/ Date of Hearing	29/09/2025
घोषणा की तारीख/ Date of Pronouncement	15 /10/2025

आदेश / ORDER

Per Dr. Arjun Lal Saini, A.M

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2024-25, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), ADDL/JCIT(A)-12, Mumbai [in short “the Id. CIT(A)”], dated 12.02.2025, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 30.10.2024.

2. Grounds of appeal raised by the assessee are as follows:

“1.In law and in facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has erred in points of law and facts.

2.In law and in facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has grossly erred in dismissing the ground of the appellant and confirming charging of surcharge @ 37% of Rs. 46,662/- instead Nil.



3. In law and in facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has grossly erred in dismissing the ground of the appellant and confirming charging of health and education cess of Rs. 6,911/- instead of Rs. 5,045/-.

4. In law and in facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has grossly erred in dismissing the ground of the appellant and confirming reducing the refund claimed from Rs. 51,750/- to Rs. 1,252/-.

5. In law and in facts and circumstance of the Appellant case, the learned Commissioner of Income-tax (Appeals) has grossly erred in dismissing the ground of the appellant and confirming in not allowing interest u/s. 244A of I.T. Act on refund.

6. Your appellant reserves the right to add, alter, amend all or any of the above grounds of appeal as may be advised from time to time.”

3. The facts of the case which can be stated quite shortly are as follows: The assessee (Manjar Discretionary Family Trust -PAN:AAATM3394F) has e-filed return of income on 12.07.2024, declaring total income of Rs. 4,20,380/- and claimed a refund of Rs. 51,750/- for assessment year (AY) 2024-25. The CPC has determined the refund at Rs. 1,250/- instead of the claimed refund of Rs. 51,750/- and imposed surcharge of 37% amounting to Rs. 46,662/- and health & education cess of Rs. 6,911/- instead of the claimed Rs. 5,045/-. The assessee claimed that he is not liable to pay the surcharge at the rate of 37% as his gross total income is only Rs. 4,20,380/-, which is less than 50 lakhs. However, learned CIT(A) rejected the above contention of the assessee and confirmed the addition made by the assessing officer (CPC), therefore assessee is in further appeal before us.

4. Learned Counsel for the assessee argued that assessee's income is below Rs. 50 lakhs, that is, it is only Rs. 4,20,380/-. Therefore, in assessee's case surcharge will not be applicable, as per the provisions of Section 164 of the



Income Tax Act, 1961. The Ld. Counsel also submitted that during the appellant proceedings the Ld. CIT(A) relied on the judgment of the Hon'ble ITAT Mumbai in ITA No. 2197/Mum/2024 order dated 07.10.2024 in the case of Ardhya Jain Trust, which is not applicable to the assessee's facts. Therefore, if the income is less than Rs. 50 lakhs then the surcharge is not applicable, hence, the addition made by the Ld. CIT(A) should be deleted.

5. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer (CPC), which we have already noted in our earlier para and is not being repeated for the sake of brevity.

6. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that the issue under consideration is covered by the judgment of the Coordinate Bench of the ITAT, Mumbai in the case of Araadhya Jain Trust vs. ITO in ITA No. 4272/Mum/2024 vide order dated 09.04.2025, wherein it was held as follows:

“22. Before we proceed to deal with the issue, let us understand what is meant by a 'Private Discretionary Trust'. A 'Discretionary Trust' is generally a Trust registered under the Indian Trusts Act, 1882, whereunder, the Trustees hold the power to decide the class of beneficiaries who can receive either capital or income from the Trust at the discretion of the Trustees. However, no one beneficiary has an absolute entitlement either to income or capital. In other words, in a discretionary trust, distribution of all capital and income is completely at the discretion of the Trustees. Generally speaking, in these kind of trusts not only the beneficiaries but even the shares of beneficiaries remain indeterminate. These Trusts/Association of Persons/Body of individuals are covered either u/s.164 or 167B of the Act. These provisions provided that the income of such Trusts/AOPs/BOIs are brought to tax at the maximum marginal rate. The expression "maximum marginal rate" has been defined u/s.2(29C) of the Act as under:



“maximum marginal rate” means the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income in the case of an individual, association of persons or, as the case may be, body of individuals as specified in the Finance Act of the relevant year;

23. *A plain reading of the aforesaid definition clause would indicate that the 'maximum marginal rate' would mean the rate of income tax, including surcharge on income tax, if any, applicable to the highest slab of income of an individual, association of person or body of individual as specified in the Finance Act of the relevant year. In other words, at the first instance, the tax on the total income of the discretionary trust has to be determined by applying the maximum marginal rate, as applicable to the highest slab of income relating to an individual, association of person or body of individual specified in the Finance Act of the relevant year. Thereafter, the surcharge, if any, has to be computed on such income-tax.*

24. *As could be seen from a conjoint reading of sections 164/167B of the Act, these provisions provide for computation of income-tax at the maximum marginal rate. However, in these provisions there is no reference to levy of surcharge. Whereas, the definition of 'maximum marginal rate' u/s. 2(29C) of the Act refers to surcharge. But, this definition clause by itself does not fix the rate of tax, instead, refers to the rate prescribed under the Finance Act of the relevant year. Thus, what should be the maximum marginal rate of income-tax is to be determined based on the rate of income-tax provided in Finance Act of the relevant year. The rates of income tax is provided u/s.2 of the Finance Act. A reference to section 2 of Finance Act, 2023, makes it clear that as per sub-section (1) of section 2, for the A.Y. 2023-24 income-tax shall be charged at the rate specified in Paragraph A, Part (1) of First Schedule to the Finance Act-2023 and such tax shall be increased by a surcharge, collected for the purposes of the Union, calculated in each case in the manner provided therein. Of-course, sub section (1) of section 2 is subject to the provisions of sub-sections (2) and (3). Sub section (2) of section 2 speaks of an assessee having net agricultural income exceeding five thousand rupees, in addition to total income, hence, is not relevant for our purpose. However, sub section (3) of section 2 of Finance Act provides that in case of assessee's covered under Chapter XII or XII-A or section 115JB or section 115JC or Chapter XII-FA or Chapter XII-FB or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act, the tax chargeable shall be determined as provided in those Chapters or sections, and with reference to the rates imposed by sub-section (1) or the rates as specified in that Chapter or section, as the case may be. Thus, sub section 2(1) of Finance Act, which is subject to the provisions of sub-section (3), though, provides that income-tax shall be charged at the rate specified in Part 1 of the specified schedule, however, sub-section (3) carves out an exception in case of certain class of income or assesseees by providing that the chargeable tax shall be determined in terms with those Chapters or sections, and with reference to the rates imposed by sub-section (1) or the rates as specified in that Chapter or section, as the case may be.*



25. In case of discretionary trusts, sections 164/167B of the Act. do not by themselves specify the rate of tax. They only say that tax on total income is to be determined at the maximum marginal rate. The definition of 'maximum marginal rate' u/s.2(29C) of the Act, in turn, refers to the rate of income-tax applicable to the highest slab as provided under the Finance Act of the relevant year. Thus, for determining the maximum marginal rate of tax, one has to revert back to the rate prescribed in Paragraph A, Part (I) of First Schedule to the Finance Act-2023. Sub-section 2(1) of the Finance Act, further provides that the tax so determined shall be increased by a surcharge collected for the purposes of Union, calculated under each case in the manner provided in the First Schedule. For ease of reference. Paragraph A, Part (I) of First Schedule to the Finance Act-2023, which is relevant for our purpose, is reproduced hereinunder:

THE FIRST SCHEDULE

(See section 2)

PART I

INCOME-TAX

Paragraph A

(1) In the case of every individual other than the individual referred to in items (II) and (III) of this Paragraph or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

- (1) where the total income does not exceed Rs. 2,50,000 Nil;
- (2) where the total income exceeds Rs. 2,50,000 but does not exceed Rs. 5,00,000 5 per cent. of the amount by which the total income exceeds Rs. 2,50,000;
- (3) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000 Rs. 12,500 plus 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000;
- (4) where the total income exceeds Rs. 10,00,000 Rs. 1,12,500 plus 30 per cent. of the amount by which the total income exceeds Rs. 10,00,000.

(II) In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year,—

Rates of income-tax

- (1) where the total income does not exceed Rs. 3,00,000 Nil;
- (2) where the total income exceeds Rs. 3,00,000 but does not exceed Rs. 5,00,000 5 per cent. of the amount by which the total income exceeds Rs. 3,00,000;



- (3) where the total income exceeds Rs. 10,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000; Rs. 5,00,000 but does not exceed Rs. 10,00,000
- (4) where the total income exceeds Rs. 1,10,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 10,00,000; Rs. 10,00,000

(III) In the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year,—

Rates of income-tax

- (1) where the total income does not exceed Rs. 5,00,000 Nil;
- (2) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000;
- (3) where the total income exceeds Rs. 1,00,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 10,00,000.

Surcharge on income-tax

The amount of income-tax computed as per the preceding provisions of this Paragraph, or the provisions of section 111A or 112 or 112A of the Income-tax Act, shall be increased by a surcharge for the purposes of the Union, calculated, in the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act,—

- (a) having a total income (including the income by way of dividend or income under the provisions of sections 111A, 112 and 112A of the Income-tax Act) exceeding fifty lakh rupees but not exceeding one crore rupees, at the rate of ten per cent. of such income-tax;
- (b) having a total income (including the income by way of dividend or income under the provisions of sections 111A, 112 and 112A of the Income-tax Act) exceeding one crore rupees, but not exceeding two crore rupees, at the rate of fifteen per cent. of such income-tax;
- (c) having a total income (excluding the income by way of dividend or income under the provisions of sections 111A, 112 and 112A of the Income-tax Act) exceeding two crore rupees but not exceeding five crore rupees, at the rate of twenty-five per cent. of such income-tax;
- (d) having a total income (excluding the income by way of dividend or income under the provisions of sections 111A, 112 and 112A of the Income-tax Act) exceeding five crore rupees, at the rate of thirty-seven per cent. of such income-tax; and
- (e) having a total income (including the income by way of dividend or income under the provisions of sections 111A, 112 and 112A of the Income-tax Act) exceeding



two crore rupees but is not covered under clauses (c) and (d), at the rate of fifteen per cent. of such income-tax:

Provided that in case where the total income includes any income by way of dividend or income under the provisions of sections 111A, 112 and 112A of the Income-tax Act, the rate of surcharge on the amount of income-tax computed in respect of that part of income shall not exceed fifteen per cent.:

Provided further that in case of an association of persons consisting of only companies as its members, the rate of surcharge on the amount of income-tax shall not exceed fifteen per cent.:

Provided also that in the case of persons mentioned above having total income exceeding,—

- (a) fifty lakh rupees but not exceeding one crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of fifty lakh rupees by more than the amount of income that exceeds fifty lakh rupees;
- (b) one crore rupees but does not exceed two crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax and surcharge on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees;
- (c) two crore rupees but does not exceed five crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax and surcharge on a total income of two crore rupees by more than the amount of income that exceeds two crore rupees;
- (d) five crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax and surcharge on a total income of five crore rupees by more than the amount of income that exceeds five crore rupees.

26 On going through Paragraph A. Part (I) of First Schedule to the Finance Act-2023, it becomes very much clear that under item f (1), the rates of income tax applicable to individuals, Hindu undivided family or association of persons or body of individuals have been provided. As could be seen from the rates of income-tax for different income brackets, if the total income does not exceed Rs.2,50,000/-, the rate of income tax is Nil. If the total income exceeds Rs.2,50,000/-, but does not exceed Rs.5,00,000/-, the rate of income tax is 5% of the amount by which the total income exceeds Rs.2,50,000/-. Where the total income exceeds Rs.5,00,000/- but does not exceed Rs.10,00,000/-. the rate of income tax is Rs.12,500 plus 20% of the amount by which the total income exceeds Rs.5,00,000/- and lastly, where the total income exceeds Rs.10,00,000/-, then the rate of tax is Rs. 1,12,500/- plus 30% of the amount by which the total income exceeds Rs.10,00,000/-. Thus, as per the rates of income tax prescribed in Item (1), the highest slab of income is Rs. 10 lacs and above and the applicable rate of income tax is 30%. Thus, in terms with section 2(29Q) of the Act, the maximum marginal rate of tax will be 30% as applicable to the highest slab of income.

27. The expression 'slab' is not mentioned either in sub-section (1) of section 2 or even under Paragraph A, Part (I) of First Schedule to the Finance Act-2023.



However, as per the materials placed before us, it is observed that in Press Note dated 01.12.1965 issued by Government of India, copy of which is placed at pg. no. 45 of the Paper Book, submitted in case of NIK Family Trust, the expression 'slab' refers to 'income' and not the tax. In fact, even section 2C(29C) of the Act refers to highest slab of income. Even Circular No. 2/2018 (F.No. 370142/15/2017-TPL) containing Explanatory Notes to Provisions of Finance Act, 2017, a copy of which is placed at pg. no. 47 of the Paper Book filed by die NIK Family Trust, refers the expression 'slab' to the various categories of income. Thus, in terms with sections 164/167B r.w.s. 2(29C) of the Act, tax as per maximum marginal rate would mean 'the rate of tax applicable to the highest slab of income' under Item (1) of Paragraph A, Part (1) of First Schedule to the Finance Act-2023.

28. Under the head 'Surcharge on income-tax' appearing in Paragraph A, Part (1), First Schedule it has been provided that the amount of income-tax computed as per the rate of income-tax under Item (1), (2) and (3) or under the provisions of section 111A or section 112 or section 112A or the provision of section] 15BAC of the Income Tax Act, shall be increased by a surcharge, for the purposes of the Union, calculated in the case of particular class of assessee in the manner provided therein. As could be seen from items (a) to (e), provided under the head 'Surcharge on income-tax', there are different rates of surcharge on income tax, depending upon the categories of income. The rate of surcharge starts from minimum of 10% to the maximum of 37% on income-tax. The maximum rate of surcharge at 37% on income-tax is applicable in case of assessee having total income, exceeding Rs.5 crores. It further emanates that the minimum rate of surcharge @ 10% on the income-tax is applicable only when the income of the assessee is above Rs.50 lacs, but less than Rs.1 crore. Thus, as per Paragraph A, Part (I) of First Schedule to the Finance Act-2023, the threshold limit for applicability of surcharge is when total income is Rs.50 lacs and above. In other words, if the total income is below the threshold limit of Rs.50 lacs, there would be no surcharge. Even the first proviso under the heading 'Surcharge on income-tax' carves out an exception regarding the rate of surcharge by stating that in case where assessee's total income includes dividend income or income under the provisions of section 111 A, 112A and section 112A of the Act, the rate of surcharge on the amount of income-tax computed on that part of income shall not exceed 15%. In other words, if the total income of an assessee includes any income by way of dividend or income under certain provisions of the Act. the rate of surcharge on tax computed on such pan of income under no circumstances would exceed 15%.

29. If we accept the contention of the Revenue that, irrespective of the nature or quantum of income, as per the definition of maximum marginal rate u/s.2(29C) of the Act. surcharge has to be computed at the highest rate of 37% applicable to the highest income bracket of Rs.5 crores and above, then the exception provided under the first proviso under the heading 'Surcharge on income-tax" would become otiose. Even, the different rates of surcharge on income-tax provided under clause (a) to (e) applicable to the different slabs of income would become meaningless so far as discretionary trusts are concerned. In our view, such an interpretation would lead to absurdity, hence, i.e. unworkable. In our view, once the definition of 'maximum marginal rate' refers to the rate of income-tax and surcharge provided under the Finance Act of the relevant year, then the rates of income-tax and



applicable rate of surcharge as provided under Paragraph A, Part (I) of First Schedule to the Finance Act-2023, would apply. Any other interpretation, in our view, would lead to undesirable consequences and would be discriminatory. In our view, the expression 'including Surcharge on income-tax, if any', within the bracketed portion of section 2(29C) of the Act. would mean the surcharge as provided in the computation mechanism under the heading 'surcharge on income tax' finding place in Paragraph A. Part (I) of First Schedule to the Finance Act-2023.

30. The Revenue has taken a line of argument that the words 'if any' succeeding the words 'including surcharge on income tax' appearing in the definition of maximum marginal rate u/s. 2(29C) of the Act are only for the purpose that when levy of surcharge is specifically provided under the Finance Act of the relevant year, it would be included in income-tax computed at the highest rate, otherwise, not. Though, at first blush this argument of the department sounds attractive, however, on deeper analysis it is found to be superfluous, for the following reasons. As discussed earlier, Article 271 of the Constitution of India, empowers the Union to impose surcharge for the purposes of Union. Whereas, Article 265 of the Constitution of India mandates that no tax can be collected without authority of law. Therefore, levy of surcharge has to be preceded by a law enacted by the parliament authorizing such levy. Thus, in absence of any law authorising levy of surcharge, it cannot be collected. This legal position is as clear as daylight hence, does not require further clarification with the use of words "if any" to mean whether the Finance Act of a particular year, if at all, provides for levy of surcharge or not. Though, in our view, there is no conflict between provisions contained u/s. 164/167B, 2(29C) of the Income Tax Act and section 2 of the Finance Act. however, even assuming that there are some conflicts, a harmonious construction has to be made to avoid absurdity and make the provisions workable. Thus, in our view, the expression 'if any' used in section 2(29C) has to be read not de hors but in conjunction with the computation mechanism provided under the heading 'surcharge on income tax' provided in section 2 of Finance Act. This view of ours is further fortified by the object for which levy of surcharge was introduced to the Finance Act - to augment (he Revenue of the Union for developmental work by asking persons in the highest income bracket to contribute little more than the other citizens, for nation building.

31. As we find, the Revenue has placed strong reliance upon the decision of the coordinate bench in case of Araadhya Jain Trust (supra) and couple of other decisions, which are on similar line, Pertinently, the decision rendered in case of Anant Bajaj Trust vs. DDIT in ITA No. 199/Mum/2024 vide order dated 26.08.2024) was subsequently recalled. Whereas, the bench has followed the decision of Anant Bujaj Trust (supra) while deciding the appeal of Kapur Family Trust vs. ITO (in IT A Nos. 3834 & 3835/Mum/2024 vide order dated 30.10.2024). Therefore, the decision rendered in case of Kapur Family Trust (supra) has lost its relevance. Insofar as the decision of the co-ordinate bench in the case of Araadhya Jain Trust (supra) is concerned, in our view, the bench has drawing its conclusion, primarily relying upon certain decisions of Hon'ble Kerala High Court and Hon'ble High Court of Bombay. As discussed elsewhere in the order.



32. However, upon carefully going through these decisions, we are of the considered view that the issue arising in the present case never fell for consideration before the Hon'ble Courts. The issue in dispute in those cases was primarily concerning what should be the maximum marginal rate and its applicability. The issue 'whether the rate of surcharge would also be at the highest rate while computing tax at maximum marginal rate¹ was never the issue before the Hon'ble Courts. Thus, in our view, the view expressed by the coordinate benches in decisions referred to in Paragraph 10(supra) lay down the correct proposition of law. Thus, in the ultimate analysis, we hold, 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 I, First Schedule, applicable to the relevant assessment year. Hence, reference is decided in favour of the assessee. The records may be returned back to the respective benches for deciding the appeals accordingly."

7. Since the issue is squarely covered by the judgment of the Coordinate Bench of ITAT Mumbai in the case of Araadhya Jain Trust (supra) and there is no change in facts and law and Ld. DR for the Revenue fails to controvert the above findings of the Tribunal, therefore, respectfully following the binding precedent in the case of Araadhya Jain Trust (supra), we allow the appeal of the assessee.

8. In the result, the appeal filed by the assessee is allowed.

Order is pronounced in the open court on 15 /10/2025

Sd/-

**(DINESH MOHAN SINHA)
JUDICIAL MEMBER**

Sd/-

**(Dr. A.L. SAINI)
ACCOUNTANT MEMBER**

Rajkot

दिनांक/ Date: 15/10/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot