

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: ITA 733/KOL/2025
Assessment Year: 2024-25**

Sri Sri Laxmi Sri Sri Narayan and Sri Sri Kali Trust	Vs.	DCIT, CPC [ITO, Ward-22(2), Kolkata]
(Appellant)		(Respondent)
PAN: AAMTS7813D		

Appearances:

Assessee represented by : None.

Department represented by : Kallol Mistry, JCIT, Sr. DR.

Date of concluding the hearing : 29-July-2025

Date of pronouncing the order : 21-October-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Addl/JCIT(A)-3, Delhi [hereinafter referred to as Ld. 'Addl/JCIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2024-25 dated 25.02.2025, which has been passed against the intimation issued u/s 143(1) of the Act, dated 30.10.2024.

2. The assessee is in appeal before the Bench raising the following grounds of appeal:

“(1) For that on the facts and in the circumstances the Ld. CIT(A) wrongly, arbitrarily and without examination of the Debutor Trust Deed held that the appellant Trust should be charged at the maximum marginal rate (MMR) under section 164 of the Act so much so that he failed to consider that the Deity is an Artificial Juridical Person and as per the Trust Deed there are no beneficiaries whose shares are unknown.



(2) For that the Ld. CIT(A) further erred in not examining the Income Tax Return filed by the Appellant and thereby ignored the information filled therein about the Trustees showing "ZERO" both under the column head "Percentage of share (if determinate)" and Remuneration paid/payable" of PART A, GENERAL "(E) Particulars of who partners/members in the firm/AOP/BOI settlor/trustee/beneficiary in the trust or executors in the case of estate of deceased /estate of insolvent as on 31st day of March, 2024 or date of dissolution".

(3) For that the decision by the Ld. CIT(A) to apply the provisions of "164. Charge of tax where share of beneficiaries unknown" is based on conjecture and/or surmise.

(4) For that the Ld. CIT(A) ignored the laid down procedures by the CBDT Circular as well as Judicial Pronouncements about the scope of the powers to make prima-facie adjustments on debatable issues and thereby upheld the erroneous levy of surcharge by the Ld. A.O.

(5) For that the Ld. CIT(A) had wrongly and arbitrarily upheld the erroneously levied Surcharge of Rs 82,016 on the Appellant.

(6) The appellant craves the leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or at the time of hearing of this appeal”

3. Brief facts of the case are that the assessee is a Trust and had filed the return of income in ITR-5 declaring total income of ₹10,93,740/- on which tax interest and fee of ₹3,51,195/- was declared and the tax @ 30% was paid along with cess. However, while processing the return, though there was no difference on tax rate @ 30% however, surcharge @ 25% was charged. The assessee contended that as per Part-I of 1st schedule of Finance Act, 2023, the surcharge was not applicable on the income below ₹50 Lakh and hence requested for non-charging of surcharge. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who considered the definition of representative assessee u/s 160 of the Act, the provisions of section 164 of the Act and held that the assessee did not fall under any exception clause to section 164(1) of the Act which provides that



the tax should be charged on such assessee at maximum marginal rate (MMR) and the definition of MMR as per section 2(29C) of the Act is that 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. Further, section 3 of Finance Act, 2023 provides that for the entity covered u/s 164 of the Act, the tax is to be determined as provided in that section. According to him, section 164(1) of the Act clearly provides for taxation at MMR, if the case is not falling under the proviso to that section, therefore, the applicability of 1st schedule of the Finance Act will not be there in his case. Therefore, charging of surcharge as per MMR in the order u/s 143(1) of the Act was confirmed and the appeal failed and was rejected by the Ld. CIT(A).

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. None appeared on behalf of the assessee and the case was heard with the assistance of the Ld. DR.

6. The assessee contended that the deity is the sole beneficiary and it is not an alleged case of share of beneficiaries being unknown, therefore, the normal rate of tax was applicable. The assessee has filed a written submission which is as under:

“That in the present case the assessee is a Debutter Trust formed in 1951 by dedicating properties to the deities and the object of the Trust inter-alia was the seba, puja, maintenance and upkeep of Deity. That sole beneficiary as per the Debutter Trust Deed is the Deity and that the Deity being a juristic person, it can hold property and be in receipt of income.”



That for this proposition reliance is placed on the decision of Hon'ble Apex Court in the case of Official Trustee of West Bengal Vs. CIT reported in (1974) 93 ITR 348.

The appellant a Debutter Trust being sole beneficiary and not an alleged case of "share of beneficiaries unknown" and that since the entire income belonged to the Deity, provisions of Sec. 160 & Sec. 164 of the Act are not applicable

That in a case u/s Sec. 167B of the Act "Charge of tax where shares of members in association of persons or body of individuals unknown, etc." the Hon'ble ITAT PUNE "SMC" Bench, in ITA 494/PUN/2019 (A.Y. 2015-16) in the case of Vijaya Durga Devi Trust Vs DCIT, CPC, Bangalore, in para 5 of the order held that "In the present case, it is a fact that the Deity is the sole beneficiary and it is not a case where the share of its income is unknown or indeterminate. In such a situation I am of the view that provisions of Sec. 167B would not be applicable."

7. We have considered the written submission filed, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). Similar issue arose before the Coordinate Bench of the Tribunal in the case of **Swati Sarawagi Family Trust vs. ACIT, Circle-7(1), Kolkata, ITA Nos. 2432 & 2433/KOL/2024** order dated 25.04.2025 relevant portions of which are extracted as under:

"5. We have considered the submissions made and find that the surcharge @ 10% only should have been applied as the income was below Rs. 1 Crore. For A.Y. as the total income was only Rs. 24,78,407, therefore, no surcharge was leviable. Hence, the appeals are allowed for both the assessment years and the Ld. AO is directed to apply the surcharge @10% for A.Y. 2022-23 as the income did not exceed Rs. 1.0 Crore and apply NIL surcharge for A.Y. 2023-24 as the income did not exceed Rs. 50,000/-. Hence Ground Nos. 1, 2 and 3 are allowed. Ground No. 5 is general in nature and does not require any separate adjudication. Ground No. 4 is consequential in nature and the Ld. AO is directed to charge interest as per law on the tax levied.

6. In the result, both the appeals filed by the assessee are allowed."

8. In the present case, the assessee contends that though the income is chargeable at MMR, since it did not exceed ₹50 Lakh, no surcharge was leviable for the impugned assessment year. Surcharge is applicable



at the rate as per the provisions of the relevant F.Y. and is applicable on the amount of the total income and not at the rate at which tax was leviable on the total income. Hence, following the finding in the case of **Swati Sarawagi Family Trust** (supra) as the surcharge is leviable on the quantum of total income and not at the rate on which the income tax was charged, and as the total income was not exceeding ₹50 lakh and there was a sole beneficiary, hence for the impugned A.Y. no surcharge was leviable. Hence though Ground No. 4 is dismissed as there was no prima facie adjustment made to the income of the assessee, but other grounds are allowed except Ground No. 6 which being general in nature does not call for separate adjudication.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 21st October, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 21.10.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. ***Sri Sri Laxmi Sri Sri Narayan and Sri Sri Kali Trust, 24, Ramanath Kaviraj Lane, Bowbazar, S C Mallick Square, Kolkata, West Bengal, 700012.***
2. ***DCIT, CPC [ITO, Ward-22(2), Kolkata].***
3. Addl/JCIT(A)-3, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata