

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.725/Del/2025, A.Y. 2023-24

Rose Trust, B-60/61, C/o Bajaj Auto Ltd., Naraina Ind. Area, Phase-II, New Delhi-110028 PAN: AAATR0380G	Vs.	Dy. Commissioner of Income Tax, Circle-49(1), Civic Centre, Mito Road New Delhi
(Appellant)		(Respondent)

Appellant by	Ms. Vasanti Patel, AR Sh. Mahendra Gohel, CA
Respondent by	Sh. Om Prakash, Sr. DR

Date of Hearing	10/10/2025
Date of Pronouncement	31/10/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal of the assessee for the Assessment Year ('AY') 2023-24 is directed against the order dated 31.12.2024 of the Additional/Joint Commissioner of Income Tax (Appeal), Mysore ['Addl. CIT(A)].

2. Considering the entire grounds of appeal and facts of the case, it is evident that we are tasked to decide the sole issue in dispute that whether the surcharge @ 37% levied by the Assessing Officer ('AO') on income of Rs.34,07,065/- (excluding dividend income of Rs.6,09,34,668/- out of the returned income of Rs.6,43,41,730/-) as against the admitted surcharge @ 15% is justified and in accordance with the law.

3. The relevant facts giving rise to this appeal are that the appellant assessee, a trust not availing benefits of section 11 of the Income Tax Act, 1961 ('Act'), filed its Income Tax Return ('ITR') of the relevant year on 19.07.2023 declaring income of Rs.6,43,41,730/- (including dividend income of Rs.6,09,34,668/-) of the relevant year. The said ITR was processed under section 143(1) of the Act, wherein the tax liability of Rs.2,75,02,229/- was determined as against the admitted tax liability of Rs.2,28,61,563/-. The AO (CPC) levied surcharge @ 37% as against the admitted surcharge of 15% as per the ITR. Aggrieved, the assessee filed a rectification petition under section 154 of the Act before the AO for revising the surcharge to 15% instead of 37% levied on entire returned income of Rs.6,43,41,730/-. In pursuance of the said rectification petition, the AO revised the surcharge rate of 15% on the dividend income of Rs.6,09,34,668/- only and not on the remaining returned income of Rs.34,07,065/- (the returned income of Rs.6,43,41,730/- minus the dividend income of Rs.6,09,34,668/-). Thus, the issue in dispute here is only the levy of surcharge @ 37% on the income Rs.34,07,065/-. Aggrieved with the processing under section 143(1) of the Act, the assessee appealed before the Ld. CIT(A), who vide impugned order dismissed the appeal as under: -

"8.1 The appellant was not having any income under section 115AD of the Act. For the AY 2023-24, the amount of income-tax computed under this sub-section shall be increased by a surcharge is to be calculated as under as the appellant was having any income under section 115AD of the Income-tax Act, and not having any income chargeable to tax under sub-section (1A) of section 115BAC of the Income Tax Act: —

"(a) in the case of every individual or Hindu undivided family or association persons except in a case of an association of persons consisting of only companies as its members, 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 having any income under section 115AD of the Income-tax Act, and not having any income chargeable to tax under sub-section (1A) of section 115BAC of the Income-tax Act,-

(i) having a total income exceeding fifty lakh rupees but not exceeding one crore rupees, at the rate of ten per cent of such income-tax;
(ii) having a total income exceeding one crore rupees, but not exceeding two crore rupees, at the rate of fifteen per cent of such income-tax;
(iii) having a total income exceeding two crore rupees, but not exceeding five crore rupees, at the rate of twenty-five per cent of such income-tax; and
(iv) having a total income exceeding five crore rupees, at the rate of thirty-seven per cent of such income-tax;"

The appellant submission of applicable surcharge 15% is not correct as the requirement of not having income under section 115AD of the Income-tax Act and not having income chargeable to tax under section 115BAC(1A) was not fulfilled by the appellant.

In view of the above, it is held that there is no infirmity in levy of surcharge at the rate of 37% and accordingly, the ground of appeal is dismissed."

4. Before us, Ms. Vasanti Patel, Ld. Authorized Representative ('AR') of the assessee submitted that the issue of surcharge has been settled by the Tribunal (Special Bench) decision in the case of Araadhya Jain Trust [2025] 173 taxmann.com 343 (Mum.). Hence, the rate of surcharge had to be worked out as per First Schedule to the Finance Act, 2023. She submitted that the AO had not appreciated bare facts of the case that the appellant assessee's income of Rs.6,43,41,730/- of the relevant year included dividend income of Rs.6,09,34,668/- and thus, the taxable income excluding dividend income was only Rs.34,07,065/-. The surcharge leviable in the present case

is as per the clause (d) and (e) of Paragraph-A of part-I of the First Schedule to the Finance Act, 2023, which reads as under:

“(d) having a total income (excluding the income by way of dividend or income under the provisions of section 111A, section 112 and section 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 section 111A, section 112 and section 112A of the Income-tax Act) exceeding two crore rupees, but is not covered under clauses (c) and (d), shall be applicable 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 section 111A, section 112 and section 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.”

5. The Ld. AR contended that Clause (iii) or clause (iv) of the paragraph (A) of Part-I of First Schedule to the Finance Act was not applicable here. Therefore, the rate of surcharge on the returned income in this case should be 15% instead of 37% charged by the AO. She placed reliance on the decisions of Tribunal in its own case of AY 2021-22; ITA No. 3036/Del/2024 and in cases of Jasmina Trust; ITA NO. 2209 & 2210/Del/2025 and Tulsi Trust; ITA NO. 1410/Del/2025. It was further contended that the surcharge leviable in this case, in the new tax regime opted by the appellant assessee, should be 15% instead of 37% as the appellant assessee was not having any income chargeable to tax under section 115AD of the Act. @ 15% instead of 37%. She thus, prayed for deletion of surcharge @ 22% (37-15).

6. The Ld. Sr. DR, placing emphasis on various paras of impugned order, prayed for dismissal of the appeal.

7. We have heard both parties and have perused the material available on the record. The issue of surcharge has been dealt in detail by the Tribunal (Special Bench) in the case of Araadhya Jain Trust (supra). The Tribunal (Special Bench) in the case of Araadhya Jain has held that the surcharge has to be computed over and above the quantum of income tax depending on either the rate provided in the Finance Act for that year or as per the relevant provisions of the Act. It has been further held by the Tribunal (Special Bench) in the case of Araadhya Jain Trust (supra) that the 'slab' refers to income and not 'tax' and not the surcharge. In terms of sections 164 and 167B read with section 2(29C) of the Act, tax as per Maximum Marginal Rate ('MMR') would mean 'the rate of tax applicable to the highest slab of income' under the item (1) of Paragraph A, Part (I) of First Schedule to the Finance Act, and not highest slab of surcharge.

8. In the present case, there is no dispute on rate of tax. A conjoint reading of sections 164 and 167B of the Act does not mention the rate of surcharge. Section 2(29C) of the Act does not itself prescribe the rate of surcharge; instead, it refers to the rates specified in the relevant year's Finance Act. Initially, the tax was levied @ 30% on entire income in this case. However, the appellant assessee, in first appellate proceedings before the Ld.

CIT(A), succeeded on the issue of rate of tax. The relevant finding of the Ld.

CIT(A) reads as under:

“7.1 The reply of the appellant and the impugned order u/s.143(1) have been perused. It is found that the appellant is an AOP and therefore, the tax rate slab as applicable to an individual is applicable to the appellant. This tax rate was not taken while calculating tax liability in the order u/s.143(1). In view of the above, the AO is directed to calculate tax liability of the appellant at the rate as applicable to an individual. In view of the above, the ground of appeal is allowed.”

9. Under the heading 'Surcharge on income-tax' in Paragraph A, Part I of the First Schedule of the Finance Act, it is provided that the income tax computed under various provisions shall be increased by a surcharge, calculated based on the taxpayer's category. Items (a) to (e) specify varying surcharge rates depending on the type of income. The first proviso under the heading 'Surcharge on income tax has carved out an exception regarding the rate of surcharge by stating that in case of dividend income or income under the provisions of section 111A, 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 view of exception, the AO revised the rate of surcharge on dividend income of Rs.6,09,34,668/-. However, the surcharge on income of Rs.34,07,065/- has been levied @ 37%. The dispute before us is the chargeability of surcharge @ 37% on income of Rs.34,07,065/-.

10. Keeping in view the ratio laid down by the Tribunal (Special Bench) in the case of Araadhya Jain Trust (supra) and above-mentioned cases relied upon by the Ld. Counsel, we are of the considered view that the applicable

rate of surcharge has to be levied in accordance with the Finance Act, 2023. The rate of surcharge has to be levied depending on the type of assessee, quantum and category of income. Here, the appellant assessee is an AOP having total income exceeding Rs.5 Crores including dividend income. It has opted new tax regime. We have considered the facts of the case in entirety and are of the considered view that the assessee fulfills all the conditions laid down in the Finance Act for applicability of surcharge @ 15% on income of Rs.34,07,065/- and thus, we direct the AO to levy surcharge @ 15% on income of Rs.34,07,065/-. The assessee gets consequential relief.

11. In the result, the appeal of the assessee is allowed as above.

Order pronounced in open Court on 31st October, 2025

Sd/-

**(VIKAS AWASTHY)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated: 31/10/2025

Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT/CIT
4. CIT(A)
5. Sr. DR, ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI