

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “A” BENCH: NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.4372 to 4374/Del/2025
[Assessment Year : 2021-22 to 2023-24]**

Vihar Trust B-60-61, C/0-Bajaj Auto Limited, Naraina Industrial Area, Phase-II, New Delhi-110028. PAN-AAATV0306N		vs	DCIT Circle-49(1) Civic Centre New Delhi
APPELLANT			RESPONDENT
Appellant by	Shri Vasanti Ben Patel, Adv. & Shri Mahender Gohel, Adv.		
Respondent by	Shri Krishna Kumar Ramawat, Sr. DR		
Date of Hearing	01.12.2025		
Date of Pronouncement	29.01.2026		

ORDER

PER MANISH AGARWAL, AM :

The captioned appeals are filed by assessee against the different orders, dated 06.06.2025, 10.06.2025 & 15.06.2025 passed by Ld. Commissioner of Income Tax (A)/ADDL/JCIT(A), Ranchi [“Ld.CIT(A)”] u/s 250 of the Income Tax Act, 1961 [“the Act”] arising out of intimation order dated 13.10.2022, 15.06.2023 & 06.06.2024 passed u/s 143(1) of the Act pertaining to assessment year 2021-22 to 2023-24 respectively.

2. As all the three captioned appeals filed by the assessee have similar issues which are inter-linked, inter-connected and this fact has been admitted by both the parties during the course of hearing before us, therefore, all the appeals filed by the assessee are decided by a common order.

3. Brief facts of the case are that assessee company is a charitable trust assessed as AOP (trust) and not claimed any benefit u/s 11 of the Act. The tax has been paid at the slab rate applicable to the individual however, the while processing the return of income for all the three years, CPC has charged the tax at Maximum Marginal Rate (“MMR”) and levy surcharge. The assessee claimed that since the assessee has surrendered the registration u/s 12A of the Act and therefore, its income is chargeable to tax at the rate prescribed for individuals and HUF’s. It is further submitted that CBDT vide Circular No.320 dated 11.01.1982 has stated that where the share of the member of the trust is not defined, the tax has to be charged at the normal rate applicable to Individuals /HUF and not as per marginal rate.

4. Ld.AR for the assessee submits that said circular is still in operation and therefore, the tax has to be charged at a normal rate of tax. In this regard, reliance is placed on the following judgements:-

- (i) *Shalmali Khasbardar Foundation v. ITO (Exemption) ITA No.: 3811/Mum/2024-Mumbai-Paper-book Page No. 81 to 91*

- (ii) *Association of Interlocking Surgeons v. ITO (2025) 172 taxmann.com 9 (Pune) - Paper-book Page No. 92 to 99.*
- (iii) *Mahakavi Edasseri Smarka Trust v. ITOe (2024) taxmann.com 44 (Cochin) - Paper-book Page No. 100 to 104.*
- (iv) *Jain Sangh Parabdi Khayu Trustee v. DCIT, CPC Bangalore ITA No.: 353-354/AHD/2021-Paper-book Page No. 105 to 109.*

5. On the other hand, Ld. Sr. DR for the Revenue supported the orders of the lower authorities.

6. Heard the contentions of both parties and perused the material available on record. The sole dispute in this case is with respect to charging of tax whether it is on Maximum Marginal Rate (“MMR”) or as per normal rates of tax as applicable on Individual and HUF. The Co-ordinate bench of the Tribunal in the case of Vindhya Trust in ITA No.131/Del/2025 order dated 23.07.2025 has dealt with the issue and decided the same in favour of the assessee by making following observations:-

“2. At the time of hearing, ld. AR of the assessee submitted that the assessee is an AOP, filed its return of income for the AY 2021-22 on 11.10.2021 declaring total income of Rs.1,18,24,410/-. The return was processed under section 143(1) of the Income-tax Act, 1961 (for short ‘the Act’) wherein CPC has accepted the return of income, however the AO levied tax at a flat rate of 30% as against the assessee’s applicable tax slab rates in the case of an individual and also levied surcharge @ 37% instead of 15% applicable to the assessee.

3. Aggrieved, assessee preferred an appeal before the ld. CIT (A). Ld. CIT(A) considered the submissions of the assessee and by reference to the return of income filed by the assessee, he observed that the shares of the members of the assessee AOP are not undetermined, therefore, tax shall be charged at the total income of the assessee at the maximum marginal rate as per section 167B of the Act.

Similarly, after considering the submissions of the assessee, ld. CIT (A) sustained the surcharge levied by the AO and held that there is no mistake in calculating the tax liability of the assessee.

4. Aggrieved with the above order, assessee is in appeal before us.

5. At the time of hearing, ld. AR of the assessee brought to our notice that in subsequent assessment year i.e. AY 2022-23, ld. JCIT (A)-3 considered the detailed submissions of the assessee and allowed the appeal of the assessee on both counts i.e. income chargeable and tax at MMR as well as levy of surcharge. He filed a copy of the same and further he submitted that in the following cases, the respective ITAT Benches allowed the similar issue contested before it :-

- (i) ITAT, Mumbai Bench in the case of Dr. Shalmali Khasbardar Foundation v. ITO (Exemption) – ITA No.3811/Mum/2024;
- (ii) ITAT, Pune Bench in the case of National Association of Interlocking Surgeons vs. ITO – (2025) 172 taxmann.com 9 (Pune);
- (iii) ITAT, Cochin Bench in the case of Mahakavi Edasseri Smarka Trust vs. ITO (E) – (2024) taxmann.com 44 (Cochin);
- (iv) ITAT, SMC, Ahmedabad Bench in the case of Jain Sangh Parabdi Khayu Trustee vs. DCIT, Bangalore – ITA No.353-354/AHD/2021.

6. On the other hand, ld. DR of the Revenue relied on the orders of the authorities below.

7. Considered the rival submissions and material placed on record. We observe that in the current assessment year, lower authorities have applied the rate of MMR and also applied surcharge applicable to AOP as applicable to section 167B (1) of the Act. However, it is brought to our notice that the constitution and functions of the assessee are exactly similar and consistently followed by the assessee. In subsequent assessment year i.e. 2022-23, ld. CIT (A) has considered the similar facts on record and allowed the same by relying on the CBDT circular. For the sake of brevity, the same is reproduced below :-

“7.2.5. Section 167(1) of the Act, makes it very clear that this section would not apply to the company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1960), or under any law corresponding to that Act in force in any part of India. The appellant is a charitable trust registered under Charitable and Religious Trust Act, 1920 and therefore, appellant can't be subjected to tax @MMR at any cost.

7.2.6. The appellant being a public charitable trust, there profit ratio/ shares can't be allocated among the members and once right is not allocated, the question whether the shares are determinate or indeterminate doesn't arise. Further, this organization was not formed for a benefit of few individuals, like in private trusts and therefore sharing of income and determination of income of each individual does not arise. As per sub-section (2) of section 1678 of the Act which deals with association of persons or body of individuals, not being a case falling under subsection (1), where individual shares of members are not indeterminate or unknown, in other words, the shares of members is known and fixed is also not applicable to facts of the appellant for the reason mentioned supra. Hence, the rate of MMR under both sub sections (1) and (2) of 1678 is not applicable to appellant' case.

7.2.7. It is pertinent to refer to the Circular of the C8DT in No. 320, dated 11.01.1982. The said circular is reproduced as under:

"Circular: No. 320 [F. No. 131(31)/81-TP (Pt.)], dated 11-1-1982- SECTION 167A ASSESSMENT WHERE SHARES OF MEMBERS UNKNOWN)

911. Whether the section is applicable to income received by trustees on behalf of provident funds created exclusively for the benefit of employees 5 ITA No.131/DEL/2025

1. A reference is invited to paragraph 15. 1 to 15.7 of the Explanatory Notes on the provisions relating to direct taxes in the Finance Act, 1981 [Circular No. 308, dated 29-6-1981] which explain the scope and ambit of section 167 A, as inserted by the Finance Act, 1981.
2. A question has been raise whether the provisions of section 167 A of the Income-tax Act which provide for charging of tax at the maximum marginal rate on the total income of an association of persons where the individual shares of members in the income of such association are indeterminate or unknown would also apply to income receivable by trustees on behalf of provident funds, superannuation funds, gratuity funds, pension funds, etc., created bona fide by persons carrying on business or profession exclusively for the benefit of the persons employed in such business. The Board have been advised that cases where income received by the trustees on behalf of a recognized

provident fund, approved superannuation fund and approved gratuity fund is governed by section 10(25) of the Income-tax Act, the question of their being charged to tax does not arise. So far as cases where income is receivable by the trustees, on behalf of an unrecognized provident fund or an unapproved superannuation fund, gratuity fund, pension fund or any other fund created bona fide by a person carrying on a business or profession exclusively for the benefit of persons employed in such business or profession are concerned, they will continue to be charged to tax in the manner prescribed by section 164(1)(iv) of the Income-tax Act, as hitherto. Similarly, in the cases of registered societies, trade and professional associations, social and sports clubs, charitable or religious trusts, etc., where the members or trustees are not entitled to any share in the income of the association of persons, the provisions of new section 167 A will not be attracted and, accordingly, tax will be payable in such cases at the rate ordinarily applicable to the total income of an association of persons and not at the maximum marginal rate".

7.2.8. In view of the above, the appeal of the appellant is allowed and AO is directed to tax the appellant's income at the normal tax rates applicable to AOP or Body of Individuals for the AY 2022-23."

8. Similarly, we observe that ITAT, Cochin Bench in the case of Mahakavi Edasserri Smarka Trust (supra) considered the similar issue and held as under:-

"4.6 We again find no reason for application of section 167B of the Act, prescribing the maximum marginal rate in the instant case, which is one of a charitable trust. Section 167B, as a reading of the provision would show, is only where the shares of the beneficiaries of the trust are not known. The assessee, registered as a charitable trust, is a public body and, accordingly, there is no question of its beneficiaries being individual members, whose shares have therefore to be defined. The application thereof in the instant case is wholly misconceived. The matter in fact stands clarified by the Board per its Circular No. 320, dated 11/01/1982, also binding on the Revenue. The tax rate accordingly is to be computed as per the normal rates as applicable to Association of Persons. The same, in our view, is again an apparent mistake and, where contested,

outside the ambit of s. 143(1)(a) in the first instance, so that it could not have been effected there-under.

4.7 We decide accordingly.”

9. Respectfully following the above decision and also the decision of the ld. CIT (A) in subsequent assessment year i.e. 2022-23, we allow the grounds raised by the assessee.”

7. Thus, by respectfully following the aforesaid judgements and other related judgements relied upon by Ld.AR for the assessee, we hold that the tax has to be charged at a normal rate of tax as against MMR. Accordingly, grounds raised in above captioned three appeals are allowed.

8. In the result, captioned appeals of the assessee in **ITA Nos. 4372 to 4374/Del/2025 [Assessment Years 2021-22 to 2023-24]** respectively, are allowed.

Order pronounced in the open Court on 29.01.2026.

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:-29.01.2026

Amit Kumar, Sr.P.S

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

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