

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, KOLKATA

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

**I.T.A. Nos. 3060-3062/Kol/2025
(Assessment Years 2020-21 to 2022-23)**

Chanda Bharech Beneficiary Trust,

11/1, Suite S-401, Ideal Plaza,

Sarat Bose Road,

Kolkata - 700020

[PAN: AAATC6298A]

..... **Appellant**

vs.

The Income Tax Officer,

Ward 33(2), Kolkata,

Middleton Row,

Kolkata - 700071

..... **Respondent**

Appearances by:

Assessee represented by : S. Jhajharai, AR

Department represented by : Susanta Saha, Sr. DR

Date of concluding the hearing : 29.01.2026

Date of pronouncing the order : 05.03.2026

ORDER

This is a batch of three appeals filed by the same assessee arising from order passed u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”) by the Ld. Addl./Joint Commissioner of Income Tax (Appeals)-2, Bengaluru (hereinafter referred to ‘the Ld. Addl./JCIT(A)'). Since the above appeals are heard together and the issues are common, these are being disposed of for the sake of convenience. We would first take up appeal ITA No. 3060/Kol/2025.

ITA No. 3060/Kol/2025

2. The only issue raised by the assessee is against the order of the Ld. CIT(A) upholding the assessment order, wherein surcharge @ 37% has been computed on total income of ₹ 4,56,900/-.

3. At the outset, the Ld. Counsel for the assessee submitted before the Bench that the issue is squarely covered by the Special Bench of the Mumbai in the case of Araadhya Jain Trust Vs. ITO, ITA No. 4272/Mum/2024, A.Y. 2023-24, order dated 09.04.2025, wherein a similar issue has been decided in favour of the assessee. The Ld. AR therefore, prayed that the issue may be kindly to be decided in the light of said decision by following the same as the facts are similar.

4. The Ld. DR on the other hand, relied on the order of authorities below.

5. The facts in brief are that the assessee filed its return of income for the impugned assessment year on 17.10.2020 declaring total income of ₹ 4,56,900/- on which, tax of ₹ 1,42,553/- was computed. While filing the return of income surcharge was calculated based on the slab applicable to the individual. Pertinent to state that the assessee is discretionary trust, and the order under Section 143(1) of the Act was passed by the AO-CPC on 24.12.2021, wherein the total income of the assessee trust was assessed incorrectly at ₹ 12,20,710/-. The assessee filed rectification before the AO-CPC vide order dated 21.05.2024 for calculating wrong income and against the levy of interest. The AO CPC passed the rectification order dated 21.05.2024 wherein surcharge @ 37% was levied on the assessee which was not therein the original order passed under Section 143(1) of the Act. Consequent to the demand of ₹ 54,600/- was raised.

6. Thereafter, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal by upholding that the maximum marginal rate for A.Y. 2020-21 was 42.74% and Assessing Officer has the power to levy surcharge @ 37% while processing the return of income.

7. After hearing the rival contentions and perusing the materials available on record, we find that the assessee is a private discretionary trust and income amounts in all the assessment years are below 50 lacs. Therefore, the issue before us is whether the assessee trust is eligible to be taxed at the rate of 30% + cess or at the rate of 30% + surcharge+cess. We also note that the maximum marginal rate has been defined u/s 2(29C) of the Act, which means the rate of income including the surcharge at income tax, if any, applicable in relation to highest slab of income in case of individual, association of persons or as the case may be, body of individual as specified in the Finance Act of the relevant year. We note that the trust/ association of person / body of individual are covered either u/s 164 or u/s 167B of the Act which provides that income of these entities / body are brought to tax at maximum marginal rate. We note that it has been provided u/s 2(29C) of the Act that income has to be assessed in case of individual/ AOP/ POI at the highest applicable rate to the individual/ BOI/ AOP including surcharge on the income tax, if any, applicable. Thus, firstly we have to calculate the income tax at the highest slab and thereafter compute the surcharge, if any, on the said income tax. We note that the maximum marginal rate of tax has to be determined on the basis of relevant Finance Act, based upon the rate of income tax provided in the Finance Act, for the relevant assessment year. We note that as per Paragraph A Part (I) of First Schedule to Finance Act, 2023, the threshold limit for applicability of surcharge is Rs.50 lacs and since the incomes in all the three assessment years are below 50 lacs, therefore no surcharge is attracted. The case of the assessee is squarely covered by the decision of Special Bench in case of Araadhya Jain Trust vs. Income-tax Officer [2025] 173 taxmann.com 343 (Mumbai - Trib.) (SB)/[2025] 126 ITR(T) 1 (Mumbai - Trib.) (SB)/[2025] 212 ITD 1 (Mumbai - Trib.) (SB)[09-04-2025], wherein the co-ordinate Bench has held as under:-

"21. *We have given a thoughtful consideration to the rival submissions and perused materials on record. We have also applied our mind to the judicial*

precedents cited before us. The short issue arising for consideration before us is, 'whether the definition of maximum marginal rate in terms with section 2(29C) of the Act can be interpreted in a manner to suggest that not only the rate of tax on the total income of assessee would be at the highest rate, but even the surcharge to be computed on such tax would be at the highest rate'.

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 incometax, 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 incometax.

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 (I) 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

(I) 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,—

- | | | |
|-----|--|---|
| (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 exceeds 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 exceeds 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. 5,00,000 but does not exceed Rs. 10,00,000 | Rs.10,000 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. 1,10,000 plus 30 per cent of the amount by which the total income exceeds 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. 10,00,000 | 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 in accordance with the preceding provisions of this Paragraph, or the provisions of section 111A or section 112 or section 112A or the provisions of section 115BAC 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 section 111A, section 112 and section 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 section 111A, section 112 and section 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 section 111A, section 112 and section 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 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) 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 in-come-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:

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 (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(29C) 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 2(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 the 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 (I) 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 115BAC 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 incometax 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 incometax' 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 111A, 112A and section 112A of the Act, the rate of surcharge on the amount of incometax 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 part 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, is 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 incometax 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 the 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 (supra) was subsequently recalled. Whereas, the bench has followed the decision of Anant Bajaj Trust (supra) while deciding the appeal of Kapur Family Trust (supra). 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 rate' 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 1, 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."*

8. Therefore, considering the facts of the assessee and the decision as discussed above, we opine that surcharge is not applicable to the assessee as the income is below Rs. 50 lacs in each year. We , therefore, respectfully following the decision of the special bench, set aside the order of ld. CIT (A) and direct the ld. AO not to include the surcharge in the maximum rate of tax. As a result, the appeal of the assessee is allowed.

ITA Nos 361 & 362/Kol/2025

9. Since the facts and issues involved in these appeals are identical, except difference in figures or calculations, therefore, our findings/decision given above in ITA No. 3060/Kol/2025 will, mutatis mutandis, apply to ITA No.3061 & 3062/Kol/2025 as well and consequently the appeals are allowed.

10. In the result, the appeals of the assessee are allowed.

Order pronounced on 05.03.2026

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 05.03.2026
AK, Sr. P.S.

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches

