



DIRECT TAX ALERT

17th April 2025

Special Bench of Hon'ble Mumbai Tribunal clarifies applicability of surcharge in case of Private Discretionary Trust chargeable to tax at Maximum Marginal Rate

FACTS OF THE CASE

- The assessee¹, Araadhya Jain Trust, a Private Discretionary Trust, filed its return of income for the Assessment Year 2023–24, declaring a total income of Rs. 4.85 lacs. As per the provisions of Sec. 164 r.w.s. 2(29C) of the Act, tax was paid by the assessee at the Maximum Marginal Rate (MMR), which is 30% for association of persons.
- However, while processing return of income, the CPC levied surcharge on income tax at the highest rate (i.e., 37%) applicable under Finance Act on the tax computed at MMR.
- The assessee challenged this treatment before the CIT(Appeals) on the contention that surcharge was not to be levied as total income of the assessee did not exceed Rs. 50 lacs. The CIT(Appeals) upheld the levy of surcharge at the maximum rate (i.e., 37%) and subsequently the assessee preferred an

¹ Araadhya Jain Trust –vs.– ITO (ITA NO. 4272/MUM/2024 dated 09-04-2025)



appeal before the ITAT, contending that while tax is payable at MMR, surcharge must still be computed in accordance with slab-based thresholds as prescribed in Paragraph A, Part I of First Schedule of the Finance Act, 2023.

- The assessee's appeal for the Assessment Year 2022–23 which involved an identical issue was disposed off by the Tribunal with a view that highest rate of surcharge as provided under the Finance Act, would be applicable irrespective of the quantum of income.
- Given that the issue involved conflicting judicial precedents in other assessee's, the assessee furnished an application before the Hon'ble President of ITAT requesting to constitute a Special Bench for deciding the issue. The Hon'ble President of the ITAT constituted a Special Bench u/s 255(3) to decide the issue. Five more assessee's, including NIK Family Trust² and Anu Aga Family Discretionary Trust³, joined as interveners.

CONTENTION OF THE ASSESSEE

- The assessee argued that for private discretionary trust, tax is charged as per the provisions of Sec. 164/167B of the Act i.e. at the MMR. However, surcharge is imposed as per Sec. 2(1) of the Finance Act, 2023 and its First Schedule, which provides for:

- (a) 10% surcharge for income exceeding Rs.50 lakh but not exceeding Rs.1 crore;
- (b) 15%, 25%, and 37% for progressively higher income slabs.

Since the trust's income is merely Rs. 4.85 lacs, no surcharge is leviable under the slab-based system of surcharge as prescribed in the Finance Act.

- The assessee further relied upon various Tribunal decisions, including Tayal Sales Corporation⁴ Lintas Employees Professional Development Trust⁵, Ujjwal Business Trust⁶.
- The assessee further contended that MMR merely replaces the basic/normal rate of tax and has nothing to do with increase of income tax by surcharge. It stated that Sec. 2(29C) of the Act can neither play any role nor can guide the mode and manner of computation of surcharge.
- The words "if any" in Sec. 2(29C) mean surcharge applies only when it is actually applicable under the slab system and not mandatorily at the highest rate. Further, for certain categories of income, the maximum rate of surcharge as prescribed under the Finance Act, 2023 is 15%. Hence, surcharge cannot be levied at the maximum rate regardless of quantum of income, nature of income or assessee, as doing so would lead to an absurd outcome.

² ITA No. 403/MUM/2025

³ ITA No. 1258/PUN/2024

⁴ ITO -vs.- Tayal Sales Corporation (2003) 1 SOT 579 (Hyd. ITAT)

⁵ Lintas Employees Professional Development Trust - vs.- ITO (ITA No. 4791/MUM/2023 dated 29-05-2024)

⁶ Ujjwal Business Trust -vs.- CPC (ITA No. 602/MUM/2024 dated 28-06-2024)



- Further, the Finance Act and the Constitution (Art. 271) treat surcharge as distinct from income tax and its collection is treated differently than the income tax levied at the specified rates.

CONTENTION OF THE REVENUE

- The Ld. DR argued that the intent of the legislature behind introduction of MMR was to curb tax avoidance. Furthermore, to discourage discretionary trusts, the income of such trusts was subjected to tax at MMR.
- It was further contended that the intention of legislation in charging tax and surcharge at MMR is clear from the use of word “if any” in Sec. 2(29C) of the Act. The word “if any” succeeding the word “including surcharge on income tax” are meant to indicate that surcharge would be included in calculation of MMR at the highest rate, only when its levy is specifically provided under the Finance Act of the relevant year, otherwise not.
- According to the revenue, in terms of Sec. 164 & 167B of the Act, the tax and surcharge for a discretionary trust has to be computed at the highest rate, irrespective of the quantum of income. In this regard, the revenue relied upon various prior ITAT rulings which, in their view, implied a cumulative highest tax and surcharge treatment.

ISSUES BEFORE THE HON’BLE MUMBAI TRIBUNAL

- Whether, in the case of Private Discretionary Trusts whose income is chargeable to tax at MMR, surcharge is to be charged at the highest applicable rate or at slab rates based on income?

RULING OF THE HON’BLE TRIBUNAL

- The Hon’ble Special Bench of the Mumbai Tribunal held that Surcharge is separate from tax and must be calculated as per the mechanism laid out in the First Schedule of the Finance Act. Further, Sec. 164 and Sec. 2(29C) refer only to computation of basic income tax at MMR. They do not fix a surcharge rate.
- Tribunal noted that Maximum Marginal Rate, as defined, refers to the rate applicable to the highest slab of income of an association of person (i.e., 30%) and includes surcharge only “if any”—meaning surcharge applies only when prescribed by the Finance Act.
- Relying upon Paragraph A, Part I of the First Schedule to the Finance Act, 2023, the Tribunal held that surcharge applies progressively, starting only above Rs. 50 lakh of income. Thus, the trust, having income below Rs. 50 lakh, falls outside the threshold for any surcharge.
- Past decisions relied upon by Revenue, were found to be either recalled or not applicable to the issue of surcharge computation.
- The Tribunal clarified that the term ‘slab’ refers to income, not tax rates, relying on a 1965 Press Note & CBDT circulars. Thus,



surcharge applicability depends on the level of income.

- The ITAT rejected the Revenue's view that MMR should be interpreted as the combined highest income tax rate plus highest surcharge (i.e., 30% + 37%). The Tribunal called this interpretation absurd and discriminatory, as it would otiose the exception provided under the first proviso of 'Surcharge on Income Tax' which provides that where total income includes dividend income or income under the provisions of Sec. 111A, 112A, and Sec. 112A of the Act, surcharge shall not exceed 15%.
- In conclusion, the Court affirmed the view of the assessee that in the case of Private Discretionary Trusts whose income is chargeable to tax at MMR, the surcharge has to be computed on the income-tax having reference to the slab rates prescribed in the Finance Act. Thus, the highest rate of surcharge (37%) is not to be applied by default. The same would be leviable only when income actually falls within that bracket.
- In the case of Araadhya Jain Trust, income was only Rs. 4.85 lakh, i.e., well below the threshold limit of Rs. 50 lakh. Hence, no surcharge could be imposed.
- Since, the CPC had been mechanically applying the highest surcharge to all discretionary trusts, this ruling will correct that practice. Trusts with income below surcharge thresholds may now claim refunds or challenge prior assessments.
- In line with earlier Court precedents, the Hon'ble Tribunal favored contextual over literal interpretation, especially to avoid absurd outcomes like taxing income of Rs. 4.85 lakh of trust at the same effective rate as that to taxpayer having income more than Rs. 5 crore.

KEY TAKEAWAYS

- This decision provides major relief for Private Discretionary Trusts with low or moderate income. It clarifies that surcharge is not to be auto-applied at the highest rate where MMR applies.



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