



N.A.SHAH ASSOCIATES LLP
Chartered Accountants

TAX JURISPRUDENCE

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EXECUTIVE SUMMARY OF JUDGEMENTS / ADVANCE RULINGS UNDER DIRECT AND INDIRECT TAXES

We are pleased to draw your attention to following important decisions which might be useful for you to take call on tax position.

Case & Citation	Issue Involved	Decision
Direct Tax		
Araadhya Jain Trust [TS-366-ITAT-2025] [Mumbai ITAT SB] [10.04.2025]	In the case of a private discretionary trust whose income is chargeable to tax at maximum marginal rate (MMR), whether surcharge is applicable at the highest applicable rate or as per slab rates?	The Special Bench of Mumbai ITAT held that in the case of private discretionary trust whose income is chargeable to tax at maximum marginal rate, surcharge is chargeable at the slab rates prescribed in the Finance Act under the heading 'surcharge on income tax' appearing in Para A, Part 1, First Schedule, applicable to the relevant assessment year and not at highest applicable rate of surcharge.
Indirect Tax		
M/s Solvi Enterprises Vs Additional Commissioner Grade 2 and Another [W.P.(C) No. 1282/1285/1287/1288/1289 of 2024]	Whether ITC can be denied on the ground that the dealer's registration was cancelled subsequently, even though the transaction occurred while the supplier was registered under GST?	The Hon'ble High Court of Allahabad held that if the supplier was registered under GST at time of transaction, ITC cannot be denied merely on the ground that the supplier registration was cancelled subsequently.

The brief analysis of above referred decisions and rulings are given below:

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DIRECT TAX

Araadhya Jain Trust [TS-366-ITAT-2025] [Mumbai ITAT SB] [10.04.2025]

Facts in brief & Issue Involved:

- ♦ The assessee, a Private Discretionary Trust, filed its ROI for AY 2023-24 declaring total income of Rs. 4,85,290/- and paid tax at MMR. The Centralized Processing Centre (CPC) levied highest rate of surcharge on the MMR at which the tax was computed.
- ♦ The assessee's appeal before the CIT(A) was dismissed holding that the highest rate of surcharge is applicable on the tax computed under MMR. Aggrieved with the Order of CIT(A) the assessee preferred appeal before ITAT.

Contentions of Assessee:

- ♦ In case of Private Discretionary Trust, tax is to be charged at MMR which is defined to mean the rate of income tax applicable to highest slab of income as specified in the Finance Act of the relevant year which is to be increased by applicable surcharge.
- ♦ Section 2(1) of the Finance Act provides that the tax shall be charged at the rates specified in First Schedule which is to be increased by surcharge based on slab rates provided in the said Schedule. Accordingly, levy of surcharge and the rate at which it has to be levied have a direct nexus to the quantum of income. Subsection (3) contains reference to section 167B providing for tax at MMR in case of private discretionary trust. However, the rates of tax for the purpose of MMR are provided in First Schedule.
- ♦ There is difference between the 'rates of income tax' and 'surcharge', as the Finance Act speaks of 'rates of income tax' and 'surcharge', rather than 'rates of surcharge'

- ♦ As per Article 271 of the Constitution of India, surcharge is recognized as a separate category and its collection is treated differently than the income tax.
- ♦ In the definition of 'maximum marginal rate' u/s.2(29C) of the Act, the words **"including surcharge on income-tax, if any"**, since are placed in round brackets within the definition clause, the term must be interpreted as connoting extra information separate from the main context of the definition itself.
- ♦ Section 2(29C) of the Act neither can play any role nor can guide the mode and manner of computation of surcharge as it is exclusively provided under the Finance Act.
- ♦ Therefore, it was submitted that the definition of MMR u/s 2(29C) cannot be interpreted to hold that the rate of tax at MMR also requires levy of surcharge at the maximum rate.

Contentions of Revenue:

- ♦ It was contended that the words 'if any' included in section 2(29C) would mean that whether the levy of surcharge is introduced in the Finance Act of the relevant assessment year or not. If the Finance Act provides for levy of surcharge, then surcharge has to be levied at the highest rate provided under the Finance Act. In case, the levy of surcharge is not at all available under the relevant Finance Act, then no surcharge will be leviable.
- ♦ Accordingly, it was submitted that in case of discretionary trusts, in terms with section 164 and 167B of the Act, r.w.s. 2(29C) of the Act, tax and surcharge has to be computed at the highest rate, irrespective of the quantum of income.

Observations & Decision of the Special Bench of Hon'ble Mumbai ITAT:

- ♦ The tax on the total income of the discretionary trust has to be determined by applying the MMR, as applicable to the highest slab of income relating to an

individual, AOP or BOI specified in the Finance Act of the relevant year. Thereafter, the surcharge, if any, has to be computed on such income tax.

- ♦ In case of discretionary trusts, sections 164/167B of the Act do not by themselves specify the rate of tax. They only provide that tax on total income is to be determined at the MMR. The definition of MMR u/s.2(29C) of the Act, in turn, refers to the rate of income-tax applicable to the highest slab including surcharge as provided under the Finance Act of the relevant year.
- ♦ The term "slab" is not explicitly defined in Section 2(1) or the First Schedule of the Finance Act. However, it is understood to refer to income levels, not tax rates. Section 2(29C) supports this by defining the MMR as the rate applicable to the highest income slab. Therefore, in context of sections 164/167B read with 2(29C), tax at the MMR means the rate of tax on the highest income slab.
- ♦ If surcharge is always applied at the highest rate of 37% as per section 2(29C), it would render the surcharge rates mentioned under clauses (a) to (e) as well as the 15% cap under the First proviso to First Schedule meaningless. This interpretation leads to absurdity. Accordingly, the phrase "including Surcharge on income-tax, if any" in section 2(29C) refers to the surcharge rates outlined under the heading "Surcharge on income-tax" in Paragraph A, Part I of the First Schedule to the Finance Act, which provides the applicable computation mechanism.
- ♦ Accordingly, it was held that in case of private discretionary trusts, surcharge has to be computed on the income tax having reference to the slab rate prescribed in the Finance Act applicable to the relevant assessment year.

NASA Comments:

- ♦ This decision would be of great relief to the taxpayers paying tax at MMR and accordingly, the litigations involving this issue will also be reduced significantly.

INDIRECT TAX

M/s Solvi Enterprises Vs Additional Commissioner Grade 2 and Another [W.P.(C) No. 1282/1285/1287/1288/1289 of 2024]

Facts in brief & Issue Involved

- ♦ M/s Solvi Enterprises (hereinafter refer as "Petitioner") is a registered dealer in GST engaged in the business of sale and purchase of scraps etc.
- ♦ The Petitioner acquired products from the registered dealer, M/s Radhe International (hereinafter referred to as 'the seller'), as evidenced by the tax invoice dated 6.12.2018, and subsequently claimed the ITC on the GST Portal for the aforementioned invoice.
- ♦ The Department cancelled the GST registration of the seller with effect from 29.01.2020 and initiated proceeding under section 74 of CGST Act, 2017 by issuing DRC-01 against the Petitioner for reversal ITC claimed on the invoice issued by the seller on account of cancellation of the seller GST registration.
- ♦ Thus, aggrieved by the order the Petitioner was filed in Hon'ble Allahabad High Court.

Contentions of Petitioners

- ♦ The Petitioner contends that ITC claimed by the Petitioner in GST returns is covered by the statutory documents and availed after fulfilling the conditions mentioned under relevant section of CGST Act, 2017.
- ♦ The Petitioner further submitted that merely at the subsequent stage, if the GST registration of the seller has been cancelled, Petitioner cannot be held responsible.


- ♦ The Petitioner also submitted that the seller had filed its return and therefore reflected in GSTR-2A of Petitioner showing genuineness of transaction.

Observations & Decision of the Honorable Allahabad High Court

- ♦ The Hon'ble Court held that it is **not in dispute** that the purchase was made by the petitioner from the seller, which was duly registered under the GST when the transaction was made.
- ♦ The Hon'ble High Court also mentioned that once the seller was registered at the time of transaction in question, therefore **"No Adverse"** inference can be drawn against the Petitioner. The Hon'ble High Court further held that the registration of seller was cancelled retrospectively and not from inception which goes to show that the transaction between petitioner and seller was registered.
- ♦ Further, Hon'ble High Court has stated that since all the details are available in the GST portal, the authorities were ought to verify the filing of GSTR 1 & GSTR 3B of the seller, however the authorities failed to do so.
- ♦ In light of the above, the Hon'ble court remanded the order to the concerned authority for fresh adjudication.

NASA Comments

- ♦ This ruling of Hon'ble High Court is welcome judgement as it highlights if GST registration of the supplier has been cancelled after the date of invoice issued by the supplier, the recipient of goods/service are not held liable for reversal of ITC.



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B 21-25, Paragon Centre,
Pandurang Budhakar Marg, Mumbai – 400013
Tel: 91-022-4073 3000, Fax: 91-022-4073 3090
E-mail Id: info@nashah.com

