

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH

**Before: Shri Sanjay Garg, Judicial Member
And Ms. Annapurna Gupta, Accountant Member**

**ITA Nos. 1, 2 & 3 /Ahd/2025
Assessment Year 2021-22, 2022-23 & 2023-24**

Shakuntala Balvantray Trust, 8 Prabhu Park, B/h Commerce College Hostel, Navrangpura, Ahmedbad-380009 PAN: AAATS7546M (Appellant)	Vs	The ITO, Ward-1(Exemption), Ahmedabad (Respondent)
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**Assessee by: Shri S.N. Divetia, A.R. &
Shri Samir Shah, A.R.
Revenue by: Shri Ashok Kumar Suthar, Sr. D.R.**

Date of hearing : 05-03-2025
Date of pronouncement : 28-04-2025

आदेश/ORDER

Per Sanjay Garg, Judicial Member:

The present appeals have been preferred by the assessee against the order passed by Commissioner of Income Tax (Appeals)/Additional/Joint Commissioner of Income Tax (Appeals)-5 Mumbai [hereinafter referred to as “CIT(A)”] dated 30-12-2024 arising out of the order passed u/s. 143(1) of the Income Tax Act, 1961 (here-in-after referred to as “the Act”) relevant to the Assessment Years 2021-22 to 2023-24. Since facts and issues involved in all the captioned appeals are identical, hence the same have been heard together and are being disposed of by the

common order. ITA No. 1/Ahd/2025 is taken as a lead case for the purpose of narration of facts.

ITA No. 1/Ahd/2025 A.Y. 2021-22

2. The assessee has taken the following grounds of appeal:-

“1.1 The order u/s 250 passed on 30.12.2024 for A.Y. 2021-22 by NFAC [CIT(A)] Add) 3CIT(A)-5 Mumbai (for short (CIT(A)) confirming the total demand of Rs 1,07,150 by applying maximum rate instead of normal rate under proviso to sec 164(1), though it is the only discretionary trust settled under the WILL of Late Shakuntala Balvantray is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering the past records and five written submissions uploaded from time to time before confirming the raising taxes at MMR instead of normal rate under proviso to sec 164(1)

1.3 The Ld CIT(A) has grievously erred in law and or on facts in upholding that the appellant Trust was liable to tax at MMR though it is the only discretionary trust settled under the WILL of Late Shakuntala Balvantray.

1.4 That in the facts and circumstances of the case as well as in law the Ld. CIT(A) has grievously erred in upholding that the appellant Trust was liable to tax at MMR though it is the only discretionary trust settled under the WILL of Late Shakuntala Balvantray.

1.5 That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) ought to have allowed further opportunity of video conference when the hearings were scheduled from time to time thereafter.

3. The brief facts of the case are that the assessee trust is a ‘trust at will’, which was created by late Smt. Sakuntalla Balvantrai, for the benefit of her daughter and children of her daughter. The only income of the trust is the interest income which is distributed to the beneficiaries. The

4. Before us, the ld. counsel for the assessee has submitted there are only three beneficiaries of the said trust created by late Sakuntalla Balvantrai. The ld. counsel of the assessee submitted that the case of the assessee trust falls under the exceptions as provided u/s. 164 of the Act. He has invited our attention to first proviso to section 164(1) of the Act which is reproduced as under:-

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ii) the relevant income or part of relevant income is receivable under "[a trust declared by any person by will and such trust is the only trust so declared by him]; or

5. The ld. counsel has further drawn our attention to page no. 34 of the paper book which is a copy of the CBDT Circular No. 577 dated 04-09-1990. The contents of which are reproduced as under:-

“1. A question has been raised whether the provisions of section 167B of the Income-tax Act, 1961, which generally 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 under a trust declared by any person by will where such trust is the only trust declared by him. Such trusts, it would be noticed, are referred to at item No. (ii) in the first proviso to section 164(1) of the Act.

2. This matter has been examined in the Board There was never an intention to subject the income of the aforesaid trusts to income-tax at the maximum marginal rate It is also well-settled that where a specific provision has been made in the law in relation to any matter and where that provision is beneficial to the taxpayer, that matter is to be governed by that special provision and not by any other general provision relating to that subject. Therefore, the income of a trust declared by any person by will, where such trust is the only trust so declared by him, will continue to be charged to tax in the manner prescribed in the first proviso to section 164(1), as hitherto.

3. Similarly, other cases covered by the first proviso to section 164(1) and the first proviso to section 164(3) would also not attract the provisions of section 167B 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.”

6. In view of the aforesaid legal position, the Assessing Officer is directed to charge the tax on the trust at the rate ordinarily applicable to total income of association of persons and not at the maximum original rate.

7. In the result, the appeal of the assessee is treated as allowed.

8. Since the facts and issue involved in all the captioned appeals are identical, hence our findings given above will mutatis mutandis apply to the other two appeals also.

9. In the combined result, all the three appeals of the assessee are treated as allowed.

Order pronounced in the open court on 28-04-2025

Sd/-
(Annapurna Gupta)
Accountant Member
Ahmedabad : Dated 28/04/2025

Sd/-
(Sanjay Garg)
Judicial Member

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद