

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**  
**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER**  
**ITA No. 3423/MUM/2025 (AY: 2023-24)**  
*(Physical hearing)*

N K Infra JV 6A, Siddhivayak Chambers, R P Road, Bandra (East), Mumbai-400051. [PAN No. AAEAN3277F]	Vs	ADIT, CPC, Bengaluru / ITO, Ward-41(1)(3), Mumbai Kautilya Bhavan C-41 to C-43, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Anish N Shah, CA
Revenue by	Sh. Surendra Mohan, Sr. DR
Date of Institution	15.05.2025
Date of hearing	23.07.2025
Date of pronouncement	23.07.2025

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of Ld.

CIT(A)/ADDL/JCIT(A) dated 30.03.2025 for assessment year (AY) 2023-24.

The assessee has raised following grounds of appeal:

*"1. The learned CIT(A) erred in confirming the action of the learned Assessing Officer (Centralized Processing Centre) with regards to charging a higher surcharge @37% amounting to ₹1,11,269/- and the consequent cess on this surcharge amounting to 4,451/- as against no (NIL) surcharge applicable since the Total Income of the Appellant is below the threshold limit of ₹50 lakhs.*

Particulars	As per Return of Income (₹)	As per Intimation order (₹)	Remarks
Surcharge	0	1,11,269	1. Surcharge was charged @37% in the intimation vide order dated 18/12/2023 vide DIN: CPC/2324/A5/394487065 as against no (NIL) surcharge considered correctly in the

			<p><i>Return of Income filed on 29/07/2023 as Total Income is below ₹50 lakhs.</i></p> <p><i>2. Incorrect charging of surcharge resulted into a further increase in the tax liability due to interest u/s 234B &amp; 234C of the Income tax Act 1961.</i></p>
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*2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the action of the learned Assessing Officer (Centralized Processing Centre) in consequently assessing the total tax liability at 24,28,475/- by levying a higher surcharge @37% as against total tax liability of ₹3,12,755/- as per the return of income filed.*

*3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the action of the learned Assessing Officer (Centralized Processing Centre) in levying a higher surcharge @ 37% amounting to ₹1,11,269/- without issuing a mandatory intimation as mandated under the First Proviso to Section 143(1)(a) of the Act. He also erred in issuing the intimation u/s 143(1) of the Income tax Act 1961 without considering:*

- a. Tax Rates applicable to the appellant.*
- b. Surcharge chargeable on tax correctly applicable for the year.*
- c. No cess would be chargeable on incorrect surcharge levied.*

*4. The learned CIT(A) erred in in confirming the action of the learned Assessing Officer (Centralized Processing Centre) in not issuing any show cause notice and not granting an adequate opportunity of being heard while the demand was raised.*

*5. Your Appellant prays that the surcharge of ₹1,11,269/- along with consequent cess of ₹4,451/- levied in the intimation order is incorrect, bad in law and hence the same may be directed to be deleted.*

*6. The appellant prays that justice be given.*

*7. Your appellant craves leave to add to, amend/modify, alter or delete any of the foregoing grounds of appeal."*

2. Rival submissions of both the parties have been heard and record perused.

The learned Authorised Representative (Id. AR) of the assessee submits that

assessee is a partnership firm. The assessee while filing return of income offered taxable income of Rs. 10,02,420/-. The return was processed by Central Processing Centre (CPC) vide intimation dated 18.12.2023. In the return of income, the assessee claimed refund of Rs. 3,02,290/-. The CPC while processing the return added surcharge @ 37% of Rs. 1,11,269/- and consequent cess on such surcharge of Rs. 4,451/-. Since, return income and assessed income is less than Rs. 50.00 lacs, no surcharge is liveable / applicable on the assessee. Aggrieved by the action of assessee, the assessee filed appeal before Id. CIT(A). The appeal of assessee was dismissed by holding that intimation dated 18.12.2023 has been subsequently rectified and order fresh order dated 30.01.2024 is passed. The Id. AR of the assessee submits that Id. CIT(A) passed order without issuing notice under section 250. Even after alleged rectification order, the surcharge has not been removed/ deleted. Applying higher surcharge rate is unjust and unfair and without authority of law and is liable to be delated.

3. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of lower authorities.
4. I have considered the rival submissions of both the parties and perused the order of lower authorities carefully. On considering the submission of Id. AR of the assessee, I find merit in his submission that neither the surcharge nor additional cess is applicable as returned income as well as assessed income of assessee is less than Rs. 50.00 lacs. Further, the appeal of assessee was dismissed without allowing any opportunity to the assessee. Thus, the appeal of assessee is accepted and jurisdictional assessing officer is directed to

remove / delete the surcharge and additional cess levied on the assessee. In the result, grounds of appeal are allowed in the order.

5. In the result, the appeal of the assessee is allowed.

Order was pronounced in the open Court on 23/07/2025 at the time of hearing.

**Sd/-**

**PAWAN SINGH  
JUDICIAL MEMBER**

MUMBAI, Dated 23/07/2025  
*Biswajit*

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar  
ITAT, Mumbai