आयकर अपीलीय अधिकरण, मुंबई पीठें, मुंबई
INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCHES, MUMBAI

BENCH: SMC

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA 4273/MUM/2026 निर्धारण वर्ष/Assessment Year: 2025-2026)		
Estate of Late Rajen Krishnalal Shah Flat No.301, Shiv Shankar Building, Plot No29, 10th Road JVPD Juhu Scheme, Juhu, Mumbai., Mumbai-400049, Maharashtra	**Vs.**	**ITO, WARD-34(1)(1)** C-41 To C-43, Avenue 3, Near Videsh Bhavan, G Block, Bandra Kurla Complex, Bandra East, Mumbai - 400051, Maharashtra
अपीलार्थी **Appellant**		प्रत्यर्थी **Respondent**
Permanent Account Number of Assessee:		**AAAJE1702D**

अपीलार्थी द्वारा/Appellant represented by:	**Shri Bhupendra Shah**
प्रत्यर्थी द्वारा/Respondent represented by:	**Shri Swapnil Savant, Sr. AR**

सुनवाई की तारीख / Date of conclusion of hearing:	**07/06/2026**
घोषणा की तारीख / Date of pronouncement:	**04/08/2026**

आदेश / ORDER

PER SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER:

This appeal is filed by the Assessee against the order of learned Additional/Joint Commissioner of Income Tax (Appeals), Faridabad [“*Ld. Addl./JCIT(A)*”] dated 30.03.2026 for the Assessment Year 2025-2026 arising out of the intimation passed u/s 143(1) of the Act.

2. The Assessee has raised the following grounds of appeal:

1) *On the facts and in the circumstances of the case and in law, the Learned Assessing Officer CPC, as confirmed by the Learned CIT Appeal, erred in levying tax at the Maximum Marginal Rate MMR on the total income of Rs.1,49,390 instead of applying the normal slab rates applicable to an individual, thereby resulting in an incorrect tax demand.*

2) *The Learned CIT Appeal erred in law and on facts in invoking the provisions of Section 167B, which are applicable to an Association of Persons AOP Body of Individuals BOI, without appreciating that the present case is governed by Section 168 relating to taxation of estate of a deceased person.*

3) *The Learned CIT Appeal failed to appreciate that:*

   - The executor is assessed in a representative capacity under Section 168, and

   - The status of Artificial Juridical Person AJP / AOP is only for administrative OR procedural purposes,

   and therefore, tax liability must be computed in the same manner and to the same extent as would have been applicable to the deceased individual.

4) *The Learned authorities below erred in not applying the rates prescribed under Paragraph A of Part I of the First Schedule to the Finance Act, 2025, which are applicable to individuals, and instead wrongly applied MMR.*

5) *The Learned CIT Appeal erred in not following and/OR incorrectly appreciating the ratio laid down in*

   - The decision of the Honourable ITAT Mumbai in Estate of Late Harkishin Bhojraj Chanrai vs DCIT CPC

   - The judgment of Honourable Madhya Pradesh High Court in CIT vs G.B.J. Sheth 133 ITR 192

   Wherein it has been held that assessment of executor is, in substance, the assessment of the deceased and tax is to be levied accordingly at normal rates.

6) *The Learned CIT Appeal erred in recording factually incorrect findings that the appellant had claimed applicability of proviso to Section 164 1 relating to trusts created by will, which was never the contention of the appellant, thereby vitiating the order.*

7) *The Learned CIT Appeal erred in holding that provisions relating to indeterminate OR unknown shares Section 167B Section 164 are applicable, without appreciating that*

   - The present case is not an AOP formed by volition,

   - Nor a discretionary trust,

- But a statutory estate under administration governed by Section 168, and hence such provisions are wholly inapplicable.

8) *The Learned AO erred in levying interest under Sections 234A, 234B and 234C amounting to Rs.1,864, Rs.5,126 and Rs.2,005 respectively, which is consequential to the incorrect computation of tax at MMR.*

3. Ld. Counsel for the assessee, at the outset, submitted that the assessee is the executor of the Estate of Late Rajen Krishnalal Shah. Ld. Counsel submitted that Late Rajen Krishnalal Shah was regularly assessed to tax under PAN AACPS6975L. It was submitted that Shri Rajen Krishnalal Shah expired on 24.11.2024 and the executor filed the return of income of the Estate of Late Rajen Krishnalal Shah u/s 139(4) of the Act under the new tax regime u/s 115BAC. Ld. Counsel submitted that the income was computed for the period from 24.11.2024 to 31.03.2025 in accordance with the provisions of section 168 of the Act. However, the CPC, while processing the return u/s 143(1), computed the tax liability at ₹46,610/- in the hands of the Estate of Late Rajen Krishnalal Shah by treating the status of the assessee as an AJP instead of as an individual, which is contrary to the provisions of section 168 of the Act. Ld. Counsel submitted that the CPC ought to have computed the tax liability applicable to an individual in view of the return of income having been filed by one of the executor u/s 168 of the Act relating to the income of the deceased, Late Rajen Krishnalal Shah. Ld. Counsel submitted that as per the provisions of section 168(1)(a), the income of the estate of a deceased person shall be chargeable to tax in the hands of the executor and if there is only one executor as if the executor were an individual. Under clause (b), where there is more than one executor, the income of the estate of the deceased person shall be chargeable to tax in the hands of the executors as if the executors were an association of persons. In the case of the deceased, since there is only one executor, the income of the Estate of Late Rajen Krishnalal Shah shall be chargeable to tax in the hands of the executor, as per clause (a) of sub section (1) of section 168, as if the executor were an individual and not as an AJP, i.e. Artificial Juridical Person. Therefore, it was submitted that there is no justification in applying the maximum marginal rate instead of the slab rates applicable to an individual. Reliance was placed on the decision of the Coordinate Bench of the Mumbai Tribunal in the case of Estate of Vasant Patki vs. DCIT in ITA No. 8970/Mum/2025 dated 30.03.2026.

4. Heard rival contentions and perused the orders of the authorities below. We find that the issue in appeal is covered by the decision of the Coordinate Bench in the case of Estate of Vasant Patki vs. DCIT and also by the decisions of the Coordinate Bench of the Mumbai Tribunal in Estate of Nalini Manilal vs. ITO in ITA No. 2412/Mum/2025 dated 31.07.2025 and Estate of Late Harkishin Bhojraj Chanrai vs. DCIT in ITA No. 2324/Mum/2021 dated 29.06.2022. In the case of Estate of Nalini Manilal vs. ITO**,** the Coordinate Bench held as under:

> *"3. We have heard rival submission of parties and perused relevant material on record. The core issue for consideration is the applicable rate of taxation-whether the assessee, being the executor of the estate of the deceased, is liable to be assessed at the slab rate as applicable to an individual under Section 168(1)(a) of the Act, or at the maximum marginal rate as applicable to an AOP. For ready reference, it is relevant to reproduce the provision of section 168 of the Act.*

Executors.

92 168. (1) Subject as hereinafter provided, the income of the estate of a deceased person shall be chargeable to tax in the hands of the executor,-

(a) if there is only one executor, then, as if the executor 93 were an individual; or

(b) if there are more executors than one, then, as if the executors were an association of persons;

and for the purposes of this Act, the executor shall be deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.(2) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own income.

(3) Separate assessments shall be made under this section on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests 23.

(4) In computing the total income of any previous year under this section, any income of the estate of that previous year distributed to, or applied to the benefit of, any specific legatee of the estate during that previous year shall be excluded; but the income so excluded shall be included in the total income of the previous year of such specific legatee.

Explanation.-In this section, "executor" includes an administrator or other person administering the estate of a deceased person 24.

3.1 From the plane reading above, we find that the Section 168 of the Act governs the assessment of executors in respect of the income of the estate of a deceased person. The provision stipulates that where there is only one executor, the assessment shall be made as if the income were the income of an individual. On the other hand, where there are multiple executors, the estate may be treated as an AOP and taxed accordingly, including under the maximum marginal rate provisions, depending upon the facts. Thus examination of the will of the assessee is essential for determination of correct facts. The relevant part of the will is reproduced as under:

"1) 1, Nalini Manilal Kenia of Mumbai, Hindu inhabitant, residing at 275, J. K. House, Telang Road, Matunga East, Mumbai-400 019, do hereby revoke all my wills, codicils and testament and dispositions here before made by me and declare this is to be my last will and testament.

I have used my judgment and discretion in making this will and bequests contained therein. I am making this will in my full conscious state being aware of all my acts and the bequests contained herein have been made by me voluntarily and of my own free will accord and desire. I am in absolute good mental state and health and I am under no pressure or influence while making this will. My thinking is clear and not clouded by hatred or anger nor is my judgment of people or situations impaired while making and signing this testament disposition.

3) I am having certain investments in shares, securities, units of mutual funds, deposits, jewelry etc, I am the absolute owner of all these where my name stands first. The Joint name/s is only for the sake of convenience. These investments/assets shall be governed by the provisions of this will.

4) Whatever nominations that I may have made in respect of any of my assets are only for the sake of convenience. The nominees shall hold the asset in trust for the persons to whom the assets are bequeathed as per this will.

5) I have made this testamentary disposition to avoid any misunderstanding or disputes amongst my relatives regarding my estate and effects.

6) I hereby appoint Mr. Manilal Jadavji Kenia to be the executor of my will (hereinafter collectively referred to as "My Executor"). On my demise, I direct my executor to take charge of all my estate whatsoever and wheresoever situated and to deal with the same in the manner hereinafter appearing.

7) I declare and direct that any nomination made by me in all such investments in which my name appears first as well any other assets and/or effects are intended merely for the sake of convenience and for realization and for dealing with such assets and not with the intention of conferring any beneficial interest in favour of such nominees and/or joint holders. I declare that all such assets shall form part of estate and shall be dealt with by my executor and trustees in accordance with the provisions of this my will.

8) I declare that the bequest made in favour of my executor under this will, shall stand whether he acts as an executor or not, or having acted, retires from such office.

9) My family consists of myself and my husband Manilal Jadavji Kenia and daughter Anju Manilal Kenia.

10) I am the sole and absolute owner of immovable properties and movable properties such as shares, deposits, debentures, bonds, deposits with public provident fund, jewellery and ornaments and units. The joint names are only for the sake of convenience, and all the assets belonging to me at the time of my death shall be governed by the provisions of this will irrespective of the fact that they may be held in joint names.

11) I am entitled to make this will in respect of all of my properties.

12) I direct that my executor shall out of my estate pay all my debts and liabilities including all taxes and expenses for funeral ceremonies, probate fees, legal expenses and other court fees as may be required and also expenses for administering my estate.

13) I direct my executor to give charity as may deem fit to the status of our family.

14) Subject to the all necessary expenses for obtaining probate of my will, payment of estate duty if any, and any other incidental expenses, all of my assets/effects of whatsoever nature and wheresoever situate and whether movable or immovable property be transferred to a discretionary trust which I propose to create by this will.

The trustees of the proposed discretionary trust will be as under:

1) Manilal Jadavji Kenia

The trust shall be called "ESTATE OF NALINI MANILAL KENIA". The trustee shall hold and stand possessed of the rest and residue of all my property of whatsoever kind and wheresoever situate (hereinafter referred to as "Trust Fund") on terms and conditions as follows:-

a) To recover the interest, dividends and any other income of the trust fund and to pay thereout the charges for collection and all other outgoings, if any at his absolute discretion.

b) The Estate created by this will shall come to an end at the will of my Executor, from the date of my death. The said period is hereinafter to as "the date of distribution".

c) On the date of distribution, my trustee shall transfer the corpus of the Trust Fund together with accumulation, if any, entirety to my daughter Anju Manilal Kenia.d) I hereby expressly declare and direct that the decision of my trustee even though they may be personally interested in the application of the income, shall be final and abiding on all persons claiming under this my will and shall not be questioned in any court of law or otherwise howsoever.

e) Upon any terms and conditions whatsoever as my Trustee think fit to the intent, my trustee shall in his absolute discretion have the same full and unrestricted power of purchasing and of investing and changing and transporting any investments, lending or depositing of any money with or without any personal security with any person or company including any firm or company in which trustee may be interested as a partner or director or otherwise, as if they were absolutely entitled to the Trust Fund without being responsible or accountable for any loss or diminution in price caused by reason of such investments.

f) If the Trustee hereby appointed feels to appoint additional trustee or trustees who he is hereby authorized to do so.

g) The Trustees or trustee of these presents shall be entitled to reimburse himself or themselves and pay and discharge out of the trust fund all expenses incurred in or about the execution of the Trusts and powers of these presents."

> *3.2 In the present case, although it was submitted before the CIT(A) that there were multiple executors, but from the relevant clauses no. 6 of the will as extracted above, it is evident that Shri Manilal Jadavji Kenia was the sole executor appointed by the testatrix, which conclusively establishes that only one executor was appointed. In such circumstances, and in light of the plain language of Section 168(1)(a) of the Act, the assessment is required to be made in the status of an individual and taxed accordingly at slab rates.*
>
> *3.2 However, since the copy of the will constitutes additional evidence placed for the first time before us, and the issue as to the applicability of Section 168(1)(a) was not conclusively verified by the CIT(A) in the absence of such documentary proof, we deem it appropriate, in the interest of justice, to restore the matter to the file of the learned CIT(A) for a fresh adjudication. The CIT(A) shall verify the authenticity and content of the will, and determine afresh whether the provisions of Section 168(1)(a) are applicable, after affording adequate opportunity of hearing to the assessee.*
>
> *3.3 Accordingly, the grounds raised in the present appeal are restored to the file of the learned CIT(A) for decision afresh, in accordance with law."*

5. The Hon'ble Madras High Court in the case of CIT vs. GBJ Sheth and Another, reported in (1982) 133 ITR 192 (MP) also held that as per section 168(1)(a) of the Act, if there is only one executor, the assessment would be "*as if the executor were an individual*". It was further held that only for assessment purposes that the executors of the Estate of the deceased assessed as an AOP; otherwise, for the purpose of rates, etc., the successor has to be deemed to be the actual beneficiary. Therefore, we find merit in the contentions of the assessee. However, since the testament and the will of the Estate of Late Rajen Krishnalal Shah were not examined by the Assessing Officer or by the learned CIT(A), we deem it appropriate to restore the issue to the file of the Assessing Officer and direct the Assessing Officer to assess the income of the assessee at the rates applicable to an individual, subject to verification.

6. In the result, the appeal of the assessee is allowed as indicated above.

Order pronounced in the open court on 04/08/2026

Sd/-	**Sd/-**
PRABHASH SHANKAR	**CHALLA NAGENDRA PRASAD**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai Dated: 04/08/2026

Copy to:

1	**ESTATE OF LATE RAJEN KRISHNALAL SHAH, FLAT NO.301, SHIV SHANKAR BUILDING, PLOT NO29 10TH ROAD JVPD JUHU SCHEME, JUHU, MUMBAI., MUMBAI-400049, MAHARASHTRA**
2	**ITO WARD 34(1)(1), C-41 TO C-43, AVENUE 3, NEAR VIDESH BHAVAN, G BLOCK, BANDRA KURLA COMPLEX, BANDRA EAST, MUMBAI - 400051,, MUMBAI-400051, MAHARASHTRA**
3	THE PCIT / CIT,
4	THE D.R., ITAT, MUMBAI BENCH
5	GUARD FILE

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