IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.6573/MUM/2025
(Assessment Year: 2022-23)

Mr. Glen Morgan D' Costa,
Li Hwan Close, 49, 557171,
Golden Hill Estate, Golden Hill Estate,
551717, Singapore,
Singapore
PAN : AIEPD5555B

..... Appellant

v/s

Income Tax Officer (International Taxation),
Ward – 2(1)(1),
Kautilya Bhavan, Bandra Kurla Complex,
Mumbai - 400051

..... Respondent

Assessee by : Mr. Gunjan Kakkad
Revenue by : Shri Krishna Kumar, Sr.DR

Date of Hearing – 21/01/2026	Date of Order - 30/01/2026

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 22.08.2025, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-56, Mumbai, ["*learned CIT(A)*"], which in turn arose from the rectification order passed under section 154 of the Act, for the assessment year 2022-23.

2. The solitary grievance of the assessee, in the present appeal, pertains to the short grant of TDS credit.

3. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is a Non-Resident Indian and for the year under consideration filed his return of income in India, declaring a total income of Rs.67,93,833/-, with total tax payable at Rs.16,32,155/-. Further, after claiming TDS credit of Rs.27,08,755/-, the assessee claimed a refund of Rs.10,76,600/- as per his original return of income. The return filed by the assessee was processed vide intimation issued under section 143(1) of the Act by the Centralised Processing Centre, Bangalore ("*CPC*"), without granting TDS credit to an extent of Rs.9,75,647/-. Accordingly, the assessee filed an application seeking rectification of the intimation issued under section 143(1) of the Act, *inter alia*, in respect of short grant of TDS credit. Vide order dated 12.11.2024 passed under section 154 of the Act, the TDS credit to an extent of Rs.9,75,647/- was again denied to the assessee.

4. In its appeal before the learned CIT(A), the assessee submitted that he, along with his wife, owned a property, each having 50% ownership. The said property was sold during the relevant financial year for a total consideration of Rs. 1 crore, and the amount was credited by the purchaser in the joint bank account of the assessee with his wife. The assessee submitted that the TDS amounting to Rs.22,88,000/- was deducted by the purchaser under section 194-IA of the Act on the PAN of the assessee. However, both the assessee and his wife computed their respective capital gains tax at a 50% share of the sale

consideration of the property, i.e., Rs. 50 Lakh each. The assessee submitted that since the entire TDS credit of Rs. 22,88,000/- was deducted on his PAN, accordingly, he claimed the entire tax credit while filing his return of income and no tax credit was claimed by his wife despite offering her entire share of 50% from the aforesaid sale transaction. Thus, the assessee submitted that in the aforesaid circumstances, since the entire TDS was deducted by the purchaser on his PAN and his wife, despite offering 50% of the consideration in her return of income did not claim the corresponding TDS credit, therefore, the entire TDS credit of Rs.22,88,000/- is allowable in his hand.

5. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and held that since only 50% of capital gain has been offered by the assessee in his return of income, therefore, he is eligible to claim only 50% of the TDS credit on the transaction value. The relevant findings of the learned CIT(A), vide impugned order, are reproduced as follows: -

> *"5.1 Ground Nos. 1 to 4:- All the grounds of appeal relate to the common issue viz. the action of CPC in not allowing TDS credit of Rs.10,03,989/- to the appellant. I have gone through the return of income, intimation u/s 143(1), order u/s 154 passed by the CPC and TRACES provided by the appellant during the course of the appellate proceedings. On perusal of the documents furnished, it is observed that the appellant has sold the property during FY 2021-22 for a total sale consideration of Rs.1,00,00,000/-, which was credited in the joint bank account of Glenn D'costa and his wife Natasha D'Costa. Further, TDS under section 195 amounting to Rs.22,88,000 was deducted under Glen D Costa name. Both co-owners computed their respective capital gain on 50% share (Rs.50,00,000/- each) in their gains without taking any TDS credit on the sale of property (the appellant has furnished a copy of challan for the same). However, the entire TDS credit of Rs.22,88,000/- on the full transaction value of Rs. 1,00,00,000/- was claimed by Glen D'Costa in his income tax return as per 26AS. Considering the fact that only 50% of the capital gain has been offered by the appellant in the return of income filed, the appellant Glen D'Costa is eligible to claim only 50% of TDS credit on the transaction value. As per the Income Tax Act, 1961, credit of TDS is to be allowed if corresponding income to same has been taken into account. Hence, the appellant's contention that the entire TDS credit of Rs.22,88,000/- should be allowed in his case, cannot be accepted. Accordingly, Ground Nos. 1 to 4 of the appeal are dismissed."*

6. During the hearing, the learned Authorised Representative ("*learned AR*") reiterated the submissions made by the assessee before the learned CIT(A) and submitted that the entire TDS credit of Rs.22,88,000/- should be allowed in the assessee's hand, as assessee's wife despite offering the capital gain *qua* her share has not claimed any TDS credit. In support of the submission, the learned AR placed reliance upon the decision of the Coordinate Bench of the Tribunal in Haddock Propbuild Pvt. Ltd. vs. ITO, in ITA No.3348/Del/2025, vide order dated 17.12.2025. During the hearing, the attention of the Bench was also drawn to the rectification application dated 25.11.2025 filed by the assessee's wife seeking the corresponding benefit of TDS credit in her hand, as the same has been denied in the hands of the assessee.

7. From the plain reading of section 199(1) of the Act, we find that any deduction of tax made in accordance with the provisions of Chapter-XVII of the Act and paid to the Central Government shall be treated as payment of tax on behalf of the person from whose income the deduction was made. Further, sub-section (3) of section 199 of the Act provides that the Board may, for the purpose of giving credit in respect of tax deducted at source or paid in terms of the provisions of Chapter-XVII of the Act, make such rules for the purpose of giving credit to a person other than those referred to in sub-section (1) of section 199 of the Act and also the assessment year for which such credit to be given. As per Rule 37BA of the Income Tax Rules, 1962 ("the Rules"), the credit for tax deducted at source and paid to the Central Government shall be given to the person to whom the payment has been

made or credit has been given (i.e. the deductee) on the basis of the information relating to deduction of tax furnished by the deductor to the income-tax authority. Sub-rule (2) of Rule 37BA of the Rules further provides that where the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, the credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1) of Rule 37BA of the Rules.

8. In the present case, the assessee could not bring any material on record to show the compliance with the provisions of Rule 37BA of the Rules by the deductee, i.e. the assessee. Further, as noted above, the assessee's wife has now also filed an application for rectification seeking credit of TDS in respect of the sale consideration offered by her, which has been denied in the hands of the assessee.

9. Having considered these facts, we are of the considered view that the decisions placed reliance upon by the assessee are factually distinguishable, as the fact of claim of TDS credit by the person, other than the deductee, was not under consideration in those decisions. Accordingly, the said decisions are not applicable to the present case. Therefore, in the larger interest of justice, we deem it appropriate to grant one more opportunity to the assessee to make sufficient compliance with the provisions of Rule 37BA of the Rules.

Accordingly, we restore the matter to the file of the jurisdictional Assessing Officer for *de novo* adjudication, as per law, with a direction to the assessee to comply with the provisions of Rule 37BA of the Rules. Accordingly, with the above directions, the impugned order is set aside, and the grounds raised by the assessee are allowed for statistical purposes.

9. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 30/01/2026

Sd/-	**Sd/-**
OM PRAKASH KANT	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 30/01/2026

Prabhat

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