

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.2194 & 2195/Bang/2025
Assessment Year: 2019-20 & 2021-22

Divya Dinesh, No.467, 36 th Cross, 19 th Main, 4 th T Block, Jayanagar, Bangalore – 560 041.	Vs.	The Dy. Commissioner of Income Tax, Circle – 7(1)(1), Bangalore.
PAN – ALGPD 2314 R		
APPELLANT		RESPONDENT

Assessee by	:	Shri Sudheendra B.R, Advocate
Revenue by	:	Shri Balusamy N, JCIT

Date of hearing	:	04.02.2026
Date of Pronouncement	:	.02.2026

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This set of 2 appeal, filed at the instance of the assessee, is directed against the common order of the Learned Commissioner of Income Tax (Appeals), Nashik (hereafter the learned CIT(A), under section 250 of the Income Tax Act, 1963 (hereafter the Act) for A.Ys. 2019-20 & 2021-22 dated 19/06/2025 and 29/08/2025.

2. First, we take up assessee's appeal in ITA No. 2194/Bang/2025 for the Assessment Year 2019-20

3. The issue raised by the assessee is that the CPC erred in adjusting the STT suffered short term capital loss for Rs. 16,28,978/- on sale of shares and mutual against the Non STT short capital gains from

sale of units of mutual fund and thereby reducing the eligible deduction under section 80G of the Act for Rs. 16,28,978/- only.

4. The facts in brief are that the assessee, an individual, during the year under consideration derived income under the house property, business income, capital gain and other sources. In the return of income, the assessee declared Gross Total Income-GTI of Rs. 37,47,06,373/- out of which a sum of Rs. 36,78,25,373/- was claimed as income chargeable to tax at a special rate other than 115BBE of the Act. The income taxable at special rate included the following:

Long term capital gain taxable at 20%	Rs. 22,57,78,095/-
Short term capital loss taxable at 15%	(Rs. 16,28,978/-)
Brought forward loss	(Rs. 5,81,89,743/-)

A. Net Long term capital gain taxable 20%	Rs. 16,59,57,374/-
B. Long term capital gain taxable at 10%	Rs. 4,14,432/-
C. Dividend Income u/s 115BBDA	Rs. 20,14,51,567/-
D. Income taxable at special rate (A+B+C)	Rs. 36,78,25,373

4.1 On the other hand, the other incomes being taxable at normal slab rate included the following income:

A. Income from House property	Rs. 4,19,043/-
B. Business Income	Rs. 4,50,000/-
C. Short term capital gain taxable at normal rate	Rs. 58,95,682/-
(Rs. 63,96,143 minus brought forward loss of Rs. 5,00,461)	
D. Interest Income	Rs. 1,16,275/-
Total (A+B+C+D)	Rs. 68,81,000/-

4.2 Further, the assessee against the taxable income at normal slab rate of Rs. 68,81,000/- claimed deduction under section 80G of the Act

for Rs. 68,81,000/- only. Hence, the assessee declared total income of Rs. 36,78,25,370/- being taxable at special rate only.

4.3 The return was processed under section 143(1) of the Act and intimation order was generated as on 28th February 2020 wherein the CPC, sett of the short-term capital loss of Rs. 16,28,980/- (taxable at 15%) against the short capital gain taxable at normal slab rate as against the assessee claim of setoff against the long-term capital gain taxable at 20%. Accordingly, the income taxable at special rate was increased whereas income taxable at normal slab rate was decreased by Rs. 16,28,980/- only. Therefore, as per the CPC, the available income taxable at normal slab rate was only of Rs. 52,52,022/- eligible for deduction under section 80G of the Act. Hence, the claim of the assessee for deduction under section 80G of the Act was reduced by Rs. 16,28,980 and thereby total income increased by Rs. 16,28,980/- on which demand of Rs. 3,89,646/- was raised.

5. Against the intimation order, the assessee filed rectification application under section 154 of the Act which came to be rejected by the CPC vide order dated 14th March 2021.

6. Being aggrieved the assessee filed an appeal before the learned CIT(A) against the order passed under section 154 of the Act.

6.1 Before the learned CIT(A), the assessee submitted that for the Assessment Year 2019–20, the return of income was filed declaring total taxable income of Rs. 36,78,25,370.00 only. The return was processed under section 143(1) of the Act by CPC, which determined a higher income and raised a tax demand. The difference arose because the CPC did not allow the set off of short-term capital loss of Rs. 16,28,978 arising from STT-paid equity transactions against other capital gains chargeable to tax at the special rate.

6.2 The assessee explained that during the year, it had earned long term capital gains taxable at 10% and 20%, and short-term capital gains taxable at normal rates. It had also incurred short term capital loss on STT-paid transactions and had brought forward long-term capital loss. In the return of income, the assessee set off the current year short term capital loss as well as brought forward long-term capital loss against the capital gains in accordance with law. After such set off, tax was computed and deductions under Chapter VI-A were claimed correctly.

6.3 However, while processing the return, the CPC disallowed the set off of short -term capital loss arising from STT-paid transactions. As a result, the taxable income increased and the deduction under section 80G was also reduced. The assessee contended that this action of the CPC was not correct.

6.4 Relying on section 70 of the Income-tax Act, the assessee submitted that short term capital loss from any capital asset can be set off against short term or long-term capital gains from any other capital asset. The law does not restrict such set off merely because different rates of tax apply. The assessee further relied on judicial decisions, including Mumbai Tribunal decision in case of Capital International Emerging Market Fund reported in 145 ITD 491 and in case of Fidelity Investment Trust reported in 36 SOT 22, wherein it was held that short term capital loss arising from STT-paid transactions is allowable to be set off against other capital gains, even if taxed at different rates.

6.5 The assessee therefore argued that it was legally entitled to set off the short-term capital loss of Rs. 16,28,978 against long term capital gains as claimed in the return. The assessee prayed that the disallowance made by CPC be deleted and the return computation be accepted.

7. However, the learned CIT(A) examined the facts of the case, the intimation issued under section 143(1) of the Act, the rectification order passed under section 154 of the Act, and the submissions of the appellant. The Id. CIT(A) observed that the assessee had earned long term capital gains taxable at 20% and 10%, and had also declared short term capital loss arising from STT-paid transactions taxable under section 111A of the Act. The assessee had claimed set off of this short-term capital loss against long term capital gain taxable at 20%.

7.1 Referring to section 70(2) of the Act, the Id. CIT(A) held that short term capital loss taxable at a concessional rate of 15% cannot be adjusted against long term capital gain taxable at a different rate such as 20%. According to the Id. CIT(A), such adjustment was not permissible under the Act. It was further observed that the issue involved was debatable in nature and therefore could not be treated as a mistake apparent from record for the purpose of rectification under section 154 of the Act. Accordingly, the action of CPC in not allowing the intra-head adjustment was upheld.

7.2 With regard to the deduction under section 80G of the Act, the Id. CIT(A) noted that due to the disallowance of set off of short-term capital loss, the gross total income increased. As per section 80G(4) of the Act, the donation in excess of 10% of the gross total income has to be ignored while computing the deduction. Since the gross total income was recomputed, the allowable deduction under section 80G was correctly restricted by CPC. The Id. CIT(A) therefore found no error in the rectification order passed under section 154 of the Act and dismissed the grounds of appeal of the assessee.

8. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

8.1 The learned AR before us filed a paper book running from pages 1 to 112 and a case law compilation having pages 174 to 205 and submitted that section 70(2) clearly permits set-off of short-term capital loss against income under the head "Capital gains" from any other capital asset. The provision does not impose any restriction based on the rate of tax. He argued that rate provisions under sections 111A and 112 operate independently from computation provisions. The CPC exceeded its jurisdiction under section 143(1) by altering the manner of set-off claimed in the return. He relied on the decision of the Mumbai Bench in **First State Investments (Hong Kong) Ltd. v. ADIT** reported *33 SOT 26* to submit that computation precedes rate application and rate difference cannot restrict intra-head adjustment. He contended that once the set-off is allowed as per law, deduction under section 80G of the Act must also be recomputed accordingly.

8.2 On the other hand, the learned DR supported the orders of CPC and Id. CIT(A). He submitted that short-term capital loss arising from transactions covered under section 111A is subject to a concessional rate of tax and therefore cannot be adjusted against long-term capital gains taxable at a different rate. He further argued that the CPC is empowered under section 143(1) to correct computational errors apparent from the return and that the restriction of deduction under section 80G was only consequential. He prayed that the order of the CIT(A) be upheld.

9. We have heard the rival contentions of both the parties and perused the materials available on record. The short issue before us is whether the short-term capital loss of Rs. 16,28,978 arising from STT-paid transactions, taxable under section 111A of the Act, can be set off against long-term capital gains taxable at 20%, and whether the CPC was justified in altering the manner of such set off while processing the

return under section 143(1) of the Act, thereby reducing the deduction claimed under section 80G of the Act.

9.1 From the facts on record, it is not in dispute that the assessee had earned long-term capital gains taxable at 20% and 10%, short-term capital gains taxable at normal rates, and had also incurred short-term capital loss on STT-paid equity transactions. In the return of income, the assessee set off the short-term capital loss against long-term capital gains taxable at 20%. After such adjustment, the balance income taxable at normal rates was claimed as eligible for deduction under section 80G of the Act.

9.2 The CPC, while processing the return under section 143(1) of the Act, altered the manner of set off and adjusted the short-term capital loss against short-term capital gains taxable at normal rates instead of long-term capital gains. As a consequence, the income taxable at normal rates stood reduced, which in turn resulted in restriction of deduction under section 80G of the Act.

9.3 The core question is whether the Act permits such set off as claimed by the assessee. In this regard it is noted that the provision of section 70(2) of the Act clearly provides that where the result of computation under the head "Capital gains" in respect of any short-term capital asset is a loss, such loss may be set off against income, if any, under the head "Capital gains" in respect of any other capital asset. The language of the section does not draw any distinction based on the rate of tax applicable to such capital gains. The statute speaks only of the nature of the asset, namely short-term capital asset, and permits set off against income under the same head from any other capital asset.

9.4 There is no provision in the Act which restricts the set off of short-term capital loss arising from STT-paid transactions against long-

term capital gains merely because such gains are taxable at a different rate. The rate of tax is governed by section 111A or section 112 or section 112A of the Act, but the mechanism of set off is governed independently by section 70 of the Act. These operate in different fields. Once the income falls under the head "Capital gains," the intra-head adjustment must be carried out in accordance with section 70 of the Act, without importing rate-based limitations which are not expressly provided by the statute.

9.5 Accordingly, in our considered view, the view taken by the learned CIT(A) that short-term capital loss taxable at a concessional rate cannot be adjusted against long-term capital gain taxable at another rate is not supported by the plain language of section 70 of the Act. The Act does not create separate compartments within the head "Capital gains" based on rates for the purpose of set off, except in the case of long-term capital loss, which cannot be set off against short-term capital gains. No such restriction is placed on short-term capital loss. In holding so, we draw support and guidance from the decision of coordinate bench of Mumbai Tribunal in the case of *First State Investments (Hong Kong) Ltd. v. ADIT reported in 33 SOT 26* in which it has been held that the phrase "under similar computation made" refers to computation of income, the provisions for which are contained under sections 45 to 55A of the Act. The Tribunal also held that the matter of computation of income was a subject which came anterior to the application of rate of tax which are contained in section 110 to 115BBC of the Act. Therefore, merely because the two set of transactions are liable for different rate of tax, it cannot be said that income from these transactions does not arise from similar computation made as computation in both the cases has to

be made in similar manner under the same provisions. The relevant observation of bench is extracted as under:

12. A lot of emphasis has been laid by the learned CIT(A) on the words "under similar computation made" as used in sub-section (2). He has opined that there are two different categories of the transactions resulting into short-term capital gain, viz., those taxable in the first period at the rate of 30 per cent and those taxable in the second period at the rate of 10 per cent and "similar computation made" refers to either of the two. In our considered opinion, there is a basic fallacy in the view adopted by the learned CIT(A) on this issue. Sections 111A and 115AD fall in Chapter XII, which provides for determination of tax in certain special cases. Thus, it is clear that all these sections from 110 to 115BC provide for a particular rate of tax to be applied on the incomes covered under these sections individually. Hence, these sections do not deal with the computation of income but only provide for the rate of tax applicable on the income. It is simple and plain that the matter of computation of income is a subject which comes anterior to the application of the rate of tax. Only when the income is computed as per the provisions of the Act, that the question of the applicability of the correct rate of income-tax comes into being. Income under the head 'Capital gains' is determined as per sections 45 to 55A. Section 48 with the heading "Mode of computation" provides that the income chargeable under the head "Capital gains" shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset, the expenditure incurred wholly and exclusively in connection with such transfer and the cost of acquisition of the asset along with the cost of any improvement, if any. Thus, the computation of capital gain, which is prescribed under section 48, cannot be confused with the rate of tax liable to be charged on the income under the head 'Capital gain' so computed. Whereas, computation of capital gain is governed by section 48, but the rates of tax, insofar as we are concerned in the present appeal, are governed by sections 111A and 115AD.

9.6 Further, the adjustment made by the CPC under section 143(1) has the effect of re-working the computation in a manner contrary to the specific claim made by the assessee in accordance with law. The power under section 143(1) is limited to making adjustments which are apparent from the return and accompanying documents. Where two views are possible on the interpretation of a statutory provision, the matter cannot be decided by way of prima facie adjustment. Even the learned CIT(A) has observed that the issue is debatable in nature. If the issue is debatable, it cannot form the basis of an adjustment either under section 143(1) or under section 154 of the Act.

9.7 In our considered view, the assessee was legally entitled to set off the short-term capital loss of Rs. 16,28,978/- against long-term capital gains in accordance with section 70 of the Act. Consequently, the computation of gross total income as returned by the assessee was in accordance with law. Once the gross total income is restored to the figure declared in the return, the deduction under section 80G of the Act must also be computed with reference to such income. The restriction applied by the CPC was only a consequential effect of the erroneous alteration in set off. Accordingly, we hold that the action of the CPC in altering the set off of short-term capital loss and restricting the deduction under section 80G of the Act is not sustainable. Therefore, we hereby set-aside the order of the learned CIT(A) and direct the AO to recompute the total income by allowing the set off of short-term capital loss as claimed by the assessee. Hence, the ground of appeal filed by the assessee is hereby allowed.

10. In the result, the appeal of the assessee is hereby allowed.

Coming to assessee's appeal in ITA No. 2195/Bang/2025 for A.Y. 2021-22

11. The effective issue raised by the assessee is that the CPC erred in disallowing claim of TDS credit of Rs. 2,59,879/- on corresponding dividend income of Rs. 34,65,071/- pertaining to revocable trust M/s Mirabilis Investment Trust, offered to tax and corresponding TDS claimed as per section 61 r.w.s. 63 of the Act.

12. The relevant facts that the assessee in the return filed for the year under consideration claimed credit of tax deducted for Rs. 2,59,879/- on dividend income. However, the same was deducted against the PAN of a revocable trust namely M/s M/s Mirabilis Investment Trust in which assessee is a beneficiary. The return filed by

the assessee was processed by CPC and the CPC in the intimation order under section 143(1) disallowed the credit of TDS of Rs. Rs. 2,59,879/- on account of OLTAS Credit Mismatch. The rectification application filed by the assessee was also dismissed vide order passed under section 154 of the Act.

13. Against the rectification order the assessee preferred an appeal before the learned CIT(A).

13.1 Before the learned CIT(A), the assessee submitted that she had filed her return of income for A.Y. 2021–22 on 12.11.2021 declaring total income of Rs. 18,43,91,580/- only. This income included dividend of Rs. 34,65,071/- received from Mirabilis Investment Trust, which is a revocable trust in which she is one of the beneficiaries. In accordance with the provisions of section 63 of the Act, the income of the revocable trust was required to be clubbed in the hands of the beneficiary. Accordingly, the appellant declared the said dividend income in her return and claimed credit of TDS amounting to Rs. 2,59,879/- deducted on such income.

13.2 The assessee submitted that while processing the return under section 143(1) of the Act, the income from the trust was considered, but the corresponding TDS credit of Rs. 2,59,879/- was not allowed, resulting in a demand. She filed a rectification petition under section 154 of the Act, but no relief was granted.

13.3 It was further submitted that as per Rule 37BA read with section 199 of the Act, the credit of TDS is to be given to the person in whose hands the income is assessable. Since the income of the trust was taxed in her hands, the corresponding TDS should also be allowed to her only. The assessee contended that filing of declaration under Rule 37BA(2) is not mandatory but optional. She relied on the decision of the Pune

Tribunal in the case of Anil Ratanlal Bohra vs. ACIT (2023), wherein it was held that credit of TDS cannot be denied merely for non-furnishing of declaration when the income has been taxed in the hands of the beneficiary. She therefore prayed that the TDS of Rs. 2,59,879/- pertaining to dividend income from the revocable trust be allowed.

14. However, the learned CIT(A) observed that the CPC had disallowed the TDS credit of Rs. 2,59,879/- on the ground that the same was not reflected in Form 26AS in the name of the assessee. The TDS was deducted in the name of Mirabilis Investment Trust and not in the name of the appellant. The Id. CIT(A) noted that although the assessee had declared the dividend income and claimed TDS credit, she had not furnished any declaration under Rule 37BA(2) authorizing the trust to deduct tax in the name of the beneficiary.

14.1 The Id. CIT(A) further observed that as per section 199 and Rule 37BA, credit of TDS is to be granted on the basis of information furnished by the deductor and as reflected in Form 26AS. In the absence of proper reflection of TDS in Form 26AS and without supporting declaration or revised 26AS, the claim could not be accepted. The Id. CIT(A) held that mere claim in the return of income is not sufficient to grant TDS credit unless it is supported by documentary evidence and proper reporting by the deductor. Accordingly, the learned CIT(A) held that the CPC was justified in disallowing the TDS credit and raising the demand, and hence, the appeal of the assessee was dismissed.

15. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

16. The learned AR submitted that the dividend income from Mirabilis Investment Trust, being a revocable trust, was rightly offered to tax in the hands of the assessee under sections 61 and 63 of the Act. Once the

income is assessed in her hands, credit of TDS must follow in view of section 199 read with Rule 37BA. He contended that Rule 37BA(2) is procedural in nature and non-filing of declaration cannot defeat substantive entitlement to TDS credit. He relied upon the decision of the Pune Bench in Anil Ratanlal Bohra v. ACIT reported in 148 taxmann.com 15 to submit that credit cannot be denied merely due to technical mismatch in Form 26AS when the income has been taxed.

17. Per Contra, the learned DR supported the findings of the Id. CIT(A) and submitted that TDS credit can be granted only when reflected in Form 26AS of the assessee. Since the tax was deducted in the PAN of the trust and no declaration under Rule 37BA(2) was furnished, CPC was justified in denying credit. He argued that the processing under section 143(1) was strictly in accordance with system-based verification and prayed that the order of the CIT(A) be confirmed.

18. We have heard the rival contentions of both the parties and perused the materials available on record. The effective issue before us is whether the assessee is entitled to the credit of TDS amounting to Rs. 2,59,879/- deducted on dividend income of Rs. 34,65,071/- pertaining to Mirabilis Investment Trust, a revocable trust in which the assessee is a beneficiary.

18.1 The facts are not in dispute. The assessee filed her return for A.Y. 2021–22 declaring total income of Rs. 18,43,91,580/-. The dividend income of Rs. 34,65,071/- received from the revocable trust was included in her total income in accordance with section 61 read with section 63 of the Act. Along with such income, she claimed credit of TDS of Rs. 2,59,879/-. However, the said TDS was deducted in the PAN of Mirabilis Investment Trust and not in the name of the assessee. While processing the return under section 143(1) of the Act, the CPC

disallowed the TDS credit on account of mismatch in OLTAS/26AS. The rectification application filed by the assessee was also rejected. The learned CIT(A) upheld the action of the CPC on the ground that the TDS was not reflected in Form 26AS of the assessee and that no declaration under Rule 37BA(2) of the Income Tax Rule was furnished.

18.2 At this stage, it is necessary to examine the statutory scheme. The provision of section 199 of the Act provides that credit for TDS shall be given to the person from whose income the deduction has been made. Rule 37BA(2) of the Income Tax Rule further provides that where income is assessable in the hands of a person other than the deductee, credit shall be given to such other person, subject to the prescribed conditions. The underlying principle is clear. TDS is only a mode of collection of tax. It is not an independent levy. Once the income is taxed in the hands of a particular person, the credit of TDS relating to such income must follow the income.

18.3 In the present case, the Revenue has accepted that the dividend income of Rs. 34,65,071/- is assessable in the hands of the assessee under the provisions relating to revocable trusts. Once the income is brought to tax in her hands, denial of the corresponding TDS credit would result in taxing the same income without granting credit for tax already deducted and deposited with the Government. That would be contrary to the scheme of section 199 of the Act.

18.4 The objection of the Revenue is mainly procedural, namely that the TDS is not reflected in the assessee's Form 26AS and that no declaration under Rule 37BA(2) was furnished. In our considered view, Rule 37BA is procedural in nature and regulates the manner in which credit is to be granted. It cannot override the substantive right flowing from section 199 of the Act. Courts have consistently held that

procedural requirements should not defeat substantive entitlement, especially when the tax has already been deducted and deposited to the credit of the Central Government.

18.5 The assessee has demonstrated that the income has been offered to tax in her hands and that TDS of Rs. 2,59,879/- has in fact been deducted and paid to the Government in relation to the same income. There is no dispute about the factum of deduction and payment. The only issue is that it stands reflected in the PAN of the trust. In such a situation, the Revenue cannot retain the tax and at the same time deny credit to the person in whose hands the income is assessed. In holding so, we draw support and guidance from the decision of Pune bench of Tribunal in the case of Anil Ratan Lal Bohora reported in 148 taxmann.com 15 wherein in identical facts and circumstances, it was held as under:

7. Adverting to the facts of the extant case, it is seen that out of total interest income credited to assessee's wife as per Form No. 26AS amounting to Rs. 39.26 lakh, she included interest from SBI in her total income to the extent of Rs. 1,84,212/-. The assessee included the remaining interest of Rs. 37.42 lakh in his income because of the applicability of section 64 of the Act. The assessee and his wife claimed proportionate tax credit, which totals up to Rs. 2,94,474/-. This deciphers that the total interest income received by the assessee's wife got taxed partly in her own assessment and partly in the assessment of her husband, the assessee in question, as per the mandate of section 64. The benefit of TDS has also been claimed accordingly. Merely because the assessee's wife did not furnish declaration to the bank in terms of proviso to rule 37BA(2), the amount of tax deducted at source, which is otherwise with the Department, cannot be allowed to remain with it eternally without allowing any corresponding credit to the person who has been subjected to tax in respect of such income. As the substantive provision of section 199 talks of granting credit for tax deducted at source to the other person, who is lawfully taxable in respect of such income, we are satisfied that the matching credit for tax deducted at source must also be allowed to him. In view of the fact that the tax of Rs. 2,80,656/- has actually been deducted at source on the interest income of Rs. 37.42 lakh, we hold that the credit for such TDS should be allowed to the assessee, who has been subjected to tax in respect of such income. This ground is allowed.

18.6 In our view, once the income of the revocable trust is taxed in the hands of the beneficiary, the corresponding TDS must also be allowed to

the beneficiary. Accordingly, we set aside the order of the learned CIT(A) and direct the AO to grant the TDS credit of Rs. 2,59,879/- to the assessee. Hence, the ground of appeal of the assessee is hereby allowed.

19. In the result appeal of the assessee is allowed.
20. In combined result, both the appeals of the assessee are allowed.

Order pronounced in court on 24th day of February, 2026

Sd/-

(KESHAV DUBEY)

Judicial Member

Bangalore

Dated, 24th February, 2026

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

Sd/-

(WASEEM AHMED)

Accountant Member

By order

Asst. Registrar, ITAT, Bangalore