



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"I" BENCH, MUMBAI**

**BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No. 2072/MUM/2025**  
**(Assessment Year : 2022-23)**

**iShares ESG Aware MSCI ETF,**  
C/o Ernst & Young LLP, 17<sup>th</sup> Floor,  
The Ruby, 29, Senapati Bapat Marg,  
Dadar (West), Mumbai - 400028  
PAN: AAECI7288K

..... Appellant

v/s

**DCIT (International Taxation)–2(2)(2),**  
Room No.606, 6<sup>th</sup> Floor, Kautilya Bhavan,  
C-41 to C-43, G Block, Bandra Kurla Complex,  
Bandra (East), Mumbai - 400051

..... Respondent

**&**

**ITA No. 2073/MUM/2025**  
**(Assessment Year : 2022-23)**

**Emerging Markets Index Non-Lendable Fund,**  
C/o Ernst & Young LLP, 17<sup>th</sup> Floor,  
The Ruby, 29, Senapati Bapat Marg,  
Dadar (West), Mumbai - 400028  
PAN: AAAAE3262D

..... Appellant

v/s

**DCIT (International Taxation)–2(2)(1),**  
Room No.606, 6<sup>th</sup> Floor, Kautilya Bhavan,  
C-41 to C-43, G Block, Bandra Kurla Complex,  
Bandra (East), Mumbai - 400051

..... Respondent

**&**

**ITA No. 2040/MUM/2025**  
**(Assessment Year : 2022-23)**

**Emerging Markets Equity Index Master Fund,**

C/o Ernst & Young LLP, 17<sup>th</sup> Floor,  
The Ruby, 29, Senapati Bapat Marg,  
Dadar (West), Mumbai - 400028  
PAN: AAAAE4752C

..... Appellant

v/s

**DCIT (International Taxation)-2(2)(1),**

Room No.606, 6<sup>th</sup> Floor, Kautilya Bhavan,  
C-41 to C-43, G Block, Bandra Kurla Complex,  
Bandra (East), Mumbai - 400051

..... Respondent

Assessee by : Shri Anish Thacker &  
Shri Pranay Gandhi  
Revenue by : Shri Satya Pal Kumar, Sr.DR  
Shri Krishna Kumar, Sr.DR

Date of Hearing - 02/06/2025

Date of Order - 06/06/2025

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeals have been filed by separate assessee against the separate final assessment orders of even date 15/01/2025, passed under section 143(3) r.w. section 144C(13) of the Income Tax Act, 1961 (*"the Act"*), pursuant to the directions issued by the learned Dispute Resolution Panel-1, Mumbai (*"learned DRP"*) under section 144C(5) of the Act, for the assessment year 2022-23.

2. Since in all the appeals the issue that arises for our consideration is similar, therefore, these appeals were heard together as a matter of

convenience and are being decided by way of this consolidated order. With the consent of the parties, the appeal in ITA No. 2072/Mum./2025 is considered as a lead case, and the decision rendered therein shall apply *mutatis mutandis* to other appeals before us.

**ITA No. 2072/Mum./2025**  
**IShare ESG Aware MSCI EM ETF - A.Y. 2022-23**

3. In this appeal, the assessee has raised the following grounds: -

*"On the facts and circumstances of the case, the Appellant craves leave to prefer an appeal against the order under section 143(3) read with section 144C(13) of the Act dated 15 January 2025, issued by the Deputy Commissioner of Income Tax (International Taxation)-2(2)(2), Mumbai ('the learned Ld.AO') in pursuance of the directions under section 144C(5) of the Act issued by the Hon'ble DRP-I, Mumbai dated 5 December 2024 on the following grounds, each of which is without prejudice to and independent of the others*

*On the facts and in the circumstances of the case and in law, the learned AO/ Hon'ble DRP:*

**Merits of the case:**

*Rejecting the hierarchy of set-off of Short-Term Capital losses adopted by the Appellant*

*1. erred in rejecting the hierarchy of set-off of short-term capital losses adopted by the Appellant and thereby, taxing the gross short-term capital gains in respect of transactions on the sale of shares not chargeable to Securities Transaction Tax ('STT');*

*2. failed to appreciate that income under the head Capital Gains' is determined as per sections 45 to 55A of the Act whilst sections 111A and 115AD only provide for determination of tax in certain cases and therefore, gains arising on transactions subjected to STT and those not subjected to STT are no different and satisfy the 'similar computation condition specified in section 70(2) of the Act;*

*3. failed to appreciate that since section 70 of the Act does not provide any hierarchy for set-off, the short-term capital loss arising from sale of shares subjected to STT can first be set-off against the short-term capital gains arising from sale of securities not subjected to STT instead of short-term capital gains arising from sale of shares subjected to STT;*

*4. erred in not following the binding decisions of the Jurisdictional Tribunal and rejecting the set-off merely because the Department has preferred an appeal before the Jurisdictional High Court against one of the orders of the Jurisdictional Tribunal;*

*Arithmetical errors in the computation sheet*

5. *Without prejudice to the above, erred in not computing tax liability on the short-term capital gains arising from sale of shares not subjected STT in the computation sheet, which is not aligned with the directions issued by the DRP and the impugned order;*
6. *erred in not granting the credit of taxes deducted amounting to Rs. 1,492,492.*

*Ground of Appeal No. 9: Initiation of penal proceedings under section 270A of the Act*

7. *erred in initiating penalty under section 270A of the Act alleging misreporting of income by the Appellant.*  
*The Appellant craves leave to add, alter, vary, omit, substitute or amend any or all of the above grounds of appeal, at any time before or at, the time of the appeal, so as to enable the Hon'ble Income-tax Appellate Tribunal to decide this appeal according to law."*

4. The issue arising in grounds nos.1 to 4, raised in assessee's appeal, pertains to the manner of set off of short-term capital loss, which was incurred by the assessee from the transaction in shares on which Securities Transaction Tax ("STT") was paid.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a company incorporated in Mauritius, and is registered with the Securities and Exchange Board of India as a Foreign Portfolio Investor. For the year under consideration, the assessee filed its return of income on 07/11/2022, declaring a total income of Rs.513,82,25,780. The return filed by the assessee was selected for scrutiny, and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, it was observed that the assessee computed the net short-term capital gains amounting to Rs.26,50,59,538, which is chargeable to tax as follows: –

<i>Particulars</i>	<i>Amounts (in INR)</i>
<i>Amount of Short-Term Capital Gains taxed at 15% under section 111A of the Act (A)</i>	<i>34,40,28,248</i>
<i>Amount of Short-Term Capital Loss taxed at 15% under section 111A of the Act (B)</i>	<i>9,99,56,708</i>
<i>Amount of Short-Term Capital Gains taxed at 30% under section 115AD of the Act (C)</i>	<i>2,09,87,996</i>
<i>Amount of Short-Term Capital Gains taxed at 30% under section 115AD of the Act (D)</i>	<i>NIL</i>
<i>Total short-term capital gains chargeable to tax [E=A-(B-C)]</i>	<i>26,50,59,536</i>

6. Thus, it was observed that the assessee set off the short-term capital loss (on which STT was paid), which is taxable at 15% under section 111A of the Act, against the short-term capital gains (on which STT was not paid), which is taxable at 30% under section 115AD of the Act, and thereafter, set off the balance loss against the short-term capital gains earned on the transaction of sale of share subjected to STT. Accordingly, the assessee was asked to show cause as to why the set-off of lower taxable loss should not be denied with higher taxable gains, as the IT Rules have provided separate columns for set-off and carry-forward of losses. In response, the assessee submitted that section 70 of the Act allows the assessee to set off the losses of lower taxable gains with the gains of higher taxable gains. In support of its submission, the assessee placed reliance upon the decisions of the Court/Tribunal, wherein a similar issue was decided in favour of the taxpayer.

7. The Assessing Officer ("AO"), vide draft assessment order dated 24/03/2024 passed under section 144C(1) of the Act, disagreed with the submissions of the assessee and held that computation of the net short-term capital gains by the assessee is not in order. The AO further held that

the IT Rules have clearly defined separate columns for set-off and carry forward of gains of having differential tax rates. Accordingly, the short-term capital gain was computed by *first* setting off 15% loss against 15% gains, as follows: –

<i>Particulars</i>	<i>Amount (INR) (Taxable @ 15%)</i>	<i>Amount (INR) (Taxable @ 30%)</i>
<i>Short-term capital gains</i>	<i>34,40,28,248</i>	<i>2,09,87,996</i>
<i>Short-term capital loss other than those covered under section 111A of the Act</i>		<i>NIL</i>
<i>Short-term capital loss covered under section 111A of the Act</i>	<i>9,99,56,707</i>	
<i>Net Short-term capital gains</i>	<i>24,40,71,541</i>	<i>2,09,87,996</i>

8. Accordingly, the AO computed the net short-term capital gains amounting to Rs.24,40,71,541 taxable at 15% under section 111A of the Act and the net short-term capital gains amounting to Rs.2,09,87,996 taxable at 30% under section 115AD of the Act.

9. The assessee filed detailed objections against the addition made by the AO. Vide directions dated 05/12/2024, issued under section 144C(5) of the Act, the learned DRP rejected the objections filed by the assessee and upheld the computation of capital gains made by the AO vide draft assessment order. The learned DRP further noted that this issue is pending consideration before the Hon'ble Bombay High Court in the case of DIT vs. M/s. DWS India Equity Fund, in ITA No.1414 of 2012, and there is no judicial finality on this issue.

10. In conformity with the directions issued by the learned DRP, the AO passed the impugned final assessment order under section 143(3) r.w.

section 144C(13) of the Act computing the net short-term capital gains amounting to Rs. 24,40,71,541 taxable at 15% under section 111A of the Act and the net short-term capital gains amounting to Rs. 2,09,87,996 taxable at 30% under section 115AD of the Act. Being aggrieved, the assessee is in appeal before us.

11. During the hearing, the learned Authorized Representative ("*learned AR*") submitted that this issue is covered in favour of the assessee by various decisions of the Co-ordinate Bench of the Tribunal.

12. On the other hand, the learned Departmental Representative ("*learned DR*") vehemently relied upon the order passed by the lower authorities.

13. We have considered the submissions of both sides and perused the material available on record. The sole issue which arises for our consideration in the present appeal is whether the short-term capital loss (on which STT was paid) can be set off against short-term capital gains (on which STT was not paid). Before proceeding further, it is relevant to note the provisions of section 70(2) of the Act, which deals with the set off of short-term capital loss, and the same reads as follows: -

*"(2) Where the result of the computation made for any assessment year under sections 48 to 55 in respect of any short-term capital asset is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the assessment year in respect of any other capital asset."*

14. Thus, as per the provisions of section 70(2) of the Act, the short-term capital loss can be set off against gain from any other capital asset. Section

70(2) of the Act does not make any further classification between the transactions where STT was paid and the transactions where STT was not paid. The emphasis of the AO on the term "*similar computation*" also only refers to the computation as provided under sections 48 to 55 of the Act, and therefore, does not support the case of the Revenue.

15. We find that while deciding a similar issue, the Co-ordinate Bench of the Tribunal in iShares MSCI EM UCITS ETF USD ACC vs. DCIT, reported in [2024] 164 taxmann.com 56 (Mum.-Trib.), following the decision of the Hon'ble Calcutta High Court in CIT vs. Rungamatee Trexim (P.) Ltd. [IT Appeal number 812 of 2008, dated 19.12.2008], allowed the set off of short-term capital loss (on which STT was paid) against the short-term capital gains (on which STT was not paid). The relevant findings of the Co-ordinate Bench, in the aforesaid decision, are as follows: -

*"016. This Leaves us with the only grounds relating to computation of short-term capital gain and set off of short-term capital loss. The only issue in this appeal is that assessee has earned short-term capital gain of 7,791,221/- which is chargeable to tax at the rate of 30%. Assessee claims that it has short-term capital loss on which securities transaction taxes are paid, and therefore such loss should be set-off against the short-term capital gain irrespective of the tax bracket of such gain and losses.*

*017. The only dispute between the assessee and revenue is as under:-*

Sr. No.	Assessee's version	Revenue's Version
1.	Short-term capital loss was set off against the net short-term capital gain on which no securities transaction taxes paid	Short-term capital loss should be first set off against short-term capital gain on which securities transaction tax is paid
2.	Balance short-term capital loss shall be first set off against short-term capital gain on which securities transaction taxes paid	If short-term capital loss still remains it is to be carried forward and not that of against short-term capital gain on which no securities transaction tax is paid and



		consequently short-term capital gain on which no securities transaction tax is paid is to be taxed at the rate of 30%
3.	If short-term capital gain on which securities transaction tax is paid still remains, such gains are set off against available brought forward short-term capital loss	One short-term capital gain on which no securities transaction tax is paid is proposed to be taxed at the rate of 30% the brought forward short-term capital loss allowed to be carried forward without utilizing such brought forward short-term capital loss was set off

018. Provisions of section 70 of the income tax act provides for the set off of losses from one source against income from another source under the same head of income. According to section 70 (1) where assessee suffers loss in respect of any source under any head of income other than capital gain, assessee is entitled to have the amount of such loss set off against his income from any other source under the same head. Therefore, these provisions speak about inter head adjustment other than the head of capital gains. For capital gains provisions of section 70 (2) of the act provides that where assessee suffers short-term capital loss, assessee shall be entitled to set off such losses against capital gain computed in a similar manner as under section 48 to 55 of the act. According to section 70(3) of the act where assessee suffers long-term capital loss, assessee shall be entitled to set off such losses against long-term capital gains computed in similar manner as provided under section 48 to section 55 of the act. It is clear that section 48 to section 55 does not provide for rate of tax on capital gain. It specifically lays down the computation mechanism of capital gain and certainly not tax on such capital gains

019. Thus, it is clear that assessee has incurred short-term capital losses of Rs. 49,454,381/- (which is subject to securities transaction tax) and also earned short-term capital gain of Rs. 791,221/- (which is not subject to securities transaction tax and taxable as per section 115AD at the rate of 30%). Thus, assessee submits that that short-term capital loss on which securities transaction taxes paid, can be set off against the short-term capital gain which is not subject to securities transaction tax. Further such capital gain is also computed as per section 115AD of the act.

020. It is not the case before us that either in the computation of short-term capital gains or short-term capital loss there is any difference in the manner of computation. Therefore, short-term capital gain arising during the year and short-term capital loss arising during the year are computed in a similar manner as provided under section 48 to section 55 of the income tax act. Further as we have already stated that section 48 to section 55 of the income tax act does not lay down any rate of tax payable on short-term capital gain.

021. Therefore, we do not find any reason to deprive the assessee from set-off of short-term capital losses suffered by the assessee for the same year

*against the short-term capital gains earned by the assessee. Such claim is in accordance with the provisions of section 70 (2) of the act.*

*022. We find that several judicial precedents relied upon by the assessee also supports the case of the assessee. The honourable Calcutta High Court in Rungamatee Trexim ITA number 812 of 2008 dated 19 December 2008 held that there is no provision nor the act compels the assessee to set off short-term capital gain which STT against short-term capital loss with STT and then allows set off against short-term capital gain without STT. Therefore, without multiplying judicial precedents, following the decision of the honourable Calcutta High Court, and several other judicial precedents of the coordinate benches relied upon before us, we allow ground number 4 - 10 of the appeal of the assessee and direct the assessing officer to allow set-off of short-term capital loss suffered by the assessee against short-term capital gain of Rs. 791,221/-."*

16. We find that similar findings have been rendered by the Co-ordinate Benches of the Tribunal in favour of the taxpayer in the following decisions: -

1. Emerging Markets Index Non-Lendable Fund vs. DCIT, Mumbai, in ITA No. 4589/Mum/2023, order dated 05.08.2024.
2. Vanguard Total International Stock Index Fund vs. ACIT (IT) – 4(3)(1), in ITA No.4656/Mum/2023, order dated 13.12.2024.
3. JS Capital LLC vs. ACIT (International Taxation), reported in (2024) 160 taxmann.com 286
4. Dy.DIT vs. M/s. DWS India Equity Fund, in ITA No.5055/Mum/2010, order dated 11.04.2012.

17. The learned DR could not show us any cogent reason to deviate from the aforesaid judicial precedents. Therefore, respectfully following the aforesaid decisions, we direct the AO to accept the methodology adopted by the assessee for the computation of the capital gains. As a result, grounds no.1 to 4 raised in assessee's appeal are allowed.

18. As regards the arithmetical errors in the computation sheet, the AO is directed to correctly compute the income of the assessee, in light of our

aforesaid directions. As a result, ground no.5 raised in assessee's appeal is allowed for statistical purposes.

19. The issue arising in ground no.6, raised in assessee's appeal, pertains to the short credit of the taxes deducted at source. During the hearing, the learned AR submitted that the assessee has also filed a rectification application before the AO dated 06/02/2025 in this regard, which is still pending consideration. Accordingly, we deem it appropriate to restore this issue to the file of the AO with the direction to grant the credit of taxes deducted at source, in accordance with the law, after conducting the necessary verification. We order accordingly. As a result, ground no.6 raised in assessee's appeal is allowed for statistical purposes.

20. Ground no.7, raised in assessee's appeal, pertains to the initiation of penalty proceedings under section 270A of the Act, which is premature in nature. Therefore, the said ground is dismissed.

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

**ITA No. 2040/Mum./2025**  
**Emerging Markets Equity Index Master Fund - A.Y. 2022-23**

22. In this appeal, the assessee has raised the following grounds: -

*"On the facts and circumstances of the case, the Appellant craves leave to prefer an appeal against the order under section 143(3) read with section 144C(13) of the Act dated 15 January 2025, issued by the Deputy Commissioner of Income Tax (International Taxation)-2(2)(1), Mumbai ['the learned AO'] in pursuance of the directions under section 144C(5) of the Act issued by the Hon'ble DRP-1, Mumbai dated 2 December 2024 on the following grounds, each of which is without prejudice to and independent of the others:*

*On the facts and in the circumstances of the case and in law, the learned AO/Hon'ble DRP:*

*General*

*1. Erred in assessing the total income of the Appellant at Rs.2,563,142,330 instead of the returned income of Rs.2,452,056,490.*

*Merits of the case:*

*Rejecting the hierarchy of set-off of Short-Term Capital losses adopted by the Appellant*

*2. erred in rejecting the hierarchy of set-off of short-term capital losses adopted by the Appellant and thereby, taxing the gross short-term capital gains in respect of transactions on the sale of shares not chargeable to Security Transaction Tax (STT);*

*3. failed to appreciate that income under the head 'Capital Gains' is determined as per sections 45 to 55A of the Act whilst sections 111A and 115AD only provide for determination of tax in certain cases and therefore, gains arising on transactions subjected to STT and those not subjected to STT are no different and satisfy the 'similar computation' condition specified in section 70(2) of the Act;*

*4. failed to appreciate that since section 70 of the Act does not provide any hierarchy for set-off, the short-term capital loss arising from sale of shares subjected to STT can first be set-off against the short-term capital gains arising from sale of securities not subjected to STT instead of short-term capital gains arising from sale of shares subjected to STT;*

*5. erred in not setting-off the net short-term capital gains arising from sale of share not subjected to STT and short-term capital gains arising from sale of shares subject to STT against brought forward unabsorbed short-term capital loss subjected to STT, contrary to the provisions of section 74 of the Act;*

*6. erred in not following the decision of the Jurisdictional Tribunal in the Appellant's own case for AY 2021-22 as well as other binding decisions passed by the Jurisdictional Tribunal and rejecting the set-off merely because the Department has preferred an appeal before the Jurisdictional High Court against one of the orders of the Jurisdictional Tribunal.*

*Arithmetical errors in the computation sheet*

*7. Without prejudice to the above, erred in computing the income from capital gains at Rs.3,240,580,259 in the computation sheet, as against Rs.2,563,142,330 determined in the Impugned order;*

8. Without prejudice to the above, erred in computing the gross total income at Rs. 5,692,636,750 in the computation sheet, as against Rs 2,563,142,330 determined in the impugned order;

9. Without prejudice to the above, erred in computing short term capital gains at Rs.117,665,920 as against Rs.111,085,832, determined in the impugned order;

10. Without prejudice to the above, erred in computing long term capital gains chargeable to tax under section 112A at Rs. 3,129,503,989 as against 'NIL' determined in the impugned order;

11. Without prejudice to the above, erred in not setting off the net long term capital gains chargeable to tax against brought forward long term capital loss in the computation sheet;

12. Without prejudice to the above, erred in computing the income taxable at special rate at Rs 5,692,636,750 as against Rs. 2,563,142,330 determined in the impugned order respectively and consequently, computing higher tax liability;

13. erred in short grant of credit of tax deducted at source amounting to INR 380,248.

Levy of interest under section 234B of the Act - Rs.139,391,602

14. erred in levying interest under Section 234B of the Act amounting to Rs. 139,391,602.

Levy of interest under section 234C of the Act - Rs.146,705

15. erred in levying interest under Section 234C of the Act amounting to Rs. 146,705.

Levy of interest under section 234D of the Act-Rs.10,020

16. erred in levying interest under Section 234D of the Act amounting to Rs. 10,020.

Initiation of penal proceedings under section 270A of the Act

17. erred in initiating penalty under section 274 r.w.s. 270A of the Act alleging underreporting of income by the Appellant.

*The Appellant craves leave to add, alter, vary, omit, substitute or amend any or all of the above grounds of appeal, at any time before or at, the time of the appeal, so as to enable the Hon'ble Income-tax Appellate Tribunal to decide this appeal according to law."*

23. Ground no.1 is general in nature. Therefore, the same needs no specific adjudication.

24. The issue arising in grounds nos.2 to 6, raised in assessee's appeal, pertains to the manner of set off of short-term capital loss, which was incurred by the assessee from the transaction in shares on which STT was paid. Since we have already adjudicated a similar issue in the foregoing paragraphs, therefore, our findings/conclusions as rendered therein shall apply *mutatis mutandis* to this appeal. Accordingly, we direct the AO to accept the methodology adopted by the assessee for the computation of the capital gains. As a result, grounds no.2 to 6 raised in assessee's appeal are allowed.

25. As regards the arithmetical errors in the computation sheet, the AO is directed to correctly compute the income of the assessee, in light of our aforesaid directions. As a result, grounds no.7 to 12 raised in assessee's appeal are allowed for statistical purposes.

26. The issue arising in ground no.13, raised in assessee's appeal, pertains to the short credit of the taxes deducted at source. During the hearing, the learned AR submitted that the assessee has also filed a rectification application before the AO dated 07/02/2025 in this regard, which is still pending consideration. Accordingly, we deem it appropriate to restore this issue to the file of the AO with the direction to grant the credit of taxes deducted at source, in accordance with the law, after conducting the necessary verification. We order accordingly. As a result, ground no.13 raised in assessee's appeal is allowed for statistical purposes.

27. The issue arising in grounds no.14-16, raised in assessee's appeal, pertains to the levy of interests under sections 234B, 234C and 234D of the Act, which are consequential in nature. Therefore, the same needs no separate adjudication.

28. Ground no.17, raised in assessee's appeal, pertains to the initiation of penalty proceedings under section 270A of the Act, which is premature in nature. Therefore, the said ground is dismissed.

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

**ITA No. 2073/Mum./2025**

**Emerging Markets Index Non-Lendable Fund - A.Y. 2022-23**

30. In this appeal, the assessee has raised the following grounds: -

*"On the facts and circumstances of the case, the Appellant craves leave to prefer an appeal against the order under section 143(3) read with section 144C(13) of the Act dated 15 January 2025, Issued by the Deputy Commissioner of Income Tax (International Taxation)-2(2)(1), Mumbai [the learned AO in pursuance of the directions under section 144C(5) of the Act issued by the Hon'ble DRP-I, Mumbai dated 2 December 2024 on the following grounds, each of which is without prejudice to and independent of the others:*

*On the facts and in the circumstances of the case and in law, the learned AO/Hon'ble DIP:  
General*

*1. Erred in assessing the total income of the Appellant at Rs. 1,536,306,420 instead of the returned income of Rs.1,472,932,450.*

**Merits of the case:**

**Rejecting the hierarchy of set-off of Short-Term Capital losses adopted by the Appellant**

*2. erred in rejecting the hierarchy of set-off of short-term capital losses adopted by the Appellant and thereby, taxing the gross short-term capital gains in respect of transactions on the sale of shares not chargeable to STT;*



3. failed to appreciate that income under the head 'Capital Gains' is determined as per sections 45 to 55A of the Act whilst sections 111A and 115AD only provide for determination of tax in certain cases and therefore, gains arising on transactions subjected to STT and those not subjected to STT are no different and satisfy the 'similar computation' condition specified in section 70(2) of the Act;

4. failed to appreciate that since section 70 of the Act does not provide any hierarchy for set-off, the short-term capital loss arising from sale of shares subjected to Securities Transaction Tax ('STT') can first be set-off against the short-term capital gains arising from sale of securities not subjected to STT instead of short-term capital gains arising from sale of shares subjected to STT;

5. erred in not setting-off the net short-term capital gains arising from sale of share not subjected to STT against brought forward unabsorbed short-term capital loss subjected to STT, contrary to the provisions of section 74 of the Act;

6. erred in not following the decision of the Jurisdictional Tribunal in the Appellant's own case for AY 2021-22 as well as other binding decisions passed by the Jurisdictional Tribunal and rejecting the set-off merely because the Department has preferred an appeal before the Jurisdictional High Court against one of the orders of the Jurisdictional Tribunal

7. Without prejudice to the above, erred in not granting set-off of the net short-term capital loss arising from sale of share subjected to STT against the short-term capital gains arising from sale of share not subjected to STT.

8. Without prejudice to the above, erred in not allowing carry forward of short-term capital loss in the computation sheet annexed to the impugned order.

*Arithmetical errors in the computation sheet*

9 Without prejudice to the above, erred in computing the income from capital gains at Rs.2,833,759,288 in the computation sheet, as against Rs.1,536,306,420 determined in the impugned order;

10 Without prejudice to the above, erred in computing the gross total income at Rs.4,306,691,743 in the computation sheet, as against Rs. 1,536,306,420 determined in the impugned order;

11 Without prejudice to the above, erred in computing long term capital gains chargeable to tax under section 112A at Rs 2,725,030,611 as against 'NIL' determined in the impugned order;

12 Without prejudice to the above, erred in not setting off the net long term capital gains chargeable to tax against brought forward long term capital loss in the computation sheet;



*13 Without prejudice to the above, erred in computing the income taxable at special rate at Rs.4,306,691,743 as against Rs. 1,536,306,420 determined in the impugned order respectively and consequently, computing higher tax liability;*

*14 erred in short grant of credit of tax deducted at source amounting to INR 246,176*

*Levy of Interest under section 234B of the Act-Rs.121,939,776*

*15 erred in levying interest under Section 234B of the Act amounting to Rs. 121,939,776*

*Levy of interest under section 234C of the Act - Rs.5,930*

*16 erred in levying interest under Section 234C of the Act amounting to Rs.5,930*

*Levy of interest under section 234D of the Act - Rs.11,518*

*17 erred in levying interest under Section 234D of the Act amounting to Rs. 11,518*

*Initiation of penal proceedings under section 270A of the Act*

*18 erred in initiating penalty under section 274 r.w.s. 270A of the Act alleging underreporting of Income by the Appellant*

*The Appellant craves leave to add, alter, vary, omit, substitute or amend any or all of the above grounds of appeal, at any time before or at, the time of the appeal, so as to enable the Hon'ble Income-tax Appellate Tribunal to decide this appeal according to law."*

31. Ground no.1 is general in nature. Therefore, the same needs no specific adjudication.

32. The issue arising in grounds nos.2 to 8, raised in assessee's appeal, pertains to the manner of set off of short-term capital loss, which was incurred by the assessee from the transaction in shares on which STT was paid. Since we have already adjudicated a similar issue in the foregoing paragraphs, therefore, our findings/conclusions as rendered therein shall apply *mutatis mutandis* to this appeal. Accordingly, we direct the AO to accept the methodology adopted by the assessee for the computation of the

capital gains. As a result, grounds no.2 to 8 raised in assessee's appeal are allowed.

33. As regards the arithmetical errors in the computation sheet, the AO is directed to correctly compute the income of the assessee, in light of our aforesaid directions. As a result, grounds no.9 to 13 raised in assessee's appeal are allowed for statistical purposes.

34. The issue arising in ground no.14, raised in assessee's appeal, pertains to the short credit of the taxes deducted at source. During the hearing, the learned AR submitted that the assessee has also filed a rectification application before the AO dated 06/02/2025 in this regard, which is still pending consideration. Accordingly, we deem it appropriate to restore this issue to the file of the AO with the direction to grant the credit of taxes deducted at source, in accordance with the law, after conducting the necessary verification. We order accordingly. As a result, ground no.14 raised in assessee's appeal is allowed for statistical purposes.

35. The issue arising in grounds no.15-17, raised in assessee's appeal, pertains to the levy of interests under sections 234B, 234C and 234D of the Act, which are consequential in nature. Therefore, the same needs no separate adjudication.

36. Ground no.18, raised in assessee's appeal, pertains to the initiation of penalty proceedings under section 270A of the Act, which is premature in nature. Therefore, the said ground is dismissed.

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

38. To sum up, all appeals before us are partly allowed for statistical purposes.

Order pronounced in the open Court on 06/06/2025

**Sd/-**  
**VIKRAM SINGH YADAV**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 06/06/2025**

*Disha Raut, Stenographer*

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