IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH MUMBAI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No. 7219/Mum/2025
(Assessment Year: 2016-17)

Amit Bholanath Mishra 502, Heena Elegance, Saibaba Nagar, Borivali (west), Mumbai-400 092	Vs.	**ACIT Circle 22(1),** Piramal Chamber, Lal Baug, Parel, Mumbai-400 012
PAN/GIR No. AAMPM3121G		
(Applicant)		(Respondent)

Assessee by	Shri Rakesh Joshi, Ld. AR
Revenue by	Shri Surendra Mohan, Ld. DR

Date of Hearing	14.01.2026
Date of Pronouncement	19.01.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

This appeal is filed by the assessee against the order passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)"], dated 19.09.2025, passed under section 250 of the Income-tax Act, 1961[hereinafter referred to as "the Act"], for the assessment year 2016–17arising out of assessment framed by way of an order

dated 28.12.2018 passed by the Assistant Commissioner of Income Tax, Circle 22(1), Mumbai [hereinafter referred to as "Assessing Officer"] under section 143(3) of the Act.

2. The brief facts of the case are that the assessee is an individual. He filed his return of income for the assessment year 2016–17 on 06.12.2016 declaring total income of Rs. 58,04,850/- . The case was selected for scrutiny. The assessment was completed by the Assessing Officer vide order dated 28.12.2018 passed under section 143(3) of the Act.

3. During the relevant previous year, the assessee derived income from salary, income from house property and income from other sources. It was noted by the Assessing Officer that the assessee had transferred two residential house properties and earned long-term capital gains aggregating to Rs. 73,15,174/-. Against the said long-term capital gains, the assessee claimed set-off of the following losses:

i. Long-term capital loss on sale of shop amounting to Rs. 15,52,968/-

ii. Long-term capital loss on sale of motor car amounting to Rs. 29,16,609/-

iii. Short-term capital loss on sale of motor car amounting to Rs. 50,93,993/-

After such set-off, the assessee computed a net capital loss of Rs. 22,48,397/- and carried the same forward to the subsequent assessment year.

4. The Assessing Officer observed that the two motor cars sold during the year appeared to be personal effects and not capital assets. The assessee was therefore called upon to explain as to why the losses arising from sale of such motor cars should not be disallowed and not permitted to be set off against long-term capital gains under section 70 of the Act.In response, the assessee submitted that the motor cars, namely Audi and Mercedes Benz, were business assets which were hired out to M/s AB Infra Build Pvt. Ltd., of which the assessee was a director and owner. It was further submitted that the assessee had never claimed depreciation on the said vehicles and therefore the cost of acquisition should be taken at the original purchase price. The Assessing Officer did not accept the assessee's contention. He held that depreciation is not optional and represents a permanent diminution in the value of an asset, irrespective of whether the assessee claims it or not. The Assessing Officer further held that if the assessee's claim that the vehicles were business assets was accepted, then depreciation at the applicable rate was required to be allowed and the computation of gain or loss on transfer of such assets would fall under section 50 of the Act as short-term capital gain or loss. Accordingly, the Assessing Officer recomputed depreciation for the relevant earlier years, recalculated the written down value of the motor cars and determined a net short-term capital loss of Rs. 2,25,366/- from the sale of both vehicles. The said short-term capital loss was held to be adjustable only against the block of depreciable assets

and not against long-term capital gains arising from sale of flats. Consequently, the Assessing Officer disallowed the set-off claimed by the assessee and added long-term capital gains of Rs. 57,62,206/- to the total income. The assessment was thus completed at a total income of Rs. 1,15,67,060/-. Penalty proceedings under section 271(1)(c) were also initiated.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Before the CIT(A), the assessee challenged the action of the Assessing Officer in applying depreciation on motor cars at the rate of 30 percent, recomputing depreciation and opening written down value for earlier assessment years which had attained finality, and disallowing the set-off of short-term capital loss on sale of motor cars against long-term capital gains on sale of immovable properties. The assessee contended that the motor cars were business assets given on hire, that depreciation had not been claimed in certain earlier years, and that re-computation of depreciation and WDV for concluded years was not permissible. It was also contended that short-term capital loss was legally allowable to be set off against long-term capital gains in accordance with the provisions of the Act.

6. The CIT(A), after considering the material on record, upheld the action of the Assessing Officer insofar as the rate of depreciation at 30 percent was concerned and also upheld the re-computation of depreciation and opening WDV by invoking the provisions of Explanation 6 to section 43(6) of the Act. However,

the CIT(A) accepted the assessee's contention on the limited issue of set-off and held that short-term capital loss was allowable to be set off against long-term capital gains. The Assessing Officer was accordingly directed to allow such set-off. The appeal was thus partly allowed.

7. Aggrieved by the order of the CIT(A), the assessee is in appeal before us raising following grounds of appeal:

1. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in making an addition of Rs. 57,62,206/-, to the total income of the assessee by disallowing the set-off of capital losses against the Long-Term Capital Gains earned on sale of immovable properties, without considering the facts and circumstances of the case.*

2. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in calculating the depreciation of Car @ 30% without assigning any reason, without considering the facts and circumstances of the case.*

3. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in recalculating depreciation of car in earlier years @ 30% and re-computing opening WDV without assigning any reason and rework & recalculated depreciation from AY 2012-13 to 2015-16, without considering the facts and circumstances of the case.*

4. *The appellant craves leave to add, amend, alter or delete the said ground of appeal.*

8. During the course of hearing before us, the learned Authorised Representative (AR) of the assessee reiterated the facts as recorded by the lower authorities. It was submitted that

the assessee has not claimed depreciation on the motor cars in the past, despite the vehicles being reflected as fixed assets in the books of account. In support of this contention, the learned AR specifically drew our attention to the computation of income, balance sheet and the schedule of fixed assets forming part of the returns of income for A.Y. 2012–13, A.Y. 2013–14, A.Y. 2014–15 and A.Y. 2015–16, to demonstrate that no depreciation was claimed on the said motor cars in any of the aforesaid assessment years. It was contended that these documents, which form part of the record, clearly establish the consistent conduct of the assessee in not claiming depreciation and that the Assessing Officer was not justified in recomputing depreciation and reworking the written down value for the earlier years which had already attained finality. In support of the aforesaid contention, the learned AR placed reliance on the judgment of the Hon'ble High Court of Karnataka in Income Tax Appeal No. 186 of 2023, rendered in the case of ***The Principal Commissioner of Income Tax vs. M/s Swetha Realmart LLP (successor in interest of M/s Swetha Health Research Pvt. Ltd.), dated 05.03.2025.***

9. Per contra, the learned Departmental Representative (DR) strongly relied upon the order of the learned CIT(A). The learned DR drew our attention to the findings recorded by the Assessing Officer and affirmed by the CIT(A) to contend that depreciation stood deemed to have been allowed in respect of the motor cars, once the assessee himself claimed that the vehicles were business

assets given on hire. It was submitted that the Assessing Officer was justified in invoking the provisions of the Act to recompute depreciation and the opening written down value, and thereafter apply section 50 for determining the character of capital gains arising on transfer of the said assets. According to the learned DR, the CIT(A) has correctly held that depreciation is not optional in nature and that Explanation 6 to section 43(6) permits re-computation of WDV by allowing depreciation for earlier years, even if the assessee had not claimed the same.

10. The learned DR further submitted that the contention of the assessee that no depreciation was claimed in earlier years does not alter the legal position, since the depreciation stood deemed to have been allowed once the assets were treated as business assets and formed part of a block of assets. He therefore supported the action of the Assessing Officer as upheld by the CIT(A) and prayed that the grounds raised by the assessee be dismissed.

11. We have carefully considered the rival submissions, perused the orders of the lower authorities and examined the material placed on record. The controversy before us essentially revolves around the applicability of section 50 of the Act, and the permissibility of re-computation of depreciation and written down value for earlier assessment years by invoking Explanation 6 to section 43(6) of the Act.

12. At the outset, it is relevant to note that though the assessee has claimed before the Assessing Officer that the motor cars were business assets allegedly given on hire, no income from leasing or hiring of the said assets has been offered to tax in the earlier assessment years. This fact clearly emerges from the computations of income for A.Ys. 2012–13 to 2015–16, which are available on record and were specifically referred to by the learned Authorised Representative during the course of hearing. Thus, while the assessee has taken a stand that the assets were given on lease, such assertion is not supported by any corresponding disclosure of lease or hire income in the returns of income of the earlier years. This factual aspect materially weakens the foundation of the Assessing Officer's conclusion that the assets were part of an active block of business assets in respect of which depreciation was allowable or deemed to have been allowed.

13. Section 50 of the Act is a special provision which applies only to capital assets forming part of a block of assets in respect of which depreciation has been allowed. The statutory condition is explicit and leaves no scope for presumption or deeming fiction beyond what is expressly provided. In the present case, it is an admitted and undisputed fact that the assessee has not claimed depreciation on the motor cars in any of the earlier assessment years. The mere assertion that depreciation is "not optional" cannot substitute the statutory requirement that depreciation

must have been actually allowed in respect of the asset for section 50 to operate.

14. The reliance placed by the Assessing Officer and affirmed by the CIT(A) on Explanation 6 to section 43(6), in our considered view, is misplaced in the facts of the present case. Explanation 6 to section 43(6) is a machinery provision intended to deal with computation of written down value where depreciation has been actually allowed or ought to have been allowed under the Act. It cannot be invoked to artificially rewrite the history of concluded assessments by forcing depreciation into years where neither claimed by the assessee nor allowed by the Assessing Officer, especially when no corresponding business income from the alleged use of the asset has been offered. Explanation 6 cannot be stretched to create a legal fiction so as to trigger section 50 in a case where the foundational condition for applicability of section 50 itself fails. The provision does not override section 50, nor does it dilute the explicit phraseology employed therein.

15. The learned AR has rightly placed reliance on the judgment of the Hon'ble Karnataka High Court in PCIT vs. M/s Swetha Realmart LLP (successor in interest of M/s Swetha Health Research Pvt. Ltd.), in ITA No. 186 of 2023.The Hon'ble High Court has categorically laid down the law after examining section 50 in depth. The relevant extract, which squarely applies to the facts before us, reads as under:

> *"Section 50 of the Income Tax Act, 1961 is not invocable when at no point of time any depreciation is allowed in respect of subject property, even if arguably the same is a depreciable asset. The said provision employs the expression 'asset forming a part of a block of assets in respect of which depreciation has been allowed'. Thus, unless that incident happens, assessee does not fit into the precincts of this provision." (para 3)*

16. The Hon'ble High Court further clarified the limited applicability of the Supreme Court decision in *Sakthi Metal Depot* as under:

> *"Even one single incident of allowing depreciation may attract the said provision. That being the position, the ratio does not come to the aid of the Revenue."*

17. In the present case, there is not even a single instance of depreciation having been allowed, and therefore, the ratio of Sakthi Metal Depot is clearly distinguishable and inapplicable.

18. In view of the above factual and legal analysis, we hold as under:

i. The assessee has not claimed depreciation in the earlier years and has also not offered any lease or hire income from the alleged use of the motor cars.

ii. Section 50 of the Act cannot be invoked in the absence of depreciation having been actually allowed.

iii. Explanation 6 to section 43(6) does not empower the Assessing Officer to retrospectively force depreciation into concluded assessment years merely to invoke section 50.

iv. The issue is squarely covered in favour of the assessee by the binding judgment of the Hon'ble Karnataka High Court in *Swetha Realmart LLP*.

19. Accordingly, the addition of Rs. 57,62,206/- made by the Assessing Officer by invoking the provisions of section 50 of the Income-tax Act, 1961 is deleted. The action of the Assessing Officer in recomputing depreciation and the written down value for the earlier assessment years by invoking Explanation 6 to section 43(6) of the Act is held to be unsustainable in law. Consequently, the findings of the learned CIT(A) to that extent are set aside.

20. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 19.01.2026.

Sd/-	**Sd/-**
(AMIT SHUKLA)	**(MAKARAND VASANT MAHADEOKAR)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated 19/01/2026
Dhananjay, Sr.PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai