IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
And
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.3526/M/2024
Assessment Year: 2014-15

N.K. Gems, AW-6110, Tower A Wing, G Block, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra East, Mumbai - 400051. **PAN – AAAFN3829J**	Vs.	**ITO- 23(2)(4),** Piramal Chambers, Lower Parel, Mumbai, Maharashtra-400013.
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Rahul Sarda, Ld. AR
Revenue by : Shri Leyaqat Ali Aafaqui, Ld. SR. D.R.

Date of Hearing : 09.01.2026
Date of Pronouncement : 12.02.2026

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 19.06.2024, impugned herein, passed by the National Faceless Appeal Centre (NFAC)/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2014-15.

2. In the instant case, Assessee as claimed had purchased a commercial office premises vide allotment letter dated 24.07.2010 at Bharat Diamond Bourse by Bharat Diamond Bourse and endorsed the same in block of asset and accepted by the Revenue. The Assessee sold the said property vide Sale-Deed registered on dated

13.11.2013 in the office of Sub-Registrar, Andheri, Mumbai, wherein consideration amount of Rs.2,03,68,000/- has also duly been also acknowledged.

3. Subsequently, the Assessee on dated 25.03.2014 purchased properties/two offices bearing no.168 and 668 on 1st floor and 2nd floor of the building namely Kamla Industrial Park, Mumbai on a consideration of **Rs. 2,08,76,204/-** and treated/introduced the said offices, as new asset and /or being part of block of assets.

4. The AO, though considered the aforesaid claim of the Assessee introducing the new offices in the block of asset, however, refused to entertain the claim of the Assessee by observing interalia:

(i) That these office premises/units were acquired vide agreement dated 25.03.2014 i.e. at the fag end of the order.
(ii) Further, from the copy of the agreement submitted, it was observed that only part payment was made by the Assessee.
(iii) Possession of the property was not received by the Assessee as on 31.03.2014.
(iv) Further, the new assets were not put to use for business purposes during the financial year under consideration and therefore, the addition to the fixed asset was "NIL" and consequently depreciation was also "NIL".
(v) and since office premises were included in the fixed assets, on which depreciation was claimed and allowed in the previous year, the provisions of section 50 of the act is applicable.

5. The AO thus, worked out/calculated the short term capital gain under Section 50 of the Act, as under: -

Sale consideration = Rs.2,03,68,000 – WDB as on 01.04.2013	**:**	**Rs. 41,97,963/-.**
Short term capital gain on depreciable	**:**	**Rs.16,17,0037/-**

asset u/s. 50 of the Act		

6. The AO ultimately, held the consideration amount paid by the Assessee for purchase of new office premises, as mere advance and block of assets as "**empty**" and disallowed the purchase of new office premises under the block of office premises/asset and the amount of **Rs.1,61,70,037/-** as short term capital gain on transfer of office premises at BDB being short term capital asset.

7. The AO also made a disallowance of Rs. 2,36,578/- being depreciation claimed on office premises, which is not in controversy and/or not agitated by the Assessee before us and therefore, we are not supposed to decide this issue.

8. The Assessee being aggrieved filed 1st appeal before the Ld. Commissioner and also challenged the decision of the AO in considering the block of assets/office premises having been sold on consideration of Rs.2,03,68,000/- as short term capital asset/short term capital gain and disallowing the purchase of new office premises under the block of office premises/assets and treating the consideration amount paid for such offices, as mere advance towards purchase of new office premises.

9. The Ld. Commissioner affirmed the decision of the AO in treating the consideration amount of new office premises, as mere advance and not treating the said premises as new assets and considering the consideration amount received on sale of previous asset from the block of assets, as short term capital gain.

10. Thus, the Assessee, being aggrieved is in appeal before this Court.

11. Heard the parties and perused the material available on record. We observe that the previous property situated at Bharat Diamond Bourse having been purchased on 24.07.2010, is not in controversy. Subsequent sale of such property on dated 13.11.2013 is also not in controversy. The only controversy revolves around the treatment of new assets/new office premises having been purchased by the Assessee during the year under consideration and endorsed as new asset in the block of assets.

12. We observe that both the authorities below declined to consider the aforesaid properties, as being part of the capital block of assets, mainly on the following reasons: -

(i) The properties were acquired vide agreement dated 25.03.2015 i.e. at the fag end of the year.
(ii) Only part payment was made by the Assessee.
(iii) No possession of the property was given to the Assessee, therefore, the property was not put to use for business purposes and,
(iv) The consideration amount for new office was just an advance towards purchase of office premises.

13. The Authorities below, while denying the claim of new asset/increase of block of assets, relied on the provisions of section 50 of the Act. The Assessee before us, demonstrated that in the provisions of section 50 of the Act, there is only requirement that new property has to be acquired but it does not contemplate the use of the property to complete the process of acquisition of property and simply on the basis of non-possession of the property, the benefit of section 50 of the Act, which is otherwise beneficial provision, cannot be denied.

14. We observe that the Assessee since through registered agreements purchased the properties/new asset during the AY under consideration, by paying full consideration amount, as

reflected from bank statement showing payments (paper book no. 138 to 141) therefore, it is entitled to introduce new office premises in the block of assets.

15. The Hon'ble Special Bench, in the case of *Chhabria Trust Vs. ACIT [2003] 87 ITD 181 (Mum.) (SB)* has also held that there is neither any explicit implied condition that the asset should be used for the purpose of business during the year under consideration. The user of the asset is important for the purpose of actual allowability of the depreciation but not for determining whether the assets falls within the block of assets or not. For completeness and ready reference, the observation drawn by the Hon'ble Special Bench is reproduced herein below: -

> *"9.3 While dealing with section 50, the ITAT in the above decision in the case of Artic (supra) has referred to the legislative history and held as under :-*
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> > *"When section 50 was substituted by the present section by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 with effect from 1-4-1988 the Board issued a circular (Circular No. 469 dated 23rd September, 1986 reported in 162 ITR statutes page 21). After referring to the budget speech of the Finance Minister wherein reference was made to the proposal to introduce a system of allowing depreciation in respect of Block of assets instead of the present system of depreciation on individual assets, at paragraph 6.3 the Board stated as follows:*
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> > *'As mentioned by the Economic Administration Reforms Commission (Report No. 12, para 20), the existing system in this regard requires the calculation of depreciation in respect of each capital asset separately and not in respect of block of assets. This requires elaborate book-keeping and the process of checking by the Assessing Officer is time consuming. The greater differentiation in rates, according to the date of purchase, the type of asset, the intensity of use, etc., the more disaggregated has to be the record keeping. Moreover, the practice of granting the terminal allowance as per section 32(1)(iii) or taxing the balancing charge as per section 41(2) of the Income-tax Act, necessitate the keeping of records of depreciation*

already availed of by each asset eligible for depreciation. In order to simplify the existing cumbersome provisions, the Amending Act has introduced a system of allowing depreciation on block of assets. This will mean the calculation of lump-sum amount of depreciation for the entire block of depreciable assets in each of the four classes of assets namely, building, machinery, plant and machinery."

This shows that the main object of introducing the block of assets concept was only to reduce time and effort spent in detailed record maintenance. While giving effect to this object, there could have been no justification or warrant for prescribing a condition that the new asset, in addition to being an asset in respect of which the same rate of depreciation is prescribed as in the case of the other assets within the class, should also be used in a business carried on by the assessee. In the case of a building, the new building purchased should be one in respect of which the same rate of depreciation, as is prescribed in respect of the other buildings, has been prescribed by the rules. If the assessee carries on a business, in that case he would also be eligible for an allowance on account of depreciation at that rate. In the case of an assessee who does not carry on a business, the result would be that he would not be entitled to any allowance on account of depreciation in respect of the asset. If at a future date he decides to commence a business, he would be entitled to the depreciation allowance in respect of the new asset, provided he satisfies the authorities that the new asset was used in that business."

16. We observe that in the case of *Artic Vs. ACIT (1999) 68 ITD 462, Mumbai*, **t**he Hon'ble Co-ordinate Bench of the Tribunal has also considered the identical issue and held as under:

"16. One more aspect remains to be seen. In the course of the arguments, the learned departmental representative submitted that the requirement of section 50(1)(iii) was that the assessee should have acquired the new property during the previous year, but in the present case the assessee has only entered into an agreement with Smt. Kamini Khanna for purchasing the flat, that the formal conveyance and registration took place in November 1995 after the close of the accounting year and under such circumstances it cannot be stated that the assessee "acquired" the flat in the previous year. Very many decisions were cited by the learned departmental representative in support of this contention but we are of the view that after the recent judgment of the Supreme Court in CIT v. Poddar Cements P. Ltd. [1997]

> ***226 ITR 625/92 Taxman 541*** *the contention cannot be accepted. In respect of a property for which payment has been made to the extent of Rs. 6,82, 049 out of the sale price of Rs. 7,17,000 at the time of signing the agreement (18-3-1995) the principle of the Judgment should apply.* ***At the end of the agreement we find that the vendor has acknowledged the payment, giving particulars of the cheques, etc.*** *The learned departmental representative drew our attention to clause 4 of this agreement to contend that the vendor herself was not in possession of the flat at the time of the agreement and therefore the purchaser could not be stated to be in possession of the property.* ***We are unable to accept the contention because this clause speaks of physical possession of the flat. But when the rights of the vendor over the property have been assigned to the assessee by the agreement and by clause 4 it was agreed that physical possession would be handed over to the assessee-firm by the builder directly after the vendor receives the full and final payment under the agreement, the legal possession of the building must be taken to be with the assessee.*** *Even otherwise the vendor is none else than one of the partners of the assessee-firm and after the signing of the agreement she must be taken to hold the flat for and on behalf of the firm in her capacity as the partner thereof and not in her individual or separate capacity. Therefore, the possession must also be taken to have been with the assessee-firm with effect from 18-3-1995"*

17. We further observe that the Hon'ble Coordinate Bench of the Tribunal in the case of *Indigogem Vs. ITO (2016) 160 ITD 405 (Mum.)* also dealt with the issue, wherein the possession of the property was not given to the then Assessee and the Hon'ble Co-ordinate Bench of the Tribunal has held that once the entire sale consideration was paid and terms of agreement are reduced into writing by way of allotment letter, the asset could be taken to be duly acquired. Further, Section 50 does not contemplate possession/use of the property.

18. We further observe that Hon'ble Apex Court in the case of *Fibre Boards Pvt. Ltd. Vs. CIT (2015) 376 ITR 596 (SC)* also considered the situation, wherein the advances were paid for the purchases and/or acquisition of the assets and thus, the Hon'ble Apex Court has held that advance paid for the purpose of purchase

of the acquisition, certainly amount to utilization of the Assessee of the capital gain made by him for the purpose of purchasing and/or acquiring the assets. For ready reference and completeness, the relevant observations of the Hon'ble Apex Court are reproduced herein below:

> *"38. We are of the view that the aforesaid construction of Section 54G would render nugatory a vital part of the said Section so far as the assessee is concerned. Under sub-section (1), the assessee is given a period of three years after the date on which the transfer takes place to purchase new machinery or plant and acquire building or land or construct building for the purpose of his business in the said area. If the High Court is right, the assessee has to purchase and/or acquire machinery, plant, land and building within the same assessment year in which the transfer takes place. Further, the High Court has missed the key words "not utilized" in sub-section (2) which would show that it is enough that the capital gain made by the assessee should only be "utilized" by him in the assessment year in question for all or any of the purposes aforesaid, that is towards purchase and acquisition of plant and machinery, and land and building. Advances paid for the purpose of purchase and/or acquisition of the aforesaid assets would certainly amount to utilization by the assessee of the capital gains made by him for the purpose of purchasing and/or acquiring the aforesaid assets. We find therefore that on this ground also, the assessee is liable to succeed. The appeals are, accordingly, allowed and the judgment of the High Court is set aside.*

19. Thus, on the aforesaid analyzation, we reiterate that the Assessee was supposed to purchase new properties and/or new asset for the purpose of **"block of assets"** during the assessment year under consideration/on or upto 31.03.2014, which have duly been purchased by the Assessee by paying entire consideration amount, as observed above, may be on the dated **25.03.2014** i.e. at the fag end of the year however, it is fact the same were purchased before **31.03.2014**. Thus, the Assessee would be entitled to include the new assets in the **"block of assets"**. The observation of the AO that only part payment was made by the Assessee having no substance and /or material. Further, possession

as held by the AO is mandatory for introducing the new asset in the "block of assets", is not a pre-condition for claiming the benefit under Section 50 of the Act and/or for treatment/inclusion of the new assets in the 'block of assets'. Further, starting of the business from the new premises, is also not a pre-condition and if an Assessee simply acquires/purchased the new assets on or before the time allowed that would suffice the purpose for claiming the benefit under block of assets.

Thus, on the aforesaid analyzations, the AO is directed to consider two new properties/assets purchased during the year on dated 25.03.2014 being part of block of assets, having been purchased on a consideration amount received on account of sale of old property/asset being part of "block of assets" and re-compute the tax liability accordingly.

20. The Assessee has also raised additional ground, which read as under:

> "4. Without prejudice to the above, the NFAC failed to appreciate that the office premises sold during the Financial Year were long term capital assets, and hence, the capital gain thereon was taxable as long term capital gains @ 20% and not @ 30%."

20.1 As we have adjudicated the main issue and allowed the new assets to be part of the "block of assets" and thus, this additional ground of appeal has become infructuous, hence, needs no adjudication.

21. In the result, Assessee's appeal is allowed.

Order pronounced in the open court on 12.02.2026.

Sd/-	**Sd/-**
(PRABHASH SHANKAR)	**(NARENDER KUMAR CHOUDHRY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Tarun Kushwaha
Sr. Private Secretary.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.