IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL APPELLATE JURISDICTION

WRIT PETITION (L) NO. 37709 OF 2025

Samir N. Bhojwani .. Petitioner

Versus

Principal Commissioner of Income Tax, Mumbai & Ors. .. Respondents

Mr. J. D. Mistri, Senior Advocate a/w Adv. Atul K. Jasani for the Petitioner.

Adv. Subir Kumar a/w Adv. Niyanta Trivedi & Adv. Diksha Pandey, for the Respondents.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: JANUARY 6, 2026

P. C.

1. Rule. Respondents waive service. With the consent of parties, rule made returnable forthwith and heard finally.

2. The above Writ Petition challenges the impugned order dated 4th September, 2025 passed by Respondent No.1 (Principal Commissioner of Income Tax) under Section 264 of the Income Tax Act, 1961 (for short the **'IT Act'**), to the extent that it does not direct the levy of tax on capital gains, in

respect of a Long Term Capital Assets, computed under Section 50, at the rate mentioned under Section 112 of the Act. The impugned order dated 4th September 2025 is annexed as Exhibit 'H' to the Petition. The main grievance of the Petitioner is that the impugned order refuses to follow the decision of the Special Bench of the ITAT in the case of ***SKF India Ltd. Vs. Deputy Commissioner of Income Tax [2024] 168 taxmann.com 328 (Mumbai- Trib.) (SB).***

3. The reasons given by the 1st Respondent for not following by the decision of the Special Bench [in *SKF (India)*] can be found in paragraph 3.2.3, 3.2.4 and 3.2.5 of the impugned order. For the sake of convenience, the said paragraphs are reproduced here under :

> *3.2.3 **It is apparent that although the decision in the case of SKF India Ltd was by the Special Bench of ITAT Mumbai there was dissenting view of the 3rd member the Special Bench of ITAT Mumbai.** Further in the assessee's own case for A.Y. 2001-02, co-ordinate division Bench of ITAT Mumbai vide order dated 29.12.2011 in ITA no.720 of 2006 had rejected the contention of the assessee for taxing the capital gain u/s.50 of the Act as per section 112 of the Act. This has been noted by the Hon'ble third member of the Special Bench. **The department has not accepted this decision of the ITAT Mumbai in SKF India(supra) and the issue is being contested before the Hon'ble Bombay High Court.** Thus, there is no finality on the issue of tax at the rate u/s 112 of the Act for capital gain u/s 50 of the Act and the decision of hon'ble Special Bench cannot be equated in the nature of declaration of law by the Hon'ble Supreme Court under Art 141 of the Constitution of India or decision by the jurisdictional High Court.*

3.2.4 *It is an undisputed fact that even prior to Special Bench decision of ITAT Mumbai, there were conflicting views of various higher judicial authorities regards applicable tax rate on capital gain deemed to have arisen out of short term capital assets transfer as mentioned by the petitioner in his application* ***and even Special Bench decision of ITAT Mumbai is not Full Bench decision.***

3.2.5 ***The ITAT Special Bench, by virtue of decision in SKF India (supra), has rendered the provision of S. 50 of the Act redundant which is beyond the scope of the power of hon'ble ITAT Special Bench. The decision of Hon'ble Special Bench ITAT, Mumbai is in contradiction to the rule of Harmonious Construction to be followed by the Courts interpreting the various provisions of statute so as to not render any provision redundant.*** *This was reiterated by the Hon'ble Supreme Court in CIT V. Hindustan Bulk Carriers 258 ITR 399 as well as landmark decision in the case of Kesavanand Bharati vs. State of Kerala. Even on merits, the Hon'ble Special Bench has far stretched the decision of Hon'ble Bombay High Court in the case of Ace Builders(supra) (wherein the issue involved was allowability of deduction u/s 54 of the Act for capital gain derived u/s 50 of the Act) by extrapolating the said decision of Hon'ble High Court to hold that the capital gain derived u/s.50 of the Act although deemed as Short term Gain, there is no change in character of the long term assets and therefore, the applicable tax rate will be as per S.112 of the Act and not normal tax rate applicable for short term capital gain.* ***With due respect to the decision of Hon'ble Bombay High Court in Ace builders(supra) and Hon'ble ITAT Special Bench Mumbai in SKF India(supra), the distinguishing facts which appears to have missed the attention or not brought to notice of Hon'ble, judges by the litigants can be enumerated as under.***

> *(i). The computation of capital gain for transfer/sale of depreciable assets as per S. 50 of the Act allows for deduction pertaining to new purchase of properties in the same block of assets during the relevant Financial year and therefore, there could not have been any intention of the Legislature to allow double benefits of deductions as enumerated under S.54/54E of the Act as held in the case of Ace Builders. Thus, there is need to revisit the decision in the case of Ace builders as the same is leading to*

incorrect interpretation of law by lower judicial authorities.
(ii). The provision of S.50 of the Act is reproduced hereunder for the sake of convenience:

> *"Special provision for computation of capital gains in case of depreciable assets.*
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> *50. Notwithstanding anything contained in clause (42A) of section 2, where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed under this Act or under the Indian Income-tax Act, 1922,the provisions of sections 48 and 49 shall be subject to the following modifications: -*

(1) where the full value of the consideration received or accruing as a result of the transfer of the asset together with the full value of such consideration received or accruing as a result of the transfer of any other capital asset falling within the block of assets during the previous year, exceeds the aggregate of the following amounts, namely :-
(i) expenditure incurred wholly and exclusively in connection with such transfer or transfers;
(ii) the written down value of the block of assets at the beginning of the previous year, and
(iii) the actual cost of any asset falling within the block of assets acquired during the previous year,

such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets"

S.50 of the Act is a non-obstante clause giving overriding effect over S.48, S.49 and S.2(42A) of the Act for treatment of capital gain arising on transfer/sale of depreciable assets as deemed to have been derived from transfer of Short term capital assets. Thus, ***the deeming fiction is to the nature of capital asset.*** *S.45 of the Act already defines any profits or income from transfer of capital asset as taxable under head Capital gain and there is no need to create deeming fiction regards capital gain in S.50 of the Act. Obviously, the intent of the*

legislature was to create deeming fiction not regards the capital gains but as regards the nature of capital assets by declaring that the capital gain on sale of depreciable assets will be deemed as capital gain derived from transfer of short term capital assets. Had it been the intention of legislature to merely create deeming fiction for the nature of the capital gain, it could have spelt out the income/profits from transfer/sale of depreciable assets as short term capital gain. The deeming fiction is as regards the capital assets moreso because S.50 starts with notwithstanding anything contained in S.2(42A) which defines short term capital assets. Thus, even though the definition of short term capital assets in S.2(42A) mentions specific holding period of not more than 24 months, this non-obstante clause brings depreciable assets of more than 24 months holding period under its fold. Therefore, the decision of Hon'ble Special Bench ITAT Mumbai that deeming fiction is not with regard to change in character of capital assets but only with capital gain is not in accordance with harmonious reading of relevant provisions of S.50, S.48 and S.2(42A) of the Act.

(iii). Once Non-obstante provision of S.50 of the Act deems the capital gain on transfer of depreciable assets as capital gain derived from short term capital assets, by virtue of S.2(42B) of the Act (defining the short term capital gain), the said capital gain becomes short term capital gain. This again fortifies the interpretation that the deeming section 50 of the Act is as regards the change in nature of capital assets whereby the depreciable assets have been deemed as short term capital assets.

(iv). In the provisions of of s.45 onwards, regarding the taxable income under head Capital gain, there is no mention of the words short term capital gain or long term capital gain as all these provisions speaks of capital gain on transfer capital assets whether short term capital assets or long term capital assets. Therefore, by no stretch of imagination, it can be stated that the deeming fiction of S.50 of the Act was deeming fiction for the capital gain. Thus, the provision of S.50 of the Act deemed the depreciable assets as short term capital assets so as to compute capital gain under this section as short term capital gain.

(v). In view of the discussion at s.no.(i) to (iv) above, it is

> *apparent that there is need to review the findings given by the Hon'ble ITAT Mumbai Special Bench and since the said case of SKF India(supra) is under jurisdiction of this office, the said decision is being contested before Hon'ble Bombay High Court.*
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> (emphasis supplied)

4. As can be seen from these findings, the first reason for not following the decision of the Special Bench in *SKF India (supra)* is that the department has not accepted the decision of the Special Bench and the issue is being contested before the Hon'ble Bombay High Court. According to the 1st Respondent, thus, there is no finality on the issue of tax at the rate under Section 112 of the Act for capital gains under Section 50 thereof, and the decision of the Special Bench cannot be equated in the nature of a declaration of the law by the Hon'ble Supreme Court under Article 141 of the Constitution of India.

5. The second ground and which appears to be somewhat rather strange, is that even prior to the Special Bench decision of the ITAT, there were conflicting views of various higher judicial authorities regarding the applicable tax rate on capital gains deemed to have arisen out of the transfer of short term capital assets and even the Special Bench decision of the ITAT is not a Full Bench decision. We fail to understand how the decision of the Special Bench cannot be termed as a 'Full Bench decision' when it was

rendered by three members of the ITAT. The 1st Respondent has probably come to this erroneous conclusion because one member of the bench dissented from the majority. This apart, in paragraph 3.2.5, the Commissioner sets out various reasons, why according to him, the Special Bench of the ITAT has gone wrong in its decision. It is on this basis that the 1st Respondent comes to the conclusion that there is a need to review the findings given by the Hon'ble ITAT, Mumbai Special Bench, and since the decision of the Special Bench in the case of *SKF India (supra)* is being contested before this Court, he has refused to follow the said decision.

6. Having heard Mr. Mistri, the learned Senior Counsel appearing on behalf of the Petitioner, as well as Mr. Subir Kumar appearing on behalf of Revenue, we are clearly of the view that the 1st Respondent completely mis-directed himself by not following the binding decision of the ITAT in the case of *SKF India (supra)*. It is not for the Commissioner to decide whether the ITAT was correct in its decision or otherwise. Even though in his personal opinion, he may be of the view that the decision has wrongly decided the law, he is bound to follow the same. If the lower authorities are permitted not to follow binding decisions because in their personal view they feel that the decision is wrong, the same would lead to complete chaos in the administration of tax laws.

7. In the view that we take, we are supported by several decisions, not only of the Hon'ble Supreme Court, but also of this Court. The Hon'ble Supreme Court in ***Union of India and Others Vs. Kamlakshi Finance Corporation Ltd [1992 supp(1) SCC 443]*** has criticized this kind of conduct by the Revenue Authorities. Paragraph 6 of this decision reads thus :

> *"6. Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer.* ***But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual mala fides but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities.*** *The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal.* ***The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department – in itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment and chaos in to assessees administration of tax laws."***
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> (emphasis supplied)

8. This decision of the Hon'ble Supreme Court was thereafter followed by this Court in the case of ***M/s. Om Siddhakala Associates Vs. Deputy Commissioner of Income Tax, CPC [Writ Petition No. 14178 of 2023 decided on 28th March 2024]***. Thereafter, this Court in the case of ***Dipti Enterprises Vs. Assistant Director of Income Tax [Writ Petition No. 2621 of 2023 decided on 17th November 2025]*** has once again reiterated that the lower authorities are bound to follow the decisions of the higher authorities. The relevant portion of the decision in the case of *Dipti Enterprises (supra)* is reproduced hereunder :

> *"15. One of the reasons cited by Respondent No.2 for not following the decision of the Jurisdictional Appellate Tribunal in the case of S.K. Ventures vs. ITO (supra) was because the said decision was not accepted by the revenue, and the revenue had filed an appeal before this High Court. This approach of the revenue to disregard a judicial precedent on the ground of it being challenged before a superior Court is unacceptable. Merely because the order of the appellate authority is "not acceptable" to the department, and is the subject matter of an appeal, can furnish no ground for not following a judicial precedent, unless its operation has been suspended by a competent Court. If this healthy rule is not followed, it would lead to undue harassment to assessees and result in chaos in the administration of tax laws.*
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> *16. In this regard, the reliance placed by the Petitioner to the decision rendered by this Court in the case of* ***Samp Furniture Pvt. Ltd. Vs. ITO [WP NO.: 3290/2024; order dated 05.08.2024]****, is well founded. In this decision it was held as under:*
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> > *"11. This apart we also find that quite absurd and unwarranted statements are made by the JAO in paragraph 12 of the reply affidavit, when he says that the department does not agree with the judgment of this Court in*

Hexaware Technologies Limited (Supra). It may be that the Revenue has not "accepted" the judgment but it would not mean that till the same is set aside in a manner known to law, the same has lost its binding force as the deponent intends to say in paragraph 12, so as to proceed as if there is no such decision of this Court, and much less a binding decision. It is noteworthy that this very approach of treating judgments being "not acceptable" is in the teeth of the law as laid down by the Supreme Court deprecating such conduct of the authorities..."

(emphasis supplied)

17. Further, the Hon'ble Apex Court in the case of ***Godrej Sara Lee ltd. vs. The Excise And Taxation Officer [Civil Appeal no.5393 OF 2010; order dated 01.02.2023)*** *inter-alia held as under:*

34. In our view, the Revisional Authority might have been justified in exercising suo motu power to revise the order of the Assessing Authority had the decision of the Tribunal been set aside or its operation stayed by a competent Court. So long it is not disputed that the Tribunal's decision, having regard to the framework of classification of products/tax liability then existing, continues to remain operative and such framework too continues to remain operative when the impugned revisional orders were made, the Revisional Authority was left with no other choice but to follow the decision of the Tribunal without any reservation. Unless the discipline of adhering to decisions made by the higher authorities is maintained there would be utter chaos in administration of tax laws apart from undue harassment to assesses. We share the view expressed in Kamlakshi Finance Corporation Lid. (supra)"

(emphasis supplied)

18. Thus, we hold that filing of an appeal by the revenue against

the order of the Appellate Tribunal ipso-facto would not absolve the revenue authorities from adhering to the applicable binding judicial precedents.

19. Secondly, we hold that the doctrine of binding precedents plays a vital role in tax jurisprudence. It is first required to be ascertained whether, in the facts and circumstances of the case and in law, a particular judicial precedent is factually and legally in consonance with the case in hand or not. If it is found that the precedent relied upon is distinguishable, then such parameters based on which it is distinguishable need to be described in the order. In the present case, Respondent No.2 has not assigned any cogent reasons for distinguishing the decision of the jurisdictional Tribunal in the case of S.K. Ventures vs. ITO (supra) from that of the Petitioner. The Petitioner has categorically stated that its grievance about the levy of tax pursuant to the provisions of Section 115JC was a decided issue by the jurisdictional Tribunal in the case of S.K. Ventures us. ITO (supra). If the assessee is pleading that its interpretation of the applicability of Section 115JC has already been decided by the jurisdictional Tribunal, then in such a case, Respondent No.2 ought to have considered the facts and law of the said case. If the facts are identical, then it ought to have been followed. Instead, Respondent No.2 states that the doctrine of binding judicial precedents would apply only when the decision of the superior authority/Court is rendered in respect of the same party. It is the claim of Respondent No.2 that because the Petitioner was not a party to the decision in the case of S.K. Ventures vs. ITO (supra), the ratio laid down therein would not apply to the Petitioner. We are of the view that if in the facts and circumstances of the case and in law, the case of the Petitioner is in consonance with the facts in the decision rendered by the jurisdictional Tribunal, then it ought to be followed as a matter of judicial discipline."

9. Once this is the law, the order passed by the Commissioner is wholly unsustainable. We accordingly deem it fit to allow the Writ Petition and hereby quash and set aside the impugned order dated 4th September 2025 passed under Section 264 of the IT Act. The matter is now remanded to

the 1st Respondent to pass a fresh order on the application filed by the Petitioner by following the decision of the Special Bench of the ITAT in the case of *SKF India (supra)*.

10. We may hasten to add that this order should not be construed to mean that we have endorsed the view taken by the Special Bench in *SKF India (supra)*. We have decided the present matter purely on the basis that once there was an order of the jurisdictional tribunal, the same ought to have been followed. In other words, we have held that judicial discipline ought to be maintained and cannot be deviated from on the ground that the order passed by the superior authority is "not acceptable" to the department.

11. Since the 1st Respondent has already decided the application for condonation-of-delay in favour of the assessee, and which has not been challenged before this Court by the Revenue, the 1st Respondent shall hear the matter on merits and will not revisit the condonation-of-delay application. We also direct that the 1st Respondent shall pass a fresh order as per our directions, as expeditiously as possible and in any event within a period of 30 days from the date of uploading of this Order on the High Court website.

12. Rule is made absolute in the aforesaid terms, and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

13. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

Mansi shelke