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आयकर अपीलीय अधिकरण, मुंबई पीठें, मुंबई
INCOME TAX APPELLATE TRIBUNAL, MUMBAI
BENCHES, MUMBAI

BENCH: F
BEFORE PAWAN SINGH, JUDICIAL MEMBERAND
SHRI RAKESH KUMAR LODHA, ACCOUNTANT MEMBER

ITA No. 406/Mum/2026 (**निर्धारणवर्ष**/AssessmentYear:**2015-2016**)		
Simplex Papers Limited 2nd Floor, Simplex Mills Compound, 30, Keshavrao Khadye Marg, Jacob Circle, Mumbai – 400011, Maharashtra.	**Vs.**	Deputy Commissioner of Income Tax, Central Circle 4(4) Room No.424, 4th Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra East , Mumbai – 400051 Maharashtra.
अपीलार्थीAppellant		प्रत्यर्थी **Respondent**
Permanent Account Number of Assessee**:**		**AABCS6910M**
अपीलार्थीद्वारा/Appellant represented by:		Shri Anil Lohia, CA a/w Shri Kaushit Jain
प्रत्यर्थीद्वारा/Respondent represented by:		Shri Kamaljeet Kumar(SR DR)

सुनवाईकीतारीख/Date of conclusion of hearing:	**13-Oct-2026**
घोषणाकीतारीख/Date of pronouncement:	**15-Oct-2026**

आदेश / ORDER

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal is filed by the Assessee against the order of Ld. CIT(A)-54, Mumbai dated 27.11.2025 for the Assessment Year (AY) 2015-2016. The Appellant/Assessee has raised the following grounds of appeal:

1) On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals), CIT(A) 54, Mumbai ["the learned CIT(A)] erred in not allowing set off of brought forward business loss against the Short Term Capital Gain arising from the sale of a depreciable asset

u/s.50 amounting to Rs.2,46,91,234/-.

2) Without prejudice to the above, on the facts and circumstances of the case and in law, the learned CIT(A) erred in not concluding that the Short Term Capital Gain arising from the sale of a depreciable asset u/s.50 in principle constitutes Business Income considering the real character of the income although taxing it under the head Capital Gains is merely a computational aspect of ignoring various decisions of the Jurisdictional Tribunal and High Court."

2. Rival submissions of both the parties have been heard and record perused. The Learned Authorized Representative (Ld. Ld.AR) of the Assessee submits that Assessee filed its return of income for the Assessment Year 2015-2016 on 29.09.2015 declaring Nil income after set of off carry forward losses. Case was selected for scrutiny and assessment was completed under section 143(3) on 16.10.2017 in accepting return of income. Subsequently, the assessment was revised by Learned Principal Commissioner of Income Tax (PCIT) by invoking this jurisdiction under Section 263 of the Income Tax Act by his order dated 14.12.2020. In the revision proceedings, the Learned PCIT identified two issues for revising Assessment Order. Firstly, sale of stores items amounting to Rs.61,80,986/- and set off of brought forward business loss against Short Term Capital Gain (STCG) arising from the sale of depreciable asset under Section 50. The Ld. AR of Assessee fairly submits that order under Section 263 of the Act was challenged before Tribunal on various grounds. However, the same was restored back to the file of PCIT with direction to allow fair and reasonable opportunity of hearing to the Assessee. In the meantime the Assessing Officer passed order giving effect under Section 143(3) rws 263 of the Act on 14.03.2022. The Assessing Officer in order giving effect made additions/disallowance as per directions of

ld PCIT. On appeal before Learned CIT(A), the Assessee was allowed relief on stores sale items however, the disallowance of set of off short term capital gain earned on sale of depreciable asset was disallowed by referring the decision of Mumbai Tribunal in Sabeena Silk Mills Vs. Income-tax Officer in ITA No.1508/Mum/2025, dated 13.08.2025. The order of Sabeena Silk Mills (supra) has been subsequently recalled by Tribunal in M.A. No.378/Mum/2025, dated 11.05.2026. The Learned CIT(A), while confirming the action of Assessing Officer solely relied upon the decision of in Sabeena Silk Mills Vs. Income-tax Officer 31(1)(1), Mumbai (Supra) which has been recalled thus it has lost its reliance value. The ld CIT(A) also relied on the decision of Mumbai Tribunal in Everest Kanto Cylinder Ltd. in ITA No. 782/Mum/2024 dated 20.01.2025, which is based on different set of facts.

3. The ld AR of the assessee submits that ground of appeal raised by the assessee in covered by the ratio of decision of Hon'ble Jurisdiction High Court in Pr.CIT Vs. Alcon Developers reported in [2021] 128 taxmann.com 371 (Bombay), wherein it was held that Assessee is entitled to claim set up off its business loss of earlier years against income from capital given earned on sale of its business undertaking. The Learned Ld.AR of the Assessee also relied upon decision of Bombay High Court in the case of Commissioner of Income Tax-5 Vs. Hickson & Dadajee (P.) Ltd. [2020] 122 taxmann.com 93 (Bombay). Further, in CIT Vs Hickson & Dadajee (P.) Ltd. (Supra), the Revenue has accepted that decision of Mumbai Tribunal in Digital Electronics Ltd. Vs. Additional Commissioner of Income Tax [2012] 49 SOT 65 (Mumbai) has been accepted by the Revenue. In Digital Electronics Ltd. (Supra) the

Tribunal held that under Section 72 of the Act the loss under head "Profit and Gains of business or Profession" can be carried forward and same can be set off against loss under the head "Profit of any business or profession". There is no requirements of Section 72 of the Act that such gain or profit must be taxable under the head "Profit and gains of business or profession". The carry forward business loss set off against "Short Term Capital Gain" of sale of building. Similar view was taken by the Hon'ble Karnataka High Court in the case of Nandi Steels Ltd. Vs. Assistant Commissioner of Income Tax, Circle 12(2), Bangalore [2021] 128 taxmann.com267 (Karnataka), dated 23.02.2021 wherein it was held that Assessee was entitled to set off carry forward business loss of earlier years against income declared under head "Income from capital gain" arising out of sale of land alongwith building and bore well which were business assets of assessee. The Learned Ld.AR of the Assessee submits that issue at present is covered by various decisions he has relied upon. It was argued that no further appeal is filed by Revenue against the relief allowed by the Learned CIT(A) on the issue of sale of store items, now the short issue is only with regard to set off of business loss against capital gain earned on sale of part of depreciable asset.

4. On the other hand the Learned Senior Learned Departmental Representative (Ld. DR) for the Revenue supported the order of Assessing Officer/ Learned CIT(A). The Learned Sr. DR for the revenue submits that he will have to verify about the status of decision of the Tribunal in the case of Digital Electronics Ltd. (Supra) which has been allegedly accepted by Standing Counsel before the Hon'ble High Court.

5. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities below. On perusal of record the lower authorities, we find that Learned AR of the assessee while making his submissions has correctly explained the fact. Before us, a very limited issue is for our consideration, that is, if the Assessee is eligible for claiming set off of brought forward business loss of Rs.2.46 Crores against the short term capital gain earned on sale of depreciable assets under the head "Short Term Capital Gain". We find that Learned CIT(A) while confirming the action of Assessing Officer relied upon decision of in Sabeena Silk Mills Vs. Income-tax Officer 31(1)(1), Mumbai (Supra), we find that decision of Tribunal in the case of in Sabeena Silk Mills Vs. Income-tax Officer (supra) has been recalled in M.A.No.378/Mum/2025. Thus, in our considered view such decision has lost its reliance/reference value. The ld CIT(A) also relied upon the decision of Mumbai Tribunal in the case of Everest Kanto Cylinder Ltd. Vs. DCIT (supra). On careful perusal of such decisions, we find that fact of the case in Everest Kanto Cylinder Ltd. Vs. DCIT (Supra) the Assessee showed depreciable asset at a value lower than written down value of the asset resulting into loss and the said Assessee claimed business loss, however, the case in our hand is at diagonally opposite.

6. We find that issue in the present appeal is squarely covered by the decision of Jurisdictional High Court in the case of Pr.CIT Vs. Alcon Developers (Supra) wherein it has been held that Assessee is entitled to claim set off of its business loss of earlier years "Income from Capital Gain" earned by the Assessee from selling its business undertaking. Similar view has been taken

by Hon'ble Karnataka High Court in the case of Nandi Steels Ltd. Vs. ACIT (supra). We also find that decision of Mumbai Tribunal in Digital Electronics Vs. Add CIT (Supra) it was held that held that under Section 72 of the Act the loss under head "Profit and Gains of business or Profession" can be carried forward and same can be set off against a loss under the head "Profit of any business or profession". There is no requirements of Section 72 of the Act that such gain or profit must be taxable under the head "Profit and gains of business or profession". The carry forward business loss set off against "Short Term Capital Gain" of sale of building. The decision in Digital Electronics Vs Add CIT (supra) has been accepted by the Revenue of such Act is at variance. Moreover, there is no reference of decision of Jurisdictional Bombay High Court in the case of Pr CIT Vs Alcon Developers (Supra) and CIT Vs. Hickson & Dadajee (P.) Ltd. (Supra) wherein the decision of Mumbai Tribunal in Digital Electronics Vs. Additional Commissioner of Income Tax (Supra) has been accepted by the Revenue. Thus, in view of the aforesaid factual and legal discussion the ground of appeal raised by Assessee is allowed.

7. In the result, appeal filed by the Assessee is Allowed.

Order pronounced in the open court on 15.10.2026.

Sd/-	**Sd/-**
RAKESH KUMAR LODHA	**PAWAN SINGH**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai
Dated:15.10.2026
Milan Patil

Copy to:

1	Simplex Papers Limited 2nd Floor, Simplex Mills Compound, 30, Keshavrao Khadye Marg, Jacob Circle, Mumbai – 400011, Maharashtra.
2	Deputy Commissioner of Income Tax, Central Circle 4(4) Room No.424, 4th Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra East , Mumbai – 400051 Maharashtra.
3	THE PCIT / CIT,
4	THE D.R., ITAT, MUMBAIBENCH
5	GUARD FILE

TRUE COPY

ABHINAV ANANT GAVANDE

Digitally signed by ABHINAV ANANT GAVANDE
Date: 2026.10.24 15:19:46 +05'30'

ASSISTANT REGISTRAR /
SR. PRIVATE SECRETARY
I.T.A.T., MUMBAI