



**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI PAVAN KUMAR GADALE, JM**

**ITA No.3218/Mum/2023**  
(Assessment Year: 2016-17)

**Goldiam International  
Limited**  
Plot No.16/17 Gems and DCIT, Central Circle 1(2)  
Jewelry Complex Seepz SEZ Vs. Mumbai  
Andheri East, Mumbai-400  
096  
(Appellant) (Respondent)  
**PAN No. AAACG2271J**

**ITA No. 3219 /Mum/2023**  
(Assessment Year: 2016-17)

**Goldiam Jewelry Limited**  
Plot No.16/17 Gems and DCIT, Central Circle 1(2)  
Jewelry Complex Seepz Vs. Mumbai  
SEZ Andheri East,  
Mumbai-400 096  
(Appellant) (Respondent)  
**PAN No. AAACG2271J**

**Assessee by** : Shri Mani Jain, CA  
**Revenue by** : Shri Mirza Azhar, DR



**Date of hearing:** 24.01.2024  
**Date of pronouncement :** 05.04.2024

## ORDER

### PER PRASHANT MAHARISHI, AM:

01. ITA No. 3218/Mum/2023 is filed by **Goldiam International Limited** for assessment year 2016 – 17 against appellate order passed by The Commissioner Of Income Tax (Appeals) – 47, Mumbai dated 3/8/2023 wherein the appeal filed by the assessee against the assessment order dated 13/2/2023 passed under section 143 (3) read with section 147 of The Income Tax Act, 1961 (the ACT) passed by The Deputy Commissioner Of Income Tax, Central Circle – 1 (2), Mumbai was dismissed.
02. Identically ITA number 3219/M/2023 with identical facts and circumstances for assessment year 2016 – 17 is filed by the sister concern **GoldiamJewelry Limited**.
03. In ITA number 3218 [**Goldiam International Limited**], taken as a lead appeal, wherein assessee raised following grounds of appeal.-

*“1. On the facts and circumstances of the Appellant’s case and in law the learned CIT (A) erred in confirming the action of learned Assessing Officer in reopening the assessment under Section 147 by issue of notice dated 29.06.2021 under Section 148 of the Act which is bad in law and without jurisdiction and is merely based on*

*external information with which the appellant has no nexus.*

2. *On the facts and circumstances of the Appellant's case and in law the learned CIT (A) erred in confirming the action of Learned Assessing Officer of reopening the assessment under Section 147 by issue of notice dated 29.06.2021 under Section 148 which is merely due to change of opinion and therefore reopening is bad in law.*

3. *On the facts and circumstances of the Appellant's case and in law the learned CIT (A) erred in confirming the action of learned Assessing Officer in reopening the assessment under Section 147 by issue of notice dated 29.06.2021 under Section 148 , which is barred by limitation of law in view of the first proviso to Sec 147 of the Income Tax Act, 1961.*

4. *On the facts and circumstances of the Appellant's case and in law the learned CIT (A) erred in confirming the action of learned Assessing Officer in alleging that the appellant had entered into sham transactions in order to avoid/ reduce the tax liability, for the reasons mentioned in the impugned order or otherwise.*

5. *On the facts and circumstances of the Appellant's case and in law the learned CIT (A) erred in confirming the action of learned Assessing Officer in relying on the third party statements recorded during the survey action under Section 133A of the Act carried out in the case of*

*JM Financial Asset Management Limited, for the reasons mentioned in impugned order or otherwise.*

6. *On the facts and circumstances of the case and in law, the learned CIT (A) erred in confirming the action of the learned Assessing Officer in disallowing the exemption of dividend income amounting to ₹99,42,767/- claimed under Section 10(35) of the Act, for the reasons mentioned in the impugned order or otherwise.*

7. *On the facts and circumstances of the case and in law, the learned CIT (A) erred in confirming the action of the learned Assessing Officer in disallowing the short term capital loss incurred by the appellant amounting to ₹1,05,65,468/-, for the reasons mentioned in the impugned order or otherwise.*

8. *The appellant craves leaves to alter, amend, withdraw or substitute any ground or grounds or to add any new ground or grounds of appeal on or before the hearing.”*

04. Facts shows that the assessee company is engaged in the business of manufacturing and trading in diamond jewelry, filed return of income on 24/11/2016 a total income of ₹ 115,724,490. After that search was conducted on the group and subsequently assessment under section 143 (3) of the act was completed on 28/12/2017 at ₹ 119,951,600. Dispute in that appeal after carrying it before the first appellate authority was settled in Vivad Se Vishwas Scheme 2020.



05. Meanwhile, survey action under section 133A of the act was conducted on 15/2/2021 in case of JM financial asset Management Ltd wherein it was found that JM balanced fund annual dividend option regular plan of JM financial manipulated accounting methodology so as to artificially inflate that distributed surplus flouting SEBI guidelines by classifying a portion of capital as distributable surplus and thereafter artificially pay out to the investor in the form of dividend. On detailed investigation, DDIT (investigation) had concluded that the dividend received was sham transaction generated using colourable device as dividend received is not on account of appreciation of the investment but is a return of part of the capital itself hence it cannot qualify as a dividend. Thus, dividend was sham and capital loss being artificial, was not considered for treatment in accordance with normal dividend and capital loss.
06. According to AO, SEBI per circular dated March 15, 2010, had categorically held that unit premium reserve shall be treated at par with unit capital and cannot be utilized to declare the dividends and the mutual fund houses cannot distribute dividends from unit premium reserve. It can distribute only from surplus generated by realizing the gains on investments or dividends received from equity markets, which it had invested. That means it has to make investment and then make a profit to distribute. These directions of the SEBI being not followed by the mutual fund as it first artificially rigged the distribution surplus and then applied as a ratio to future or allotted units. Accordingly, by deploying unfair methods, the mutual fund houses have rigged up the distributable surplus in a planned manner. While accounting for the breakup of net asset value on the

date of investments, the fund house credits the income equalization reserve account instead of unit premium reserve account, which is strictly against the guidelines specified by SEBI. Immediately after the dividend is declared since there is not enough money to distribute, the capital amount introduced by the client is distributed back to the arm in the form of tax-free dividend. The balance amount is redeemed at a loss. Since the net asset, value is false and the investors book a short-term capital loss, which looks genuine but is actually fictitious and preplanned losses. The investors, in order to reduce the tax liability, entered into these sham transactions, received dividends, and short-term capital loss. As a result, the dividend is not eligible for deduction under section 10 (35) of the act and short-term capital loss is also not eligible for adjustment with other capital gains being generated because of sham transactions. In fact, dividend being distributed out of capital itself, such dividend should be reduced from the cost of investment resulting in a reduction in short-term capital loss.

07. The information is received that assessee has indulged in the sham scheme just to avail fictitious loss which has resulted in escapement of taxable income of the assessee for the assessment year under consideration as to it was found that assessee had invested in the scheme of mutual fund namely JM balanced fund, quarterly dividend on 17/6/2015 at the cost of acquisition of ₹ 300 lakhs and same were sold on 28/3/2016 at ₹ 19,434,337/- resulting into loss of ₹ 10,565,468/-. The assessee has also earned dividend on 18/6/2015 of ₹ 53,97,502/- and on 26/12/2015 of ₹ 4,545,265/-. Thus, in nutshell assessee has claimed loss of ₹ 10,565,468/- and earned tax-free dividend of ₹ 9,942,767/-. The learned assessing officer questioned

the assessee that under these circumstances is shown as dividend income should not be held as your income from an unexplained sources and text accordingly. Further, the short-term capital loss claimed by the assessee should not be disallowed.

08. Assessee explained the transaction and submitted that assessee is a regular investor in mutual fund and has made a total investment of ₹108,41,15,150 as on 31st of March 2016 and total purchases in various schemes of mutual funds during the year is more than ₹ 46 crores as well as redemption is also of ₹ 51 crores. Assessee is not at all related to the any of the fund manager named in the reasons for reopening and the assessee has purchased the said units from the market. Assessee is not aware of any of the activities mentioned in the notice. The acquisition of the units of mutual fund as well as the redemption of the investment in the scheme is based on the market review and information received from various fund managers. It was also the claim that conditions specified in section 94 (7) of the act are fulfilled by the assessee and the assessee is therefore eligible to claim exemption of dividend income as well as loss incurred on the same.
09. Learned AO disagreed with the submission made by the assessee for the reason that during the course of survey under section 133A of the act in case of JM financial asset Management Ltd on 15/2/2021 it was found that that company had manipulated accounting methodology so as to artificially inflate the distributable surplus. Further the guidelines were flouted of the regulator by the mutual fund thus the dividend received is an account of manipulated accounts by the mutual fund operator which is in contravention to the circular of regulator. The AO further found that this mutual fund



plans started on 23/12/2014 with the asset under management of ₹ 5000/-. As on 23/4/2015 such a UM was only ₹ 5275 and there were only 2 investors in the plan. The net asset value is ₹ 26.99 but taking advantage of low as under management, the distributable surplus of the plan has been directed to ₹ 16.76 by realizing profitable (. These investments have been made long back resulting in substantial appreciation. During the period 24/4/2015 215/6/2015 mutual fund received an inflow of ₹ 19.18 crores and the closing asset under management as on 14/6/2015 stood at ₹ 18.89 crores. Further the planned received the huge inflow of ₹ 2719 crores in the span of just four days from 15/6/2015 – 18/6/2015. A dividend of ₹ 4.75 per unit has been distributed on 18/6/2015 i.e., 17.85%. This planned received further inflow of ₹ 2259 crores between 20/6/2015 to 27/12/2015 in span of just a nearly 6 months. A dividend of Rs. 4 per net asset value has been distributed to the unit holders on 27/12/2015, which is around 18.68%. Further the planned received an inflow of ₹ 4698 crores between 28/12/2015 to 30/3/2016. A dividend of ₹ 6 was distributed to the unit holders on 30/3/2016, which is around 40%. During financial year 2015 – 16, the total dividend distributed through plan is around Rs. 3563 crores. After payout of 3 dividends, the unit value decreased from ₹ 26.60/- ₹ 11.21. Thus, in the process the guidelines of the regulator regarding crediting portion of capital into unit premium reserve had been violated. Thus, the AO held that the conduct of the assessee proves without doubt that it was well aware of the nuances of the scheme and knowingly and purposefully indulged in the sham scheme just to avail artificially rigged distributable exempt profit in the form of dividend and fictitious short-term capital loss as. Further, during the course of survey statements of the key person is responsible for the



management of the mutual fund were recorded. One Shri Sanjay Chhabria fund manager admitted that there has been no application of mind in managing the fund and as per the advice of Mr. Bhanu Katoch CEO he has increased the distributable surplus. He further stated that the due process of dividend distribution as mandated by the same be not followed the letter and spirit. Merely chains of documents were created so as to impress upon that the guidelines were being followed. The statement of Mr. Suwendu Rakshit, the head of the salesteam, stated that the sales team had been passing on hints to the distributors about the prospect of dividend distribution much in advance to lure the prospective clients. This violated dividend declaration policy and there should not be any type of communication regarding probable date and amount of dividend by the mutual fund before the decision taken by the trust a company. Shri Deepen Doshi institutions sales had stated that he has never been part of any committee for deciding the dividend amount and has no role in any dividend declaration. Mrs. Diana D'Sa, the compliance head who is responsible for overseeing all the compliance as per the SEBI guidelines admitted that SOP has not been followed and documents are created to show that the semi-guidelines are followed. Thus, the AO reached at the conclusion that assessee has earned exempt dividend income of ₹ 9,942,767/- claimed as exempt income and short-term capital loss of ₹ 1,05,65,468/- is fraudulent transaction. Both are fictitious. The claim of the assessee was also rejected that provisions of section 94 (7) are fulfilled by the assessee holding that when the dividend is result of sham transaction. AO further applied the decision of the honourable Supreme Court in the case of MacDowell land Co Ltd versus commercial tax officer (1985) 3 SCC 230. Thus, exempt dividend

income of ₹ 9,942,767 was treated as income from unexplained sources and loss of ₹ 10,565,468 was disallowed holding it to be fictitious short-term capital loss, which was to be set off against income from capital gain. Consequently, assessment order under section 147 of the act was passed on 13/2/2023 determining total income of the assessee at ₹ 144,059,830 against the assessed income under section 143 (3) of the act of ₹ 119,951,600/-.

010. Assessee preferred appeal before learned CIT – A challenging the reopening of assessment as well as addition on merits. The learned CIT – A held that AO has issued notice after duly recording the reasons, taking appropriate approval as per the provisions of section 151 (2) of the act. The reasons for provided to the assessee and therefore there is no violation of any of the principles of natural justice. Reasons also stated that assessee is beneficiary of sham dividend declared by the company. This information was received from inside total on record of AO on the basis of which reassessment proceedings are initiated. After analyzing several judicial precedents, he upheld the reassessment holding that AO had valid reasons to initiate reassessment proceedings which were duly recorded and communicated to a plant. Thus, there is no infirmity in the jurisdiction as you by AO under section 148 of the. On the merits of the case, he held that earning exempt income of dividend and claiming fictitious laws is a colourable device adopted by appellant by purchasing and redeeming the mutual funds. According to him it also looks quite on unnatural that company involved in the business of manufacturing and trading in diamond jewelry would earned huge tax-free dividend and simultaneous Lisa further loss from sale of mutual fund within short period of nine months. He held that the



transaction of purchase and sale of mutual fund has been made with the motive to create bogus laws and on tax-free dividend. He relied upon the decision of honourable Supreme Court in case of Sumati Dayal versus CIT (214 ITR 801) and held that AO is correct in treating the dividend income of ₹ 9,942,767 as sham and a loss of ₹ 10,565,468 has fictitious. Accordingly, the appeal filed by the assessee was dismissed.

011. Assessee aggrieved with that is in appeal before us. On the issue of reopening of the assessment, it was claimed that assessee filed its return of income on 24/11/2016 and the assessment order under section 143 (3) of the act was passed on 27/12/2017. Notice for reopening of assessment was issued to the assessee under section 148 of the act on 29/6/2021, which was approved by the additional Commissioner. Further notice was issued under section 148A (b) of the act on 28/5/2022 and the order passed under section 148A (d) of the act was passed on 28/7/2022 which is approved by the principal Commissioner of income tax. Thereafter the notice under section 148 was issued on 28/7/2022 which was approved by the principal Commissioner of income tax. The learned authorized representative referred to the decision of the honourable Bombay High Court in case of Siemens financial services private limited in writ petition number 4888 of 2022 dated 25 August 2023. The various dates were tabulated of that decision and thereafter it was pointed out that approval for issuance of notice under section 148A (the) of the act has not been properly obtained and hence the order passed thereon, and consequent notice issued under section 148 of the act have to be quashed and set-aside. It was held that sanction ought to have been granted under section 151 (ii) and not under section 151 (i) of the

act. It was further held that the notice to reopen has also been issued on the basis of a change of opinion which is not permissible. After referring to the dates in the decision of the honourable Bombay High Court it was stated that reopening of the case by the learned AO is invalid. Thus, it was submitted that the ground number 1 and 2 are covered in favour of the assessee. It was stated that reopening was made after approval taken from principal Commissioner of income tax it should have been taken from principal chief Commissioner of income tax since the reassessment is initiated after three years of the end of the assessment year. It was further stated that all this evidence was available before the learned assessing officer during the course of assessment proceedings and therefore it is merely a change of opinion.

012. He submitted that identical dates are also in case of ITA number 3218 in case of Goldiam International Limited and ITA number 3218 of Goldiam jewelry Ltd.
013. Assessee did not press ground number 3.
014. The learned AR submitted that ground number 4 – 8 are with respect to the additions on the merit of the case. He submitted that in case of Goldiam jewelry Ltd on identical facts and circumstances the assessee has claimed dividend income of ₹ 4,971,383 and disallowance of short-term capital loss of ₹ 5,282,734/-. In case of Goldiam International Limited the dividend income claimed exempt is ₹ 9,942,767 and short-term capital loss of ₹ 10,565,468 was claimed for the same assessment year in identical manner. He submits that the notice by JM financial mutual fund was issued on 13 June 2015 stating that JM balanced fund quarterly dividend



option is declaring dividend of ₹ 4.75 per unit. Assessee purchased such mutual fund on 17/6/2015. Therefore, the purchase of the assessee was after the intimation of the notice that there would be a dividend declaration of ₹ 4.75 per unit. Therefore, it cannot be said that the assessee had any inside information prior to purchase. Assessee relied upon publicly available information. He produced a copy of the notice dated 13 June 2015 to show the same. Similarly, it was also shown that a notice was issued by the fund on 21 December 2015 that a dividend of Rs. 4 per unit would be issued. Based on that on 26 December 2015 such dividend was received. Subsequently assessee redeemed its unit only on 28th of March 2016. He further submitted that assessee is a regular investor in mutual fund and is holding portfolio of more than ₹ 108 crores. There is no connection between the assessee and the mutual fund or the trustees. The provisions of section 94 (7) of the act are also fulfilled and therefore the assessee is eligible to claim exemption of dividend as well as the loss incurred as a short-term capital loss. Therefore, it was submitted that neither the dividend income earned by the assessee nor short-term capital loss suffered by the assessee are sham or fictitious.

015. The learned departmental representative vehemently supported the order of the learned lower authorities. He submitted that that the statement of the employees of the mutual fund clearly shows that the declaration of dividend and short-term capital loss is sham and fictitious. He submits that when there are some who declared the dividend itself says that it is a sham transaction in violation of SEBI guidelines/circulars, the claim of the assessee that the dividend income earned should be granted exemption and loss should be allowed to be set off is devoid of any merit. He extensively referred



to the findings of the AO and learned CIT – A. On the issue of reopening, he relied on the order of the learned CIT – A.

016. We have carefully considered the rival contention and perused the orders of the lower authorities. The first ground of appeal is with respect to the reopening of the assessment. The assessee says that in the present case the assessee filed its return of income on 24/11/2016 on which assessment order was passed under section 143 (3) on 27/12/2017. The notice of reopening was issued on 29/6/2021 which was approved by the additional Commissioner. Consequently, the notice under section 148A (b) was issued on 28/5/2022 and further order under section 148A (d) was issued on 28/7/2022 which was approved by the principal Commissioner of income tax. The notice issued under section 148 of the act was issued on 28/7/2022 is approved by the principal Commissioner of income tax. The claim of the assessee is that the principal chief Commissioner of income tax should have granted such approval as more than three years have elapsed. He submits that for the identical as the year in case of Siemens financial services private limited the honourable Bombay High Court as per order dated 25 August 2023 has held that under section 151 'specified authority' for the purposes of section 148 and section 148A shall be, if three years or less than three years have elapsed from the end of the relevant assessment year, principal Commissioner or principal director of Commissioner or director. If more than three years have elapsed from the end of the relevant assessment year, then principal chief Commissioner or the principal director general of chief Commissioner or director general. Admittedly in this case also the approval/sanction for the order under section 148A (d) was obtained from principal Commissioner

of income tax (C) – 1, Mumbai and not principal chief Commissioner of income tax despite more than three years have left from the end of the relevant assessment year. Accordingly, respectfully following the decision of the honourable Bombay High Court we allow ground number 1 and 2 of the appeal quashing reassessment proceedings.

017. Even on the merits of the case, the facts clearly shows that assessee purchased JM balanced fund mutual fund on 17/6/2015 and the record date of dividend was 18/6/2015 as per the notice dated 13 June 2015 that a dividend of ₹ 4.75 per unit is to be declared. The assessee purchased mutual fund of ₹ 300 lakhs (11,36,316.29 units). The assessee earned dividend on 18/6/2015 of ₹ 5,397,502/-. Further on December 21, 2015, and notice was issued by the mutual fund for declaration of dividend of Rs. 4 per unit. The record date was fixed on 26 December 2015. In both the notices issued by mutual fund clearly state that "after payment of dividend, the power unit NAV of the dividend options of the scheme will fall to the extent of the payout and statutory levies (if applicable)." Therefore, naturally if anybody is selling after the dividend earned by the unitholder the redemption value will fall. Assessee sold all those mutual funds on 28/3/2016 at redemption amount of ₹ 19,434,337/-, which resulted into a short-term capital loss. Thus, the assessee acted on a publicly available notice issued by the mutual fund, both the notices are placed before us, it cannot be said that transaction entered into by the assessee is fictitious or sham. With respect to the applicability of provisions of section 94 (7) of the act, the lower authorities have also accepted that the assessee fulfils the condition by which the transaction insecurities cannot be considered for avoidance of tax.

Assessee purchased such securities and 17/6/2015 when the record date was 18 June 2015 and securities were sold on 28/3/2016. The lower authorities have denied the exemption of dividend income and allowability of capital loss despite transaction is not falling under section 94 (7) of the act holding it to be sham and fictitious transaction is devoid of any merit. Accordingly on the merits also, orders of the lower authorities are reversed and ground number 4 – 7 of the appeal are allowed.

018. In the result, ITA number 3218/M/2023 in case of Goldiam International Limited is partly allowed.
019. Coming to the facts of ITA number 3 2 19 shows that assessee company is engaged in the business of manufacturing and trading in diamond jewelry, filed its return of income on 24/11/2016 at a total income of ₹ 103,255,531/-. Thereafter consequent to search, assessment under section 143 (3) was completed on 27/12/2017 at the total income of ₹ 104,869,810. Assessee settled the dispute under Vivad Se Vishwas Scheme. Thereafter consequent to survey action under section 133A of the income tax act on 15/2/2021 in case of JM financial asset Management Ltd, assessments for reopened. The dates of reopening and approval by the principal Commissioner of income tax are identical as in the case of Goldiam International Limited.
020. On the merits assessee purchased on 17/6/2015 568,158.145 units for ₹ 1.5 crores, earned dividend on 18th/6/2015 of ₹ 2,698,751/- and on 26/12/2015 of ₹ 2,272,632/-. The units were redeemed on 28/3/2016 at ₹ 9,717,168/-. Thus, assessee claimed exemption of



dividend income of ₹ 4,971,383/- and claimed short-term capital loss of ₹ 5,282,734.

021. The learned AO with identical reason as in case of Goldiam International Limited made the addition and CIT – A4 the same reasons confirmed the addition.

022. As in case of Goldiam International Ltd in ITA number 3218/M/2023 We have quashed the reopening of the assessment as well as deleted the addition of denial of exemption of dividend income as well as of short-term capital loss in that case, for similar reasons, we allow ground no 1 -2 and 4-7 of the appeal , hence, partly allow the appeal of Goldiam jewelry Ltd in ITA number 3219/M/2023 for assessment year 2016 – 17.

023. Accordingly, both the appeals of the assessee are allowed partly.

Order pronounced in the open court on 05.04.2024.

Sd/-  
(PAVAN KUMAR GADALE)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 05.04 .2024

*Sudip Sarkar, Sr.PS/ Dragon*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//



Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai