

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA Nos. 1628 & 1626/MUM/2024
Assessment Year: 2016-17 & 2017-18**

Income Tax Officer 25(1)(1),
1st floor, Room No. 115, Kautilya
Bhavan G. Block, Bandra Kurla
Complex, Bandra (E),
Mumbai-400051.

Appellant

Vs.

J M Financial Property Fund II,
141, Maker Chambers III,
Nariman Point,
Mumbai-400021.

**PAN NO. AABTJ 0512 D
Respondent**

Assessee by : Mr. Fenil Bhatt/Pinak Shah
Revenue by : Mr. Ankush Kapoor, CIT-DR

Date of Hearing : 27/06/2024
Date of pronouncement : 31/07/2024

ORDER

PER OM PRAKASH KANT, AM

These appeals by the Revenue are directed against separate orders, both dated 09.02.2024, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2016-17 and 2017-18 respectively.



2. As identical issue in dispute are involved in both these appeals, therefore, same were heard together and disposed off by way of this consolidated order for convenience. The Revenue has raised identical grounds in both the assessment years and therefore, for the sake of brevity, the grounds raised by the Revenue in assessment year 2016-17 are reproduced as under:

1. *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in allowing the exemption u/s 10(23FB) of the I.T. Act, notwithstanding that the assessee has not only invested in portfolio investments, but also in mutual fund units, which are not mandated in the Trust deed and violates the basic objects of the trust deed?"*

2. *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in allowing the exemption u/s 10(23FB) of the I.T. Act, without appreciating that the investments made by the assessee in portfolio investment and in mutual fund units is in clear violation of Regulation 8(b) of the SEBI(VCF) Regulations, 1996?"*

3. *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in allowing the exemption u/s 10(23FB) of the I.T. Act, without appreciating that the assessee has invested in an associate company namely M/s JM Financial Mutual Fund, which is in clear violation of clause 12(c) of the SEBI(VCF) Regulations, 1996?"*

4. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the exemption u/s 10(35) of the I.T.Act, without appreciating that the income of the assessee cannot be split taking the income partly for computation u/s 10(23FB) and taking out partly for computation/exemption u/s 10(35) of the Act, in effect allowing and granting two status for the same year?"*

3. The assessee is registered with the Security Exchange Board of India (SEBI) as venture capital fund (VCF). The assessee filed its return of income in the status of association of person(AOP). During the year under consideration, the assessee had sold compulsory convertible debenture held in the capital venture undertaking (CVU), the sale of which has resulted in short term capital gain of



Rs.23,00,00,000/-. The assessee also earned interest income on debentures amounting to Rs.3,98,500/- on its investment in VCU. In view of investment in VCU exempt from tax in the hands of the VCF, the assessee claimed benefit of section 10(23FB) r.w.s. 115U of the Act and filed returned income at Rs. Nil claiming income of Rs.23,03,98,500/- (23,00,00,000 + 3,98,500/-) as exempt u/s 10(23FB) of the Act. In addition to the income of Rs, 23,03,98,500/-, the assessee also received Rs.46,40,015/- on account of dividend from investment of Rs.2,16,62,805/- in mutual funds i.e. J.M. Money Manager Fund and J.M. High Liquidity Fund. The Assessing Officer relied on the assessment order in preceding assessment year i.e. AY 2015-16 wherein claim of exemption u/s 10(23FB) of the Act and section 10(35) of the Act was rejected due to violation of SEBI rules by way of investment in entities and instruments other than those prescribed under regulations of VCF. The Ld. CIT(A) however, following the finding of the Tribunal in earlier years allowed the claim of the assessee observing as under:

“6. I have duly considered the submissions of the appellant and material on record. Ground nos. 2, 4, 6, 7 and 10 are against denial of claim of exemption u/s 10(23FB) & 10(35) of the Act and denial status of the appellant as VCF are considered together. Perusal of the assessment order reveals that the AO kept entire thrust on the assessment order in the case of JM Financial India Fund - Scheme B for the A.Y. 2015-16 in denying the claim of exemption u/s 10(23FB) and 10(35) in the case of the appellant. It has been submitted by the appellant, jurisdictional ITAT, i.e. Hon'ble ITAT, Mumbai in ITA No. 277/Mum/2019 in the case of JM Financial India Fund - Scheme B Vs ITO for the A.Y. 2015-16 passed an order on 20.08.2019 wherein entirely same issues of denial the claim of exemption u/s 10(23FB), 10(34) and 10(35) were involved has been decided in favour of JM Financial India Fund - Scheme B. The decision the jurisdictional ITAT is on the case on the basis of which the AO passed the order in the case of the same issues. The decisions of the jurisdictional ITAT is binding on the



lower authorities and they have to follow the same in view of binding force of judicial precedence as enunciated by the Hon'ble Supreme Court in the case of UOI and others Vs. Kamlakshi Finance Corporation Ltd (AIR 1992 SUPREME COURT 711) wherein it has been held that the principles of judicial discipline require that the orders of the highest appellate authority should be followed unreservedly by the subordinate authorities. Relevant extract of the order is under -

"8. We have dealt with this aspect at some length, because it has been suggested by the learned Additional Solicitor General that the observations made by the High Court, have been harsh on the officers. It is clear that the observations of the High Court, seemingly vehement, and apparently unpalatable to the Revenue, are only intended to curb a tendency in revenue matters which, if allowed to become widespread, could result in considerable harassment to the assesses-public without any benefit to the Revenue. We would like to say that the department should take these observations in the proper spirit. The observations of the High Court should be kept in mind in future and the utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them."

The jurisdictional ITAT in the case of JM Financial India Fund - Scheme B (Supra) has allowed the claim of exemption u/ss 10(23FB), 10(34) and 10(35) of the Act. The facts of that case and the case of the appellant are exactly the same. The issues involved in both the cases are also same. Therefore, respectfully following the judgement of the jurisdictional ITAT in the case of JM Financial India Fund - Scheme B (Supra), all the ground raised in this appeal are decided in favour of the appellant. Therefore, both the addition i.e addition of Rs.23,03,98,500/- denying the claim of exemption u/s 10(23FB) of the Act and addition of Rs.46,10,015/- denying the claim of exemption u/s 10(35) of the Act are deleted. Accordingly, ground nos. 2, 4, 6, 7 and 10 are allowed."

4. We have heard rival submissions of the parties and perused the relevant material on record. We find that the assessee J.M. Financial Co-operation Fund-II is a scheme of JM Investment Property Fund (Fund). The Fund was established in 1982 by way of trust deed dated 22.09.2006 and was registered with the SEBI as venture capital fund under the SEBI (Venture Capital Funds) Regulation, 1996. The assessee was granted a certification of registration vide registration No. IN/VCF/06-07/094 as venture



capital fund by SEBI. The Assessing Officer denied the claim of income earned from investment in VCU which is eligible for exemption in the hands of the assessee u/s 10(23FB) of the Act r.w.s. 115U of the Act being a passed through entity. The Assessing Officer also denied benefit of exempted dividend income of Rs.22,15,375/- earned on investment in mutual funds. We find that the Ld. CIT(A) has followed binding precedent in the case of the assessee itself. Further, we note that Coordinate bench of Tribunal in ITA No. 7472/Mum/2017 in the case of M/s HDFC Property Fund has observed that the investment in portfolio for mutual funds was mandated as per the object of the trust and therefore, being not in violation of the object of the trust and temporarily investment made in the unit of the mutual fund was within the ambit of the assessee trust deed. Similarly, regarding the violation of the Regulation of the SEBI (VCF Regulation, 1996) also the Ld. Assessing Officer had not pointed out any adverse observation made by the SEBI, therefore deleted the disallowance for deduction u/s 10(23FB) of the Act. The Tribunal in the said case accordingly found the temporary investment made in the units of the mutual fund within the ambit of the trust deed and also in the unit of VCF. The relevant finding of the Tribunal is reproduced as under :

“12. We have carefully considered the rival submissions. Ostensibly, as our discussion in the earlier paras show, the sum and substance of the stand of Assessing Officer revolves around the manner in which assessee has made certain investments; firstly, in the units of Mutual funds; and, secondly, towards Debenture application monies. The first objection of the Assessing Officer is that such investments are not permitted in terms of the Trust Deed itself. In this context, we find that the appellant has been constituted in



terms of the Trust Deed dated 06.11.2004 settled by Housing Development Finance Corporation Ltd. It has been constituted to pool together resources, both institutional and other investors, for making investment in high growth sectors including real estate sector in India. The objects of the Trust are contained in clause 6, a copy of which is placed in the Paper Book. Though we are not reproducing the contents of the Trust Deed, its perusal shows that the investments by the appellant are required to be made in compliance with the requirements of VCF Regulations of SEBI. In terms of clause 4.1.27, the Trust Deed also envisages temporary investments which have been defined to mean, inter alia, money market instruments, units of money market liquid mutual funds or other similar debt instruments. The said clause also brings out that the temporary investments are also to be understood as referring to short term securities issued on guarantee by the Indian Government, or its agencies or instrumentalities, overnight and short term instruments, like bank deposits, etc. Though we are presently concerned with investments made in liquid mutual fund schemes, we are enumerating the other aspects of the expression „temporary investments“ stated in the Trust Deed only to bring out that the Trust is entitled to make such-like investments of its available funds, awaiting regular investment in the stated purposes. In fact, clause 11.1 of the Trust Deed dealing with „Investment of Trust fund“ specifically prescribes that the trust may invest the available contributions awaiting investment or realised funds awaiting distribution in temporary investments. The aforesaid clearly brings out that the appellant is empowered by its Trust Deed to make temporary investments which, inter alia, would include within its purview the investments in question. Apart therefrom, we find enough potency in the pleadings of the appellant that there is an industry and trade practice whereby Venture Capital Funds retain certain amounts with them, pending regular investments in Venture Capital Undertakings for certain purposes, like disbursement of expenses, distribution to unit-holders, etc. Till such time the funds are not utilised for the main purposes, advisably the Venture Capital Fund would make temporary investments to earn monies. The course adopted by the assessee in this regard was by investing in units of mutual funds or even by way of fixed deposits with banks. Insofar as the objection of the Assessing Officer regarding non-compliance with the VCF Regulations of SEBI is concerned, here also we do not find any support for the stand taken by the Assessing Officer. In fact, our attention was drawn to SEBI (Informal Guidance) Scheme, 2003 issued by SEBI with regard to VCF Regulations where the temporary deployment of funds by a Venture Capital Fund in liquid mutual funds or bank deposits or other liquid assets of high quality such as treasury bills, etc. were permissible. Moreover, we cannot lose sight of the fact that the Certificate of Registration as a Venture Capital Fund issued by SEBI continues to subsist during the period under consideration, which clearly belies the assertion of the Assessing Officer that there has been a violation of VCF Regulations of SEBI. Thus, on an overall analysis of the situation, we find that the temporary investment made in the units of mutual funds is within the ambit of appellant’s Trust Deed and also within the ambit of VCF Regulations of SEBI.”



4.1 In view of the above, respectfully following the finding of the Tribunal in the case of the assessee in earlier as well as finding of the Tribunal in the case of HDFC Property Fund (supra), we uphold the finding of the Ld. CIT(A) on the issue in dispute, therefore, the grounds raised by the Revenue are accordingly dismissed. The facts and circumstances and grounds raised in the assessment year 2017-18 being identical to assessment year 2016-17, the grounds raised in assessment year 2017-18 are also dismissed.

5. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open Court on 31/07/2024.

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 31/07/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai