

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.5105/Mum/2024  
(Assessment Year :2016-17)**

Deputy Commissioner of Income Tax 905, Pratishtha Bhavan Mumbai, Maharashtra	Vs.	CMS Computers Limited CMS Lake Centre Kaycee IND Compound 70, Lake Road Bhandup (W) Mumbai - 400 078
<b>PAN/GIR No.AAACC1758L</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**ITA No.5108/Mum/2024  
(Assessment Year :2016-17)**

Deputy Commissioner of Income Tax 905, Pratishtha Bhavan Mumbai, Maharashtra	Vs.	2015 Grover Family Trust, Mumbai A/902, A/902, Marathon Futurx NM Joshi Marg Lower Parel, Mumbai- 400 013
<b>PAN/GIR No.AAAAZ1967C</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Pratik Jain
Revenue by	Shri Annavarani Kasuri, Sr. AR
<b>Date of Hearing</b>	<b>18/07/2025</b>
<b>Date of Pronouncement</b>	<b>12/08/2025</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeals have been filed by the Revenue against separate impugned order dated 05/07/2024 passed by Id. CIT(A)-47, Mumbai for the quantum of assessment passed u/s.147 r.w.s. 144 for the A.Y.2016-17.

2. Both the assesseees M/s. CMS Computers Limited and 2015 Grover Family Trust both belong to same group having identical facts and similar nature of findings given by Id. AO and Id. CIT(A), therefore, same were heard together. For the sake of ready reference, the chart showing the addition made by the Id. AO is as under:-

Name of the assessee	Investment(A)	Dividend (B)	Redemption amount (C)	Loss (D=A-C)	Suo moto Disallowance u/s.94(7)(E)	Net loss claimed in return (F=D-E)	Loss disallowed by AO (G=lower of Column (F)&(B))
CMS Computer Ltd	1,50,00,00,000	80,96,00,896	77,24,81,242	72,75,18,758	29,92,12,840	42,83,05,918	42,83,05,918
2015 Grover Family Trust	16,50,00,000	4,63,79,164	10,90,98,636	5,59,01,364		5,59,01,364	4,63,79,164
<b>Total</b>						<b>48,42,07,282</b>	<b>47,46,85,082</b>

3. Since the facts and findings recorded by the authorities below in both the cases are identical, for the sake of ready reference appeal of M/s.CMS Computers Ltd., is taken as a lead matter and our finding given therein will apply *mutatis mutandis* in the appeal of 2015 Grover Family Trust.

4. The assessee, a limited company, filed its return of income on 17.10.2016 and a revised return on 09.03.2017, declaring a total income of Rs.15,00,90,979/-. The return was

originally processed under section 143(3) on 01.09.2018 determining total income at Rs.15,53,22,394/-. Subsequently, based on information arising out of a survey in the case of JM Financial Asset Management Ltd. as well as a survey at the assessee's own premises, the case was reopened under section 147. The reassessment culminated in an order dated 30.03.2023 determining the total income at Rs.58,36,28,310/- after disallowing the claim of short-term capital loss arising from redemption of the aforesaid mutual fund units.

5. The ld. AO in his order has extensively noted the report of Investigation Wing and thereafter, has referred to a survey action u/s.133A which was conducted on 15/02/2021 in the case of CMS Computers Limited and Universal Trustees Pvt. Ltd., During the survey, a statement of Shri Mahesh Idnani was recorded wherein, he has stated that capital gain has been adjusted against short term capital loss due to sale of investment in JM balanced fund managed by M/s. JM Financial Asset Management Ltd., The working of the capital gain was stated to be as under:-

	<b>CMS Computers Limited</b>
Sale Consideration	Rs.113,42,01,195/-
Cost of Acquisition	Rs.57,59,85,255/-
Capital Gains	Rs.55,82,15,940/
Short term Capital loss adjusted	Rs. 42,83,05,918/-
Tax Paid	Rs.2,59,82,004/-

6. Detail of the Investment made in J M Balanced Fund is tabulated as under:-

<b>Transactions</b>	<b>Date of Transactions</b>	<b>No. of Units</b>	<b>Values</b>
Purchase	24.12.2014	57540931	1500000000
Dividend Received	28.01.2015	57540931	299212840
Dividend Received	25.03.2015	57540931	510388056
Redemption	07.04.2015	57540931	772418241

7. From the above chart Id. AO noted that investment of Rs.150,00,00,000/- has resulted into receipt of dividend of Rs.29,92,12,840/- within 36 days and Rs.51,03,88,056/- which is not taxable within 92 days of investment and short term capital loss of Rs.72,75,81,759/-. Thus, short capital loss of Rs.42,83,68,919/- has been adjusted against long term capital gain. Apart from that he noted that similarly Grover family members alongwith 2015 Grover Family Trust had also made investment in JM equity fund against which they have huge dividend and incurred loss on redemption of mutual units. The details of which are as under:-

<b>s. No</b>	<b>Name</b>	<b>PAN</b>	<b>Investment</b>	<b>Dividend</b>	<b>Redemption Value</b>	<b>Loss Claimed</b>
1	2015 Grover Family Trust	AAAAZ1967C	165,000,000	46,379,164	109,098,636	5,59,01,364

2	R D Grover HUF	AAEHR7415J	35,000,000	23,142,135	23,142,135	1,18,57,865
3	Aarti Grover	AEPPG9690B	13,000,000	3,654,115	8,595,650	44,04,350

8. Thereafter, he has discussed *modus operandi* in his detailed order and certain statements of the employees of JM balanced fund and also have discussed the SEBI report. He has highlighted the summary of the findings of the Investigation Wing in the following manner:-

*“6.11 Summary of findings:*

*6.11.1 The modus operandi identified as per the findings during the course of survey action as well as post survey inquires is being summarized as under:*

*i. JM Financial Asset Management Company, internally creates and floats few schemes with their employees as subscribers to the scheme*

*ii. While the scheme has only 2 or maximum 3 subscribers (all of whom are internal employees/associate companies) with minimum investment amounts, the IER is increased over a long period of time to show huge distributable surplus, the ratio of which is applied to all the inflow of funds*

*iii. Once a significant IER is created on a small AUM base, the sales team reaches out to other distributors/NHIs/Big Corporates with the plan of providing fictitious STCL and distributing dividend (exempt from taxation) which would not fall within the purview of section 94(7) of the IT Act.*

*iv. The target Investors are about the modus operandi and the possible tax benefit that they would avail by subscribing to schemes as genuine investors.*

v. In the meantime, the Income Equalization Reserve (IER) is increased to a reasonable size by realizing profitable positions.

vi. The dividend distribution is conveniently planned well in advance according to which target investor decide about quantum and timing of investment to match their specific requirements. This results in flow of funds from different investors in large amount at almost same time. Dividend is distributed just after 3 months and few days from the last date of investment. This ensures that the provisions of section 94(7) were not applicable to the investors.

vii. The new investors infuse money into this scheme, as per their requirements to ensure that they get desired short term capital losses.

viii. While accounting the breakup of NAV on the dates of investments, the fund house credits the IER account instead of UPR which is strictly against the guidelines specified by SEBI.

ix Immediately after the dividend is declared, since there is not enough gains to distribute, the capital amount introduced by the clients is distributed back to them in the form of tax-free dividend. For this purpose, existing investments are sold in large quantity by the scheme.

x. After this units are redeemed at a loss by the investor since the NAV falls because of dividend payment and the investors book a short-term capital loss which looks genuine but is actually fictitious and preplanned loss resulting from sham transactions entered into abusing provisions of Income Tax and SEBI regulations.

xi. Such Short-Term Capital Loss is only notional as the loss is pre-planned and offset with money paid back to the investors in the form of dividend. A genuine investment is made for the purpose of making gains, not for the purpose of having tax free income and creation of artificial losses. However, in given case, the only purpose of investment is to evade tax

xii. The investors, in order to reduce their tax liability, entered into these sham transactions and received dividend and Short-

*Term Capital Loss. As a result, the dividend is not eligible for deduction u/s 10(35) of the I.T. Act and short-term capital loss is also not eligible for adjustment with other capital gains, being generated on account of sham transaction. In fact, being distributed out of capital itself, such dividend should be reduced from the cost of investment with resulting reduction in short term capital loss.”*

9. Finally, the ld. AO had disallowed the short term capital loss of Rs.42.84 Crores which were set off against long term capital gain of Rs.52.82 Crores. In sum and substance, the finding of the ld. AO can be summarized in the following manner:-

i. Ld.AO alleged that during the survey in case of JM Financials, it was found that JM Balanced Fund Annual Dividend Option Regular Plan of JM Financial had manipulated accounting methodology so as to artificially inflate the distributable surplus. It was alleged by department that the dividend received by the investors from the said Plan was out of sham transactions generated from colorable devices.

ii. Ld AO has stated that the said fund has violation the SEBI circular No. SEBI/IMD/CIR No 18/198647/2010 which instructs the fund houses that the unit premium reserve shall be treated at par with Unit Capital and cannot be utilized to declare dividends and the mutual fund houses cannot distribute dividends from Unit Premium Reserve. It was also alleged that the mutual funds house has rigged up the distributable surplus, in a planned manner

iii. Ld. AO stated that assessee is one of the beneficiaries of the said scam. It was contended that assessee has claimed fictitious short term capital loss along with claim of dividend Ld. AO also stated that assessee was well aware of the

nuances of the scheme and knowingly and purposefully indulged in the sham scheme just to avail fictitious loss

iv. Ld.AO has also made reference to the statement recorded of various persons during survey proceedings in case of JM Financials including the statement of Shri Sanjay Chabbaria & Shn Suvendu Rakshith Based on the such findings AO alleged that mutual fund have not followed the SEBI guidelines thereby rigging up distributable surplus in a planned manner

v. Ld. AO also stated that a survey action u/s 133A of the Act, was also carried out in case of the assessee group The statement of various key persons were recorded. AO has discussed the statement recorded of Shri Mahesh Idnani, Sr Vice President of M/s CMS Computers Limited. Based on such statement, it was alleged that the loss claimed by assessee group was not genuine Thus, the so-called investment made by assessee is colourable and non-genuine in nature

10. Ld. CIT(A) after considering the submissions made by the assessee as well as the entire assessment order and all other material facts on record has deleted disallowance made by the ld. AO. He has referred to relevant provision of Section 94(7) CBDT Circular, judgment of Hon'ble Supreme Court in the case of Walfort Share & Stock Brokers (P) Ltd., (2010) 41 DTR 233 (SC) and finally deleted the addition in the following manner:-

*“Coming to the validity of the assessee’s claim regarding the short-term capital loss, it is noted that the assessee had made an investment of Rs.150,00,00,000/- which was subsequently sold for Rs.77,24,81,241/- leading to a short-term loss of Rs. 72,75,18,759/-. The said sales consideration received by the*

*assessee is duly reflected in the bank statement and the folio statement submitted by the assessee. The assessee in its submission has made reference to provisions of section 48 of the Act, which states that capital gains is computed by reducing cost of acquisition and expenditure incurred on transfer from sales consideration. Considering the provisions of the said section and the facts of the present case, it is seen that the assessee's computation of short-term capital loss by reducing the cost of investment i.e. Rs.150 crores from sales consideration of Rs.77,24,81,241/- appears to be in line with the provisions of the Act. Also, I find that the AO has not disputed the amount of such cost or sales consideration, thus doubting the short-term capital loss arising from such figures is not correct. Further, it is not the case of the AO that the appellant has violated the provisions of section 94(7) of the Act.*

*Further, it is noted that the appellant is a regular investor and has also incurred losses of Rs.7,25,636/- in BOI AXA Equity Mutual Fund which has not been doubted by the AO. It is also noted that the appellant has also received dividend of Rs. 18,68,861/- from Infosys Limited, Bharat Electronic Limited & BOI AXA Equity Mutual Fund. This shows that the investment in JM financial fund is not an isolated transaction.*

*In the assessment order, it is noted that AO has heavily relied on findings of survey action conducted in case of JM Financial Asset Management Limited on 15.02.2021 wherein it has been alleged that JM Financial had manipulated accounting methodology so as to artificially inflate the distribute surplus thereby floating the SEBI guidelines. I find that AO has failed to bring on record any SEBI enquiry or order on JM Financials which supports the contention of the AO. The allegation levied in the assessment order are not sufficient to show that the appellant was involved in manipulation, if any, done by JM Financials. Therefore, the allegation of AO is not support by any evidence which is found at the premises of the JM Financials.*

*Further, I have also considered the various statements of employees of JM Financials which has been relied upon by the AO. I find that none of the employees have admitted that the manipulation has been done for the purpose of providing tax benefit to the appellant or other investors. There is no mention*

*that JM Financials have provided excess dividend to the appellant in order to provide tax benefit. It is also noted that though the employees have mentioned the name of CEO Mr. Bhanu Katoch, no statement of the CEO has been recorded or relied upon by the AO. Moreover, there is no live link between these statements and the appellant. Accordingly, I do not find any substance in the findings of the survey at JM Financials to hold the transaction entered in to by the appellant as non-genuine.*

*Coming to the findings of the survey in assessee's case, AO has relied upon the statement of Mr. Mahesh Idnani, Sr. Vice President of M/s CMS Computers Limited, wherein he was enquired about the Investment made in JM Balanced Fund. In response to the same, he responded that investment was made on advice given by IIFL Wealth Management and on approval of Ms. Aarti Grover, promoter of the group. He has also confirmed that the investment was made on the presumption that the fund would give decent returns. He has also stated that apart from JM Financials, they have made investment in other funds also. Further, I find that AO has relied scheme suggested with reference to issue of bonus units by IIFL; however, the loss incurred is with respect to dividend scheme and not bonus scheme. Therefore, reliance of AO is misplaced. Further, it is also important to note that the action of the appellant is engaging IIFL wealth management to obtain advise on investing in mutual fund which would be tax effective cannot be doubted. There is no evidence bought on record by the AO that the appellant, IIFL and JM Financials have worked in collusion to obtain illegal tax benefit.*

*Further, it is important to note that there is no SEBI enquiry raised on the JM Financials which has been bought on record by the AO to establish his allegation. It is also noted that the said fund is still active in the market and has given overall return of 11.51% against the benchmark return of 11.33% as reflected in the annual report of JM Financials for FY 2014-15. It is also noted that an investor makes investment after analysing the performance and publicly available data of the Mutual Fund. The assessee has shown that the said scheme is an open-ended scheme floated by the Mutual Fund, so any person can enter the scheme at the price available in the open market and exit the scheme at any time at the market price.*

*Therefore, the chances of assessee being specifically being involved in the alleged pre-planned transaction gets reduce in the absence of clear evidences bought on record by the AO.*

*Further, I find that the entire transaction of purchase and sale has been done through proper banking channels. The appellant is a regular investor and has invested in similar funds. Units have been sold through proper and approval channels and the fund has been approved by SEBI. Also, the said fund is still active as on date. AO has not bought on record any evidence which could show that SEBI has suspended the said fund from operations. Therefore, the allegation of the violation of SEBI guidelines stated by AO does not holds true.*

*It is also noted that out of the total loss incurred of Rs. 74 Cr., the assessee had suo-moto offered dividend to tax of Rs.29.92 Cr. which cannot be ignored.*

*I have also considered that argument of the appellant that there are several balances and checks provided by the Statute and several independent Government and Semi Government bodies and experts have been introduced to ensure the bonafide, genuineness of the Scheme floated by a Mutual Fund. Therefore, unless a very specific allegation supported by direct and cogent evidence is brought on record which is also confirmed by SEBI, allegations merely on suspicion cannot be upheld.”*

11. Thereafter, he has heavily relied upon the decision of the Tribunal in the case of Goldiam International Ltd. vs. DCIT in ITA No. No.3218/Mum/2023 dated 05/04/2024. Thus, in sum and substance, the finding of the ld. CIT(A) can be summarized in the following manner:-

(i) Ld.CIT(A) noted that the assessee had made an investment of Rs.150,00,00,000/- which was subsequently sold for Rs.77,24,81,241/-leading to a short-term loss of Rs. 72,75,18,759/- The said sales consideration received by the

assessee is duly reflected in the bank statement and the folio statement submitted by the assessee

(ii).Ld.CIT(A) has referred to the provision of section 48 of the Act which states that capital gains is computed by reducing cost of acquisition and expenditure incurred on transfer from sales consideration. Considering the said provision section, Ld.CIT(A) observed that assessee's computation of short-term capital loss by reducing the cost of investment. i.e. Rs.150 crores from sales consideration of Rs.77,24,81,241/- appears to be in line with the provisions of the Act.

(iii) Ld. CIT(A) noted that AO has not disputed amount of cost or sales consideration thus, doubting the short-term capital loss arising from such figures is not correct. Further, id. CIT(A) noted that it is not the case of the AO that the assessee has violated the provisions of section 94(7) of the Act. In this regard, Id. CIT(A) has relied upon the CBDT Circular No.14/2001 and decision of Supreme Court in the case of Walfort Share & Stock Brokers (P) Ltd. (2010) 41 DTR 233 (SC).

(iv) Ld.CIT(A) observed that assessee is a regular investor in shares and securities including the mutual funds. Ld.CIT(A) noted that in the same year, assessee has also incurred losses of Rs.7,25,636/-in BOI AXA Equity Mutual Fund which has not been doubted by the AO. Further, LD.CIT(A) also noted that assessee has received dividend of Rs. 18,68,861/- from Infosys Limited. Bharat Electronic Limited & BOI AXA Equity Mutual Fund. This shows that the investment in JM financial fund is not an isolated transaction.

(v) With regards to findings of id AD based on the survey in case IM Financial Asset Management Limited. Ld.CIT(A) observed that Id. AO has failed to bring on record any SEBI enquiry or order on JM Financials which supports the allegations of the Id AO.

(vi) With regards to statements of various employees of JM Financials which has been relied upon by the AO Ld. CIT(A) observed that none of the employees have admitted that the manipulation has been done for the purpose of providing tax benefit to the assessee or other investors. Ld. CIT(A) also noted that employees of JM Financials have mentioned name of CEO Mr. Bhanu Katoch, but no statement of the said CEO has been recorded or relied upon by AO. Further, Ld. CIT(A) also noted that there is no live link between these statements and the assessee.

(vii) Ld. CIT(A) also noted there is no adverse statement given by the assessee group during survey in its premises which could show that assessee has knowingly invested in the JM Fund for the purpose of incurring losses. The statement of Mr. Mahesh Idnani, Sr. Vice President of assessee company stated that Investment in JM Balanced Fund was made on advice given by IIFL Wealth Management and approved by Ms. Aarti Grover, promoter of the group. He has also confirmed that investment was made on the presumption that the fund would give decent returns. Thus, Id. CIT(A) noted that such statement does not help the allegation of AO.

(viii) Ld CIT(A) also noted that action of assessee is engaging IIFL wealth management for advise on investing in mutual fund cannot be doubted. Ld. AO has not bought evidence to show that IIFL and JM Financials have worked in collusion to obtain illegal tax benefit.

(ix) Ld.CIT(A) also observed that there is no SEBI enquiry raised on the JM Financials which has been bought on record by the AO to establish his allegation. He also observed that the said fund is still active in the market and has given overall return of 11.51% against the benchmark return of 11.33% as reflected in the annual report of JM Financials for FY 2014-15

(x) Ld.CIT(A) in its order appreciated the fact that scheme floated by JM Financials is an open-ended scheme floated by the Mutual Fund, so any person can enter the scheme at the price available in the open market and exit the scheme at any time at the market price. Therefore, the chances of assessee being specifically being involved in the alleged pre-planned transaction gets reduce in the absence of clear evidences bought on record by the AO.

(xi). Ld.CIT(A) also noted that entire transaction of purchase and sale has been done through proper banking channels. The assessee is a regular investor and has invested in similar funds. Units have been sold through proper and approval channels and the fund has been approved by SEBI. Moreover, the said fund is still active as on date and has been debarred by SEBL Ld.AO has not bought on record any evidence which could show that SEBI has suspended the said fund from operations. Therefore, the allegation of the violation of SEBI guidelines stated by AO does not holds true

(xii) Ld.CIT(A) also noted that there are several balances and checks provided by the Statute and several independent Government and Semi Government bodies to ensure the bonafide, genuineness of the Scheme floated by a Mutual Fund. Therefore, unless a very specific allegation supported by direct and cogent evidence by SEBI, allegations made by AO is merely on suspicion

(xiii) Ld CIT(A) has also relied on the decision of Mumbai Tribunal in the case of M/s. Goldiam International Ltd. Vs. DCIT in ITA No. 3218/Mum/2023 dated 05.04.2024, wherein similar facts involving JM Financials, Hon'ble Tribunal has held that it is natural for NAV to drop after dividend declaration and investor incurring loss on redemption thereafter Thus, transactions entered by the assessee cannot be said to be fictitious/ sham on that account

12. Here it would be relevant to discuss the brief facts of M/s.2015 Grover Family Trust are that assessee had acquired units of JM Financials mutual fund JM Balanced Fund for Rs. 16,50,00,000/- on 28.10.2015 Against the same the assessee had earned dividend income of Rs 4,63,79,164/- on 30.03.2016 Further assessee had redeemed mutual funds of the said company in the year under consideration on 31.03.2016 resulting into a short-term capital loss of Rs. 5,59,02,455/- The said loss was adjusted by the assessee against the long-term capital gain. The loss to the extent of dividend being Rs. 4,63,79,164/ has been disallowed by the ld. AO in the assessment order.

13. Here also the finding of the ld. AO and ld. CIT(A) is exactly similar.

14. We have considered the rival submissions, perused the orders of the authorities below, and examined the material available on record. We have also carefully considered the statements, survey findings, legal provisions, and judicial precedents relied upon by both sides. The central premise of the Assessing Officer's case is that the JM Balanced Fund – Annual Dividend Option Regular Plan of JM Financial Asset Management Ltd., in which the assessee invested, was allegedly structured in a manner so as to artificially inflate the distributable surplus through impermissible accounting methods. This, according to the Assessing Officer, was in violation of SEBI Circular No. SEBI/IMD/CIR No.

18/198647/2010, which specifically prohibits the utilisation of Unit Premium Reserve (UPR) for payment of dividends. Based on such premise, it was concluded that the scheme was nothing but a colourable device, devoid of commercial substance, designed to enable investors to receive tax-free dividends and simultaneously generate fictitious short-term capital losses for set-off against taxable capital gains.

15. The Assessing Officer sought to substantiate this conclusion by relying heavily on the report of the Investigation Wing, the findings recorded during survey in the case of JM Financial Asset Management Ltd., and the statements of certain of its employees, namely Shri Sanjay Chabbaria and Shri Suvendu Rakshith. He further relied on the survey conducted at the assessee's premises under section 133A and the statement of Shri Mahesh Idnani, Senior Vice President of CMS Computers Ltd., to suggest that the investment was made on the advice of IIFL Wealth Management with the approval of Ms. Aarti Grover, promoter of the group, and was not bona fide. The Assessing Officer interpreted these facts to mean that the assessees knowingly participated in a premeditated scheme to obtain an undue tax advantage.

16. On a careful analysis, we find that such an inference is not borne out by cogent and corroborative evidence. The transactions of purchase and redemption are supported by unimpeachable documentary evidence including mutual fund folio statements and bank statements and have been duly recorded in the regular books of account. The computation of

short-term capital loss has been carried out strictly in accordance with section 48 of the Act, wherein the cost of acquisition and expenses on transfer are deducted from the full value of consideration. Significantly, the Assessing Officer has not disputed either the cost of acquisition or the redemption value. Further, the assessees have themselves disallowed, under section 94(7), the loss to the extent of the dividend component, thereby adhering to the statutory disallowance mechanism.

17. We further note that the assessees are not occasional or isolated participants in the mutual fund market. They are regular and consistent investors in shares, securities, and mutual funds. In the same assessment year, they have undertaken similar investments, for example, in BOI AXA Equity Mutual Fund which have resulted in losses accepted as genuine by the Department. They have also earned dividend income from reputed listed companies such as Infosys Ltd. and Bharat Electronics Ltd. This consistent investment behaviour reinforces that the impugned transactions were part of ordinary commercial and treasury operations, rather than being aberrations engineered solely for tax advantage.

18. With respect to the reliance placed by the Assessing Officer on statements of employees of JM Financial Asset Management Ltd., we observe that none of these statements specifically allege that any manipulation was undertaken with the intent to confer a tax benefit upon these assessees. While

the name of the fund's CEO, Mr. Bhanu Katoch, has been mentioned, no statement from him has been recorded or brought on record. The absence of such direct testimony from the key managerial person significantly weakens the evidentiary value of the Revenue's case. Moreover, there is no "live link" between the alleged modus operandi described in those statements and the specific transactions of these assessees.

19. The statement of Shri Mahesh Idnani, relied upon by the Assessing Officer, is equally incapable of supporting the Revenue's allegation. In that statement, he merely confirmed that the investment in the JM Balanced Fund was made on the advice of IIFL Wealth Management and approved by the group promoter, with the presumption that the fund would deliver decent returns. Such conduct, namely, taking professional advice from an established wealth management company before making an investment, is a legitimate and prudent commercial practice, and absent any proof of collusion, cannot be viewed as indicative of a sham arrangement.

20. We also attach weight to the fact that the JM Balanced Fund is an open-ended, SEBI-approved mutual fund scheme. Such a scheme is available to the investing public at large, and units can be purchased or redeemed at prevailing NAVs on any business day. During the relevant period, the scheme posted an overall annual return of 11.51% for FY 2014-15, slightly outperforming its benchmark of 11.33%. There is no

material brought on record to suggest that SEBI has suspended, penalised, or debarred this scheme during or after the relevant period. In the absence of any regulatory censure or penal action, it is unsafe to characterise the scheme as inherently sham.

21. It is trite law that suspicion, however strong, cannot take the place of proof. The burden lies squarely upon the Revenue to establish, by direct, cogent, and credible evidence, that a transaction is colourable or devoid of commercial substance. In the present cases, that burden has not been discharged. What emerges instead is that the investments were genuine, made through proper banking channels, duly reflected in the books, and supported by contemporaneous documentation.

22. The legal position is also well settled. In *CIT v. Walfort Share & Stock Brokers (P) Ltd.* (2010) 41 DTR 233 (SC), the Hon'ble Supreme Court held that a transaction otherwise in accordance with law cannot be disregarded merely because it results in a tax advantage, unless it is devoid of commercial purpose and is a mere facade. Even assuming that the investments were made with awareness of the dividend record dates and the inevitable fall in NAV thereafter, such awareness does not render the transaction non-genuine if it is otherwise lawful and commercially permissible.

23. We also derive persuasive guidance from the coordinate bench decision in *Goldiam International Ltd. v. DCIT* (ITA No. 3218/Mum/2023, order dated 05.04.2024), where, on

substantially identical facts involving the same fund house, the Tribunal held that a fall in NAV after declaration of dividend, and the resultant loss on redemption, is an inherent feature of the mutual fund mechanism and not, without more, evidence of a sham. The Tribunal further observed that in the absence of violation of section 94(7), short-term capital loss arising in such circumstances is otherwise allowable under law.

24. We find that a similar issue had come up for consideration before this Tribunal in the case of DCIT v. Rajesh Manhar Bhansali Gem & Jewellery Complex in ITA No. 5107/Mum/2024, wherein, on identical facts and in relation to the same JM Balanced Fund–Annual Dividend Option Regular Plan, the Tribunal, after a detailed consideration of the factual record, statutory provisions, and applicable judicial precedents, upheld the allowability of the short-term capital loss claimed by the assessee.

25. In our view, the ratio decidendi in Rajesh Manhar Bhansali squarely governs the present appeals. The factual backdrop in that case and in the matters before us is materially indistinguishable: the nature of the scheme, the allegations of manipulation, the reliance on SEBI's circular, the absence of any SEBI censure, and the assessee's pattern of regular investment activity are all common features. In Rajesh Manhar Bhansali, the coordinate Bench, after an extensive analysis of section 94(7), the judgment of the

Hon'ble Supreme Court in Walfort Share & Stock Brokers (P) Ltd., and the absence of any direct evidence of sham, concluded that the short-term capital loss could not be disallowed merely on suspicion or on generalised allegations. That decision also reaffirmed that a fall in NAV after dividend declaration is an inherent and predictable market phenomenon, and that genuine transactions cannot be disregarded simply because they yield a tax advantage. The reasoning, findings, and conclusions of the coordinate Bench in that case are instructive, and for ready reference, we reproduce the relevant discussion therein as under:

*"3. Facts in brief are that assessee is an individual and is director of M/s. Goldiam International Ltd., Golden Jewellery and other entities. He has filed the return of income on 12/08/2016 declaring total income of Rs.5,77,50,560/-. In his case, original assessment was completed u/s. 143(3) on 28/12/2017 and total income was assessed at Rs.5,82,31,560/-. The assessee's case was reopened u/s.148 on the basis of some information received through insight portal, i.e., survey u/s.133A of the Income Tax Act, 1961, was conducted on 15.02.2021 in the case of M/s. JM Financial Asset Management Limited ("JM Financial"), Mumbai. In the course of survey, it was found that JM Balanced Fund- Annual Dividend Option Regular Plan (the "Plan") of JM Financial had manipulated accounting methodology so as to artificially inflate the distributable surplus. In the process, the SEBI guidelines have been flouted by the JM Mutual Fund by classifying a portion of capital as distributable surplus and thereafter artificial payout to the investor in the form of dividend.*

*4. It was also communicated that though dividend received by the unit holders from the equity based mutual fund is exempt from taxation u/s 10(35) of the Act, however, the same cannot be applied as said provisions are for genuine investments in market regulated mutual funds. On detailed investigation, the DDIT (Inv.) had concluded that the dividend received was from sham transaction generated using colorable devices. The*

*dividend received is not on account of appreciation of the investment but is return of a part of the capital itself and hence it can't qualify as dividend. It is nothing but a make-believe arrangement to create fictitious loss to the beneficiary investor so they may adjust it with capital gains from other investments. The dividend being sham and capital loss being artificial is not eligible for set off.*

*5. Further, ld. AO noted that SEBI vide its Circular No. SEBI/IMD/CIR No 18 / 198647/2010 dated March 15, 2010, had clearly instructed the fund houses that Unit Premium Reserve shall be treated at par with Unit Capital and cannot be utilized to declare 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 invest and make a profit to distribute. However, said direction of the SEBI has not been followed by the mutual fund, as first it has artificially rigged the distributable surplus and then applied said ratio to future allotted units (before the planned dividend distribution date). Thus, ld. AO observed that it can be deduced that deploying unfair and manipulative methods, the mutual fund house has rigged up the distributable surplus in a planned manner and strictly against the guidelines specified by the SEBI. He further observed that as per the SEBI, investors, in order to reduce their tax liability, entered into these sham transactions and received dividend and Short-Term Capital Loss and therefore, the dividend is not eligible for deduction u/s 10(35) of the Act and short-term capital loss is also not eligible for adjustment with other capital gains. Assessee was now the beneficiary of this scam by adopting the said modus operandi and assessee has also claimed short term capital loss alongwith claim of dividend income which is a colourable nature of transaction. Accordingly, notice u/s.148 was issued on 29/06/2021.”*

26. The findings of the Tribunal is as under:-

9. We have heard both the parties at length and also perused the relevant finding given in the impugned orders. The case of the department before us is that denial of exemption of dividend income u/s.10(35) and claim of set off of short term capital loss is based on –

- Firstly, survey action carried out in the case of J.M Financial Asset Management Ltd., which revealed that J.M Financial Asset Management Ltd., has manipulated accounting methodology to artificially inflate distributable profits which lead to the conclusion by the ld. AO that dividend received by the investors from the said fund was out of sham transaction;
- Secondly, ld. AO has relied heavily upon SEBI Circular No. SEBI/IMD/CIR No 18 / 198647 /2010 which instructed that the Unit Premium Reserve shall be treated at par with unit capital and cannot be utilized to declare dividends and the mutual fund houses cannot distribute dividends from Unit Premium Reserve. Ld. AO has also referred to some statement recorded by various employees of J.M Financial Asset Management Ltd.

10. Whereas, the assessee's case before us that he is a regular investor in shares and mutual funds and he has made investment of Rs.6 Crores in J.M. Financial Asset Management Ltd., and has earned dividend income of Rs.1,83,65,846/- and the said units were sold for consideration of Rs.4,00,63,648/- which had resulted into premium capital loss. Thus, it has been submitted that J.M. Financial Asset Management Ltd., has issued a market update on 30/09/2014 wherein, the details of the funds were made public based on that assessee made investment on December 2014, thus, the investment was made after duly considering the market information. Apart from that, it has been submitted that ld. AO has not invoked the provision of Section 94(7) and even otherwise also the said section is not applicable. For the sake of ready reference, Section 94(7) is reproduced hereunder:-

“Where— (a) any person buys or acquires any securities or unit within a period of three months prior to the record date;  
(b) such person sells or transfers—  
(i) such securities within a period of three months after such date; or  
(ii) such unit within a period of nine months after such date;  
(c) the dividend or income on such securities or unit received or receivable by such person is exempt, then, the loss, if any, arising to him on account of such purchase and sale of securities or unit, to the extent such loss does not exceed the amount of dividend or income received or receivable on such

securities or unit, shall be ignored for the purposes of computing his income chargeable to tax.”

11. From the perusal of the aforesaid provision, it is clear that loss incurred on account of issue of dividend has not been considered as non-genuine and the same shall be disallowed only when the record date falls within the period as stipulated u/s.94(7). This proposition has been upheld by the Hon’ble Supreme Court in the case of Walfort Share & Stock Brokers (P) Ltd. (2010) 41 DTR 233 (SC) wherein the Hon’ble Supreme Court held as under:-

“The real objection of the Department appears to be that the assessee is getting tax-free dividend; that at the same time it is claiming loss on the sale of the units; that the assessee had purposely and in a planned manner entered into a pre-meditated transaction of buying and selling units yielding exempted dividends with full knowledge about the fall in the NAV after the record date and the payment of tax-free dividend and, therefore, loss on sale was not genuine. ”

"We find no merit in the above argument of the Department. At the outset, we may state that we have two sets of cases before us. The lead matter covers assessment years before insertion of s. 94(7) vide Finance Act, 2001 w.e.f. 1st April, 2002. With regard to such cases we may state that on facts it is established that there was a "sale". The sale-price was received by the assessee. That, the assessee did receive dividend. The fact that the dividend received was tax-free is the position recognized under s. 10(33) of the Act. The assessee had made use of the said provision of the Act. That such use cannot be called "abuse of law", Even assuming that the transaction was pre-planned there is nothing to impeach the genuineness of the transaction. With regard to the ruling in McDowell & Co. Ltd. vs. CTO (1985) 47 CTR (SC) 126 : (1985) 154 ITR 148 (SC), it may be stated that in the later decision of this Court in Union of India vs. Azadi Bachao Andolan & Anr (2003) 184 CTR 450, 263 ITR 706 (SC) it has been held that a citizen is free to carry on its business within the four corners of the law. That, mere tax planning, without any motive to evade taxes through colourable devices is not frowned upon even by the judgment of this Court in McDowell & Co. Ltd. 's case (supra). Hence, in the cases arising before 1<sup>st</sup> April, 2002, losses pertaining to exempted income cannot be disallowed. "

12. Thus, loss incurred cannot be held to be non-genuine merely because the dividend has been issued by J.M. Financial funds. It is not in dispute that the purchase / investment of Rs.6 Crores and sale had duly been recorded and reflected in the bank statement and as per the provision of Section 48, capital gain has to be computed by reducing the cost of acquisition and expenditure incurred on transfer from sale consideration. In absence of applicability of Section 94(7), such short term capital loss is otherwise allowable under the Act. It has been further noted by the ld. CIT(A) that assessee has also invested in many other mutual funds during the year under consideration for instance, assessee has incurred losses of Rs.92,24,691/- in India Bulls Blue Mutual fund and Rs.3,25,836/- in Franklin India Smaller Company Fund Growth. He has also received dividend of Rs. 49,93,432/- from these funds. He has earned a total dividend of Rs.5,12,90,760/- through his investments in stocks and mutual funds during the year. As a matter of fact, appellant has also invested in JM Arbitrage Advantage Fund floated by JM Financial and earned capital gain of Rs.4,27,67,171/- which has not been doubted by the AO. This shows that the investment in JM Financial Mutual Fund is not an isolated transaction.

13. Another important fact here is that nowhere the ld. AO has brought on record any SEBI enquiry in the case of J.M. Financial Asset Management Ltd., to support his finding given by him. His entire order is based on the premise of SEBI Circular which was general and not particularly applicable for J.M. Financial Asset Management Ltd., Nowhere, there is any material that assessee was involved in manipulation done by J.M. Financial Asset Management Ltd.

14. Ld. CIT (A) has also considered various statements of employees of J.M. Financial Asset Management Ltd., which has been relied upon by the ld. AO, however, none of the employees were admitted that any manipulation has been done for the purpose of providing tax benefit to the asset in other investors. There is no whisper that J.M. Financial Management Ltd., have provided excess dividend to the assessee nor provided tax benefit. There is no live link nexus between the statement and the assessee. Thus, ld. CIT (A) has rightly held that there is no substance in relying upon such statement.

15. Another fact which has been noted by the Id. CIT (A) is that there is no SEBI enquiry raised on J.M. Financial Management Ltd. It is a matter of fact that the said fund is still active in the market and has given early return of 11.51% against the benchmark return of 11.33% as reflected in the annual report of J.M. Financial Management Ltd., for A.Y.2014-15. Thus, when assessee has made investment in open-ended scheme floated by the Mutual Fund and assessee has made investment as per the price available in the open market and has exited at the time based on market price, then it cannot be said that assessee was involved in alleged pre-planned transaction.

16. Ld. CIT (A) has also relied upon the co-ordinate Bench decision of the ITAT, Mumbai in the case of Goldiam International Ltd. Vs. DCIT wherein similar facts involved in J.M. Financial Asset Management Ltd., was involved. The relevant observation and the finding of the Tribunal are as under:-

"7. 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 Rs.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 record 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 Rs.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."*

16. The ld. CIT(A) has also relied upon various other co-ordinate Bench decision and also the judgment of the Hon'ble Calcutta High Court in the case of *Eveready Industries India Ltd. vs. CIT* reported in 334 ITR 413. The relevant finding of which are as under:-

"4. The facts leading to the filing of this appeal may be summed up thus (a) The assessee had purchased 35 lakh units of UTI from Peerless General Finance & Investment Co. Ltd "Peerless") on 29th May, 1989 at the rate of Rs. 14.75 per unit for a total consideration of Rs 5,16,25,000. Those very units were sold back to Peerless on 31st July, 1 of Rs. 4,55,00,000, 989/ TAX DEPA the rate of 13 per unit for the aggregate consideration

(b) While the units were purchased cum-dividend, as the booking closing date was 30th June, 1989 and the shares were purchased on 29th May, 1989, those units having been sold after the book closure, i.e., on 31st July, 1989, were sold ex-dividend. The assessee also received dividend at the rate of 18 per cent on those units, which worked out to be Rs. 63 lakh. Thus, in connection with the aforesaid transaction, the assessee incurred a loss of Rs. 63,84,000 which is the subject matter of dispute

.....

9. After hearing the learned counsel for the parties and after going through the aforesaid decision of the Supreme Court, we find that it is now clear that the fact that the dividend received by the assessee was tax free is the position recognized under section 10(33) of the Income-tax Act. It appears that the assessee has utilized the said provision of the statute and as such, the same cannot be called as an abuse of the process of law. As pointed out by the Supreme Court, even if we assume for the sake of argument, that the transaction was a preplanned one, there was nothing to Impeach the genuineness

*of the transaction. As regards the observation of O Chinnappa Reddy, J. in the case of McDowell & Co. Ltd. v. CTO [1985] 154 ITR 148 /22 Taxman 11, it was pointed out by the Supreme Court in the later decision of the Supreme Court in the case of Union of India v. Azadi Bachao Andolan [2003] 263 ITR 706/132 Taxman 373, that a citizen is free to carry on his business within the four corners of the law and that mere tax planning, without any motive to evade taxes through colourable devices is not frowned upon. Thus, in a case arising before April 1, 2002, the losses pertaining to exempted income cannot be disallowed.*

*10. We, therefore, set aside the order passed by the authorities below and hold that in the case before us, the assessee is entitled to claim loss on the aforesaid transaction by answering the two questions framed by the Division Bench in favour of the assessee against the Revenue. We direct the Assessing Officer to treat the loss arising out of the aforesaid transaction and also to grant benefit of exemption as pointed out by the Supreme Court"*

*17. Thus, the finding of the ld. CIT (A) in deleting the disallowance / addition made by the ld. AO is upheld. Otherwise also, on the facts as discussed in the impugned orders, we do not find that there any sham transaction involved between assessee and J.M. Financial Asset Management Ltd., to hold that dividend income is fictitious or the short term capital loss is also fictitious. Accordingly, the claim of the assessee is allowed and the appeal of the Revenue is dismissed.*

*27. In view of the aforesaid finding of the Co-ordinate Bench, we do not find any infirmity in the order of the ld. CIT(A) and same is confirmed.*

**28. In the result, both the appeals of the Revenue are dismissed.**

Order pronounced on 12<sup>th</sup> August, 2025.

**Sd/-**  
**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 12/08/2025  
KARUNA, *sr.ps*

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**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,

(Asstt. Registrar)  
**ITAT, Mumbai**