IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH MUMBAI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No. 6577/Mum/2025
(Assessment Year: 2015-16)

Ramesh Purshottam Modi 303, Modi House, Linking Road, Khar West, Mumbai-400 052	Vs.	**ITO Circle 22(1)** Income Tax Department, Piramal Chamber, Dr. SS Rao Marg, Parel, Mumbai 0 400 012
PAN/GIR No. AAHPM2793F		
(Applicant)		(Respondent)

Assessee by	Shri Ashwani Kumar a/w Ms. Deepali Aggarwal, Ld. ARs
Revenue by	Shri Umashankar Prasad, Ld. DR

Date of Hearing	12.02.2026
Date of Pronouncement	19.02.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

This appeal is directed against the order dated 03.10.2025 passed under section 250 of the Income-tax Act, 1961[hereinafter referred to as "the Act"] by the National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"], for Assessment Year

2015-16, arising out of the reassessment order dated 29.05.2023 passed under section 147 read with section 144B of the Act.

Facts of the Case

2. The assessee is an individual. For Assessment Year 2015-16, the assessee had originally filed return of income declaring total income of Rs. 56,88,130/-. The case was selected for scrutiny and assessment was completed under section 143(3) of the Act. Subsequently, notice under section 148 of the Act dated 30.06.2021 was issued for reopening the assessment. The reopening was stated to be based on information received from the Investigation Wing, DIT (Inv.)-3(1), Mumbai, uploaded on the Insight Portal on 25.06.2021. As per such information, enquiries conducted by the Investigation Wing revealed a modus operandi adopted in certain mutual fund schemes managed by JM Financial Asset Management Ltd., particularly in JM Equity Hybrid Fund – Dividend Option.

3. According to the Assessing Officer pre-planned investments were made into the scheme prior to declaration of dividend. Substantial dividend was received. Immediately thereafter, redemption of units was undertaken resulting in short term capital loss. The short term capital loss was set off against other capital gains. The dividend income was claimed as exempt. The distributable surplus was allegedly inflated by improper classification of capital as distributable surplus, in violation of SEBI guidelines. Survey proceedings were conducted in the

premises of JM Financial Asset Management Ltd. Statement of Shri Sanjay Chhabaria, Fund Manager, was recorded on oath.

4. The Assessing Officer observed that dividend of Rs. 44,24,42,395/- was received. Redemption resulted in short term capital loss. The transactions were pre-planned. SEBI guidelines were allegedly violated by crediting capital into unit premium reserve and declaring dividend therefrom. The transaction was a colourable device. The ratio of the decision of the Hon'ble Supreme Court in McDowell & Co. Ltd. was applicable. The Assessing Officer concluded that the dividend received was fictitious in nature and that income had escaped assessment.

5. Before the Assessing Officer, the assessee raised detailed objections both on the validity of the reassessment and on the merits of the proposed addition. The assessee contended that the reopening of the assessment was based merely on a change of opinion, inasmuch as the issue in question had already been examined during the original assessment proceedings completed under section 143(3) of the Act. It was specifically submitted that no new tangible material had come into the possession of the Assessing Officer subsequent to the completion of the original assessment so as to justify the assumption of jurisdiction under section 147 of the Act. The assessee further contended that the transactions relating to investment in mutual fund units and the applicability of section 94(7) and section 94(8) of the Act had already been examined by the Assessing Officer during the original scrutiny proceedings and, therefore, reopening on the

same set of facts was impermissible. It was also submitted that there was no material whatsoever to suggest that the assessee had any involvement in any alleged manipulation by the mutual fund house. The assessee asserted that neither the findings recorded in the survey proceedings conducted in the case of JM Financial Asset Management Ltd. nor the statements of key managerial personnel recorded during such proceedings conclusively established any involvement of the assessee in any alleged malpractice or pre-arranged transaction.

6. The assessee emphasised that the investments in mutual fund units were made through the recognized stock exchange mechanism and through normal banking channels, and that the genuineness of the mutual fund scheme, which was duly registered with SEBI, had been verified. It was further contended that no specific evidence had been brought on record by the Assessing Officer linking the assessee to any alleged accommodation entry or sham arrangement. According to the assessee, both the dividend received and the subsequent redemption of units were genuine transactions carried out in the ordinary course of investment activity.

7. The assessee also specifically objected to the proposal of the Assessing Officer to treat the dividend amount as unexplained money within the meaning of section 69A of the Act, contending that the dividend was received from a duly registered mutual fund scheme and could not, under any circumstances, be characterized as unexplained income.

8. The Assessing Officer rejected the objections raised by the assessee and proceeded to hold that the information received from the Investigation Wing constituted fresh and tangible material justifying the reopening of the assessment. According to the Assessing Officer, the issue regarding the genuineness of the dividend received from the mutual fund scheme had not been examined during the original assessment proceedings completed under section 143(3) of the Act. It was further held that the pattern of investment, declaration of dividend and subsequent redemption of units indicated that the dividend distribution was part of a pre-planned arrangement. The Assessing Officer observed that the distributable surplus of the scheme had allegedly been inflated in violation of SEBI guidelines and that the entire transaction represented a colourable device adopted with the object of claiming exempt income and booking artificial loss.

9. On this basis, the Assessing Officer concluded that the dividend amount of Rs. 44,24,42,395/- was fictitious in nature. After adjusting the short-term capital loss of Rs. 4,70,46,776/- arising on redemption of units, the Assessing Officer made a net addition of Rs. 39,53,95,619/- under section 68 read with section 115BBE of the Act. Consequently, the total income of the assessee was determined at Rs. 40,10,83,749/- as against the returned income. The Assessing Officer also initiated penalty proceedings separately under the relevant provisions of the Act.

10. Aggrieved, the assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee raised both jurisdictional and

merit grounds. It was contended that the notice under section 148 dated 30.06.2021 was issued beyond limitation under section 149 and without complying with statutory requirements. The assessee also objected that the notice was issued without generating DIN and later regularised contrary to CBDT Circular No. 19/2019, and that approval details were not properly mentioned. It was further contended that reopening was based on the same facts examined during the original assessment under section 143(3) dated 26.12.2017 and therefore amounted to change of opinion. The assessee denied any fictitious short term capital loss of Rs. 44,24,42,395/- and argued that the final addition, based on revocation of exemption under section 10(35), travelled beyond the recorded reasons. It was also contended that only about 12 percent of units were sold, that the dividend and investment transactions were genuine, and that once purchase and sale were accepted, dividend could not be treated as unexplained. The assessee objected to inconsistent reference to sections 69A and 68, reliance on third party statements without furnishing copies or cross examination, and initiation of penalty. An additional ground was raised alleging violation of faceless procedure under section 151A.

11. The CIT(A) addressed both legal and merit issues. The validity of reopening was upheld on the ground that information from the Investigation Wing constituted tangible material and was not available at the time of the original assessment. The plea of change of opinion was rejected. The technical objections relating

to limitation and DIN were rejected by invoking section 292B. The addition under section 68 was upheld despite reference to section 69A in the show cause notice, holding that the assessee was not prejudiced and had failed to establish genuineness. The ground relating to penalty was held to be premature. Ultimately, the appeal was dismissed.

12. Further aggrieved by the order of the CIT(A), the assessee is in appeal before us raising following grounds of appeal:

> *1. On the facts and circumstances of the case, the impugned Assessment Order is bad in law.*
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> ***Jurisdictional Errors in Reassessment Proceeding:***
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> *2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the Ld. AO in initiating Reassessment proceedings without meeting the prerequisite conditions for invoking jurisdiction under section 147/148 of the Act, and issued an illegal/invalid Notice of Reopening u/s 148 of the Act dt. 30.06.2021.*
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> *2.1The Ld. CIT(A) failed to appreciate that the Ld. AO prepared the notice u/s 148 mentioning the date as 30.06.2021 (i.e. under the old provision) and issued the said notice u/s 148 after the expiry of the time limit u/s 149.*
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> *2.2The Ld. CIT(A) failed to appreciate that the Ld. AO issued notice u/s 148 without generating the DIN and subsequently tried to regularise by sending email intimation, completely against the guidelines issued by CBDT Circular No.19/2019 dt. 14.08.2019.*
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> ***Reassessment is Merely a Change of Opinion***
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> *3. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the Ld. AO who failed to consider the fact that all the transactions (including the alleged transaction of Rs. 44,24,42,395) were duly verified during the original assessment*

proceedings u/s 143(3) of the Act. Thus the very initiation of reassessment proceedings were bad in law.

Reasons for initiating the Reassessment and the basis of the Final addition are different

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the Ld. AO that in the reason recorded, the Ld. AO stated that the appellant has claimed fictitious losses of Rs 44,24,42,395/-, whereas Ld. AO completed the Assessment proceedings by making an addition on the ground revoking the exemption of 10(35) as a non-genuine dividend of Rs. 395395619/-.

4.1The Ld. CIT (A) and the Ld. AO failed to appreciate that the reason for reopening (i.e., alleged fictitious losses) and the basis of the final addition (i.e., disallowance of dividend exemption under section 10(35)) are entirely unrelated and independent issues. As a result, the reassessment suffers from a jurisdictional defect, and the addition made and upheld on grounds not forming part of the recorded reasons is beyond the scope of valid reassessment and hence bad in law.

Addition U/s 68 – Rs. 39,53,95,619

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of genuine dividend income of Rs. 39,53,95,619 as unexplained cash credit u/s 68.

JAO issued the in contravention of the faceless procedure

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the Jurisdictional Assessing Officer had issued the Notice u/s 148A(b) of the Act and passed the Order u/s 148A(d) of the Act along with the Notice u/s 148 of the Act, which contravened the mandatory faceless procedure as per Section 151A of the Act as well as the E-Assessment Scheme dated 29.03.2022 issued by the CBDT.

A Genuine Transaction cannot be considered as Fictitious

7. The Ld. AO placed the reliance on a third-party statement of Oath, the details of which were never provided during the course of assessment proceedings in spite of the appellant's request.

7.1That the Ld. CIT (A) failed to appreciate that the order passed by Ld. AO was bad in law as much as neither the details of statement of a third party relied upon by him were provided to the appellant nor any opportunity to cross examine the said party was provided.

VC Hearing not provided by CIT(A)

8. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in disposing of the appeal without providing an opportunity of being heard through Video Conferencing.

The appellant craves leave to add/ alter any grounds of appeal before or at the time of hearing.

13. During the course of hearing before us, the learned Authorised Representative (AR) for the assessee reiterated that the original assessment had been completed under section 143(3) of the Act and that the issue relating to the investment in mutual fund units, dividend income and the resultant short term capital loss had already been examined by the Assessing Officer in the original proceedings. It was submitted that the reassessment had been initiated beyond a period of four years from the end of the relevant assessment year and that there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. On this basis, it was contended that the assumption of jurisdiction under section 147 was bad in law.

14. The learned AR further pointed out that, as per the reasons recorded, the basis for reopening was the alleged short term capital loss of Rs. 44.24 crore, whereas in the reassessment order the addition was ultimately made under section 68 on account of dividend amounting to Rs. 44,24,42,395/-, which was treated as fictitious in nature. It was submitted that after allowing short

term capital loss of Rs. 4,70,46,776/- arising on redemption of units, the Assessing Officer made a net addition of Rs. 39,53,95,619/- under section 68, which, according to the learned AR, was beyond the scope of the reasons recorded and therefore unsustainable in law. The learned AR further submitted that the show cause notice dated 29.04.2023 issued during the course of reassessment proceedings proposed to treat the dividend amount as unexplained money under section 69A of the Act. However, in the final reassessment order, the Assessing Officer did not make the addition under section 69A but instead proceeded to invoke section 68 and treated the dividend as unexplained cash credit. It was contended that no fresh show cause notice was issued before changing the basis of the proposed addition from section 69A to section 68, and therefore the addition was made without affording proper opportunity to the assessee, resulting in violation of principles of natural justice.

15. On the issue of invalidity of reassessment proceedings and failure of jurisdiction under section 148, the learned Authorised Representative placed strong reliance upon the judicial precedents of the Hon'ble Bombay High Court in ***Commissioner of Income-tax v. Jet Airways (I) Ltd. (331 ITR 236)*** and the Hon'ble Delhi High Court in ***Ranbaxy Laboratories Ltd. v. Commissioner of Income-tax (336 ITR 136)***where it was held that the Assessing Officer, upon forming a reason to believe and issuing notice under section 148, must assess or reassess "such income" which formed the basis of reopening, and only thereafter

can he assess any other income which comes to his notice during the course of proceedings. It has been categorically held that if the income which was the foundation of the reasons recorded is not ultimately assessed or reassessed, it is not open to the Assessing Officer to independently assess some other income.

16. On merits, the learned AR submitted that the entire basis of the Assessing Officer's conclusion was factually incorrect and inapplicable to the case of the assessee. It was contended that the modus operandi referred to in paragraph 4 of the recorded reasons does not apply to the facts of the present case. The Assessing Officer had stated that a huge dividend had been received on 31.03.2015, whereas in fact no such dividend was received by the assessee on that date from JM Equity Hybrid Fund – Dividend Option. It was further submitted that the allegation that mutual fund units were sold and fictitious losses of Rs. 44,24,42,395/- were booked is incorrect, as no such loss was booked by the assessee. It was also pointed out that the Assessing Officer had wrongly compared the JM Equity Hybrid Fund – Dividend Option with the SOP of a different fund, namely JM Large Cap Fund – Half Year Dividend Option, and on that basis concluded that the dividend was distributed in a pre-planned manner without business prudence. According to the learned Authorised Representative, such comparison between two distinct schemes was erroneous and led to an incorrect inference.

17. The learned AR further submitted that as per the alleged modus operandi, after receiving dividends and immediately after

crossing the time limits prescribed under section 94(7) and 94(8), the units were to be redeemed. However, in the assessee's case, being a genuine long-term investor, the majority of the units were retained. It was demonstrated that out of 3,14,45,800 units purchased on 21.10.2014 for Rs. 80,00,00,000/-, only 38,00,000 units, approximately 12 percent, were redeemed on 26.03.2015, and the balance 2,76,45,800 units, representing about 88 percent of the holding, continued to be held as on 31.03.2015. This, according to the learned AR, clearly establishes that the investment was not a short-term pre-arranged transaction but a long-term holding.

18. It was further submitted that the assessee has been investing in various mutual fund schemes over a period of time and this was not a solitary transaction. The past trend and investment practice would show that the assessee is a regular investor and not a participant in any alleged arrangement.

19. The learned AR also highlighted the inconsistency in the assessment order. While the Assessing Officer accepted the purchase and sale transactions and even allowed the short-term capital loss of Rs. 4,70,46,776/- arising on sale of 38,00,000 units, he nevertheless restricted the addition to Rs. 39,53,95,619/- on the so-called principle of natural justice. It was argued that once the purchase and redemption of units and the resultant loss were accepted as genuine, doubting the dividend income from the very same investment as fictitious or

non-genuine and treating it as unexplained cash credit is legally untenable.

20. Accordingly, it was submitted that the entire variation is based on erroneous facts and inapplicable information, and the conclusion that the dividend income is fictitious or represents unexplained cash credit is wholly unsustainable in law as well as on facts.

21. The learned AR placed reliance on a series of judicial precedents in support of the contention that in absence of any material demonstrating the assessee's participation in any sham or pre-arranged transaction, the dividend received from a SEBI regulated mutual fund cannot be treated as fictitious and the resultant loss cannot be disallowed.

22. Strong reliance was placed on the judgment of the Hon'ble Bombay High Court in **Karan Maheshwari vs. ACIT reported in 176 taxmann.com 700**, wherein reopening on identical allegations relating to dividend and short-term capital loss arising from investment in JM mutual fund schemes was quashed. The Hon'ble Court held that in absence of any material indicating that the assessee had knowingly participated in any sham transaction or illegality, the reassessment proceedings were unjustified. The Special Leave Petition filed by the Revenue against the said decision was dismissed by the Hon'ble Supreme Court as reported in ***176 taxmann.com 1003.***

23. Reliance was further placed on the decision of the Co-ordinate Bench in the case of **Goldiam International Ltd. vs. DCIT (ITA Nos. 3218 & 3219/Mum/2023)**, wherein on identical facts involving JM Balanced Fund and allegations of artificial dividend distribution, the Co-ordinate Bench held that in absence of any evidence showing connivance or participation of the assessee in the alleged manipulation by the fund house, the addition could not be sustained.

24. The learned AR also relied upon the decision of the Co-ordinate Bench in ***Giriraj Enterprises vs. DCIT (ITA No. 427/PUN/2024 and connected appeals)***, where similar allegations based on survey findings in the case of JM Financial were examined. The Co-ordinate Bench, after analysing the SEBI circulars and statements recorded during survey, held that merely because the mutual fund house was alleged to have violated regulatory guidelines, the investor could not be fastened with tax liability in absence of cogent material establishing collusion or pre-arranged understanding

25. The learned Departmental Representative (DR), opposing the legal contentions of the assessee, submitted that the information forming the basis of reopening was received subsequent to completion of the original assessment under section 143(3) and, therefore, constituted fresh and tangible material in the possession of the Assessing Officer. It was contended that the survey proceedings conducted by the Investigation Wing and the findings recorded therein were not available at the time of original

assessment and hence the reassessment proceedings cannot be characterised as a mere change of opinion.

26. The learned DR further pointed out that during the original scrutiny proceedings, the Assessing Officer had examined transactions relating to "Birla Sunlife Cash Plus Funds" and not the investment made in JM Mutual Fund – Dividend Option, as is evident from page 2 of the order placed on page 49 of the paper book. According to him, the issue relating to the alleged abnormal dividend from JM Mutual Fund was not the subject matter of enquiry in the original assessment and hence there was no formation of opinion on this aspect.

27. On the procedural objection raised by the assessee regarding the reasons recorded, the learned DR submitted that the notice issued under section 148A(b) cannot be equated with the reasons recorded for reopening. It was argued that the order passed under section 148A(d), after considering the reply of the assessee and after obtaining approval from the specified authority, constitutes the final reasons for issuance of notice under section 148. Therefore, according to the learned DR, the reassessment proceedings were validly initiated in accordance with the statutory framework introduced post amendment.

28. With regard to the judicial precedents relied upon by the learned AR, particularly in the case of Karan Maheshwari (supra), the learned DR submitted that the said decision arose in writ jurisdiction and was rendered on the peculiar facts of that

assessee. Referring to paragraphs 10 and 14 of the judgment, it was contended that in that case the petitioner was not furnished with complete information and the impugned order under section 148A(d) was passed without providing material relied upon by the Department. According to the learned DR, the factual matrix in the present case is distinguishable, as the assessee had been issued notices under section 148A(b), had participated in the proceedings and had acknowledged the subsequent notices. Hence, it was argued that the ratio of the said writ decision cannot be mechanically applied to the present case.

29. In rebuttal to the submissions of the learned DR, the learned AR submitted that during the course of original assessment proceedings under section 143(3), the assessee had furnished complete details not only in respect of Birla Sunlife Cash Plus Fund but also in respect of JM Balanced Fund / JM Equity Hybrid Fund. Attention was invited to page 47 of the paper book to demonstrate that the investment particulars, dividend income and related transactions were duly disclosed before the Assessing Officer in the original scrutiny. It was therefore contended that the assertion of the Department that the JM Mutual Fund transactions were not examined in the original assessment is factually incorrect.

30. The learned AR further controverted the submission of the Department that notice under section 148A(b) does not constitute the “reasons recorded”. It was submitted that the statutory scheme post amendment requires the Assessing Officer to provide

the material and information relied upon and the basis of allegation in the notice under section 148A(b), which forms the foundation of the proposed reopening. Reliance was placed on specific paragraphs of the decision in the case of Karan Maheshwari, wherein it has been held that failure to provide complete information and material forming the basis of the allegation at the stage of section 148A(b) vitiates the proceedings, and that the order under section 148A(d) cannot cure such foundational defects.

31. It was pointed out that in the cited decision, the Hon'ble Court quashed the proceedings on the ground that the assessee was not furnished with complete information, documents and material allegedly linking him to the so-called manipulation, and that the notice contained vague and inconsistent allegations. Drawing parity with the present case, it was submitted that the notice under section 148A(b) in the assessee's case also suffers from similar infirmities, including absence of specific material linking the assessee to any alleged manipulation and inconsistency regarding the fund and nature of transaction. Accordingly, it was contended that the reopening is bad in law and deserves to be quashed.

32. We have carefully considered the rival submissions, perused the assessment order, the appellate order, the material placed on record and the judicial precedents relied upon by both sides. It is an undisputed position that the original assessment in the present case was completed under section 143(3) on 26.12.2017.

The assessment records show that during the course of original scrutiny proceedings, the Assessing Officer had called for details of mutual fund transactions and dividend income. The assessee furnished complete details of investment in mutual funds including JM Balanced Fund / JM Equity Hybrid Fund as well as Birla Sunlife Cash Plus Fund.

33. The learned DR contended that only Birla Sunlife Cash Plus Fund was examined and not the JM scheme. However, from the paper book and the correspondence placed on record, it is evident that the assessee had disclosed the investment particulars, dividend income and related details of JM scheme during the original proceedings. Therefore, it cannot be said that there was total absence of enquiry. It is well settled that once a query is raised and answered during scrutiny, reopening on the same material amounts to change of opinion. The Hon'ble Bombay High Court in ***CIT vs. Jet Airways (I) Ltd. 331 ITR 236*** (Bom) has held that where the Assessing Officer has formed an opinion in original assessment, reassessment on the same issue is impermissible. Similarly, the Hon'ble Delhi High Court in ***CIT vs. Ranbaxy Laboratories Ltd. 336 ITR 136*** (Del) has held that the Assessing Officer cannot reopen on a ground which was examined in original assessment.

34. In the present case, the reopening has been made beyond four years from the end of the relevant assessment year. Therefore, the first proviso to section 147 is attracted. In such circumstances, reopening is permissible only if there is failure on

the part of the assessee to disclose fully and truly all material facts necessary for assessment.

35. No such failure has been demonstrated by the Revenue. The investment, dividend income and redemption details were part of the return and were furnished during scrutiny. Hence, the condition precedent under the first proviso to section 147 is not satisfied. Accordingly, we hold that the reopening suffers from the vice of change of opinion and is hit by the proviso to section 147.

36. The Department contended that information was received from the Investigation Wing after completion of original assessment and therefore constituted fresh tangible material. Undoubtedly, information from an external source may constitute tangible material. The Hon'ble Supreme Court in *ITO vs. Purushottam Das Bangur* 224 ITR 362 (SC) and the Hon'ble Gujarat High Court in *Pushpak Bullion Pvt. Ltd.* 85 taxmann.com 84 have recognized this principle. However, the material must have live link and nexus with the assessee's case. In the present matter, the notice under section 148A(b) contains general allegations regarding manipulation by JM Financial and dividend stripping. It does not establish any specific material showing that the assessee had participated knowingly in any sham transaction. Further, the notice itself reflects inconsistency as to whether the allegation pertains to JM Balanced Fund – Annual Dividend Option or JM Equity Hybrid Fund – Quarterly Dividend. This ambiguity itself demonstrates non-application of mind.Thus, even assuming information was received, it cannot be said that

there was specific tangible material establishing escapement of income in the hands of the assessee.

37. The reasons recorded referred to alleged fictitious short term capital loss of Rs. 44,24,42,395/-. However, the final addition was made under section 68 treating dividend of Rs. 44,24,42,395/- as fictitious, after adjusting short term capital loss of Rs. 4,70,46,776/- and making net addition of Rs. 39,53,95,619/-.The Hon'ble Bombay High Court in ***Jet Airways (I) Ltd.*** **(supra)** and the Hon'ble Delhi High Court in ***Ranbaxy Laboratories Ltd.*** **(supra)** have held that reassessment must be confined to the reasons recorded and if the original ground fails, the Assessing Officer cannot sustain reassessment on a different ground.

38. In the present case, the ground recorded was fictitious loss, whereas the addition has been made treating dividend as unexplained cash credit. The foundation and superstructure are different. Therefore, reassessment cannot survive.

39. The learned DR argued that 148A(b) is not the "reasons recorded" and that 148A(d) constitutes the final reasons. We are unable to accept this contention. Under the amended scheme, section 148A(b) requires the Assessing Officer to provide the information and material relied upon and give opportunity of being heard. The foundation of reopening must be disclosed at this stage. The Hon'ble Bombay High Court in ***Karan Maheshwari*** **(supra)** has held that failure to provide complete

material at the stage of section 148A(b) vitiates proceedings. It was observed that vague and generalized allegations without furnishing underlying material are not sufficient compliance. In the present case, the assessee has consistently contended that complete material, statements and enquiry reports were not provided. The order under section 148A(d) relied upon matters not furnished earlier. This violates principles of natural justice.

40. The additional ground relating to violation of section 151A and E-Assessment Scheme has been raised. However, since we have already held the reopening invalid on substantive grounds, this aspect becomes academic and is not adjudicated further.

41. Even assuming reopening is valid, we proceed to examine merits. The Assessing Officer treated dividend income of Rs. 44,24,42,395/- as fictitious and made addition under section 68 read with section 115BBE.Section 68 applies where any sum is found credited in the books and the assessee fails to explain the nature and source thereof. In the present case investment was made through recognized stock exchange, units were allotted, dividend was declared by mutual fund registered with SEBI, dividend was credited through banking channel and redemption of certain units was accepted and loss of Rs. 4,70,46,776/- was allowed. If purchase and sale transactions are accepted as genuine, dividend arising therefrom cannot be selectively treated as fictitious without cogent evidence. The Hon'ble Supreme Court in *CIT vs. Walfort Share & Stock Brokers (P.) Ltd.* 326 ITR 1 (SC) has clearly held that dividend stripping transactions prior to

insertion of section 94(7) cannot be treated as sham and that Parliament has not treated such transactions as bogus but only restricted loss to extent of dividend. Even post section 94(7), loss is to be restricted only to the extent of dividend received and not entire transaction to be treated as sham.

42. In the present case, the Assessing Officer himself allowed loss on sale of 12% units. Therefore, transaction is partly accepted as genuine. In such circumstances, treating dividend as unexplained cash credit under section 68 is legally untenable. Further, dividend received from mutual fund is not a "cash credit" in the nature contemplated by section 68. Its source is the mutual fund scheme, which is identifiable and regulated entity. There is no material to show that the dividend amount represents unaccounted money introduced by the assessee.

43. As regards the remaining grounds raised in the memorandum of appeal, the learned AR submitted that the same are not pressed. In view of the said submission, the other grounds are treated as not pressed and are dismissed as such.

44. In view of the foregoing discussion, the reopening under section 147 is invalid as it is based on change of opinion, beyond four years without failure of disclosure, and addition made is not on the ground recorded. The proceedings under section 148A suffer from violation of statutory mandate and principles of natural justice. On merits also, the addition under section 68

treating dividend of Rs. 39,53,95,619/- as unexplained cash credit is unsustainable in law and on facts.

45. Accordingly, the reassessment order dated 29.05.2023 passed under section 147 read with section 144B and the appellate order confirming the addition are set aside. The addition of Rs. 39,53,95,619/- is deleted.

46. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 19.02.2026.

Sd/-	**Sd/-**
(SAKTIJIT DEY)	**(MAKARAND VASANT MAHADEOKAR)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Mumbai, Dated 19/02/2026
Dhananjay, Sr.PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai