

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI  
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 1774/Mum/2022 (A.Y. 2007-08)**

**JM Financial Asset Management Limited.**

B, 8<sup>th</sup> Floor Cnergy,  
Appasaheb Marathe Marg,  
Prabhadevi, Mumbai-400025.

**PAN: AAACJ2578F**

..... Appellant

Vs.

DCIT, Central Circle-3(2),  
Room No. 608, Aayakar Bhavan,  
M.K. Road, Mumbai-400020.

..... Respondent

Appellant by	:	Dr. K. Shivaram
Respondent by	:	Sh. Vranda U Matkari, Sr. DR
Date of hearing	:	21/12/2022
Date of pronouncement	:	24/01/2023

**ORDER**

**PER GAGAN GOYAL, A.M.:**

This appeal by assessee is directed against the order of Commissioner of Income Tax (Appeals)-47, Mumbai [for short 'CIT (A)'] dated 09.05.2022 under section 143(3) of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2017-18. The assessee has raised the following grounds of appeal:

*“1. That on the facts and in the circumstance of the case, the Ld. Commissioner of Income Tax (Appeals) ('CIT(A)') erred in confirming the action of the Assessing Officer ('AO') in initiating the reassessment proceedings u/s 147 of the Income Tax Act ('the Act') without appreciating the fact that the same had been done in utter disregard of the express provisions of the Act on fresh application of mind on the same set of facts, more so when there was no failure on the part of the appellant to disclose truly and fully all the facts necessary for completion of the original assessment u/s 143(3) of the Act.*

*2. That on the facts and in the circumstance of the case, the order u/s 143 r.w.s 147 of the Act dated 10 March 2014 passed by the AO is unjustified, erroneous and needs to be summarily cancelled.*

*3. That on the facts and circumstances of the case, the Ld. CIT(A) erred in sustaining the disallowance of spill over mutual fund expenses made by the AO of INR 2,33,99,000/-.*

*4. That on the facts and circumstances of the case, the Ld. CIT(A) was not justified in sustaining the disallowance of SEBI registration fees of INR 44,68,000/- made by the AO without appreciating the facts that the expenses were incurred wholly and exclusively for the purpose of the business as per the provisions of Sec. 37(1) of the Act.*

*5. That the appellant craves leave to add, amend, modify, rescind, supplement or alter any of the Grounds stated here-in-above, either before or at the time of hearing of this appeal.”*

2. Brief facts of the case are that assessee filed its return of income on 29-10-2007 declared total loss at Rs 16,73,70,217/-. Case of the assessee was assessed at loss of Rs. 16, 72, 47,040/- vide assessment order dated 17-11-2009 u/s 143(3).

Thereafter a notice u/s 148 was issued to reopen the case vide dated 26-03-2013 (after 4 years).

3. Reasons for reopening were supplied to the assessee which were duly objected by the assessee vide their letter dated 12-07-2013 was disposed on by the AO on 06-02-2014. During the reassessment proceedings AO added back mutual fund expenses as discussed in para-4 of the order amounting to Rs 23399000/- and registration fees as discussed in para-5 amounting to Rs 44,68,000/-. Against this action of AO i.e., reopening of the matter and additions made assessee preferred an appeal before the Ld. CIT (A)-47 Mumbai. Ld. CIT (A) also sustained the action of the AO. Being further aggrieved assessee preferred this appeal before ITAT.

4. We have gone through the order of AO, order of Ld. CIT (A) and submissions of the assessee along with the paper-book. In addition to this we have considered the details filed by the assessee during original assessment proceedings. In compliance to notice u/s 142(1) r.w.s 143(2) vide page no. 36 to 41 of the paper-book dated 20-10-2022. The reopening of the case was being done on the same issues which were submitted, disclosed and the same is considered to be change of opinion. For sake of reference extract of relevant submission during the assessment proceedings for the year under consideration at page no. 40 of the Paper Book is reproduced here-in-below:

**"Assessment Year 2007-08**

**NOTE ON MUTUAL FUND EXPENSES**

*Total Mutual fund expenses incurred during the financial year 2006-07 corresponding to the Assessment Year 2007-08 is Rs. 8,32.85,055/-*

*The break-up of such mutual Fund Expenses is as under:*

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount</b>
1.	Mutual Fund Spill over of Expenses	Rs. 2,33,99,400/-
2.	New Fund Offer Expenses	Rs. 5,54,17,262/-
3.	Sebi Registration Fees for Launching Fixed Maturity Plans	Rs. 44,68,339/-
	<b>Total</b>	<b>Rs. 8,32,85,055/-</b>

**A brief background of Mutual Fund:** *Spill over Expenses*

*Mutual Fund (MF) is a trust and can only absorb expenses as specified by Securities Exchange Board of India (SEBI) regulations. These expenses are in the nature of brokerage, registrar fees, publicity, custodian etc which are in line with the directions laid down by the Securities Exchange Board of India (SEBI) regulations. When the MF expenses exceed the limit specified by SEBI, in such cases the excess expenditure incurred by the schemes of Mutual Funds are to be borne by the Asset Management Company and/or Trustee Company (As per Regulation 52(7) of the SEBI Mutual Funds Regulations, 1996). Accordingly the excess expenditure of Rs. 25,999,333/- incurred during the year has been borne by both assessee company (Asset Management Company) and the Trustee Company as under:*

*Expenses Borne by JM Financial Asset Management Pvt. Ltd. Rs. 23,399,400/-*

*Expenses Borne by JM Financial Trustee Company Pvt Ltd. Rs. 2,599,933/-*

*The portion of above expenses borne by the assessee company is termed as Mutual Fund Spill over of Expenses. A copy of Board resolution stating excess expenditure to be borne by the Asset Management Company is attached herewith.”*

5. After considering the aforesaid submissions made by the assessee, the AO has allowed the expenses claimed by the assessee while framing assessment under section 143(3) of the Act.

5(a). In addition to this we have gone through annexure -A (page no.238) wherein assessee demonstrated that since AY 2003-04 ,2005-06,2008-09,2009-10, 2011-12 and 2013-14 assessee was claiming mutual fund spill over expenses and SEBI registration fees. Assessment of all these years were categorically considered these expenses and allowed.

6. Assessing Officer is only entitled to reopen the assessment, but he cannot review an assessment in the sense that there cannot be a rethinking or different opinion on the same material, which was the subject matter of the original assessment proceedings. Thus, bearing these principles in mind, if we examine the case on hand, we need to scrutinize as to whether the reopening was a change of opinion and was there any attempt to review the original order of assessment. There cannot be adjudication into the merits or roving enquiry into the merits of the assessment to come to a conclusion as to whether the reopening was justified or not. *Prima facie*, the Assessing Officer should be able to establish that the reopening of assessment was not on account of change of opinion, be it within four years or beyond four years.

7. when a regular order of assessment was passed under section 143(3) of the Act, a presumption could be raised that such an order had been passed on application of mind and if it was to be held that an order, which had been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without anything further, the same would amount to giving premium to the Authority exercising quasi-judicial function to take benefit of his own wrong. If such is the position, in the absence of any allegation that there was any fresh material to come to a conclusion that

income escaped assessment, the Assessing Officer cannot now take a stand that the claim made by the assessee under section 37 of the Act, which was acceded to by the Assessing Officer, was incorrect and the expenditure is not allowable. If this is the observation and reason for reopening, it would be a clear case of change of opinion. What the Assessing Officer purported to do is to review his earlier decision.

8. As held by the Hon'ble Supreme Court, in a plethora of judgements, it is not for the assessee to tell as to how the Assessing Officer has to complete the assessment. The duty of the assessee is to make a full and true disclosure of all materials. If the assessee is put on notice calling for additional materials, the assessee is duty bound to fully and truly disclose all materials and thereafter, it is for the Assessing Officer to take a call on the materials. We are satisfied that whatever be the concern, it was to be traced in the assessment under section 143(3) of the Act, the details in the understanding of the Assessing Officer were called for and the details were placed by the assessee and thereafter, the assessment has been completed. Therefore, we find that the reopening was wholly without jurisdiction. As pointed out earlier, the Assessing Officer, while disposing of the objections, has not touched upon the issue relating to jurisdiction.

9. Our view is fortified with the case laws relied upon by the assessee as under:

**1) [2022] 145 taxmann.com 37 (SC) Deputy/Assistant Commissioner of Income-tax vs. Financial Software and Systems (P.) Ltd.**

2) [2022] 139 taxmann.com 562 (SC) Principal Commissioner of Income-tax vs. Fibres and Fabrics International (P.) Ltd.

3) [2021] 125 taxmann.com 71 (SC) Deputy Commissioner of Income Tax, Circle 1(1) vs. Bajaj Allianz Life Insurance Company Ltd.

10. In view of above facts and position of law settled by Hon'ble Apex Court, we allow the ground nos. 1 and 2 raised by the assessee. In the result, order of AO is found to be erroneous, unjustified and without jurisdiction. As the assessment order has been declared beyond jurisdiction, ground nos. 3 and 4 become infructuous and requires no adjudication on merits by this bench.

11. **In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on 24<sup>th</sup> day of January, 2023.

Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER

Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 24/01/2023

SK, Sr.PS

**Copy of the Order forwarded to:**

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)  
ITAT, Mumbai