IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 4298 OF 2026

Grasim Industries Limited }
A-2, Aditya Birla Centre, }
S. K. Ahire Marg, Worli, }
Mumbai – 400 030. } … **Petitioner**

V/s.

1. **Deputy Commissioner of Income-tax,** }
Central Circle 1(4), Mumbai, }
9th Floor, Prathishta Bhavan, }
Old CGO Annexe, }
Mahashree Karve Road, }
Mumbai 400 020, Maharashtra }

2. **Additional Commissioner of Income-tax,** }
Central Range 1, Mumbai, }
9th Floor, Prathishta Bhavan, }
Old CGO Annexe, Mahashree Karve Road, }
Mumbai – 400 020. }

3. **Union of India,** }
Through the Joint Secretary & Legal Adviser, }
Branch Secretariat, }
Department of Legal Affairs, }
Ministry of Law and Justice, }
2nd Floor, Aayakar Bhavan, M. K. Marg, }
New Marine Lines, Mumbai – 400 020 } … **Respondents**

Mr. J. D. Mistri, Senior Advocate with Mr. Madhur Agrawal, Mr. Punit Shah i/b Atul K. Jasani for Petitioner.

Mr. Akhileshwar Sharma for Respondents.

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CORAM : B. P. COLABAWALLA &
FARHAN P. DUBASH, JJ.

RESERVED ON : 12th OCTOBER 2026
PRONOUNCED ON : 22nd OCTOBER 2026

JUDGMENT (Per Farhan P. Dubash, J.):

1. Rule. Rule made returnable forthwith and with the consent of both parties, heard finally. By this Writ Petition, the Petitioner challenges the notice dated 24th March 2026 issued under Section 148A(1) of the Income-tax Act, 1961 **("the Act")**, the order dated 30th June 2026 passed under Section 148A(3) and the consequential notice dated 30th June 2026 issued under Section 148 seeking to reopen its assessment for Assessment Year 2020–21.

2. The controversy has arisen on account of 230,90,26,052 rights equity shares of Vodafone Idea Limited subscribed to by the Petitioner at a price of Rs. 12.50 per share. According to the Revenue, in the absence of any valuation or supporting material furnished by Vodafone Idea Limited or the Petitioner of the shares allotted under the rights issue, the difference between the fair market value of Rs. 13.925 per share determined as on the date of allotment, and the issue price (i.e. Rs. 12.50 per share), represents the benefit received by the Petitioner and the differential amount of Rs. 329,03,62,124/- is brought to tax under Section 56(2)(x) of the Act representing income which has escaped

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assessment within the meaning of Section 147 of the Act. Being aggrieved, the Petitioner has approached this Court challenging the reassessment proceedings.

I. CHRONOLOGY OF RELEVANT DATES AND EVENTS

3. The statutory background and the material events leading to the present Writ Petition may be set out as follows:

(a) During Financial Year 2019–20, the Petitioner subscribed to 230,90,26,052 rights equity shares of Vodafone Idea Limited **("VIL")** at the price of Rs. 12.50 per share. The said transaction was duly disclosed in the books of accounts of the Petitioner.

(b) For Assessment Year 2020–21, the Petitioner filed its Return of Income on 5th February 2021, which was subsequently revised. Thereafter, pursuant to the merger of Grasim Premium Fabrics Private Limited with the Petitioner, a physical return was filed on 27th December 2021.

(c) The Petitioner's case was selected for scrutiny assessment pursuant to a notice dated 29th June 2021 issued under Section 143(2) of the Act. During the assessment proceedings, the Petitioner furnished details of its investment in the rights equity shares of VIL.

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(d) On 30th August 2023, a Draft Assessment Order was passed, against which, the Petitioner raised objections before the Dispute Resolution Panel. Pursuant to the directions issued by the DRP, a Final Assessment Order came to be passed on 25th June 2024.

(e) On 24th March 2026, Respondent No. 1, the Deputy Commissioner of Income Tax, issued the impugned show-cause notice under Section 148A(1) of the Act. The notice proposed reassessment on three distinct grounds, involving three separate amounts. One of those grounds concerned the Petitioner's subscription to the rights equity shares of VIL.

(f) By its reply dated 7th April 2026, the Petitioner raised objections to the aforesaid notice and sought the material forming the basis of the alleged escapement of income. In response thereto, Respondent No. 1 furnished certain particulars on 27th May 2026.

(g) According to the particulars furnished by Respondent No. 1, the difference between the subscription price of Rs. 12.50 per share and the fair market value of Rs. 13.925 per share determined as on the date of allotment, was liable to be brought to tax under Section 56(2)(x) of the

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Act as representing income which had escaped assessment within the meaning of Section 147 of the Act.

(h) On 15th June 2026, the Petitioner filed further objections, *inter alia*, disputing the applicability of Section 56(2)(x) of the Act to the transaction of rights equity shares of VIL subscribed by it. The Petitioner also raised an objection regarding non-compliance with the scheme, framed under Section 151A of the Act.

(i) By the impugned order dated 30th June 2026, Respondent No. 1 rejected the Petitioner's objections concerning the rights equity shares and issued the consequential notice under Section 148 of the Act on the same date. The other two grounds raised in the show-cause notice were dropped. Accordingly, Respondent No. 1 recorded his satisfaction that income chargeable to tax amounting to Rs. 329,03,62,124/- had escaped assessment within the meaning of Section 147 of the Act and held that it was a fit case for issuance of notice under Section 148 of the Act.

(j) Respondent No.1 thereafter issued the impugned consequential notice under Section 148 of the Act on the same date.

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(k) Being aggrieved thereby, the Petitioner has approached this Court by filing the present Writ Petition.

II. SUBMISSIONS OF THE PETITIONER

4. Mr. J. D. Mistri, learned Senior Counsel appearing on behalf of the Petitioner, submits at the very outset that the basis of the reassessment proceedings is misconceived and the same is barred by limitation. Elaborating on this submission, he points out that the impugned notice dated 24th March 2026 did not disclose the information forming the basis of the allegation concerning the VIL rights equity shares. He argues that the mere reference to an amount and to transactions with VIL did not disclose their nature or explain why income was said to have escaped assessment. According to him, those particulars were furnished only on 27th May 2026, and that too, only pursuant to the Petitioner's request.

5. Mr. Mistri submits that in terms of Section 148A(1) of the Act, the show-cause notice is required to be accompanied by the necessary information suggesting that income chargeable to tax has escaped assessment. He, therefore, submits that the notice dated 24th March 2026, being unaccompanied by the requisite information, cannot be regarded as a valid notice under the aforesaid provision. According to him, it was only on 27th

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May 2026, when the relevant information was furnished, that the requirements of Section 148A(1) could be said to have been complied with.

6. Mr. Mistri submits that under Section 149(2)(b) of the Act, the period prescribed for issuance of a notice under Section 148A, in the circumstances of the present case, is five years from the end of the relevant Assessment Year. Since the present proceedings relate to Assessment Year 2020–21, he submits that the said period expired on 31st March 2026. He, therefore, submits that the information having been furnished only on 27th May 2026, the reassessment proceedings are clearly barred by limitation. In support of this contention, reliance is placed on the decision of this Court in ***Anurag Gupta v. Income Tax Officer*** **[(2023) 150 taxmann.com 99 (Bombay)].**

7. In support of the requirement of an effective show-cause notice, Mr. Mistri places reliance on the decision of the Hon'ble Supreme Court in ***Union of India & Ors. v. Rajeev Bansal*** **[(2024) 469 ITR 46 (SC)]**, particularly paragraphs 101 and 106 concerning the supply of the information and material forming the basis of the notice.

8. Apart from the challenge to the proceedings on the ground of limitation, Mr. Mistri submits that even otherwise, Section 56(2)(x) of the Act does not apply to the proportionate allotment of rights equity shares by a company to its existing shareholders. He submits that the Revenue has erroneously treated

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the difference between the subscription price and the fair market price computed as on the date of allotment, as income chargeable to tax under that provision.

9. Elaborating on this submission, Mr. Mistri points out that rights equity shares are ordinarily offered at a price lower than their prevailing market price. He argues that if the Revenue's interpretation is accepted, every shareholder subscribing to such an issue would be liable to tax on the difference. He submits that the same reasoning, extended to bonus shares, would result in the shareholder being taxed on their entire value although no money is received. According to him, these consequences could not have been intended by the Legislature.

10. Mr. Mistri submits that Section 56(2)(x) is intended to tax monetary and non-monetary benefits arising from the receipt of property without consideration or for inadequate consideration. He submits that its language must be read in the light of that object, without attributing an unintended taxable benefit to a genuine and proportionate rights allotment.

11. In support of the aforesaid submission, Mr. Mistri places reliance on the decisions of the Hon'ble Supreme Court in ***K. P. Varghese v. Income Tax Officer*** **[(1981) 131 ITR 597 (SC)]** and ***Commissioner of Income Tax v. J. H. Gotla*** **[(1985) 156 ITR 323 (SC)]**. Relying on these decisions, he submits that

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where a literal interpretation of a statutory provision leads to an absurd or unintended result, the Court ought to adopt an interpretation which advances the object and purpose of the provision rather than one which defeats it.

12. Mr. Mistri further submits that the interpretation canvassed by the Revenue would also render the provisions of clauses (iii), (iiia) and (iv) of Section 55(2)(aa) of the Act redundant and ineffective. He submits that these provisions specifically prescribe the manner in which the cost of acquisition of rights shares, bonus shares and shares acquired pursuant to renunciation of rights is to be determined. According to him, if the difference between the market value and the subscription price is brought to tax under Section 56(2)(x) of the Act, the cost of acquisition would thereafter have to be determined in accordance with Section 49(4) of the Act. He argues that this would render the aforesaid specific provisions of Section 55(2)(aa) wholly redundant. He, therefore, submits that the provisions of the Act ought to be interpreted harmoniously, so as to give effect to each of them.

13. Mr. Mistri further submits that the Revenue has failed to appreciate the nature and effect of the rights issue. He points out that the rights shares were offered to the existing shareholders of VIL in proportion to their respective holdings, and the Petitioner's percentage shareholding remained unchanged after the allotment. He submits that the lower subscription price cannot, by itself, establish a benefit to the Petitioner, since the rights issue also affects the value

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of the existing shares. As a result, he contends that there is no undue benefit accruing to the Petitioner merely because the rights equity shares were allotted at a price lower than their prevailing average market price. He submits that the benefit of subscribing at a lower price is offset by the proportionate entitlement of the other shareholders and the consequential adjustment in the value of the existing shares.

14. Mr. Mistri further submits that Section 56(2)(x) of the Act is essentially an anti-abuse provision intended to bring to tax, benefits arising from the receipt of property without consideration or for inadequate consideration. In this regard, he invites our attention to the Memorandum explaining the provisions of the Finance Bill, 2010, wherein the Legislature has expressly described the provision of Section 56(2)(vii) of the Act as an anti-abuse provision. He submits that the said legislative intent was reiterated when Section 56(2)(x) was introduced by the Finance Act, 2017. According to him, the aforesaid provision cannot be construed in a manner so as to bring within its ambit, a genuine commercial transaction involving the issuance and allotment of rights equity shares to existing shareholders, particularly when no disproportionate benefit is conferred upon any shareholder.

15. In this context, Mr. Mistri relies on CBDT letter F. No. 12/6/63-IT (A-I) dated 17th October 1963 concerning the treatment of rights issues under Section 2(24) of the Act. He refers to the distinction drawn therein between the

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categories of shareholders specified in the letter and other shareholders. He further places reliance on the decisions in ***Sudhir Menon HUF v. Assistant Commissioner of Income Tax*** **[(2014) 148 ITD 260 (Mumbai-Trib.)]** and ***Assistant Commissioner of Income Tax v. Subodh Menon*** **[(2019) 103 taxmann.com 15 (Mumbai-Trib.)]** in support of his submissions concerning the applicability of the provisions relating to receipt of shares for inadequate consideration.

16. Mr. Mistri also argues that there is a fundamental distinction between the issuance and allotment of fresh shares by a company and the receipt of shares which are already in existence. He submits that when a company issues fresh shares, the said shares come into existence only upon their allotment. Prior thereto, the said shares do not exist, as property in the hands of the company or any other person. According to him, Section 56(2)(x) of the Act contemplates receipt of property by one person from another person, whereas in the instant case, the shares themselves came into existence only upon their allotment to the Petitioner. He, therefore, submits that the provisions of Section 56(2)(x) cannot be invoked in respect of such an allotment. In support of this contention, Mr. Mistri places reliance on the decisions in ***Khoday Distilleries Ltd. v. Commissioner of Income Tax*** **[(2008) 307 ITR 312 (SC)]** and ***Principal Commissioner of Income Tax v. Jigar Jashwantlal Shah*** **[(2024) 460 ITR 628 (Gujarat)]**.

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17. Mr. Mistri further submits that the impugned proceedings are also contrary to the scheme framed under Section 151A of the Act. He submits that the e-Assessment of Income Escaping Assessment Scheme, 2022, contemplates reassessment proceedings being undertaken in a faceless manner and on the basis of random allocation of cases. According to him, the impugned proceedings initiated by Respondent No. 1 are contrary to the aforesaid statutory scheme and are, therefore, without jurisdiction.

18. Mr. Mistri also submits that the initiation of the reassessment proceedings is based upon the opinion formed by the Deputy Director of Income Tax (DDIT) that the issuance of rights equity shares would attract the provisions of Section 56(2)(x) of the Act. According to him, the formation of such an opinion by another officer of the Department cannot, by itself, substitute the independent application of mind required of Respondent No. 1 before initiating reassessment proceedings. He, therefore, submits that the impugned proceedings are vitiated on account of borrowed satisfaction.

19. Lastly, Mr. Mistri submits that though the impugned order refers to an approval purportedly obtained from the specified authority under Section 151 of the Act, a copy of the said approval has not been furnished to the Petitioner. He submits that in the absence of a valid approval as contemplated under the aforesaid provision, the reassessment proceedings cannot be sustained.

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20. For all the aforesaid reasons, Mr. Mistri submits that the impugned notice dated 24th March 2026 issued under Section 148A(1) of the Act, the order dated 30th June 2026 passed under Section 148A(3) thereof, as well as the consequential notice dated 30th June 2026 issued under Section 148 of the Act, are wholly unsustainable in law and ought to be quashed and set aside.

III. SUBMISSIONS OF THE REVENUE

21. *Per contra*, Mr. Akhileshwar Sharma, learned Counsel appearing on behalf of the Revenue opposes the present Writ Petition and supports the impugned notices and order. He submits that the Assessing Officer was in possession of information suggesting that income chargeable to tax had escaped assessment on account of the allotment of rights shares of VIL to the Petitioner at a consideration substantially below their fair market value. He adds that the difference between the consideration paid and the fair market value of the shares constituted sufficient information for initiating reassessment proceedings under the Act.

22. Mr. Sharma submits that the rights equity shares were allotted at Rs. 12.50 per share, whereas the Revenue has computed the fair market value on the date of allotment at Rs. 13.925 per share. According to him, the resulting difference warranted examination under Section 56(2)(x) of the Act. He submits that the issue as to whether that difference is ultimately chargeable to tax, is a matter

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for reassessment and ought not to be conclusively decided at the stage of initiation of the proceedings.

23. Mr. Sharma points out that proceedings under Section 148A of the Act are only preliminary in nature and the Assessing Officer is not required to conclusively establish escapement of income at that stage. According to him, the requirement, at that stage, is only that there must be information suggesting that income chargeable to tax has escaped assessment. He submits that, in the present case, information available on record, including the material concerning the allotment and valuation of the shares was sufficient to satisfy this statutory requirement.

24. As regards the allegation of breach of the principles of natural justice, he submits that the Petitioner was afforded an opportunity to place its objections and supporting material before the Assessing Officer. Mr. Sharma also opposes the Petitioner's contention that the proceedings were initiated without any relevant material or that the information relied upon was insufficient to warrant initiation of reassessment proceedings. He further submits that the objections raised by the Petitioner do not render the impugned proceedings invalid.

25. Mr. Sharma also denies the Petitioner's contention that the allotment of rights shares does not fall within the scope of Section 56(2)(x) of the Act. He instead

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submits that the nature of the transaction, the consideration paid, the fair market value of the shares and the applicability of the aforesaid provision are matters requiring examination during reassessment. He, accordingly, contends that no case is made out for interference with the impugned notices and order in exercise of this Court's writ jurisdiction.

26. Apart from the aforesaid submissions, Mr. Sharma also denies the other allegations and contentions raised by the Petitioner, including those relating to the alleged absence of jurisdiction, non-application of mind, inadequacy of the material relied upon, non-consideration of the Petitioner's objections and violation of the principles of natural justice. He accordingly submits that the present Writ Petition is devoid of merit and deserves to be dismissed.

IV. REASONS, ANALYSIS AND FINDINGS

27. We have heard Mr. Mistri on behalf of the Petitioner and Mr. Sharma on behalf of the Revenue. We have also perused the record, the Petitioner's written submissions and the decisions relied upon.

On the plea of limitation:

28. Since the Petitioner has raised the issue of limitation, it would be appropriate if we first deal with that issue, namely, whether the impugned notice dated

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24th March 2026 issued under Section 148A(1) of the Act has been issued within the period of limitation prescribed under Section 149 thereof.

29. Section 148A of the Act provides for the procedure to be followed by the Assessing Officer before issuance of a notice under Section 148 thereof. Sub-section (1) of Section 148A, *inter alia*, requires the Assessing Officer, who is in possession of information suggesting that income chargeable to tax has escaped assessment, to issue a show-cause notice to the Assessee before initiating reassessment proceedings. Significantly, the said provision expressly stipulates as under:

> *"**Procedure before issuance of notice under section 148.***
>
> ***148A.** (1) Where the Assessing Officer has information which suggests that income chargeable to tax has escaped assessment in the case of an assessee for the relevant assessment year, he shall, before issuing any notice under section 148 provide an opportunity of being heard to such assessee by serving upon him a notice to show cause as to why a notice under section 148 should not be issued in his case and such notice to show cause shall be accompanied by the information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year."*
>
> *(emphasis supplied)*

30. Sub-section (2) of Section 148A enables the Assessee to furnish its reply within the period specified in the show-cause notice. Sub-section (3) thereafter requires the Assessing Officer to consider the material available on record, including the reply furnished by the Assessee and pass an order, with the prior approval of the specified authority, determining whether or not, it is a fit case for issuance of a notice under Section 148 of the Act. Thus, the

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procedure contemplated under Section 148A comprises distinct stages, beginning with the furnishing of information suggesting escapement of income and culminating in a determination by the Assessing Officer as to whether reassessment proceedings ought to be initiated.

31. The limitation for issuance of notices under Sections 148 and 148A of the Act is prescribed under Section 149 thereof. Sub-section (1) of Section 149 provides that a notice under Section 148 cannot ordinarily be issued after three years and three months from the end of the relevant Assessment Year. However, where the Assessing Officer possesses books of accounts, documents or evidence relating to an asset, expenditure, transaction or entries which show income escaping assessment amounting to or likely to amount to Rs. 50 Lakhs or more, the period extends up to five years and three months from the end of the relevant Assessment Year. The said section reads thus:

> *"**Time limit for notices under Sections 148 and 148-A**.*
>
> ***149** (1) No notice under section 148 shall be issued for the relevant assessment year, -*
>
> *(a) if three years and three months have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);*
>
> *(b) if three years and three months, but not more than five years and three months, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence related to any asset or expenditure or transaction or entries which show that the income chargeable to tax, which has escaped assessment, amounts to or is likely to amount to fifty lakh rupees or more.…*
>
> *(2) No notice to show cause under Section 148A shall be issued for the relevant assessment year, -*

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> *(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);*
>
> *(b) if three years, but not more than five years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment, as per the information with the Assessing Officer, amounts to or is likely to amount to fifty lakh rupees or more."*

32. Sub-section (2) of Section 149 separately prescribes the limitation for issuance of a show-cause notice under Section 148A of the Act. Sub-clause (a) thereof prescribes a period of three years from the end of the relevant Assessment Year. Sub-clause (b), which is material for our consideration, permits issuance of such notice beyond three years but not beyond five years, provided the information in the possession of the Assessing Officer suggests that income escaping assessment amounts to or is likely to amount to Rs. 50 Lakhs or more. Thus, the Legislature has consciously prescribed separate periods of limitation for issuance of a show-cause notice under Section 148A and the consequential reassessment notice under Section 148 of the Act.

33. On a conjoint reading of Sections 148A(1) and 149(2)(b) of the Act, two requirements clearly emerge. *First*, the show-cause notice must be issued within the period of limitation prescribed under Section 149(2)(b). *Second*, the notice must comply with the mandatory requirements of Section 148A(1), namely, that it must be accompanied by the information suggesting that income chargeable to tax has escaped assessment. These requirements operate

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together and cannot be read in isolation. Hence, it is evident that merely issuing a notice within the prescribed period would not, by itself, constitute compliance with the statutory scheme if the essential information required to accompany such notice has not been furnished.

34. It is equally important to examine what is contemplated by the expression, *"information which suggests that income chargeable to tax has escaped assessment"* appearing in Section 148A(1) of the Act. In our view, the requirement is not satisfied merely by mentioning an amount which the Assessing Officer believes represents income escaping assessment. The information furnished must, at the very least, disclose the nature of the transaction giving rise to the alleged escapement, the basis on which, such escapement is alleged and sufficient particulars to enable the Assessee to effectively respond to the show-cause notice. Otherwise, the opportunity of hearing contemplated under Section 148A(1) would be reduced to an empty formality.

35. The impugned notice dated 24th March 2026 must therefore be examined against these requirements. It was accompanied by an annexure referring, inter alia, to transactions with VIL. However, in relation to the rights-share ground, the annexure did not disclose the nature of the transaction, the basis of computation or the manner in which income was said to have escaped assessment. The impugned notice also did not disclose that Section 56(2)(x)

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was proposed to be invoked on the difference between the subscription price and the fair market price of the rights equity shares.

36. The amount of Rs. 329,03,62,124/- stated in the impugned notice is the result of a computation; it does not, by itself, disclose the information on which that computation rests. In our view, there is a fundamental distinction between informing an Assessee that a particular amount has escaped assessment and furnishing the information on the basis of which such an allegation is made. Section 148A(1) of the Act is not satisfied with only the former but expressly requires the latter. If the mere disclosure of an amount were to be regarded as sufficient compliance, the requirement of furnishing the information accompanying the notice would be rendered redundant and otiose.

37. The Petitioner's objections dated 7th April 2026 bear this out. The Petitioner sought the material underlying the amount referred to in relation to VIL, together with the nature of the transaction and the basis for treating it as income escaping assessment. The precise foundation of that ground had not been disclosed when the initial notice was issued.

38. It was only thereafter, on 27th May 2026, that Respondent No. 1 furnished the particulars forming the basis of the alleged escapement of income. By the said communication, Respondent No. 1 disclosed that VIL had allotted rights equity shares to the Petitioner at Rs. 12.50 per share, whereas their fair market

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value on 10th May 2019 was computed at Rs. 13.925 per share. It was further disclosed that the difference of Rs. 1.425 per share, multiplied by the number of rights equity shares allotted to the Petitioner, was sought to be brought to tax under Section 56(2)(x) of the Act. Thus, the nature of the transaction, the basis of computation and the statutory provision under which the Revenue proposed to bring the alleged income to tax were disclosed only on 27th May 2026.

39. Admittedly, we are concerned with Assessment Year 2020–21, which ended on 31st March 2021. The period of five years prescribed under Section 149(2)(b) of the Act, therefore, expired on 31st March 2026. Though the impugned notice dated 24th March 2026 was issued before the expiry of the aforesaid period, the information which was required to accompany the said notice under Section 148A(1) was furnished only on 27th May 2026, namely, after the expiry of the prescribed period of limitation.

40. The question is whether supplying the foundational information on 27th May 2026 could validate the notice dated 24th March 2026 for the purposes of limitation. In our view, it could not. Section 148A(1) expressly requires that information to accompany the show-cause notice. Where the show cause notice does not disclose the transaction or the basis of the alleged escapement, supplying that information after the statutory period has expired cannot retrospectively convert it into a valid notice issued within time. To hold

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otherwise would permit a notice containing only an allegation of escapement to be issued before limitation expires, with its essential foundation supplied at any later date. That construction would defeat both the requirement in Section 148A(1) and the time limit in Section 149(2)(b). The two provisions must be given effect together.

41. The decision of this Court in ***Anurag Gupta*** *(supra)* supports the requirement of meaningful disclosure. There, the failure to supply the material underlying the information deprived the Assessee of an effective opportunity to answer the notice under the then Section 148A(b). The Court set aside the order and the consequential notice, leaving the Revenue at liberty to proceed from the show-cause stage only if otherwise permissible, having regard to limitation. The decision thus does not dispense with limitation when a defective notice is sought to be corrected. The present provision expressly requires the information to accompany the notice.

42. We may also refer to the decision of the Hon'ble Supreme Court in ***Union of India & Ors. v. Rajeev Bansal*** **[(2024) 469 ITR 46 (SC)]**. In paragraphs 101 and 106, the Hon'ble Supreme Court explained that issuance of a show-cause notice and supply of the relevant information and material are both required under the then Section 148A(b). The observations arose in the special context of the deemed notices and transitional directions considered in that case. We rely on them for the requirement of an effective opportunity to respond and

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not for importing the transitional computation of limitation into the present proceedings. Here, the obligation to accompany the notice with the requisite information follows expressly from Section 148A(1). Paragraph 106 reads thus:

> *"106. In Ashish Agarwal (supra), this Court directed the assessing officers to provide relevant information and materials relied upon by the Revenue to the assesses within thirty days from the date of the judgment. A show cause notice is effectively issued in terms of Section 148A(b) only if it is supplied along with the relevant information and material by the assessing officer. Due to the legal fiction, the assessing officers were deemed to have been inhibited from acting in pursuance of the Section 148A(b) notice till the relevant material was supplied to the assesses. Therefore, the show cause notices were deemed to have been stayed until the assessing officers provided the relevant information or material to the assesses in terms of the direction issued in Ashish Agarwal (supra). To summarize, the combined effect of the legal fiction and the directions issued by this Court in Ashish Agarwal (supra) is that the show cause notices that were deemed to have been issued during the period between 1 April 2021 and 30 June 2021 were stayed till the date of supply of the relevant information and material by the assessing officer to the assessee. After the supply of the relevant material and information to the assessee, time begins to run for the assesses to respond to the show cause notices.."*
>
> *(emphasis supplied)*

43. It is well settled that the opportunity of hearing contemplated under Section 148A(1) of the Act is not an empty formality. The notice issued under the said provision must necessarily disclose the material particulars and the information forming the basis of the alleged escapement of income, so as to enable the Assessee to effectively respond thereto. The subsequent furnishing of such material cannot cure the defect arising from its non-disclosure at the stage of issuance of the show-cause notice.

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44. Mr. Sharma is right that the Assessing Officer need not conclusively establish escapement of income at the show-cause stage. That, however, does not answer the Petitioner's objection. A preliminary examination must still comply with the statutory conditions for its initiation. The Revenue cannot rely upon the preliminary nature of the proceedings to dispense with the information which Section 148A(1) expressly requires it to furnish. The question is not merely whether the Petitioner eventually had an opportunity to answer the information. It is whether the mandatory requirements were fulfilled within the period prescribed by Section 149(2)(b). A reply to information furnished after the period had expired cannot retrospectively validate the initial notice.

45. We may also note that the consequential notice under Section 148 of the Act was issued on 30th June 2026. Though Section 149(1)(b) permits issuance of such a notice within five years and three months from the end of the relevant Assessment Year, subject to fulfilment of the conditions stipulated therein, this does not dispense with the requirement of a valid proceeding under Section 148A. Section 148 itself makes the issuance of a notice thereunder subject to the provisions of Section 148A. Consequently, where the very foundation of the reassessment proceedings is contrary to the mandatory requirements of Section 148A(1), the consequential order and notice cannot

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independently survive merely because they were issued within the separate period prescribed under Section 149(1).

46. In these circumstances, we are of the opinion that the impugned notice dated 24th March 2026 did not satisfy the mandatory requirements of Section 148A(1) of the Act. The information which was necessarily required to accompany the said notice was furnished only on 27th May 2026. Therefore, at the highest, the notice issued under Section 148A(1) could be said to be validly issued only on 27th May 2026. However, by this time, the said notice was time barred as per the provisions of Section 149(2)(b) of the Act. The Revenue, therefore, cannot rely upon the notice dated 24th March 2026 to contend that the reassessment proceedings were validly initiated within the prescribed period of limitation. Consequently, the impugned notice dated 24th March 2026, the order dated 30th June 2026 passed under Section 148A(3), and the consequential notice dated 30th June 2026 issued under Section 148 of the Act cannot be sustained.

On the applicability of Section 56(2)(x):

47. We shall now consider the Petitioner's other principal contention, namely, that Section 56(2)(x) of the Act is not attracted on the facts of the present case.

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48. Section 56(2)(x) of the Act, *inter alia*, brings to tax, the receipt of specified property from another person without consideration or for a consideration lower than its fair market value beyond the prescribed threshold. Insofar as movable property is concerned, clause (c) applies to specified property other than immovable property. Sub-clause (B) thereof deals with property received:

> *"**Income from other sources.***
>
> *56. (1) …*
>
> *(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—*
>
> *(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017, -*
>
> *(a) …*
>
> *(b) …*
>
> *(c) any property, other than immovable property, -*
>
> *(A) …*
>
> *(B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration"*

49. For Section 56(2)(x)(c)(B) to apply, there must be a receipt, from another person, of property of the kind specified in the provision, which includes shares and securities. The consideration must fall short of its aggregate fair market value by more than Rs. 50,000/-. The issue before us is whether the

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proportionate rights allotment in this case gives rise to the receipt of a benefit of that character merely because the subscription price is below the fair market price that is determined by the Revenue, as on the date of allotment.

50. That question cannot be answered by comparing the two prices alone. The legal nature and effect of the allotment must also be considered. Fresh shares come into existence upon allotment. An allotment is therefore distinct from the acquisition of an existing shareholder's shares, and a proportionate rights issue must be examined in the context of the shareholder's existing interest in the company.

51. The Petitioner subscribed to 2,30,90,26,052 rights equity shares of VIL at Rs. 12.50 per share. The issue was offered to the existing shareholders in proportion to their holdings, and the Petitioner's percentage shareholding remained unchanged after the allotment. The Revenue has not disputed that position. Instead, the Revenue contends that the difference between the fair market value of Rs. 13.925 per share determined as on the date of allotment and the issue price, represents the benefit received by the Petitioner and the differential amount is brought to tax under Section 56(2)(x) of the Act.

52. At this stage, it would be useful to also refer to Section 55(2)(aa) of the Act, which specifically deals with the determination of the cost of acquisition of financial assets acquired pursuant to rights entitlements. Clause (iii) thereof

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provides that, in relation to financial assets subscribed to on the basis of such entitlement, the cost of acquisition is the amount actually paid for acquiring the asset. Clause (iiia) separately deals with assets allotted without payment, whereas clause (iv) deals with assets acquired pursuant to the renunciation of rights. Further, Section 49(4) provides a distinct rule for determining the cost of acquisition of property whose value has already been subjected to tax under Section 56(2)(x).

> *"55. (2) For the purposes of sections 48 and 49, "cost of acquisition", -*
>
> *(aa) in a case where, by virtue of holding a capital asset, being a share or any other security, within the meaning of clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereafter in this clause referred to as the financial asset), the assessee -*
>
> *(A) becomes entitled to subscribe to any additional financial asset; or*
> *(B) is allotted any additional financial asset without any payment,*
>
> *then, subject to the provisions of sub-clauses (i) and (ii) of clause (b)],-*
>
> *(i) …*
> *(ii) …*
> *(iii) in relation to the financial asset, to which the assessee has subscribed on the basis of the said entitlement, means the amount actually paid by him for acquiring such asset."*

53. The aforesaid provisions indicate that the Act recognises the issuance of rights shares, the allotment of bonus shares and the acquisition of shares pursuant to renunciation of rights as distinct transactions for the purposes of determining their cost of acquisition. They must, therefore, be read harmoniously with Section 56(2)(x) of the Act. We do not suggest that the provisions governing

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cost of acquisition, by themselves, create an exemption from Section 56(2)(x). However, they reinforce the necessity of examining the true legal character of a rights allotment rather than mechanically treating every difference between the subscription price and the market price, as taxable income.

54. In ***Khoday Distilleries*** *(supra)*, the Hon'ble Supreme Court, whilst examining the nature of allotment of shares in the context of the Gift-tax Act, distinguished the creation of shares upon allotment from the transfer of shares already in existence and held that an allotment represents the creation of shares by appropriation out of the unappropriated share capital of a company. The Hon'ble Supreme Court specifically distinguished the creation of shares upon allotment from the transfer of shares already in existence. The principle laid down therein is relevant for appreciating the legal nature of the transaction in the present case.

55. We may also refer to the decision of the Gujarat High Court in ***Jigar Jashwantlal Shah*** *(supra)*. The Gujarat High Court, whilst examining the applicability of Section 56(2)(vii)(c) of the Act to rights shares allotted to an existing shareholder, held that shares issued pursuant to a rights issue come into existence only upon allotment and cannot be equated with pre-existing property received from another person. The Court further recognised that where shares are allotted proportionately to existing shareholders, the provisions concerning receipt of property for inadequate consideration would

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not operate in the manner suggested by the Revenue. Though the said decision concerns Section 56(2)(vii)(c), the reasoning is relevant to the present case, considering the corresponding language relating to receipt of property employed in Section 56(2)(x).

56. The Tribunal's decisions in ***Sudhir Menon HUF*** *(supra)* and ***Subodh Menon*** *(supra)* also support the result on the facts before us. These decisions reinforce the need to examine what the shareholder actually receives through the allotment. They do not warrant treating every subscription below market value as a taxable benefit.

57. There is yet another aspect which cannot be overlooked. In the present case, the rights equity shares were issued to existing shareholders in proportion to their shareholding. The Petitioner has specifically asserted that its percentage shareholding remained unchanged even after the rights issue. This position is not disputed by the Revenue. In such a situation, merely because the subscription price was lower than the prevailing average market price, it cannot automatically be inferred that the Petitioner received a corresponding economic benefit. The issuance of additional shares also has a bearing upon the value of the existing shares. Therefore, the difference between the subscription price and the market price cannot, without examining the nature and effect of the rights issue, be regarded as income arising from the receipt of property for inadequate consideration.

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58. In our view, the Revenue has fundamentally failed to appreciate the aforesaid distinction. The entire foundation of the impugned proceedings is that the Petitioner subscribed to the rights equity shares of VIL at Rs. 12.50 per share, whereas the Revenue has computed their fair market price on the date of allotment at Rs. 13.925 per share. It is solely on account of this difference that the Revenue seeks to invoke Section 56(2)(x) of the Act. However, the Revenue has not identified any acquisition of pre-existing shares from another person or any disproportionate benefit accruing to the Petitioner by reason of the rights allotment. The mere difference between the two prices, therefore, cannot constitute sufficient grounds for invoking the aforesaid provision in the facts of the present case.

59. The Memorandum explaining the Finance Bill, 2010 described the relevant provisions as anti-abuse measures and explained the proposed extension to specified receipts of shares by firms and companies. The Memorandum explaining the Finance Bill, 2017 likewise described the existing provisions as anti-abuse provisions and proposed extending their scope through clause (x). These materials do not create a general exemption for every transaction described as commercial. They do, however, assist in construing the provision in its setting. In the present case, the Revenue has identified no disproportionate benefit, it relies only on a price difference arising from a proportionate rights allotment.

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60. This approach is consistent with ***K. P. Varghese*** *(supra)* and ***J. H. Gotla*** *(supra)*, which require the statutory language to be read in its context and in the light of the object sought to be achieved, avoiding an unintended or absurd result where the language permits a rational construction. These decisions do not authorise the Court to disregard a taxing provision. Instead, they support examining the character and effect of the present rights allotment before concluding that the price difference represents the receipt of property for inadequate consideration.

61. We are equally unable to accept the submission of the Revenue that the question of applicability of Section 56(2)(x) ought to be left open for examination during reassessment proceedings. The nature of the transaction is not in dispute. It is an allotment of rights equity shares by VIL to the Petitioner. The Revenue's case is founded solely upon the difference between the subscription price and the fair market price of those shares computed as on the date of allotment. The controversy, therefore, concerns the applicability of the statutory provision to the admitted transaction. Where the statutory provision itself cannot be invoked on the basis of such a transaction, the Revenue cannot justify initiation of reassessment proceedings merely by contending that taxability would be examined at a subsequent stage.

62. We accordingly hold that, in the facts of this case, Section 56(2)(x) cannot be invoked merely to tax the difference between the subscription price and the

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fair market value of the rights equity shares proportionately allotted to the Petitioner. Our finding is confined to the allotment before us, in which the Petitioner's percentage shareholding is stated to have remained unchanged and no disproportionate benefit has been identified. The basis for reassessment is therefore unsustainable.

63. For all these reasons, the reassessment proceedings cannot be sustained. They were not validly initiated within limitation. The Revenue has also erroneously applied Section 56(2)(x) of the Act. The impugned notices and order are consequently liable to be set aside.

64. Since the above Writ Petition is being allowed on the grounds of limitation and the erroneous application of Section 56(2)(x) of the Act, it is unnecessary to examine the other grounds urged by the Petitioner. We have therefore not gone into those grounds and express no opinion on their merits. All such contentions are left open.

V. OPERATIVE ORDER

65. In these circumstances, the above Writ Petition is disposed of in terms of the following order:

A. *Rule* is made absolute, and the above Writ Petition is allowed.

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B. The impugned notice dated 24th March 2026 issued under Section 148A(1) of the Act, the order dated 30th June 2026 passed under Section 148A(3) thereof and the consequential notice dated 30th June 2026 issued under Section 148 of the Act are hereby set aside.

C. There shall be no order as to costs.

66. This order shall be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned parties shall act upon such digitally signed copy of this order downloaded from the official website of the Bombay High Court.

(FARHAN P. DUBASH, J.) **(B. P. COLABAWALLA, J.)**

Shubham Gadhavepatil

JYOTI PRAKASH PAWAR

Digitally signed by JYOTI PRAKASH PAWAR
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