



Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
INCOME TAX APPEAL NO.2089 OF 2019  
WITH  
INCOME TAX APPEAL NO.2101 OF 2019  
WITH  
INCOME TAX APPEAL NO.2111 OF 2019  
WITH  
INCOME TAX APPEAL NO.2778 OF 2019  
WITH  
INCOME TAX APPEAL NO.3053 OF 2019

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Refrigerated Distributors Pvt Ltd ...Appellant

*Versus*

The Dy. Commissioner of Income Tax 2(3)(1) ...Respondent

WITH

INCOME TAX APPEAL (L) NO.2791 OF 2015

Refrigerated Distributors Pvt Ltd

Now Known As Partytime Ice Pvt Ltd ...Appellant

*Versus*

The Assistant Commissioner of Income Tax ...Respondent

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**Mr Rajeev Waglay, i/b, DSR Legal/Dinesh Parmar, for the  
Appellant in all the Appeals.**

**Mr Akhileshwar Sharma, for the Respondent in all the  
Appeals.**

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CORAM M.S. Sonak &  
Jitendra Jain, JJ.  
DATED: 05 March 2025

**ORAL JUDGMENT: [Per M. S. SONAK, J.]**

1. Heard learned Counsel for the parties.
2. These Appeals relate to assessment years 2007-08 to 2012-13.
3. Mr Waglay, the learned Counsel for the Appellants, requests that the Income Tax Appeal No. 2111 of 2019 be treated as the lead Appeal. He proposes the following substantial question of law, which, according to him, arises in all these Appeals:-

“Whether the Hon’ble Tribunal erred on facts & in law in confirming the addition to the extent of 10% of the Gross Profit margin in respect of unproved purchases for A. Y. 2009-10.”
4. The other questions are not pressed, and in any event, we are satisfied that none of the questions in paragraph 2 of the Appeal memo arise in these Appeals. The challenges are basically to the concurrent findings of facts recorded by three authorities. Since these findings involved no perversity, they give rise to no questions of law, much less substantial questions of law.
5. The assessing officer in this case, after a detailed analysis of the material on record, concluded that this was a case of bogus purchases. After rejecting the books of account offered, the assessing officer chose to add only 25% of the

bogus purchases. The Commissioner did not revise this by resorting to Section 263 of the Income Act, 1961.

6. Instead, the Appellant assessee appealed to the Commissioner of Income Tax (Appeals). The Appeals were dismissed, and the 25% addition was confirmed. The Appellant assessee once again appealed to the Income Tax Appellate Tribunal (ITAT). By the impugned order, the ITAT confirmed the finding about bogus purchases or the rejection of the appellant assessee's books of account but reduced the addition to only 10%.

7. The revenue also appealed the ITAT's orders, urging that there was no ground to reduce the additions to only 10%. By separate orders, we dismissed the revenue's Appeals, i.e. Income Tax Appeal Nos. 1840 of 2018 and 1843 of 2018 because this was only a matter of estimation as to whether the addition should have been 25% or 10%. In our opinion, such estimation did not give rise to any substantial question of law. These are assesses's Appeals challenging the very same estimation. Therefore, following our orders to dismiss revenue's appeals, even these appeals deserve to be dismissed.

8. Still, we heard Mr Waglay, the learned Counsel for the Appellants, when he contended that the rejection of the assessee's books of account was improper or that this was not a case of bogus purchases and even the addition of 10% was not proper. He strenuously submitted that merely because purchase invoices and delivery challan were not produced, the purchase could not have been doubted. He further submitted that simply because the suppliers did not appear before the assessing officer, the purchases could not be held to be bogus.

He relied on **CIT Vs. Nikunj Eximp Enterprises Pvt Ltd<sup>1</sup>** and **PCIT Vs Vaman International P Ltd<sup>2</sup>** to support his contentions.

9. Mr Waglay invited us to reappraise the evidence on record and hold that this is not a case of bogus purchases at all and, therefore, the rejection of the assessee's books of account suffered from perversity. With his assistance, we evaluated the material on record even though the scope of an appeal under Section 260A of the IT Act is restricted. Still, the more we got into such material, the more we were convinced how the concurrent findings on bogus purchases were justified, and we wondered why the assesses were let off with only a 10% addition in these matters.

10. An Appeal under Section 260A of the Income Tax Act can be entertained only if it involves a substantial question of law. Re-appreciation of evidence is not within the scope of such Appeals. Findings of fact, mainly when concurrently recorded by the assessing officer, Commissioner of Income Tax (Appeals), and the ITAT, are mostly immune from interference unless a case of perversity is made out.

11. To make out a case of perversity, the Appellant must establish that the finding is based on no evidence whatsoever and not merely inadequate evidence. The Appellant must also point out that relevant evidence has been completely excluded or that irrelevant evidence has been considered. The Appellant must also make out a case in which the authorities' view is palpably absurd, and no person or authority familiar

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<sup>1</sup> 372 ITR 619 (Bom)

<sup>2</sup> 422 ITR 520 (Bom)

with the subject matter or with legal training could have ever taken such a view.

**12.** Apart from the fact that no substantial question of law based on perversity is even suggested, we find that the Appellants make out no such case. In fact, at the invitation of Mr Wagle, upon evaluating the material on record, we find that the material on record well supports the findings of fact. Based on such findings of fact, we were surprised that the assessing officer did not make a 100% addition and let off the assessee by making only a 25% addition.

**13.** Apart from not producing purchase invoices or delivery challans, the Appellant assessee failed to produce any credible material supporting the purchases. Even Octroi Check Naka records were not produced on the spacious plea that since the Appellant was dealing in the transportation of fish and further since fish was perishable and often emitted foul odour, even the Octroi Check Nakas could never stop the Appellants' vehicles and check the deliveries or the transportation. This kind of explanation is hard to accept and indicates the extent to which the Appellant is prepared to go to camouflage the bogus purchases.

**14.** This is not a case where proper documentation was in place, but the authorities held against the assessee only because the suppliers did not appear pursuant to the summons or the assessee could not produce delivery challans. These circumstances were correctly considered along with other material on record or frivolous defences. Only after a detailed evaluation of all such material cumulatively did the three authorities record concurrent findings of fact that the

purchases were bogus. There is no perversity involved in such concurrent recording.

15. The decisions in *Nikunj Enterprises* (supra) and *Vaman International* (supra) turn on their own peculiar facts. This Court has held that the circumstance about the supplier not appearing before the assessing officer cannot be the sole ground to conclude that the purchases were bogus. In these matters, the assessing officer, Commissioner of Income Tax (Appeals) and the ITAT have not held against the Appellant on the twin grounds that the supplier did not bother to appear and no delivery challans could be produced. A host of relevant factors have been considered, and the finding is based upon a critical evaluation of all such material on record.

16. In this case, the assessing officer has accepted the Appellant's version regarding some of the supplies, which were backed by documentation like delivery challans. If delivery challans and other valid documentation were possible regarding some of the supplies, we fail to understand why the same was not possible regarding the supplies, which are now adjudged as bogus. The explanation for the meagre documentation inspired no confidence and bordered on frivolity. The assessing officer has also considered the stereotyped affidavits of the so-called suppliers and correctly rejected them.

17. Mr Waglay posed a question to this Court as to why the Appellant would deal with the same suppliers if the Appellant was indeed involved in making bogus purchases. This question, it appears, was posed even to the assessing officer who has dealt with the same in the assessment order. In any

event, it is not for this Court to fathom the modus operandi to be adopted by the Appellant while indulging in bogus purchases. Possibly because this modus operandi may have worked in the past, the Appellant must have assumed that the same would work in the future. Based upon such questions posed to the Court, no case is made out to disturb the concurrent findings of fact recorded by the three authorities.

**18.** For all the above reasons, we are satisfied that there is no substantial question in these Appeals. The Appeals are liable to be dismissed and hereby dismissed without any costs order.

**(Jitendra Jain, J)**

**(M.S. Sonak, J)**