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

INCOME TAX APPEAL NO. 95 OF 2020
WITH
INCOME TAX APPEAL NO. 92 OF 2020
WITH
INCOME TAX APPEAL NO. 100 OF 2020
WITH
INCOME TAX APPEAL NO. 103 OF 2020

Jayprakash Barbhaya .. **Appellant**
V/s.
The Income Tax Officer-29(1)(5) .. **Respondent**

Mr. Devendra H. Jain a/w Ms. Saukhya Lakade a/w Mr. Shashank A. Mehta for Appellant.

Ms. Sushma Nagaraj a/w Mr. Abhinav Palsikar for Respondent.

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

DATE : 28th SEPTEMBER 2026

P.C.:

1. Income Tax Appeal No. 95 of 2020 challenges the order dated 27th November 2018 passed by the Income Tax Appellate Tribunal **("the Tribunal")** in Appeal No. 4486/Mum/2016, which primarily deals with the ground raised by the Appellant challenging the jurisdiction to pursue the re-assessment proceedings under Section 147 of the Income Tax Act, 1961 **("the Act")** for Assessment

Year (**"A.Y"**) **2010-11.**

2. Income Tax Appeal No. 92 of 2020 challenges the order dated 24th November 2017 passed by the Tribunal in Appeal No. 4486/Mum/2016, which primarily deals with the ground on merits concerning the additions made in respect of alleged bogus purchases made by the Appellant, for **A.Y. 2010-11**.

3. Income Tax Appeal No. 103 of 2020 challenges the order dated 27th November 2018 passed by the Tribunal in Appeal No. 4485/Mum/2016, which primarily deals with the ground raised by the Appellant challenging the jurisdiction to pursue the re-assessment proceedings under Section 147 of the Act for **A.Y. 2009-10**.

4. Income Tax Appeal No. 100 of 2020 challenges the order dated 24th November 2017 passed by the Tribunal in Appeal No. 4485/Mum/2016, which primarily deals with the ground on merits concerning the additions made in respect of alleged bogus purchases made by the Appellant, for **A.Y. 2009-10**.

Income Tax Appeal No. 95 of 2020:

5. Considering the matter on hand and with the consent of the parties, we first

take up the Income Tax Appeal No. 95 of 2020 (for A.Y. 2010-11). Further, considering the subject matter of the Appeal, we are of the view that the same can be disposed of at this stage itself. Consequently, this Appeal is admitted, and with the consent of parties, is taken up for final disposal.

6. This Appeal has been preferred by the Assessee under Section 260A of the Act, proposing the following questions as substantial question of law:-

> *"A. Whether on the facts and in the circumstances of the case and in law the Tribunal erred in upholding the assessment order passed u/s 147 without disposing of the appellant's objections to reopening of assessment thereby violating the law laid down by Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. v/s D.C.I.T. (2003) 259 ITR 19 (SC) & Jurisdictional High Court in KSS Petron Private Ltd vs. ACIT [ITA No. 224 of 2014] (Bom HC).*
>
> *B. Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in observing that vide order of the Tribunal dated 23.07.2017 in Miscellaneous Application No. 163/M/2018, the order dated 24.11.2017 was recalled only to the limited extent of declining validity of reopening u/s 147?"*

7. The brief facts, as submitted by Mr. Jain, the learned Counsel appearing on behalf of the Appellant, are as under:

7.1 The Appellant is an individual and carrying on business of reselling of aluminum extrusion. The assessment was reopened by issuance of a notice under Section 148 dated 23rd March 2013, on the basis of

information allegedly received from the Sales Tax Department, Mumbai.

7.2 Against the reasons recorded for reopening, the Appellant, *vide* letter dated 11th February 2014, raised objections challenging the validity of the reopening of assessment.

7.3 Without first disposing of the objections raised by the Appellant [by a speaking order], on 21st March 2014, the Respondent passed the Reassessment Order under Section 143(3) read with Section 147 of the Act, making an aggregate addition of Rs. 2,46,46,744/- (being 100% of alleged bogus purchases). In paragraphs 15 and 16 of the said Reassessment Order, the Respondent disposed of the jurisdictional objections which were raised by the Appellant in its letter dated 11th February 2014.

7.4 Aggrieved by the Reassessment Order, the Appellant preferred an Appeal before the Commissioner of Income-tax (Appeals)-33 on 28th April 2014. During the appellate proceedings before the Commissioner of Income Tax (Appeals) **["CIT(A)"]**, the Appellant made detailed submissions on both the jurisdictional and substantive issues and furnished various documentary evidences, as submitted before the Respondent, in support of his contentions. The CIT(A), *vide* order dated 1st March 2016, partly allowed the appeal and restricted the addition to 20% of the alleged purchases. However, the CIT(A) dismissed the grounds challenging the

jurisdiction of reopening.

7.5 Aggrieved by the said order of the CIT(A), the Appellant preferred an appeal before the Tribunal on 29th June 2016, challenging, *inter alia*, the validity of the re-opening as well as the addition sustained by the CIT(A). The Revenue also preferred an appeal before the Tribunal on 25th May 2016 against the relief granted by the CIT(A) in its order.

7.6 The Tribunal, while dealing with the merits of the addition, recorded findings of fact, *inter alia*, that the reassessment had been completed on suspicion, that payments to the suppliers had been made through account-payee cheques and that there was no evidence to establish that the Appellant had received back cash from the suppliers. The Tribunal, therefore, dismissed the appeal filed by the Income Tax Department, and *vide* order dated 24th November 2017 in ITA No. 4486/Mum/2016 (the first order of the Tribunal), and directed the Respondent to restrict the impugned additions to 12.50% of the alleged bogus purchases.

7.7 Since the jurisdictional ground challenging the validity of the reopening had not been adjudicated by the Tribunal in its order, the Appellant, on 7th March 2018, filed a Miscellaneous Application **("First MA")** under Section 254(2) of the Act [bearing MA No. 163/Mum/2018] before the Tribunal seeking recall of the said order.

7.8 The Tribunal, *vide* order dated 23rd July 2018, allowed the First MA and

recalled its order dated 24th November 2017.

7.9 The Tribunal thereafter adjudicated the jurisdictional ground challenging the validity of the reopening and decided the same against the Appellant *vide* its order dated 27th November 2018 (the second order of the Tribunal) [(bearing ITA No. 4486/Mum/2016 for A.Y. 2010-11)]. Thus, the jurisdictional challenge to the reassessment proceedings came to be rejected by the Tribunal in the second order of the Tribunal. However, in the said second order, in paragraph 14, it was recorded by the Tribunal that the Respondent had initiated the reopening after disposing the objections raised by the Appellant against the reopening of assessment. The Tribunal also found that the Assessing Officer had adopted a proper procedure for reopening of the assessment after recording valid reasons and disposing the objections of the Appellant. The Appellant had specifically contended that the Respondent had not passed a separate order disposing objections raised against the reassessment.

7.10 Being aggrieved by the aforesaid incorrect assertion made in the second order of the Tribunal, the Appellant filed a further Miscellaneous Application No. 339/M/2019 (**"Second MA"**) before the Tribunal on 4th June 2019, stating that the matter be recalled so as to adjudicate the contention of the Appellant regarding violation of the directions laid down by the Hon'ble Supreme Court in the case of ***GKN Driveshafts***

(India) Ltd. v. ITO [(2003) 259 ITR 19 (SC)]. The Appellant relied upon the decision of this Court in the case of ***KSS Petron Private Limited vs. ACIT [ITXA No. 224 of 2014, decided on 3rd October 2016]*** and ***Bayer Material Science Pvt Ltd vs. ACIT [2016] 382 ITR 333 (Bom HC)*** to contend that not passing a separate speaking order against the objections raised for reopening is in violation of the directions laid down in the case of ***GKN Driveshafts (India) Ltd. v. ITO*** (supra).

7.11 On 28th June 2019, the Appellant, out of abundant caution, filed an appeal against the order of the Tribunal before this Court, bearing ITXA No. 92 of 2020, challenging the addition of 12.5% of impugned bogus purchases which was sustained by the Tribunal in its order dated 24th November 2017 (the first order of the Tribunal).

7.12 Further, along with the above appeal, the Appellant filed an appeal before this Court, bearing ITXA No. 95 of 2020, against the second order of the Tribunal dated 27th November 2018 challenging the dismissal of the legal/jurisdictional grounds [viz. reassessment made without passing separate order disposing the objection raised against the reopening] raised by the Appellant.

7.13 The Second MA (against the second order of the Tribunal dated 27th November 2018) was heard by the Tribunal and dismissed *vide* order dated 7th November 2019. The Tribunal held that the Appellant was, in

substance, seeking a review of the earlier order and that such review was not permissible in law. The Tribunal further observed that the issue relating to the validity of reopening and the procedure prescribed by the Hon'ble Supreme Court in ***GKN Driveshafts (India) Ltd.*** (supra) had already been considered while passing the earlier order.

7.14 Aggrieved by the dismissal of the aforesaid Miscellaneous Application, the Appellant preferred Writ Petition No. 1162 of 2020 before this Court. This Court, *vide* order dated 11th January 2022, dismissed the Writ Petition noting that the Appellant had already filed an Appeal (viz. the present Appeal) before this Court against the principal order of the Tribunal, which was pending at that point of time. The Court observed that, if the Appellant was aggrieved by the principal order passed by the Tribunal, he could raise his grievance in the above appeal. The Writ Petition was accordingly dismissed.

8. In this factual backdrop, the controversy in the present Appeal can be considered with reference to the first substantial question of law mentioned hereinabove, which is again reproduced hereunder:

> *"A. Whether on the facts and in the circumstances of the case and in law the Tribunal erred in upholding the assessment order passed u/s 147 without disposing of the appellant's objections to reopening of assessment thereby violating the law laid down by Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. v/s D.C.I.T. (2003) 259 ITR 19*

(SC) & Jurisdictional High Court in KSS Petron Private Ltd vs. ACIT [ITA No. 224 of 2014] (Bom HC)"

9. Mr. Jain submits that the Tribunal has committed a gross error on facts and in law in upholding the reassessment order passed under Section 147 of the Act, without appreciating that the objections raised by the Appellant to the reopening of the assessment were not disposed of by the Assessing Officer by a separate and speaking order. He submits that the objections were dealt with only in the body of the Assessment Order and no separate order disposing of the objections was passed prior to completion of the reassessment proceedings. Accordingly, the same is contrary to the mandatory procedure laid down by the Hon'ble Supreme Court in ***GKN Driveshafts (India) Ltd.*** (supra), was the submission.

10. Mr. Jain further submits that this issue is no longer *res integra* and has been the subject matter of several decisions of various High Courts, including this Court, which have consistently held that the Assessing Officer is bound to dispose of the objections raised by the Assessee to the reopening of assessment by passing a separate speaking order before proceeding with the assessment. The disposal of such objections in the body of the Assessment Order is not sufficient compliance with the mandatory procedure prescribed by the Hon'ble

Supreme Court in ***GKN Driveshafts (India) Ltd.*** (supra).

In support of the above contention, Mr. Jain has placed reliance on the following decisions:

i. ***Bayer Material Science (P) Ltd.*** (supra).

ii. ***KSS Petron Private Ltd. v. ACIT*** (supra).

iii. ***Fomento Resorts & Hotels Ltd. v. ACIT [(Tax Appeal No. 63/2007, order dated 30.08.2019) (Bom HC) (Goa Bench)].***

11. Mr. Jain contends that, in fact, this Court in the case of ***Asian Paints Ltd. v. Deputy Commissioner of Income Tax [(2008) 296 ITR 90 (Bom)]*** has categorically held that after disposing of the objection of the Assessee (raised against the reasons recorded), the Assessing Officer should not proceed with the reassessment for at least four weeks so as to grant time to the Assessee to decide whether to approach the High Court under its writ jurisdiction to challenge such order disposing of the objections.

12. Ms. Nagaraj, the learned Counsel for the Respondent-Revenue, in all fairness, accepts that the directions laid down by the Hon'ble Supreme Court in the case of ***GKN Driveshafts (India) Ltd.*** (supra) were contravened as no separate order disposing of the objections was passed. She, however, submits that the proper course of action is to remand the matter to the Assessing Officer for fresh

disposal of the objections and not to quash the reassessment proceedings. In support of this submission, the learned Counsel relied upon the following decisions:

i. Modern Realty (P.) Ltd. v. DCIT [(2025) 174 taxmann.com 64 (Bom)]

ii. MGM Exports v. DCIT [(2010) 323 ITR 331 (Gujarat HC)]

13. In rebuttal of the above submission, Mr. Jain submits that this Court in the case of ***KSS Petron Limited*** (supra) has specifically dealt with the contention as raised by the learned Counsel for the Revenue in the present case and held that when there is a jurisdictional defect in following the procedure of reassessment, the entire reassessment stands vitiated and there is no need for restoring the matter back to the Assessing Officer. He also relied on the decision of Delhi High Court in ***Ferrous Infrastructure (P.) Ltd. v. DCIT [(2015) 63 taxmann.com 201 (Delhi)]***.

14. We have heard the learned Counsel for both the parties and have perused the material on record. The Revenue has not disputed the fact about the jurisdictional objection having been raised by the Appellant *vide* letter dated 11th February 2014. It is also not disputed that the Respondent did not pass any separate order disposing of the said objections, but proceeded to address the same directly in paragraphs 15 and 16 of the impugned reassessment order.

15. Thus, the moot question that arises for our consideration is whether the disposal of the objections raised by the Appellant [against the reopening of assessment] in the Assessment Order dated 21st March 2014 constitutes sufficient compliance with the procedure prescribed by the Hon'ble Supreme Court in ***GKN Driveshafts (India) Ltd.*** (supra), or whether the Assessing Officer was required to first dispose of the Appellant's objections by a separate and speaking order and communicate the same to the Appellant before proceeding with the reassessment proceedings.

16. In ***GKN Driveshafts (India) Ltd.*** (supra), the Hon'ble Supreme Court held that when a notice under Section 148 of the Act is issued, the proper course of action for the noticee is to file the Return of Income, and if he so desires, seek the reasons recorded for issuing the notice. The Assessing Officer is then bound to furnish the reasons within a reasonable time. Upon receipt of the reasons, the noticee is entitled to file objections to the issuance of the notice, and the Assessing Officer is bound to dispose of such objections by passing a speaking order before proceeding with the assessment.

17. The Tribunal, in paragraph 8 of its order dated 27th November 2018, specifically recorded the contention advanced on behalf of the Appellant

regarding the manner in which the objections to the reopening had been dealt with. The relevant portion reads as under:

> *"8. As per learned AR in the case of re-opening of the assessment, the AO should have decided the objection raised by the assessee. In the assessment order in para 11 for the AY 2009-10, the AO incorporated the submissions wherein it has been mentioned that Section 147 postulates that the AO has to have reason to believe that there is an escapement of income and he has to record reasons u/s 148(2) before issuing notice u/s 148…"*
>
> ...
>
> *"14. In view of the above, we found that there was sufficient reason to believe before the AO for initiating reassessment proceedings. We also found that AO has adopted proper procedure for reopening of assessment after recording valid reasons and asking the objection of assessee if any.* ***After disposal of the objection, the AO has initiated reassessment proceedings.*** *Accordingly, we do not find anything wrong in initiating reassessment proceedings for the years under consideration."*
>
> ***(emphasis supplied)***

18. We find that while recording the specific contention of the Appellant in paragraph 8 of its order, the Tribunal has not examined the aforesaid factual and legal issue in its proper perspective. The finding recorded in paragraph 14 that the Assessing Officer had followed the proper procedure and that "after disposal of the objection" the reassessment proceedings were initiated, does not disclose the basis on which the Tribunal arrived at such conclusion. In particular, the Tribunal has not identified any separate order passed by the Assessing Officer disposing of the objections raised by the Appellant, nor has it adverted to the fact that the objections were dealt with only in the body of

the Assessment Order dated 21st March 2014. Even before us, the Revenue has not brought on record any such separate speaking order disposing of the objections raised by the Appellant.

19. The legal position in this regard is no longer *res integra*. In ***Bayer Material Science (P.) Ltd.*** (supra), this Court after considering the decision of the Hon'ble Supreme Court in ***GKN Driveshafts (India) Ltd.*** (supra), held that the Assessing Officer is required to dispose of the Assessee's objections to the reasons recorded for reopening by a speaking order and that only thereafter can the Assessing Officer proceed with the reassessment proceedings. This Court treated the passing of an Assessment Order without first disposing of the objections as being in defiance of the procedure laid down by the Hon'ble Supreme Court in ***GKN Driveshafts (India) Ltd.*** (supra).

The relevant extract of the said decision is as under:

> *"11. In the present facts, we find that the draft Assessment order was passed on 30th March, 2015 without having disposed of the Petitioner's objections to the reasons recorded in support of the impugned notice. The reasons were supplied to the Petitioner only on 19th March, 2015 and the Petitioner had filed the objections to the same on 25th March, 2015. This passing of the draft Assessment order without having disposed of the objections is in defiance of the Supreme Court's decision in GKN Driveshafts (India) Ltd. (supra). Thus, the draft Assessment order dated 30th March, 2015 is not sustainable being without jurisdiction. This for the reason that it has been passed without disposing of the objections filed by the Petitioner to the reasons recorded in support of their impugned notice. Accordingly, we set aside the draft Assessment order dated 30th March, 2015. We are not dealing the validity of the reasons in support of the impugned notice in the present*

facts as the time limit to pass the Assessment order as provided under 4th Proviso to sub-Section(2) of Section 153 of the Act has already expired when the petition was filed."

20. This principle was reiterated by this Court in ***KSS Petron Private Ltd.*** (supra) In that case, the Tribunal had held that the Assessing Officer was not justified in finalizing the assessment without first disposing of the Assessee's objections to the reopening. The relevant extract of the said decision is as under:

> "*7. On further Appeal, the Tribunal passed the impugned order. By the impugned order it held that the Assessing Officer was not justified in finalizing the Assessment, without having first disposed of the objections of the appellant. This impugned order holds the Assessing Officer is obliged to do in terms of the Apex Court's decision in* ***GKN Driveshafts (India) Ltd., v/s. ITO 259 ITR 19****. In the aforesaid circumstances, the order of the CIT(A) and the Assessing Officer were quashed and set aside. However, after having set aside the orders, it restored the Assessment to the Assessing Officer to pass fresh order after disposing of the objections to re-opening notice dated 28th March, 2008, in accordance with law.*
>
> *8. We note that once the impugned order finds the Assessment Order is without jurisdiction as the law laid down by the Apex Court in GKN Driveshafts (supra) has not been followed, then there is no reason to restore the issue to the Assessing Officer to pass a further/fresh order. If this is permitted, it would give a licence to the Assessing Officer to pass orders on re-opening notice, without jurisdiction (without compliance of the law in accordance with the procedure), yet the only consequence, would be that in appeal, it would be restored to the Assessing Officer for fresh adjudication after following the due procedure. This would lead to unnecessary harassment of the Assessee by reviving stale/ old matters."*

21. Further, the Goa Bench of this Court in the case of ***Fomento Resports & Hotels Ltd.*** (supra) under identical circumstances after relying on the decision of this Court as cited above held as under:

> *" 24. According to us, the rulings in Bayer Material Science (P) Ltd. (supra) and KSS Petron Private Ltd. (supra) afford a complete answer to the contentions raised by Ms. Linhares in defence of the impugned order.*
>
> *25. Since, in the present case, the Assessing Officer has purported to assume the jurisdiction for reopening of the assessment, without having first disposed of the Assessee's objections to the reasons by passing a speaking order, following the law laid down in GKN Driveshafts (India) Ltd. (supra), Bayer Material Science (P) Ltd. (supra) and KSS Petron Private Ltd. (supra), we are constrained to hold that such assumption of jurisdiction by the Assessing Officer was ultra vires Section 11 of the said Act. The first substantial question of law will, accordingly, have to be answered in favour of the Appellant and against the Respondent-Revenue".*

22. Mr. Jain has also brought to our notice that the Special Leave Petition filed by the Revenue against the above order of this Court (Goa Bench) in ***Fomento Resorts & Hotels Ltd.*** (supra) was dismissed by the Hon'ble Supreme Court *vide* order dated 16th November 2022 in SLP(C) No. 1725/2020, by observing that there were no merits. This further reinforces the legal position that the Assessing Officer is bound to dispose of the objections raised by the Assessee to the reopening of assessment by passing a separate speaking order before proceeding with the assessment.

23. Applying the aforesaid legal position to the facts of the present case, we are unable to accept the contention that the disposal of the objections by the Assessing Officer in paragraphs 15 and 16 of the Assessment Order dated 21st March 2014 constitutes sufficient compliance with the mandatory procedure prescribed by the Hon'ble Supreme Court in ***GKN Driveshafts (India) Ltd.***

(supra). The Assessing Officer was required to dispose of the objections raised by the Appellant by a separate and speaking order before proceeding with the reassessment proceedings. Failure to follow the prescribed procedure has, therefore, vitiated the reassessment proceedings and rendered the assumption of jurisdiction by the Assessing Officer unsustainable in law.

24. Ms. Nagaraj, however, relied upon the decision of this Court in ***Modern Realty (P.) Ltd.*** (supra) and the decision of Gujarat High Court in ***MGM Exports*** (supra) to contend that at the highest, the matter ought to be remanded to the Assessing Officer for fresh disposal of the objections. We are unable to accept the said contention in the facts of the present case because in ***Modern Realty (P.) Ltd.*** (supra), this Court was dealing with a situation where the Assessing Officer had passed an order disposing of the objections, but had failed to actually deal with any of the objections raised by the Assessee and proceeded with the assessment. Assessee challenged the said action by filing a Writ Petition before this Court. This Court directed the Assessing Officer to consider and dispose of the objections. The factual position in the present case is materially different. Here, the Assessing Officer did not pass any separate order disposing of the objections before proceeding with the reassessment, the objections were dealt with only in the Assessment Order itself. The Revenue's reliance on ***Modern Realty P. Ltd.*** (supra), therefore, does not assist the

Revenue in the facts of the present case.

25. Further, in ***MGM Exports*** (supra), the Gujarat High Court held that framing of a reassessment order without disposing the objections raised by the Assessee was a jurisdictional defect and directed the Assessing Officer to first pass the order disposing objections. We are of the opinion that this Court itself in ***KSS Petron Ltd*** (supra) has specifically held that once reassessment is without jurisdiction and contrary to the directions laid down by Hon'ble Supreme Court in the case of ***GKN Driveshaft*** (supra), there was no reason to restore the issue to the Assessing Officer as it would lead to unnecessary harassment of the Assessee by reviving stale/old matters. This is categorically stated by this Court in paragraph 8 of the said decision, which is reproduced earlier. We are not only inclined, but also bound, to follow the above referred decision of this Court.

26. In view of the aforesaid discussion, we hold that the first substantial question of law is required to be answered in favour of the Appellant and against the Respondent-Revenue. The impugned order dated 27th November 2018 passed by the Income Tax Appellate Tribunal, Mumbai Bench "F", in ITA No. 4486/Mum/2016 for the A.Y. 2010-11, insofar as it relates to the first substantial question of law, is unsustainable in law and is liable to be quashed

and set aside.

27. In view of our answer to the first substantial question of law, there is no necessity to advert to the second substantial question of law, at least insofar as the present Appeal is concerned.

28. The Appeal is, accordingly, allowed. The Assessment Order dated 21st March 2014 passed by the Assessing Officer under Section 143(3) read with Section 147 of the Act, the order dated 1st March 2016 passed by the Commissioner of Income-tax (Appeals)-40 and the order dated 27th November 2018 passed by the Income Tax Appellate Tribunal, Mumbai Bench "F", Mumbai in ITA No. 4486/Mum/2016 for the A.Y. 2010-11 are set aside on the ground of non-compliance with the jurisdictional parameters prescribed for reassessment proceedings, without adjudicating upon the second substantial question of law.

Income Tax Appeal No. 92 of 2020:

29. In view of the Assessment Order dated 21st March 2014 for A.Y. 2010-11 having being quashed, the above Appeal which challenges the impugned order dated 24th November 2017 passed by the Tribunal sustaining additions of 12.5% of alleged bogus purchases, now stands infructuous. Accordingly, this Appeal is dismissed as infructuous.

Income Tax Appeal No. 103 of 2020:

30. This Appeal pertains to A.Y. 2009-10 against the order of the Tribunal dated 27th November 2018 in Appeal No. 4485/Mum/2016, wherein the question of law raised is identical to what has been decided by us in the ITXA No. 95 of 2020. As the circumstantial facts and the legal consideration involved are similar, we allow the above Appeal in terms of our discussion in ITXA No. 95 of 2020.

Income Tax Appeal No. 100 of 2020

31. In view of the Assessment Order dated 21st March 2014 for A.Y. 2009-10 having being quashed in ITXA No. 103 of 2020, the above appeal which challenges the impugned order dated 24th November 2017 passed by the Tribunal sustaining additions of 12.5% of alleged bogus purchases, now stands infructuous. Accordingly, this Appeal is dismissed as infructuous.

32. We clarify that for A.Y. 2010-11 as well as A.Y. 2009-10, the Respondent-Revenue shall be at liberty to take such further action as may be permissible in law.

33. This order will be digitally signed by the Private Secretary / Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

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

Jyoti Pawar

JYOTI PRAKASH PAWAR
Digitally signed by JYOTI PRAKASH PAWAR
Date: 2026.10.05 13:08:33 +0530