

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT  
JAIPUR**

D.B. Income Tax Appeal No. 170 / 2009

Commissioner of Income Tax-Central,, New Central Revenue  
Building, Statue Circle, Jaipur (Raj).

----Appellant

Versus

M/s Carpet Mahal , Outside Zorawar Singh Gate,, Amer Road,  
Jaipur.

----Respondent



For Appellant(s) : Mr. Anuroop Singhi

For Respondent(s) : Mr. Aditya Bohra on behalf of Mr. Gunjan  
Pathak

**HON'BLE MR. JUSTICE K.S. JHAVERI**

**HON'BLE MR. JUSTICE VIJAY KUMAR VYAS**

**Judgment**

**Per Hon'ble Jhaveri, J.**

**10/05/2017**

1. By way of this appeal, the appellant has challenged the judgment and order of the Tribunal whereby the Tribunal has dismissed the appeal filed by the department and allowed the appeal and the cross objection of the assessee.

2. This Court while admitting the appeal on 21.10.2013 has framed the following substantial questions of law:

“(i) Whether, the cross objection filed by the assessee challenging the addition on account of bogus purchases was maintainable when the assessee itself filed an application for treating the said income as its business income instead of `income from other sources?

(ii) Whether the Tribunal was justified in upholding the order of CIT(A) wherein it has held that the disallowed purchases of

Rs.2,42,445/- should be treated as 'income from business' and not as 'income from other sources', ignoring the fact that the addition itself of Rs.17,80,595/- sustained by the CIT(A) was also challenged by the assessee before the Tribunal?

3. Counsel for both the parties have submitted that the issues are squarely covered by the decision of this Court in the case of

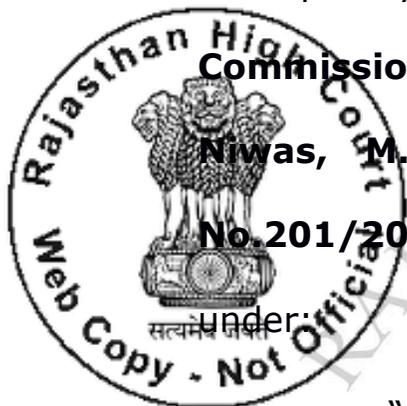
**Commissioner of Income Tax vs. M/s Gems Paradise, Gulab Niwas, M.I. Road, Jaipur in DB Income Tax Appeal**

**No.201/2010** wherein in para 3 & 4, the Court has observed as under:

"3. Considering the law declared by the Supreme Court in the case of Vijay Proteins Ltd. Vs. Commissioner of Income Tax, Special Leave to Appeal (C) No.8956/2015 decided on 06.04.2015 whereby the Supreme Court has dismissed the SLP and confirmed the order dated 09.12.2014 passed by the Gujarat High Court and other decisions of the High Court of Gujarat in the case of Sanjay Oilcake Industries Vs. Commissioner of Income Tax (2009) 316 ITR 274 (Guj) and N.K. Industries Ltd. Vs. Dy. C.I.T., Tax Appeal No.240/2003 decided on 20.06.2016, the parties are bound by the principle of law pronounced in the aforesaid three judgments.

4. We remit back the case to the Assessing Officer for deciding afresh on the factual matrix. The authority will accept the law but the transaction whether it is genuine or not will be verified by the Assessing Officer on the basis of the aforesaid three judgments. The issues are answered accordingly. The appeal is accordingly disposed of."

4. In that view of the matter, the issues are answered in favour of the department and against the assessee. The matter is remitted back to the Assessing Officer to decide the same afresh



in view of the principles laid down hereinabove.

5. The appeal stands disposed of accordingly.

(VIJAY KUMAR VYAS),J.

(K.S. JHAVERI),J.

Ashesh Kr. Yadav/69



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