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

INCOME TAX APPEAL NO. 1748 OF 2013

The Commissioner of Income Tax-18 ..Appellant

Vs.

M/s Gammon Rizzani Joint Venture ..Respondent

....

Mr. A.R. Malhotra a/w N.A. Kazi, Advocates for Appellant.
Mr. Jas Sanghavi, Advocate i/b PDS Legal for Respondent.

....

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 14 SEPTEMBER 2015

P.C.:

This appeal under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 17 December 2012 passed by the Income Tax Appellate Tribunal (the 'Tribunal') for the Assessment Year 2003-04.

2. The appeal before the Tribunal emanates from assessment order passed by the Assessing Officer consequent to directions under Section 263 of the Act passed by the Commissioner of Income Tax.

3. The questions of law proposed by the revenue are as under:

> "1. Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in dismissing the appeal of the revenue on the basis of it's quashing the order u/s 263 without discussing the appeal on merits?
>
> 2. Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in dismissing the appeal without giving an option to recall the order if the appeal of the revenue is allowed by the High Court against the quashing of proceedings u/s. 263?"

4. The Tribunal by the impugned order dismissed the revenue's appeal in view of the fact that the assessee's appeal against the order of the Commissioner of Income Tax passed under Section 263 of the Act directing fresh assessment was allowed by the order dated 25 July 2012 of the Tribunal. Mr. Malhotra, the learned Counsel for the revenue very fairly states that the revenue's appeal against the order dated 25 July 2012 of the Tribunal in

respect of an order passed under Section 263 of the Act in exercise of power of revision by Commissioner of Income Tax, was dismissed by this Court on 30 March 2013 (Income Tax Appeal No. 847/2013).

5. In view of the above, the questions as framed do not give rise to any substantial question of law.

6. Accordingly, appeal dismissed. No order as to costs.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/Order.