IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1903 OF 2013

The Commissioner of Income Tax
(Large Tax Payer Unit), Mumbai 400 005 … Appellant
v/s
M/s Reliance Industries Ltd.,
Mumbai 400 020 … Respondent

Mr A.R. Malhotra with Mr N.A. Kazi for Appellant.
Mr J.D. Mistry, Sr. Counsel with Mr Raj Darak and Mr P.C. Tripathi for Respondent.

CORAM : M.S. SANKLECHA AND
B.P. COLABAWALLA JJ.

DATE : 1st FEBRUARY, 2016

P.C.:-

1. This Appeal under Section 260A of the Income Tax Act, 1961 challenges the order dated 28th February 2013 passed by the Income Tax Appellate Tribunal (Tribunal). The impugned order relates to Assessment Year 2005-06.

2. Although numerous questions have been raised by the Revenue in the appeal memo, the only question which arises for our consideration from the impugned order dated 28th February 2013 in this Appeal is as under :-

> "Whether in the facts and circumstances of the case, the Tribunal was justified in holding that the proceedings for reopening assessment for AY 2005-06 by notice dated 30th March 2010 is without jurisdiction ?"

3. The impugned order of the Tribunal holds that the entire exercise of reopening the assessment for A.Y. 2005-06 in the present facts would be academic. This for the reason that even after determination of income consequent to reopening the amount of income brought to tax continued to be remain the same as in the regular assessment proceedings. The respondent was assessed to tax on income under section 115JB of the Act in the regular assessment proceedings and also in the order passed in re-assessment proceedings. (The assessment order on reopening of assessment was only on the issue on which the reopening notice was issued). In the above view, even if the appeal of the Revenue was allowed and the order of the Assessing Officer dated 30th November, 2010 was restored, there is no income chargeable to tax which has escaped assessment.

4. Mr. Malhotra, learned counsel for the Revenue has not been able to point out why the aforesaid finding of the Tribunal that the issue of allowing the appeal is academic is not correct.

5. Thus, the entire issue of adjudicating upon the validity of the reopening notice which in these facts would be academic. This is so as even if the reopening notice is sustained, there is no income chargeable to tax which had escaped assessment. In the above view, the question as framed does not give rise to any substantial question of law, hence not entertained.

6. Appeal is dismissed. No order as to costs.

(B.P.COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**