**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX APPEAL NO.614 OF 2015**

**THE PR.COMMISSIONER OF INCOME TAX )**
**- 3 )...APPELLANT**

**V/s.**

**M/S.GENERAL INSURANCE CORPORATION )**
**OF INDIA )...RESPONDENT**

Mr.A.R.Malhotra a/w. Mr.N.A.Kazi, Advocate for the Appellant.

Mr.F.V.Irani a/w. Mr.A.K.Jasani, Advocate for the Respondent.

**CORAM : S.V.GANGAPURWALA &**
**A. M. BADAR, JJ.**

**DATE : 26th JULY 2017**

**P.C. :**

1 The present appeal pertains to Assessment Year 2002-2003. Mr.Malhotra, the learned counsel for the appellant, submits that the Tribunal was not justified in holding that assessee is exempted from applicability of provisions of Section 115JB in the order under appeal. The Tribunal was not correct in upholding the decision of the Commissioner of Income Tax (Appeals) that

the Assessing Officer cannot bring to charge the total income in accordance with Section 115JB of the Income Tax Act, when the same was not done while passing the order under Section 143(3) of the Income Tax Act. Mr.Malhotra, the learned counsel submits that earlier the assessment order was passed by the Assessing Officer. In an appeal before the Tribunal, the Tribunal remitted the matter back. After the matter was remitted, the Assessing Officer had rightly considered all the aspects of the matter. The Tribunal ought not to have interfered.

2 The learned counsel for the respondent supports the order and submits that the Assessing Officer has gone beyond the scope of the order of remand.

3 We have considered the submissions. It is a matter of record that assessment order was passed by the Assessing Officer. The same was taken up in appeal before the Commissioner and thereafter before the Tribunal. The Tribunal under its order dated 22nd October 2009 remitted the matter to the Assessing Officer

with the limited directions to the Assessing Officer to exclude profit on sale of investments from income of the assessee liable to be taxed. Save and except the above, no further directions were given by the Tribunal empowering the Assessing Officer to re-open the whole assessment. In the earlier assessment order, the Assessing Officer had never raised up any issue with regard to Section 115JB nor the same was the subject matter in issue in appeal before the Commissioner or before the Tribunal, nor the order of remand empowered the Assessing Officer to do so.

4 In light of the above, it was not open for the Assessing Officer to travel beyond the directions of the Appellate authority. The Assessing Officer, as such, exceeded his jurisdiction, while considering the issue under Section 115JB.

5 In light of the above, no substantial question of law arise. The appeal is dismissed. No costs.

**(A. M. BADAR, J.)** **(S.V.GANGAPURWALA, J.)**