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

INCOME TAX APPEAL NO.1083 OF 2015

The Pr. Commissioner of Income Tax-1,
Mumbai .. Appellant
v/s.

M/s. Lark Chemicals P. Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
Ms. Aasifa Khan for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 28th FEBRUARY, 2018.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 6th February, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2004-05.

2. The Revenue has urged the following question of law for our consideration :-

Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that the reopening done by the Assessing Officer was not in accordance with Section

147 of the I.T. Act when the fact and circumstance indicate otherwise on the basis of substantial evidence brought on record?

3. We find that the impugned order of the Tribunal while allowing the respondent assessee's appeal has held that there was no reasonable belief in the Assessing Officer to issue the reopening notice seeking to reopen the subject assessment year i.e. A.Y. 2004-05. Besides, the impugned order holds that the order which was passed consequent to reassessment, has not confirmed the addition attributable to the reasonable belief of the Assessing Officer while issuing the reopening notice. The reassessment order has made an addition on an issue which is not a subject matter of the reasons recorded in support of the reopening notice as forming its reasonable belief that income chargeable to tax has escaped assessment.

4. In the above view, the question as formulated becomes academic as our Court in ***Commissioner of Income Tax Vs. Jet Airways (I) Ltd. 331 ITR 236*** while examining Explanation-3 to Section 147 of the Act has held that the Assessing Officer has to necessarily assess / re-assess the income which escaped assessment on the basis of the formation of the reasonable belief for opening the assessment. It is only on

assessing / reassessing such income which has escaped assessment in the reasons recorded, would it be open to the Assessing Officer to assess / reassess any other income, which came to his notice during the reassessment proceedings. However, in the absence of reassessing the income which escaped assessment and which was the basis for formation of belief in issuing the notice, the order passed on reassessment is bad in law.

5. In the above view, the question does not give rise to any substantial question of law. Thus, not entertained.

6. Thus, the appeal is dismissed. No order as to costs.

(SANDEEP K. SHINDE, J.) **(M.S. SANKLECHA, J.)**