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

INCOME TAX APPEAL NO.410 OF 2016

Pr. Commissioner of Income Tax-14,
Mumbai-400 020 .... Appellant
Vs.
M/s. Lupin Investments P. Ltd.,
Mumbai-98 .... Respondent

Mr. Suresh Kumar for the Appellant.
Ms Vasanti B. Patel for the Respondent.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : SEPTEMBER 03, 2018

P.C:

1. After having heard Mr. Suresh Kumar and Ms Patel at great length and perusing the order under appeal, we do not find any fault, much less serious legal infirmities in the reasoning of the Tribunal when it sets aside the order of the Commissioner, dated 29-2-2012, and allows the assessee's appeal there-against. That order was passed under Section 263

of the Income Tax Act, 1961 and the Commissioner did not have the aid and assistance of the amendment to the Section introduced with effect from 1-6-2015, namely, the Explanation 2. The reasoning in the Tribunal's order is that the Assessing Officer raised a specific query (Question No.9) during the course of the assessment. The assessee, on 31-8-2009, filed a detailed explanation, but the Assessing Officer later on chose not to refer to this explanation nor mentioned anything about the waiver of loan of Rs.27,24,71,386/-. The Tribunal, following a binding Judgment of this Court in the case of **Commissioner of Income Tax v. Gabriel India Ltd.**, reported in [1993] 203 ITR 108 (Bom.), held that by this alone the Commissioner does not derive the authority and power in law to pass a revisional order. In such circumstances, the recourse to Section 263 of the Income Tax Act, 1961 was impermissible. Such a finding based on the peculiar factual position emerging from the record in relation to the respondent/assessee does not raise any substantial question of law. That is a possible conclusion and cannot be said to be perverse or vitiated by any error of law apparent on the face of the record. The appeal is devoid of any merit and is dismissed, but without any order as to costs.

(B.P. COLABAWALLA, J.) (S.C. DHARMADHIKARI, J.)