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

INCOME TAX APPEAL NO. 640 OF 2015

The Principal Commissioner of
Income Tax-2 .. Appellant

v/s.

M/s. Wimco Ltd. .. Respondent

Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the appellant
None for the respondent

CORAM : S.V. GANGAPURWALA &
A.M. BADAR, J.J.

DATED : 1st AUGUST, 2017

P.C.

1. The present appeal pertains to Assessment Year 2003-04.

2. Mr. Suresh Kumar, the learned Counsel for the appellant submits that the reopening of an assessment is permissible when the original assessment order under Section 143(3) of the Act is silent in respect of the issue on which re-assessment notice is issued. The reopening was within four years. According to the learned Counsel, the decision relied upon by the Tribunal in ***Rallis India Ltd. 323 ITR 54 (Bom)*** is distinguishable on the facts that the Assessing Officer

had neither called for the details of the provision for diminution in the value of assets nor raised any query in regard to the addition of the same to the net profit in the computation of book profit as per provisions of Section 115JB of the Act.

3. We have gone through the judgment of the Tribunal. The assessment was completed on 22.02.2006. The reassessment under Section 143(3) r/w Section 147 was completed on 26.12.2008. The claim of the assessee was allowed in the original assessment and the decision of the Assessing Officer was supported by various judicial pronouncements. The Tribunal relied upon the judgment of this Court in case of *Rallis India* (supra) to state that retrospective amendment could not have been the sole ground for reopening of the assessment. Clause (i) of the Explanation I to Section 115JB of the Act was brought into force by Finance Act, 2009 with retrospective effect from 01.04.2001.

4. The probable view was taken by the Assessing Officer. It is observed that the judgment of this Court in case of *Rallis India* (supra) would apply to the present case also.

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

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