IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1267 OF 2015

Commissioner of Income-Tax-23 ....Appellant
V/s.
Nimbkar Cooperative Housing
Society Ltd. ....Respondent

* * * * *

Mr. Arvind Pinto, Advocate for the appellant.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :- 12TH MARCH, 2018.

P.C. :-

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 11th September, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 11th September, 2013 is in respect of Assessment Year 2006-07.

2 The Revenue urges the only following re-framed question of law, for our consideration:

> *"(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in law in holding that any income made on the sale of additional TDR is not taxable under the head "Capital Gains" ?"*

3. Mr. Pinto, the Learned Counsel appearing for the Revenue, very fairly states that, the issue arising therein stands concluded against the Revenue and in favour of the respondent-Assessee by the decision of this Court in **Commissioner of Income Tax V/s. Kailash Jyoti No.2 CHS Ltd. (Income Tax Appeal No. 1607 of 2013 & Ors. renderred on 24th April, 2015)**. In the above case, an identical issue raised by the Revenue was dismissed on the ground that as there is no cost on acquisition the sale of TDR i.e. additional FSI would not give rise to the same being charged to tax under the head "Capital Gains".

4. Therefore, in view of the reasons indicated in our order passed in *Kailash Jyoti No.2 CHS Ltd*. (supra), the question as proposed does not give rise to any substantial

question of law. Thus, not entertained.

5 Accordingly, **Appeal dismissed.** No order as to costs.

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