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

INCOME TAX APPEAL NO.1185 OF 2016

Pr. Commissioner of Income Tax-4 .. Appellant

v/s.

Financial Technologies I. Ltd. .. Respondent

Mr. Tejveer Singh for the appellant
Ms. Vasanti Patel for the respondent

**CORAM : AKIL KURESHI &**
**M.S. SANKLECHA, J.J.**

**DATED : 21st JANUARY, 2019**

**P.C.**

1. The Revenue has raised following question of law for our consideration :-

*(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in holding that the issue of depreciation of IPRs could not be made subject matter of assessment u/s 153A without appreciating the fact that the director of the assessee company had in his statement u/s 132(4) during the course of the search withdrawn the claim of depreciation on IPRs and hence, the assessee was liable for penalty in view of provisions of Section 271(1)(c) of the IT Act?*

2. It is undisputed fact that the Revenue had raised identical question in Income Tax Appeal No.801 of 2016 and other connected appeals, concerning this very assessee for the earlier assessment years, arising out of the same judgment of the Tribunal. The Revenue's appeal was dismissed making following observations :-

> *"3. For the assessment year 2004-05, Revenue has questioned the judgment of the Tribunal reversing the view of the CIT(A) and allowing the assessee's appeal and thereby deleting penalty imposed under Section 271(1)(c) of the Income Tax Act, 1961 ("the Act" for short). In the impugned judgment, the Tribunal noted that the assessee in the return had raised the claim of depreciation on its intellectual property rights. During the search operation, director of the assessee company reduced the claim of depreciation in his statement under Section 132(4) of the Act recorded by the Income Tax Authorities. The Tribunal further noted that during such search, no incriminating material was found on the basis of which the assessment could have been framed in this respect. The Tribunal also noted that the original return filed for the assessment year in question, when the claim was made by the assessee, the same was disallowed by the Assessing Officer but in the appeal, the CIT(A) accepted the same. The Tribunal further noted that Section 32 of the Act does not cover certain intangible assets for depreciation. The Tribunal relied upon the decision of the Supreme Court in the case of CIT Vs. Reliance Petro Products Pvt. Ltd. Reported in 322*

*ITR 158(SC) for holding that being a plausible claim, mere fact that the same was withdrawn during the search would not give rise to the penalty.*

*4. As can be seen, the Tribunal has broadly proceeded on the basis that the claim was part of the original return and therefore, there was no concealment by the assessee and further that CIT(A) had allowed such a claim for regular assessment and Section 32 of the Act also gave rise to a debatable issue in this respect. The Tribunal, therefore, in our opinion, correctly placed reliance in the decision in the case of Reliance Petro Products Pvt. Ltd. (supra). No question of law arises. The Income Tax Appeals are, therefore, dismissed."*

3. In the result, this appeal is dismissed.

**(M.S. SANKLECHA, J.)** **(AKIL KURESHI, J.)**