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

INCOME TAX APPEAL NO.112 OF 2017
WITH
INCOME TAX APPEAL NO.115 OF 2017
WITH
INCOME TAX APPEAL NO.113 OF 2017

Pr. Commissioner of Income Tax-27 .... Appellant

versus

Yashomandir Sahakari Patpedhi Ltd. ... Respondent

…….

- Mr.Ashok Kotangle a/w Mr.Prabhakar Ranshur, Advocate for Appellant.
- Mr.Sanjeev M. Shah, Advocate for Respondent.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 12th MARCH, 2019.

P.C. :

1. The Income Tax Appeal is filed by the revenue challenging the Judgment and Order dated 11/12/2015 passed by the Income Tax Appellate Tribunal. Following question is presented for our consideration;

“Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in dismissing the Revenue's appeal without adjudicating on merits of the case on the issue of assessee's claim of deduction u/s.80P(2)(ia) r.w.s 80P(2)(d) & 2(24) by allowing the assessee's appeal that the proceedings u/s 147 of the I T Act, 1961 were void ab initio?”

2. Respondent Assessee is a Credit Society. The issue pertains to the validity of reassessment proceedings. The assessee's return for the assessment year 2007-08 was taken in scrutiny by the Assessment Officer. He passed the order under section 143(3) of the Income Tax Act, 1961 (for short 'the Act') on 29/09/2009. To reopen such assessment, he issued notice under section 148 of the Act within a period of four years from the end of relevant assessment year. For issuing such notice Assessing Officer had placed reliance on an amendment brought in by the legislature on 01/04/2006 with retrospective effect. This was the sole basis for reopening the assessment. Tribunal by the impugned judgment held that the assessee's claim of

deduction under section 80(P)(2) of the Act was examined by the Assessment Officer during original scrutiny Assessment. The Assessing Officer did not have any additional material to reopen the assessment. The action of the Assessment Officer to reopen the assessment would be based on the change of information.

3. We find no error in view of the tribunal. When the claim was examined during the original scrutiny assessment, the assessment could not have been reopened, on the basis of an amendment which was already in existence when the assessment was framed. In such circumstances no question of law arises. Income Tax Appeal is dismissed.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**