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

INCOME TAX APPEAL NO. 806 OF 2017

Pr. Commissioner of Income Tax-10 .. Appellant

v/s.

M/s. Hexaware Technologies Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
Mr. Jas Sanghvi i/b PDS Legal for the respondent

**CORAM : M.S. SANKLECHA &**
**NITIN JAMDAR, J.J.**

**DATED : 30th SEPTEMBER, 2019**

**P.C.**

1. This appeal under Section 260A of the Income Tax Act, 1961 (Act) challenges the order dated 21st July, 2016 passed by the Income Tax Appellate Tribunal (Tribunal). This appeal relates to Assessment Year 2006-07.

2. The Revenue has urged the following questions of law for our consideration :-

> *"(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that the proceedings u/s 147 was bad in law as there was no failure on*

*part of the assessee to fully and truly disclose the fact ?*

*(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that the proceedings u/s 147 are bad in law due to non-issue of notice u/s 143(2) irrespective of the fact that assessee had not contended the same during the reassessment proceedings as envisaged u/s 292BB of the Income Tax Act 1961?"*

3. *Regarding Question (a) :-*

(a) The respondent assessee is engaged in the business of design development and export of software. For the subject assessment year, the respondent assessee filed a return of income declaring total income at Nil after set off of unabsorbed depreciation of Rs.9.95 crores. On 23rd December, 2009 the assessment was completed in scrutiny assessment proceedings under Section 143(3) of the Act.

(b) Thereafter, on 23rd March, 2013 reopening notice was issued under Section 148 of the Act seeking to reopen of the assessment for A.Y. 2006-07. The reasons in support of the reopening notice dated 22nd March, 2013 records the fact that the respondent in its return of income had considered the written down value of the depreciated assets on gross basis. However, during the scrutiny assessment proceedings, the respondent assessee was directed by the Assessing Officer to reduce the current years depreciation by Rs. 2.60 crores (approximately) for arriving at written down value of its assets. It is on the basis of having incorrectly taken depreciation, the short term capital gain on slump sale have been determined. This should have been without taking into account current years depreciation of Rs.2.60 crores (approximately). Thus, the reason to believe that income chargeable to tax has escaped assessment.

(c) The Assessing Officer by his order dated 15th January, 2014 under Section 143(3) r/w Section 147 of the Act confirmed the reopening notice and taxed the income. In appeal, the Commissioner of Income Tax (Appeals) [CIT(A)] by order dated 21st July,l 2016 rendered a finding of fact that there was no failure on the part of the respondent assessee to disclose truly and fully all facts necessary for the assessment. It held that as the reopening notice was beyond a period of four years from the end of the relevant assessment year, as the regular assessment was done under section 143(3) of the Act, the reopening dated 22nd February, 2013 was without jurisdiction. This as it is hit by the first proviso to Section 147 of the Act.

(d) Being aggrieved, the Revenue carried the issue in appeal to the Tribunal. On facts, the Tribunal upheld the view of the CIT(A) and found that there was no failure on the part of the respondent to disclose truly and fully all facts necessary for the assessment. The regular assessment being under Section 143(3) of the Act, the notice being beyond the period of four years from the end of the relevant assessment year is hit by the first proviso to Section 147 of the Act. Thus, dismissed the Revenue's appeal.

(e) We find that the impugned order of the Tribunal as well as the CIT(A) have found on facts that there was no failure on the part of the respondent assessee to disclose all facts truly and fully as necessary for the assessment. In fact, that is evident from the reasons recorded in the reopening notice dated 22nd March, 2013. In fact, the reasons recorded in support of the reopening notice dated 23rd March, 2013 even does not allege that there is any failure on the part of the respondent to disclose truly and fully all material particulars necessary for assessment. Nor does the reading of the reasons as a whole indicate the same. Therefore, on the basis of the above facts, it was found that the reopening notice is without jurisdiction and hit by the first proviso to Section 147 of the Act. The CIT(A) as well as the Tribunal in support of the impugned order correctly placed reliance upon the decision of this Court in the case of ***Nirmal Bang Securities Vs.***

***Asstt. Commissioner of Income Tax, 382 ITR 93***.

(f) In the above view, the question (a) as proposed does not give rise to any substantial question of law. Thus, not entertained.

4. *Regarding question (b) :-*

In view of answer to question (a), this question is rendered academic. Thus, not entertained.

5. The appeal is dismissed. No order as to cost.

**(NITIN JAMDAR, J.)** **(M.S. SANKLECHA, J.)**