

Urmila Ingale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 1126 OF 2017**

Pr. Commissioner of Income Tax-10	... Appellant
Vs.	
Haxaware Technologies Ltd.	... Respondent

Mr.Suresh Kumar, for the Appellant.
Mr.Nishant Thakkar a/w Mr.Hiten Chande i/b PDS Legal for the Respondent.

**CORAM : NITIN JAMDAR &
M. S. KARNIK, JJ.**

DATE : 19 DECEMBER, 2019.

P. C. :

. By this Appeal, the appellant has challenged the order passed by Income Tax Appellate Tribunal in I.T.A No. 725 of 2015. The present Appeal pertains to the Assessment Year 2007-08. The Appellant – Revenue has formulated the following substantial question of law for consideration in this Appeal.

“Whether on the facts and in the circumstances of the case and in Law, the Hon’ble ITAT erred in holding that the reassessment is invalid without appreciating that the reasons were communicated to the assessee vide letter dated 02/07/2012 and the issue raised therein were the reasons for re-opening ?”

2. The Respondent – Assessee filed return of Income Tax for the year 2007-08 on 31 October 2007 declaring total income of Rs.7,52,80,804/-. The assessment was completed under section 143(3) of the Income Tax Act, 1961 on 30 November 2010. Thereafter it was sought to be reopened under section 147 of the Act. Notice under section 148 was issued on 1 March 2012 and served on the Assessee. The Assessee filed his reply on 05 March 2012 stating that return filed on 31 October 2007 be treated as its return in response to the notice. The Assessing Officer proceeded to pass the order. The Respondent – Assessee filed an appeal to the Commissioner of Income Tax (Appeals), main ground being that the Assessing Officer did not supply reasons in support of the reopening notice. The Commissioner (Appeals) allowed the appeal on the ground of jurisdiction of the Assessing Officer and on merits. The appeal filed by the Appellant – Revenue to the Income Tax Appellate Tribunal was dismissed by the impugned order. Hence, this appeal by the Revenue.

3. We have heard Mr.Suresh Kumar, learned Counsel for the Appellant and Mr.Nishant Thakkar, learned Counsel for the Respondent.

4. The Tribunal and the Commissioner have recorded a finding that no reasons in support of notice for reopening were supplied to the Respondent - Assessee inspite of they being asked by the Respondent - Assessee. After considering the material placed

before it the Tribunal, observed as under :

“We have considered the rival contentions of the Id AR for the parties and perused the material placed on record. The notice u/s 148 dated 01.03.2012 was duly served upon the assessee. In reply to the notice u/s 148 the assessee submitted that return already filed on 31.10.2007 may be treated as return filed in response to the notice u/s 148 of the Act. The assessee requested reasons recorded for reopening. The AO did not passed any order about the reasons demanded by assessee. We have further perused the order of reassessment u/s 143(3) r.w.s. 147 dated 18.03.2013, the AO has not recorded that the reasons of reopening was supplied. Though para no.3 of the assessment order contained the reference of reply of assessee dated 05.03.2012. The Ld. CIT (A) while considering this ground of appeal on the allegation of assessee that assessee was not supplied reasons of reopening despite requesting time and again, forwarded the objections raised by assessee to the AO and directed to submit his report. The AO filed his report dated 22.09.2014, wherein it was contended that the AR of the assessee was provided copy of reasons recorded during the hearing dated 12.09.2014 (during remand proceedings). The Ld. CIT (A) observed that reasons recorded were never communicated to the assessee during the course of assessment proceeding despite being repeatedly asked by assessee. No separate order for disposing the objection raised by assessee was passed by AO.”

Thus the Tribunal has confirmed the factual finding recorded by the Commissioner that copy of the reasons were not supplied to the Respondent - Assessee inspite of being asked by the Respondent - Assessee. Nothing is pointed out how this position is incorrect. Even on merits, the Tribunal found that the reasons were incorrect as they were not pertaining to the year under consideration.

5. Once it is established from the record and concurrently held by both Commissioner and the Tribunal that copy of the reasons

was given to the Respondent – Assessee in support of the notice for reopening, the view taken that the reopening of assessment was without jurisdiction, cannot be faulted with. Learned Counsel for the Respondent - Assessee has placed on record decision of the Division Bench of this Court in case of **Commissioner of Income-Tax Vs. Videsh Sanchar Nigam Ltd. reported in (2012) 21 taxmann.com.53(Bombay)**. It is held by Division Bench that if the reasons for reopening of the assessment, though repeatedly asked, are not supplied and supplied only after completion of assessment, the order of reassessment cannot be upheld. This dicta directly applies to the present case.

6. In these circumstances, question as framed does not give rise to any substantial question of law. Appeal is dismissed.

[M. S. KARNIK, J.]

[NITIN JAMDAR, J.]

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