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

INCOME TAX APPEAL NO.203 OF 2017

Principal Commissioner of Income Tax-7 .... Appellant

versus

Hanil Era Textiles Ltd. ... Respondent

…....

- Mr.Suresh Kumar, Advocate for Appellant.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 15th APRIL, 2019.

P.C. :

1. This appeal is filed by the revenue to challenge the judgment of Income Tax Appellate Tribunal. Following question is presented for our consideration;

"Whether on the facts and circumstances of the case and in law the Hon'ble Tribunal is correct in holding that the order of reassessment passed u/s. 143(3) rws passed in pursuance to notice u/s. 148 is void-ab-initio deserved to be quashed and set aside?"

2. Issue pertains to reopening of assessment within a period four years from the end of assessment year. The return of the assessee was taken in scrutiny by the Assessing Officer. After completion of such assessment, he issued the notice of reopening of assessement on the ground that the assessee's claim of deduction under section 10B of the Income Tax Act, 1961 (for short 'the Act') was not allowable. The tribunal by the impugned judgment held that the assessee as per the relevant provisions of section 10B, existing at the relevant time, had chosen the initial assessement year of 1997-1998. The assessee thus made a claim for deduction under section 10B of the Act through said assessment year 1997-1998 and onwards. The Assessing Officer during the course of original assessment proceedings had examined the entire claim, had also enquired into the commencement of manufacturing and period of claim of deduction and all other conditions needed to be fulfilled for sustaining claim under section 10B of the Act. In the opinion of the tribunal, therefore, reopening the assessment on the same issue would not be permissible. The tribunal referred to and

relied on the decision in the case of ***CIT Vs. Kelvinator of India Ltd. Reported in (2010) 320 ITR 561 (SC)***.

3. We do not find any error in the view of the tribunal. When during the original scrutiny assessment, the assessee's claim of deduction under section 10B of the Act was scrutinized, any attempt on part of Assessing Officer to reexamine the said claim, without any material would be based on change of opinion. Reopening of assessment was therefore clearly impermissible.

4. In the result no question of law arises. Income Tax Appeal is dismissed.

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