

Principal Commissioner of Income Tax, Mumbai Vs. M/s. IVEN Interactive Ltd., Mumbai

Civil Appeal No. 8132 of 2019 arising out of SLP(C) No.3530/2019 · Supreme Court of India · 2019-10-18 · UDAY UMESH LALIT · INDIRA BANERJEE · M.R. SHAH · F2J-C-1340

Full judgment text

Principal Commissioner of Income Tax, Mumbai Vs. M/s. IVEN Interactive Ltd., Mumbai

[Civil Appeal No. 8132 of 2019 arising out of SLP(C) No.3530/2019]

M.R. SHAH, J.

Leave granted.

2. Feeling aggrieved and dissatisfied with the judgment and order dated 27.06.2018 passed by the High Court of Judicature at Bombay in Income Tax Appeal No.94 of 2016, by which the High Court has dismissed the said appeal preferred by the Revenue and has confirmed the orders passed by the learned C.I.T (Appeals) as well as I.T.A.T quashing and setting aside the assessment order for A.Y. 200607, the revenue has preferred the present appeal.

3. That the respondent - assessee filed return of income for the Assessment Year 200607 on 28.11.2006 declaring total income of Rs.3,38,71,716/-. The said return was filed under EModule Scheme and thereafter a hard copy of the same was filed on 05.12.2006. The return of income was accompanied with balance sheet and profit and loss account. The return was processed under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the '1961 Act'). That a notice under Section 143(2) of the 1961 Act was issued to the respondent assessee on 05.10.2007. The notice was sent at the assessee's address available as per the PAN database. That a further opportunity was provided to the assessee vide notice under Section 143(2) of the 1961 Act on 25.07.2008.

The said notice was also issued to the assessee at the available address as per the PAN database. That thereafter, further notices under Section 142(1) of the 1961 Act were issued to the assessee on 23.01.2008, 25.07.2008 and 05.10.2008 along with questionnaires calling for various details and were duly served on the respondent assessee company. In response to the said notice, the representative of the company appeared on 28.11.2008 and 04.12.2008. The assessee participated in the proceedings before the Assessing Officer. However, the assessee challenged the notice under Sections 143(2) and 142(1) of the 1961 Act on the ground that the said notices were not served upon the assessee as the assessee company never received those notices and the subsequent notices served and received by the assessee company were beyond the period of limitation prescribed under proviso to Section 143 of the 1961 Act.

3.1 That the Assessing Officer vide assessment order dated 24.12.2008 completed the assessment under Section 143(3) of the 1961 Act by making disallowance of Rs. 8,91,17,643/under Section 14A of the 1961 Act, read with Rule 8 of the Income Tax Rules and computed total income at Rs.5,52,45,930/.

3.2 Being aggrieved by the assessment order dated 24.12.2008, the assessee preferred appeal before the learned C.I.T (Appeals). The learned C.I.T (Appeals) allowed the appeal vide order dated 23.12.2010 holding, inter alia, that the Assessing Officer completed the assessment under Section 143(3) of the 1961 Act, without assuming valid jurisdiction under Section 143(2) of the 1961 Act, and therefore, the assessment framed under Section 143(3) of the 1961 Act was invalid.

The learned C.I.T (Appeals) observed that as the subsequent service of notice under Section 143(2) of the 1961 Act was beyond the period of limitation prescribed under the proviso to Section 143 of the 1961 Act and earlier no notices were served upon the assessee and/or received by the assessee as the same were sent at the old address and in the meantime companyassessee changed its address and therefore the assessment order was bad in law. The Revenue preferred appeal before the Income Tax Appellate Tribunal, which came to be dismissed by the learned I.T.A.T. vide order dated 19.01.2015. The order passed the learned C.I.T (Appeals) as well as I.T.A.T. have been confirmed by the High Court, by the impugned judgment and order. Hence, the Revenue has preferred the present appeal.

4. Shri H. Raghavendra Rao, learned Advocate appearing on behalf of the Revenue has vehemently submitted that the impugned judgment and order passed by the High Court dismissing the appeal and thereby confirming the orders passed by the learned C.I.T (Appeals) and I.T.A.T holding that the assessment order was bad in law, is contrary to the provisions of Section 143(2) of the 1961 Act.

4.1 It is further submitted that the Assessing Officer sent the notice under Section 143(2) of the 1961 Act to the assessee at the available address as per the PAN database. It is submitted that as such there was no intimation by the assessee to the Assessing Officer with respect to change of address. It is submitted therefore that notice under Section 143(2) of the 1961 Act was sent to the assessee on the available address as per the PAN database. It is submitted therefore that once notice under Section 143(2) of the 1961 Act was issued and sent to the assessee on the available address as per the PAN database, it can be said to be a sufficient compliance of the relevant provisions of the 1961 Act, more particularly Section 143(2) of the 1961 Act.

4.2 It is further submitted that as such the High Court has not properly appreciated the fact that the alleged communication dated 06.12.2005 from the respondentassessee to the Assessing Officer intimating new address of the assessee was never received by the Assessing Officer. It is submitted that even today also the assessee is not in a position to produce the said communication. It is submitted therefore the respondentassessee has failed to prove that the alleged communication dated 06.12.2005 was, in fact, sent to the Assessing Officer, intimating about new address.

4.3 It is further submitted by the learned Advocate appearing on behalf of the Revenue that, as such, the learned C.I.T (Appeals) has heavily relied upon the alleged communication dated 06.12.2005 intimating the change of address to the Assessing Officer by the assessee, however, the communication dated 06.12.2005 is not forthcoming and has not been produced. It is submitted therefore that in the facts and circumstances of the case the Assessing Officer was justified in sending the notices under Section 143(2) of the 1961 Act at the available address as per the PAN database. It is submitted therefore that the learned C.I.T (Appeals), I.T.A.T and the High Court have committed a grave error in holding that the assessment order is bad in law as the notice under Section 143(2) of the 1961 Act was beyond the period of limitation.

4.4 It is further submitted that as such thereafter the assessee did participate in the assessment proceedings and therefore the learned C.I.T (Appeals) ought to have considered the appeal on merits and ought not to have set aside the assessment order solely on the ground that the assessment order is bad in law.

4.5 Making the above submissions, it is prayed to allow the present appeal.

5. Shri S.K. Bagaria, learned Senior Advocate appearing on behalf of the respondentassessee has made strenuous efforts to support the orders passed by the learned C.I.T (Appeals) and confirmed by the I.T.A.T. and the High Court. It is submitted that as such the Assessing Officer was aware of the new address of the assessee and therefore the Assessing Officer was required to send the notices on the new address. It is submitted that instead the Assessing Officer sent the notice at the old address and therefore the same was never served upon the assessee. It is submitted that by the time the subsequent notice was served upon the assessee, the notice under Section 143(2) of the 1961 Act was barred by limitation as provided under Section 143(2) of the 1961 Act. Therefore, the learned C.I.T (Appeals), I.T.A.T and the High Court are right in holding that the assessment order was bad in law.

5.1 Learned Senior Advocate appearing on behalf of the assessee has further submitted that as such the change of address and change in the name of the assessee company was intimated to the Registrar of Companies in Form 18. It is submitted therefore in fact the name of the company was changed and the change in the address has been established and proved.

5.2 Shri Bagaria, learned Senior Advocate has further submitted that the Assessing Officer was in the knowledge of the new address, which is evident from the fact that the Assessment Orders for A.Y 200405 and A.Y. 200506 were sent at the new address.

5.3 Relying upon the decision of this Court in the case of Assistant Commissioner of Income Tax v. Hotel Blue Moon reported in (2010) 3 SCC 259, it is submitted by the learned Senior Advocate for the assessee that as held by this Court the issuance of the notice under Section 143(2) of the 1961 Act within the time prescribed in the proviso to Section 143(2) of the 1961 Act is must and mandatory. It is submitted that therefore when it was found that notice under Section 143(2) of the 1961 Act was not served upon the assessee within the time prescribed in the proviso to Section 143(2) of the Act, the

assessment order was bad in law and the same was rightly set aside by the learned C.I.T (Appeals), confirmed up to High Court.

5.4 Making the above submissions and relying upon the aforesaid decision of this Court, it is prayed to dismiss the present appeal.

6. We have heard the learned counsel for the respective parties at length.

6.1 At the outset, it is required to be noted that notice under Section 143(2) of the 1961 Act was sent by the Assessing Officer to the assessee at the address as mentioned in the PAN database on 05.10.2007 and the same was within the time limit prescribed in proviso to Section 143(2) of the 1961 Act. However, it was the case on behalf of the assessee that the said notice was not served upon the assessee as the assessee changed its name and address and shifted to new address prior thereto and therefore the said notice was not served upon the assessee and by the time when subsequently the notices were served upon the assessee, notice under Section 143(2) of the 1961 Act was barred by the period prescribed in proviso to Section 143(2) of the 1961 Act and therefore the assessment order is bad in law.

It was the case on behalf of the assessee that vide communication dated 06.12.2005 the assessee intimated to the Assessing Officer about the new address and despite the same the Assessing Officer sent the notice at the old address. However, it is required to be noted that the alleged communication dated 06.12.2005 is not forthcoming. Neither the same was produced before the Assessing Officer nor even the same has been produced before this Court. In the affidavit also, filed in compliance with order dated 21.08.2019, the assessee has stated that the alleged communication dated 06.12.2005 is not available. Thus, the assessee has failed to prove the alleged communication dated 06.12.2005. The only document available is Form No.18 filed with the ROC. Filing of Form18 with the ROC cannot be said to be an intimation to the Assessing Officer with respect to intimation of change in address. It appears that no application was made by the assessee to change the address in the PAN data base and in the PAN database the old address continued.

Therefore, in absence of any intimation to the Assessing Officer with respect to change in address, the Assessing Officer was justified in issuing the notice at the address available as per the PAN database. Therefore, the Assessing Officer cannot be said to have committed any error and in fact the Assessing Officer was justified in sending the notice at the address as per the PAN database. If that is so, the notice dated 05.10.2007 can be said to be within the period prescribed in proviso to Section 143(2) of the 1961 Act. Once the notice is issued within the period prescribed as per the proviso to Section 143(2) of the Act, the same can be said to be sufficient compliance of Section 143(2) of the 1961 Act. Once the notice is sent within the period prescribed in the proviso to Section 143(2) of the 1961 Act, in that case, actual service of the notice upon the assessee thereafter would be immaterial.

In a given case, it may happen that though the notice is sent within the period prescribed, the assessee may avoid actual service of the notice till the period prescribed expired. Even in the relied upon case by the learned Senior Advocate for the assessee in the case of Hotel Blue Moon (supra), it is observed that the Assessing Officer must necessarily issue notice under Section 143(2) of the 1961 Act within the time prescribed in the proviso to Section 143(2) of the 1961 Act. Therefore, in the facts and circumstances of the case, the High Court is not justified in dismissing the appeal and confirming the orders passed by the learned C.I.T (Appeals) and the I.T.A.T. setting aside the assessment order solely on the ground that the assessment order is bad in law on the ground that subsequent service of notice upon the assessee under Section 143(2) of the 1961 Act was beyond the time prescribed in the proviso to Section 143(2) of the 1961 Act.

7. Now so far as the observations made by the High Court while concurring with the view of the learned Tribunal that merely by filing of return of income with the new address, it shall be enough for the assessee to discharge its legal responsibility for observing proper procedural steps as per the Companies Act and the Income Tax Act is concerned, we are of the opinion that mere mentioning of the new address in the return of income without specifically intimating the Assessing Officer with respect to change of address and without getting the PAN database changed, is not enough and sufficient. In absence of any specific intimation to the Assessing Officer with respect to change in address and/or change in the name of the assessee, the Assessing Officer would be justified in sending the notice at the available address mentioned in the PAN database of the assessee, more particularly when the return has been filed under EModule scheme.

It is required to be noted that notices under Section 143(2) of the 1961 Act are issued on selection of case generated under automated system of the Department which picks up the address of the assessee from the database of the PAN. Therefore, the change of address in the database of PAN is must, in case of change in the name of the company and/or any change in the registered office or the corporate office and the same has to be intimated to the Registrar of Companies in the prescribed format (Form 18) and after completing with the said requirement, the assessee is required to approach the Department with the copy of the said document and the assessee is also required to make an application for change of address in the departmental database of PAN, which in the present case the assessee has failed to do so.

8. Now so far as the submission on behalf of the assessee that with respect to the Assessment Years 200405 and 200506, communications and the assessment orders were sent at the new address and therefore the Assessing Officer was in the knowledge of the new address is concerned, the same has been sufficiently explained by the Revenue.

9. In view of our findings, recorded hereinabove, the impugned judgment and order passed by the High Court as well as the orders passed by the learned C.I.T (Appeals) and the I.T.A.T holding the assessment order bad in law on the aforesaid ground cannot be sustained and the same deserve to be quashed and set aside. As the learned C.I.T (Appeals) has not considered the other grounds on merits and has not considered the appeal on merits, the matter is required to be remanded to the learned C.I.T (Appeals) to consider the appeal on merits, in accordance with law.

10. Accordingly, the present Appeal is Allowed. The Impugned Judgment and Order passed by the High Court as well as the orders passed by the C.I.T (Appeals) and the I.T.A.T are hereby quashed and set aside. The matter is remanded to the learned C.I.T (Appeals) to consider the Appeal on merits on other grounds, in accordance with law. No costs.

.....J. [UDAY UMESH LALIT]

.....J. [INDIRA BANERJEE]

.....J. [M.R. SHAH]

NEW DELHI;

OCTOBER 18, 2019.

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