IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 94 OF 2016

Pr. Commissioner of Income
Tax-6 ....Appellant
V/s.
M/s. I-Ven Interactive Ltd. ....Respondent

* * * * *

Mr. Suresh Kumar, Advocate for the appellant.

CORAM :- M.S. SANKLECHA, &
SANDEEP K. SHINDE, JJ.

DATE :- 27TH JUNE, 2018.

P.C. :-

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 19th January, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 19th January, 2015 is in respect of Assessment Year 2006-07.

2 Mr. Suresh Kumar, Learned Counsel for the Revenue states that although numerous questions have been formulated in the Memo of Appeal, the first question therein is being pressed as the other questions are merely different facets of the first question, for our consideration :

> *"(a) Whether on the facts and in the circumstance of the case and in law, the Tribunal was right in cancelling the assessment order by holding that the notices under Section 143(2) even when duly accepted by the associate of the assessee on the address available as per PAN database, the assessment framed under Section 143(3) cannot be held to be a valid assessment ? "*

3 The impugned order of the Tribunal dismissed the Revenue's Appeal before it by holding that as the notice under Section 143(2) of the Act was not served upon the appellant within the period specified under the proviso to sub-section (2) of Section 143 of the Act, the order dated 24th December, 2012 is bad in law.

4 The respondent-Assessee had filed its return of income for Assessment Year 2006-07 giving its new address

therein. However, the Assessing Officer served the notice within the stipulated time under Section 143(2) of the Act not on the address in the return but upon the address in the PAN record. The above notice sent by the Revenue within the prescribed time was not received by the respondent as it ceased to be the address of the respondent. Thereafter, admittedly beyond the time prescribed under Section 143(2) of the Act, the notice was served upon the respondent. During the Assessment proceedings, the respondent did raise objections as to the jurisdiction to assess the appellant under Section 143(3) of the Act. However, the Assessing Officer did not accept it and passed an order dated 24th December, 2012 under Section 143(3) of the Act.

5 The justification of the Revenue is that, they served the notice dated 5th October, 2007 at the address available in its PAN records. Therefore, the notice under Section 143(2) of the Act sent on the earlier address was correct. Besides, the respondent participated in the

assessment proceedings and their action is protected by Section 292BB of the Act.

6. We find that, the Commissioner of Income-Tax (Appeals) records the fact that besides the return of income indicating the new address, the appellant had by earlier letter dated 6th December, 2005 intimated the change of its address to the Assessing Officer and also requested a issue of fresh PAN. Besides, the Assessing Officer had infact served at the new address, the assessment order under Section 143(3) of the Act on 30th November, 2006 inrespect of Assessment Year 2004-05. This was much prior to the statutory notice issued on 5th October, 2007 and 25th July, 2008 at the address of the respondent as recorded in the PAN. The respondent had taken up the objection with regard to non-service of notice during the assessment proceedings. Thus, as rightly held by the impugned order of the Tribunal that, in view of the proviso to Section 292(BB) of the Act, the notice not being served within time, cannot

be deemed to be valid. Therefore, no fault can be found with the impugned order of the Tribunal.

7 In the above view, the proposed question of law does not give rise to any substantial question of law. Thus, not entertained.

8 **Appeal dismissed.** No order as to costs.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**