

# TAX FLASH NEWS

23 October 2019



## Notice sent at the address mentioned in the PAN database is a sufficient compliance of issue of notice under Section 143(2) of the Income-tax Act – Supreme Court

Recently, the Supreme Court in the case of I-Ven Interactive Limited<sup>1</sup> (the taxpayer) held that issuance of notice to the taxpayer's address as per Permanent Account Number (PAN) database is a sufficient compliance of issue of notice under Section 143(2) of the Income-tax Act, 1961 (the Act). Mere mentioning of the new address in the return of income without specifically intimating to the Assessing Officer (AO) with respect to change of address and without getting the PAN database changed, is not enough and sufficient. In the absence of any specific intimation to the AO with respect to the change, the AO would be justified in sending notice at the available address mentioned in the PAN database of the taxpayer.

### Facts of the case

The taxpayer filed e-return for the Assessment Year (AY) 2006-07. The e-return was processed under Section 143(1) of the Act. Subsequently, a scrutiny notice under Section 143(2) of the Act was sent at the taxpayer's address available as per the PAN database. Further, opportunity was provided to the taxpayer by issuing various notices [under Section 143(2) and Section 142(1)] along with questionnaires calling for various details. In response to the said notice, the taxpayer participated in the assessment proceedings before the AO. However, the taxpayer challenged the notices issued under Sections 143(2) and 142(1) of the Act on the ground that the said notices were not served as it was never received those notices and the subsequent notices served and received by the taxpayer were beyond the period of limitation. The AO completed the assessment under Section 143(3) of the Act by making certain disallowances.

The Commissioner of Income-tax (Appeals) [CIT(A)], the Income-tax Appellate Tribunal (the Tribunal) and the High Court held the decision in favour of the taxpayer. The High Court while concurring with the view of the Tribunal observed that filing of return of income with the new address is enough for the taxpayer to discharge its legal responsibility for observing proper procedural steps. Aggrieved, the tax department filed an appeal before the Supreme Court.

### Tax department's contentions

There was no intimation by the taxpayer to the AO with respect to change of address. Therefore, notice under Section 143(2) of the Act was sent to the taxpayer on the available address as per the PAN database. Once notice under Section 143(2) of the Act was issued and sent to the taxpayer on the available address as per the PAN database, it can be said to be a sufficient compliance of the relevant provisions of the Act, more particularly Section 143(2) of the Act. Further, the taxpayer had participated in assessment proceedings and therefore, lower authorities ought to have considered the appeal on merits.

### Taxpayer's contentions

The change of address and change in the name of the taxpayer was intimated to the Registrar of Companies (RoC) in Form 18. The AO was in the knowledge of the new address, which is evident from the fact that the assessment orders for AY 2004-05 and AY 2005-06 were sent at the new address.

<sup>1</sup> PCIT v. I-Ven Interactive Services [2019] 110 taxmann.com 332 (SC)

## Supreme Court decision

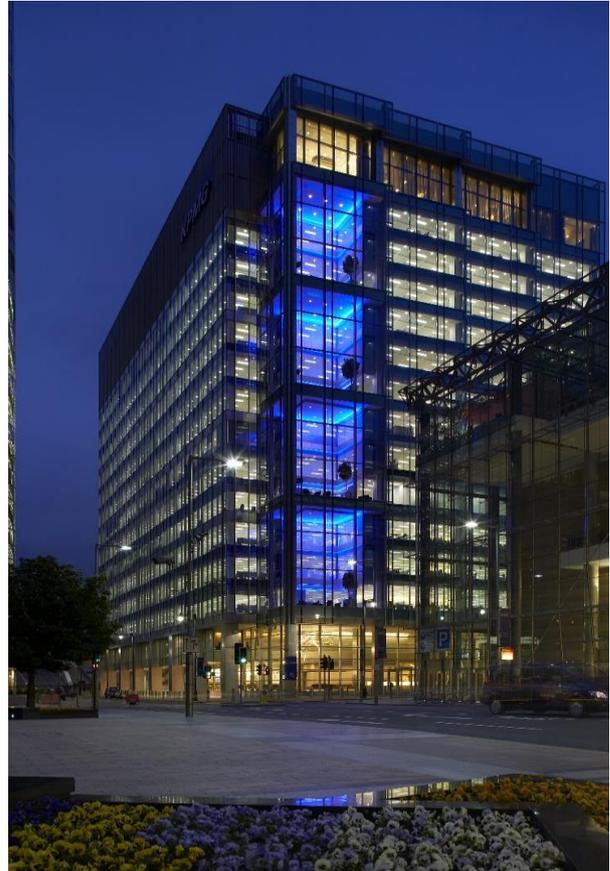
The taxpayer contended that vide communication<sup>2</sup> the taxpayer intimated the new address to the AO and despite the same, the notice was sent at the old address. The Supreme Court observed that the alleged communication was not forthcoming. Neither the same was produced before the AO nor even the same has been produced before the Supreme Court. The only document available is Form No.18 filed with the ROC. However, filing of Form 18 with the ROC cannot be said to be an intimation to the AO with respect to intimation of change in address. No application was made by the taxpayer to change the address in the PAN database and the old address continued. Therefore, in absence of any intimation to the AO with respect to change in address, the AO was justified in issuing the notice at the address available as per the PAN database. The AO had not committed any error in sending the notice at the address as per the PAN database. The notice issued by the AO can be said to be within the period prescribed in Section 143(2) of the 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 Act. Mere mentioning the new address in the return of income without specifically intimating the AO with respect to change of address and without getting the PAN database changed, was not enough and sufficient.

Notices under Section 143(2) of the Act were issued on selection of case generated under automated system of the tax department which picks up the address of the taxpayer 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, the same has to be intimated to the RoC in the prescribed format (Form 18). After completing with the said requirement, the taxpayer is required to approach the tax department with the copy of the said document and the taxpayer was also required to make an application for change of address in the departmental database of PAN. In the present case, the taxpayer has failed to do so.

## Our comments

In the present case, the Supreme Court while allowing the appeal of the tax department observed that mere mentioning of the new address in the return of income without specifically intimating the AO with respect to change of address and without getting the PAN database changed, is not enough and sufficient. In the absence of any intimation to the AO with respect to change in address, the AO was justified in issuing the notice at the address available as per the PAN database.

It is important to note that notices under Section 143(2) of the Act are issued on selection of case generated under automated system of the tax department which picks up the address of the taxpayer from the PAN database. Therefore, if there is a change of address of the company's registered office, the taxpayer may update the same to avoid such circumstances.



<sup>2</sup> Dated 6 December 2005

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