

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1730 OF 2018

Nu-Tech Corporate Services
Ltd (previously known as IIT
Capital Services Ltd,Mumbai ..Petitioner

Vs.

The Income Tax Officer Ward 1(2)(3)
and Others ..Respondents

Mr. Neel Khandelwal I/b Atul K. Jasani, for the Petitioner.

Mr. Suresh Kumar, for Respondent Nos.1 to 3.

Mr. Sanjay Jain, Dy. Commissioner of Income Tax (interest and
Taxation) 2 (3) (1) present.

CORAM:-S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.
DATE :- SEPTEMBER 24, 2018.

P. C.:

When this matter was taken up on 11th September,
2018 the following order came to be passed:-

*“1 After this matter was heard for some time,
Mr.Suresh Kumar sought an adjournment to file affidavit in reply.*

*2 We invited the attention of Mr.Suresh Kumar to
Exhibit-M, page 94 of the paper-book, which is the impugned
communication. The impugned communication refers to the prior*

letter of 16th February 2018, the petitioner/assessee's response thereto on 1st March 2018 and 11th April 2018. It then says that there are records of the office, namely, office of the Deputy Commissioner of Income Tax-10(3)(1) Aayakar Bhavan, Mumbai relating to Assessment Years 1995-1996, 2003-2004, 2009-2010 and Assessment Year 2012-2013. As per these records, the demands relating to these Assessment Years are outstanding. Therefore, if any refund arises after the Income Tax Appellate Tribunal's order in relation to the petitioner/assessee for Assessment Years 1993-1994, 1995-1996 and 2002-2003 are concerned, that refund will be adjusted against the demand as aforesaid.

3 The petitioner consistently and continuously demands the documents or the records of the office. The petitioner is not admitting that anything is due and payable, much less the sums indicated in the impugned communication. The petitioner is also not agreeable to the adjustment and has rather denied it. The petitioner's consistent case is that it has not received the order raising the demands for the above Assessment Years.

4 Then, the impugned communication makes an interesting reading, which is as under :-

“After considering the letters, filed by you the records, of this office have been again examined and it is noticed that following undisputed demand is outstanding in your case :

A.Y. 2003-04 Rs.62,00,000/-

A.Y. 2009-10 Rs.90,92,528/-

Vide the above referred letters it was requested by you to provide copy of the orders as well as proof of service of the relevant orders. In response to that vide this office letter dated copy of the order passed u/s.271(1)(c) of the I.T.Act for A.Y.2003-04 has been provided. However proof of delivery of the order is under process of procurement. It may be noted that the matter is quite old and the jurisdictional office have been changed many times since completion of the relevant proceedings, therefore time is being taken to locate the case records. Similarly in the case of A.Y.2009-10, efforts are being made to takeout the case record and under process of procurement and therefore will take some time.

However it may be noted that as per record of this office the demand is outstanding and appearing in the D & CR hence required to be adjusted against the refund mentioned above, therefore the same will be adjusted as

per the provisions of section 245 of the I.T.Act.”

5 *On a bare perusal of this communication and the portion reproduced above, we inquired from Mr.Suresh Kumar as to which official record and maintained by which public official is relied upon so as to support this communication. Mr.Suresh Kumar would submit that he would have to file an affidavit. Mr.Suresh Kumar attempted to urge before us that the petitioner may say that the petitioner has not received a copy of the order, but insofar as the penalty is concerned, the petitioner has proceeded to file an Appeal before the Commissioner of Income Tax (Appeals) on 25th April 2018. That is for the Assessment Year 2003-2004.*

6 *We are not impressed by Mr.Suresh Kumar's submission and the respondent cannot turn around and blame the petitioner just because an Appeal in relation to penalty is filed i.e. for the Assessment Year 2003-2004. We want the records raising a demand of Rs.62,00,000/- on the assessee/petitioner before us for the Assessment Year 2003-2004. That record is not provided to the petitioner is the specific complaint. Even with regard to Assessment Year 2009-2010, the demand is stated to be of Rs.90,92,528/-. However, the above reproduced portion from this communication is clear and it says that in case of this Assessment Year, efforts are being made to trace out the case record and that will take some time.*

7 *In the circumstances, we do not grant any request for adjournment now made. We direct the Deputy Commissioner of Income Tax of the Circle to remain present in this Court with all original records. In the event, he does not remain present or he remain present, but is unable to produce the relevant records, this Court will quash the impugned communication.*

8 *We place this matter on 24th September 2018. The matter should be placed under the caption of “Urgent Admission”.”*

2 In pursuance of the order passed on that date, today it is stated that the Deputy Commissioner of Income Tax of the concerned Income Tax Circle is present in court with all original

records.

3 It is stated that the officer who is present today was at the relevant time, the Deputy Commissioner. Today, he is not holding that post but some other post in the Department.

4 The instructions given by the officer who is present in Court to Mr. Suresh Kumar are that, in the records though the Department/Revenue claims that the demand of Rs.62 Lakhs for the Assessment Year 2003-2004 is raised on the Petitioner/Assessee and for the Assessment year 2009-2010, the demand of Rs. 90,92,528/- is raised, there is no proof in the official records of service of such demand on the Petitioner/Assessee. Thus, it is conceded that the demand has been raised on the Petitioner/Assessee but there is absolutely no communication of the said demand to the Petitioner/Assessee. There is, therefore, nothing in the records which can attribute knowledge of this demand to the Petitioner/Assessee. He is not aware of any such demand being raised.

5 It is stated by Mr.Suresh Kumar that in the absence of

this, it will not be possible to file affidavit to justify what has been done by the Respondent/Department.

6 If this is the position and emerging from the official records and public documents then, it is surprising that Mr. Suresh Kumar is instructed by the officer present in Court to state that at the relevant time when he addressed this communication, he was informed that the demand was indeed raised. Reliance is placed upon the copy of the notice of demand and to be found in the official records. However, though this notice of demand under Section 156 of the Income Tax Act, 1961 for the Assessment Year 2009-2010 in the sum of Rs. 90,92, 528/- is raised, the records do not indicate that such a notice was served on the Petitioner/Assessee.

7 It is conceded before us that a proof of service would be necessary before the impugned action and particularly seeking to adjust the refund due to the Petitioner/Assessee against such demand is taken.

8 It is then stated by Mr. Suresh Kumar that the officer

who is present in Court while taking the impugned steps and measure proceeded on the assumption that the notice of demand is duly served. He has, therefore, taken the action as impugned in this Petition. He has acted *bonafide*, and therefore, we should not visit him with any consequences particularly of the nature that is contemplated by us.

9 Our order passed on the earlier occasion is clear. Though we have extensively heard both sides on that date and even today, Mr. Suresh Kumar would urge that this officer now is posted elsewhere in the Department but at Mumbai itself. He relied on the position as brought to his notice by other officials in the Department. Therefore, if at all there is any lapse or omission on his part, that is not intentional or deliberate.

10 We do not see how the step which was initiated by some other official but taken to its logical end and conclusion by this officer should not be visited with such consequences as the law permits. All the more because on account of his fault, lapse and error, it is the Department or the Respondents who have been severely embarrassed and seriously handicapped in justifying

their acts which are challenged in this Petition.

11 If we allow such oral routine explanation to be tendered and accepted, we do not think that the state of affairs will ever improve. The superiors in the hierarchy have never bothered as to whether the discipline demanded from these officers is indeed in place. Though there is lack of discipline and there is gross insubordination, still, the acts of omission and commission are overlooked. They are overlooked to the detriment of larger public interest and public revenue. If the superiors in the hierarchy do not feel anything about such state of affairs, we feel that it is time to remind them that at least this Court will not take the lapses and serious errors on the part of the officials lightly and casually. We would have to remind these officials that it is on account of their actions that litigation is generated and the precious judicial time of this Court is wasted in settling and deciding routine issues of governance and administration. This Court then is handicapped because it has no time at its disposal to devote for deciding and settling the questions of law in number of Appeals which are pending. In this Court, at least, there are about 10,000 Appeals approximately involving the Revenue pending for

adjudication.

12 It is the Revenue Officials who go on boasting that 30% to 40% of the Revenue collection in this Country is from the city of Mumbai. If that is the position and the status of city of Mumbai styled as a commercial capital of India, then, it is but natural that the judiciary and the public expects highest degree of efficiency and expediency on the part of the officials. The judiciary and public at large also expects the superiors to take stock of situation like this and avoid its repetition. We have not found any Revenue Official being pulled up much less punished in accordance with the Disciplinary Rules by these superior officers. Eventually every power is in the nature of trust. The enormous power that the Department of Revenue and particularly the Income Tax Commissionerate wields is for larger public good. They have to be prompt in recovering the revenue and which is recoverable legally. In the event they find that the officers' satisfaction has to be based on certain prerequisites being complied with, then, whether such requirements and requisites are complied with, has to be ascertained by them. It is no answer to say that when the concerned official was posted and the Department passed the

orders or took the actions impugned in this Petition, he inherited legacy of some other officer. It was some other officer who has already initiated the steps or measures and the present official has merely taken the consequential and conclusive steps. Before taking drastic measures and addressing communications, as are impugned in this case, it was duty of this official to ascertain whether there was a notice of demand, that is valid, that its legality and validity is also based on satisfaction of the procedural requirements being fulfilled and whether indeed these procedural requirements are complied with. If he does not do it, he must face the consequences.

13 We do not think that such answers as are given by Mr. Suresh Kumar, on instructions of this official, can be accepted by us. Then it will be said that the highest court in the State has also overlooked and ignored the admitted serious lapses, deficiencies and defects in the working and functioning of the Income Tax Department. That these are serious errors and defects, has not been disputed before us. That no corrective steps have been taken till date is also evident.

14 We find that information technology and modern

methods have not improved the state of affairs at all. The file which has been handed over to us, on perusal, would reveal that several documents and papers therein are scattered. There is no proper indexing and pagination. The maintenance of papers and records leaves a lot to be desired. If this Court is now to ensure that the Clerks, Peons and the officials in the Department work properly, then, we think that even the time at our disposal for judicial work will be hopelessly inadequate. It is not our duty to set-right and improve the type of functioning and working which we have noticed. It is, therefore, clear that with the modern technology at their disposal, why it is not possible for these officials to utilize it. If demands are generated electronically as is now stated, then, equally that technology should enable them to generate proof and evidence of service and other procedural requirements being complied with. If these are the state of affairs, we do not think anybody will be able to help the Revenue Officials.

15 They would now have to set their house in order. We think that the Ministry level officials including the departmental heads will have to work in coordination and cooperation. They

must weed out promptly and expeditiously inefficient and corrupt officials and those who are deadwood. We think that but for this official, the Revenue and the Respondents would not have suffered in the manner noted by us.

16 In the facts and circumstances, we allow this Writ Petition in terms of our earlier detailed order. There is absolutely no denial of the factual statements made in the Writ Petition. There is no dispute with regard to the legal position. In such circumstances, the impugned order dated 11th April, 2018 is quashed and set aside. We direct the Respondents to grant the refund determined for the Assessment Years 1993-1994 and 1995-1996 together with applicable interest within three months from the date of communication of our order. We have not been shown anything in law which disables the Petitioner from claiming such refund. If that amount is yet not released but is sought to be adjusted against demands which are also not taken to their logical conclusion, then, the Revenue must suffer the consequences in law. It cannot then say that the Petitioner was not prompt or vigilant in obtaining the refund or the benefits due to it in accordance with law.

17 By allowing the Writ Petition and without visiting the concerned officials with any consequences would send a wrong message. We must as a part of our duty send strong signal and message that we do not tolerate any inefficiency and lapse in the working and functioning of this Department. Hence, while we allow the Writ Petition, we impose costs on the Respondents which are quantified in the sum of Rs.1.5 Lakhs. The costs to be paid to the Petitioner within a period of four weeks from today. The costs be apportioned between the officer who is present in Court and the officer who was his predecessor. The amounts shall be in the first instance paid by the Respondents and thereafter they shall be recovered from the salaries of these two officers. Equally, the lapses and errors on their part be noted by taking due cognizance of this order. The superiors should enter in their Annual Confidential Reports these lapses and errors on account of which the Respondents faced this embarrassment in the Court. Once the Respondents could not justify their acts and solely because of the inefficiency of these officials, then, the superiors must initiate the requisite steps and if they include denial of any promotional or monetary benefits to such officials, then, even then such steps and measures be initiated in accordance with law. That is the

minimal expectation of this Court.

18 The Writ Petition is allowed in above terms.

19 We have noted that the official as also the official who is present in Court has tried to overreach the authority and powers of this Court by not allowing Mr. Suresh Kumar to argue the case but frequently interrupting him. In the view of this officer, Mr. Suresh Kumar has not performed his duty by inviting the attention of this Court to the relevant documents in the file or in his custody. The official's version is "I have to presume that once the demand is raised it must have been duly served or steps in relation thereto are taken by other officials in the Department." He could not have then questioned their acts and placed as he is in a position of the Deputy Commissioner. We do not think that such conduct on the part of the officer enhances the image and reputation of the Respondents. We think that he is compounding his lapses and errors by such conduct and behaviour in the Court. All the more, therefore, he should be visited with the above consequences.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)