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

WRIT PETITION NO.1485 OF 2019

Vinod K. Tiwari ... Petitioner
versus
Income Tax Officer, Ward 15(3)(1) and Ors. ... Respondents

Mr. D.H.Jain, for Petitioner.
Mr. Suresh Kumar, for Respondents.

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE: 22nd JULY, 2019

P.C.:

1. The Petitioner has challenged an order dated 30th December, 2016 passed by the Income Tax Officer, Mumbai, holding that the Petitioner liable to pay the unpaid dues of a company in which he was a director. The Petitioner has also challenged the Revision order dated 28th March, 2019 passed by the Commissioner of Income Tax, dismissing the Petitioner's Revision Petition against the said order dated 30th December, 2016.

2. It is undisputed that the Petitioner was one of the directors of one Telesteels India Pvt. Ltd., a Private Limited Company. It appears that the said Company had sizeable income tax dues for the assessment year 2013-14. Since such dues were not recovered from the Company, the Assessing Officer in exercise of the powers under Section 179 of the Income Tax Act, 1961 ("the Act" for short) issued a show cause

notice to the Petitioner. Such dues not to be recovered from the Petitioner as a director of the Company. The case of the Petitioner is that such notice was never served to the Petitioner. The Petitioner therefore, had no opportunity to meet with the allegations contained in the said notice. The Petitioner could not participate in the proceedings before the Assessing Officer. The Assessing Officer eventually passed an order dated 30th December, 2016 which was ex-parte. The Petitioner upon coming to learn about the order, preferred the Revision Petition before the Commissioner, which came to be dismissed.

3. There is nothing on record to suggest that the Petitioner's stand that the show cause notice was never served on him, is incorrect. The Respondents have filed Reply; however not denied this averment of the Petitioner. Before the Commissioner also, the Petitioner had taken the said ground. The Commissioner has not held that the notice was duly served on the Petitioner. Under the circumstances, we find that the entire proceedings have been completed in breach of natural justice. Only of this ground, we are inclined to set aside both the orders. However, this will not prevent the Department from serving the show cause notice on the Petitioner and proceeding further thereafter in accordance with law. Learned Counsel for the Petitioner stated that Petitioner's current address is as mentioned in the cause title of this Petition, which is as under :

"Vinod K. Tiwari (PAN : AEGPT8583D),

Occ – Service, Age 49 years, an Individual,

Residing at Sawal Ram, Raj Kumar, 9, Ramkumar

Rakhit Lane, Burabazar, Kolkatta-700007."

4. Learned Counsel for the Department gives a copy of such notice to the Counsel of the Petitioner, who accepts the same for and on behalf of the Petitioner. This would constitute a valid service of notice on the Petitioner. The Petitioner would have four weeks time from today to file his Reply to such show cause notice. It would be open for the Department to proceed further thereafter in accordance with law unmindful of the observations made by the Commissioner in the impugned order.

5. The Writ Petition is disposed of in above terms.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**