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

REVIEW PETITION NO.79 OF 2018
IN
WRIT PETITION NO.1730 OF 2018

Pr.Commissioner of Income Tax-1	**...**	**Review Petitioner**
In the matter of :		
Pr.Commissioner of Income Tax-1	**...**	**Petitioner**
Vs		
Nu-Tech Corporate Services Ltd.	**...**	**Respondent**

Mr.Suresh Kumar a/w Mohinee Chougule a/w Prithish Chatterjee, Sumandevi Yadav for the Petitioner.

Mr.P.C. Tripathi i/b Atul K. Jasani for the Respondent.

CORAM :- S. C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.

DATE :- JULY 26, 2019

P.C. :-

1. We have heard Mr.Suresh Kumar.

2. We have perused the order under review. We have also perused the review petition. We do not think that we can recall or review our own order, particularly, on the pleadings in the memo of review petition. Para 3.10 of the review petition reads as under:-

> 3.10 At the time of the hearing the assessing officer could not produce evidence of service of the penalty order and demand notice dated 18/05/2012, because after the year in which the captioned penalty order was passed, major restructuring of the department took place in the year 2014, resulting in major reshuffling in territorial jurisdiction amongst various offices of the department. It may be submitted that vide the restructuring-2014 of the department, the territorial jurisdiction of erstwhile circle 8(2), Mumbai has been created into 6 new Circles under the charge of Pr.CIT-10, Mumbai was created and Circle-10(3)(1), Mumbai is one of these circles. Subsequent to the captioned restructuring the common records such as Speed Post register and Demand & Collection Register (D&CR) etc. were sent to the godown. Hence the required record could not be traced out at the given point of time. Again, after the hearing dated 24/09/2018, thorough search of the records is carried out and could locate the speed post register maintained by the postal department with the office of the erstwhile DCIT.Cir, 8(2), Mumbai. This speed post register shows that the penalty order and demand notice for A.Y.2009-10 was sent by speed post to the assessee on 18.05.2012. Hereto annexed and marked as **Exhibit-"D-1"**, is a copy of the relevant pages of the said register. However, it is admitted that the postal acknowledgment of service has not been available in the relevant records. The record does not show that these documents were returned back un-served."

3. To our mind, on two occasions, the writ petition was heard. Writ Petition No.1730 of 2018 was heard on 11th September, 2018 and 24th September, 2018. On both occasions, the Revenue could not produce the proof of service nor it could satisfy this Court that the assessee had knowledge of the demand.

4. In the circumstances, desperate attempt made by the Revenue in seeking a review of the order, which is passed on facts, is, to say the least, deplorable.

5. There, this Court found that the proof of service would be necessary before the action impugned in the writ petition can be taken. That action was to adjust the refund due to the assessee against a demand of the Revenue. The knowledge of the assessee of such an action was the core issue. That was decided against the Revenue. On the pleadings of the review petition, we cannot launch an inquiry by going behind the order under review and on the same aspect, namely, of service. The guarded statement in para 3.4 of the review petition, all the more enables us to express our disinclination to entertain this review petition. The parameters of review jurisdiction having not been satisfied, the review petition is dismissed.

6. Further, what we have noticed is that the Deputy Commissioner of Income Tax was present in Court on both occasions and was unable to assist the Revenue's advocate as also this Court in arriving at just, fair and correct conclusion and approached the Hon'ble Supreme Court to expunge the remarks made against him in the order under review.

7. Pertinently, the Department did not challenge the order under review by filing the Special Leave Petition. Secondly, the officer concerned did not oppose the order under review on merits. He was more concerned with the proposed action that

may follow. Now, the remarks against him having been expunged, the Revenue is caught in a piquant situation.

8. However, we clarify that in the event, there is any deliberate and intentional act of the official, then, based on such a satisfaction, the Revenue can always take necessary steps in accordance with law.

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