IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Writ Petition No. 1628 of 2019
[Pankaj Dattatraya Dube Vs. Shri K. B. Shukla & another]

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. Pankaj Dubey, petitioner-in-person.
Mr. Anand Parchure, Adv., for respondent nos. 1 and 2.

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CORAM : R. K. DESHPANDE AND S. M. MODAK, JJ.

DATE : 14th March, 2019

Heard.

According to the Department, an order passed under Section 143 (3) of the Income Tax Act, 1961, dated 19th September, 2016, was served upon the petitioner along with the Notice of Demand under Section 156 of the Income Tax Act, which is also dated 19th September, 2016. Shri Pankaj Dubey, the petitioner-assessee before this Court, emphatically denied the service of order dated 19th September, 2016 passed under Section 143 (3) of the Income Tax Act till today. He further submits that there is no acknowledgment signed by him in respect of service of the order dated 19th September, 2016 upon him. He acknowledges the receipt of this order dated 19th September, 2016 tendered to him before this Court today on 14th March, 2019 for the first time.

In view of the aforesaid rival submissions, it is not a disputed fact that at least today, the petitioner-assessee got the order dated 19th September, 2016. This is without prejudice to the contention of the Department that the order was already served upon the petitioner long back and denial by him is totally false. We are not entering into this controversy and it shall be open for the appropriate Authority to go into this aspect by leading evidence to establish the factual position. Hence, parties are at liberty to agitate said question before the appropriate Authority.

Shri Pankaj Dubey, the petitioner-assessee, submits that he has also not been served with a copy of the order said to have been passed on 13th December, 2016 modifying assessment made on 19th September, 2016. He has also demanded a certified copy of the application filed by him for rectification, on which the order dated 13th December, 2016 was passed.

Before us a copy of the order dated 13th December, 2016 [rectification order] is tendered to the petitioner. The petitioner has acknowledged it in our presence. So far as the certified copy of the application of the petitioner for rectification is concerned, the petitioner submits that he has demanded it as his own application is not traceable. The Department will have to trace out the application from the record and as and when it is traced out, it shall be supplied to the petitioner.

The petitioner submits that against the order dated 19th September, 2016 if the petitioner is aggrieved, he shall prefer an appeal as is permissible under the provisions of the Income Tax Act. Hence, we leave all those questions open, including the question of limitation and the question of receipt of order by the petitioner. It is informed to us by Shri Parchure, learned counsel appearing for the Department, that the proceedings under Section 263 are pending and same shall be concluded on or before 31st March, 2019. The petitioner is expected to co-operate with the Income Tax Authorities for a decision in the proceedings on merits. If the Department fails to get co-operation expected from the petitioner, the Department shall be at liberty to proceed further and pass appropriate order, and the petitioner shall have a liberty to challenge such order by approaching appropriate forum as is available under the Income Tax Act. Needless to say that the proceedings of appeal, if any, to be preferred by the petitioner against the order dated 19th September, 2016 and the proceedings, if any, taken up against the order passed in the proceedings under Section 263 can simultaneously go on.

With the aforesaid observations, the petition stands disposed of.

Judge **Judge**

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