

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11295/2004

M.C.D.

..... Petitioner

Through : Ms. Geeta Mehrotra, Advocate

versus

VIMAL CHANDRA

..... Respondent

Through : Mr. Abhay Jain, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% 27.02.2008

1. CM No.12527/2004

This is an application for bringing on record legal representatives of Mr. Vimal Chandra. In the application it is stated that Mr. Vimal Chandra has left behind 3 sons and 2 daughters. The said legal representatives have been served and

reply has been filed by all of them except Ms. Shashi Nafari. Ms. Shashi Nafari has been served but has not cared to enter appearance. The cause of action survives. I see no ground or reason, why the legal representatives of Mr. Vimal Chandra should not be brought on record. The application is allowed. The amended memo of parties is also taken on record.

2. W.P.(C) No.11295/2004

Rule. With the consent of the parties the matter is taken up for disposal.

3. Property bearing no.A-17, First Floor and Second Floor Front (Half) portion, Hauz Khas, New Delhi was assessed to property tax at the rateable value of Rs.72,200/- w.e.f. 1/4/1994. The rateable value fixed was on the basis of MCD (Determination of Rateable Values) Bye Laws, 1994. Assessment order in this regard was passed on 18/7/1997 pursuant to a rectification application moved by the respondent under Section 176 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as Act). I may note here that by the same order rateable value of the property in question was fixed at Rs.1,98,200/- w.e.f. 1/8/1991. However, the said determination is not subject matter of challenge in the present writ petition.
4. The respondents challenged this order dated 18/7/1997 fixing rateable value of the property in question at Rs.72,200/- w.e.f. 1/4/1994 before

Additional District Judge under section 169 of the Act. Challenge was also made to the rateable value of Rs.1,98,200/- w.e.f. 1.8.1991 to 31.3.1994. The learned ADJ by his order dated 20th May, 1998 upheld the rateable value of the property fixed w.e.f. 1/4/1994. In paragraph 8, 12 and 13 of the said order dated 20th May, 1998 has been observed as under :

“8. ----- . However, RV fixed from 1.4.94 would remain maintained as the appellant counsel is not disputing the land rate taken for fixing this RV.

12. Since the matter is being remanded back for fixing this RV w.e.f. 1/8/1991 as per law. However, the RV of Rs.72,200/- fixed w.e.f. 1.4.94 would remain maintained. The assessing authority would also see the dispute of the rebate and if the payment was made by the appellant within the stipulated period entitling the appellant for rebate then the appellant should be given prompt payment rebate.”

13. With these observations, both these appeals are partly accepted. RV of Rs.1,98,200/- w.e.f. 1.8.91 is set aside and matter is remanded back for fixing the RV as per law w.e.f. 1.8.91. However, the RV of Rs.72,200/- w.e.f. 1.4.94 is maintained. The assessing authority should also see the dispute with regard to the rebate on account of prompt payment. Parties to bear their own costs. Files be consigned to record room. A copy of this order be placed in the other file.”

5. It is clear from the reading of the above paragraphs that rateable value of Rs.72,200/- as fixed w.e.f. 1/4/1994 was maintained. However, the matter was remanded back for determining rateable value w.e.f. 1/8/1991 till 31/3/1994.

6. The respondent herein did not challenge the order dated 20th May, 1998 in so far as rateable value w.e.f. 1/4/1994 at Rs.72,200/- was maintained. The said order therefore has become final and binding between the parties. The order has attained its finality in so far as rateable value w.e.f. 1/4/1994 is concerned.
7. Pursuant to the order dated 20th May, 1998, the assessing authority was to examine and fix the rateable value for the period 1/8/1991 till 31/3/1994. The assessing authority did not have jurisdiction and authority to fix rateable value of the property for the period after 1/4/1994 and therefore did not pass any order pertaining to the said period. Order dated 16/4/2003 was passed by the assessing authority pertaining to the period 1/4/1991 till 31/3/1994. This was made subject matter of another appeal before the Appellate Authority. While filing the said appeal the respondent assessee also raised additional grounds challenging rateable value of Rs.72,200/- fixed w.e.f. 1/4/1994. The Appellate Authority under section 169 of Act has allowed the appeal filed by the respondent and has set aside the rateable value of Rs.72,200/- w.e.f. 1/4/1994 on the ground that principle of parity had not been considered.
8. I do not think the order passed by the Appellant Authority setting aside the rateable value of Rs.72,200/- w.e.f. 1/4/1994 can be sustained. As is

clear from the order dated 20th May, 1998 passed by the Appellant Authority that rateable value w.e.f. 1/4/1994 was maintained. To that extent the rateable value fixed by the assessing authority has attained finality. The assessing authority could not have re-examined or gone into the question of rateable value w.e.f. 1/4/1994. The assessing authority by order dated 16/4/2003 had only examined and gone into the question and fixed the rateable value of the property for the period 1/8/1991 till 31/3/1994. It was this order which was made subject matter of appeal under section 169 of the Act. The jurisdiction of the Appellate Authority was limited to the correctness and the rateable value of the property fixed of this order for the period prior to 31.3.1994. The Appellate Authority did not have jurisdiction to go into and examine the rateable value w.e.f. 1/4/1994 which had already become final and binding after order dated 20th May, 1998 was accepted by the respondent assessee. The rateable value w.e.f. 31/3/1994 could not be reopened in an appeal fixing rateable value for the period between 1/8/1991 to 31/3/1994. Rateable value of the property after 31/3/1994 could not be subject matter of an appeal against order dated 16/3/2003.

9. Learned counsel for the respondent relies upon Section 171 of the Act which reads as under :

“ Finality of appellate orders – The order of the court confirming, setting aside or modifying an order in respect of any rateable value or assessment or liability to assessment or taxation shall be final :

Provided that it shall be lawful for the court, upon application or on its own motion, to review any order passed by it in appeal within three months from the date of the order.”

10. The said provision supports the case of the MCD. It stipulates that an order of the appellate court confirming the rateable value or assessment or liability shall be final. The Appellate Authority by its order dated 20th May, 1998 had confirmed rateable value of Rs.72,200/- of the property w.e.f. 1/4/1994 and the said order has therefore attained finality.
11. Learned counsel for the respondent also relies upon judgment of the Supreme Court in the case of Mathur Prasad Sanju Jaiswal & Ors. Vs. Tulsibai AIR 1971 Supreme Court 2355. The said judgement explains the principle of resjudicata. It is submitted that the decision of the Appellate Authority dated 20th May, 1998 on the question of principle of parity is incorrect in view of subsequent decision of the Supreme Court wherein the said principle has been accepted. It is also stated that the judgment referred to by the Appellate Authority in the order dated 20th May, 1998 in the case of “Ravish Chandra Rastogi & Ors. vs. Municipal Corporation of Delhi & Ors. reported in 67 (1997) DLT 713 (DB)” has been set aside in the subsequent decision by the Supreme Court. This aspect would have been relevant in case order dated 20th May, 1998

had been challenged in a writ petition and had not attained finality. The said order having attained finality cannot now be challenged in subsequent proceedings which do not relate to the years 1/4/1994 onwards. The order dated 20th May, 1998 will operate as resjudicata between the parties, in so far as rateable value was fixed for the period after 1/4/1994.

12. It is well settled that in tax matters each year as a separate year and the principle of resjudicata has limited application. In “Bharat Sanchar Nigam Ltd. v. Union of India,(2006) 3 SCC 1” it was observed that :-

“**20.** The decisions cited have uniformly held that res judicata does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why the courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is per incuriam. However, these are fetters only on a coordinate Bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a Bench of superior strength or in some cases to a Bench of superior jurisdiction.”

13. However, no such ground has been made out and argued. It is not the case of the respondent that objections against the rateable value of Rs.72,200/- were filed and these have been disposed of and challenged. Rateable value of Rs.72,200/- fixed w.e.f. 1/4/1994 were by law adopted for subsequent years but were never objected to. The period after 1/4/1994 till 31/3/2004, when unit area method was introduced is covered by the order dated 20th May, 1998. The rateable value for this period between 1/4/1994 till 31/3/2004 has become final between the parties and cannot be reopened.

14. The petitioner will raise a revised bill for the period after 1/4/1994 to 31/3/2004 after adjusting the amounts already paid. The respondent will make payment in terms of the revised bill. He will also be entitled to rebates permissible under the policies of MCD.

The writ petition is accordingly disposed of.

SANJIV KHANNA,J

FEBRUARY 27, 2008

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