

REPORTABLE

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

+ **WRIT PETITION (CIVIL) NOS. 12758/2005 AND
8219/2006**

Date of decision : August 1, 2008

RITU SENGUPTA...Petitioner in WPC 12758/2005.

ASHISH GOYLE Petitioner in WPC 8219/2006.

Through Mr. Bharat Bhushan Jain with
Mr.Vikram Nandrajog, Advocates.

versus

MUNICIPAL CORPORATION
OF DELHI

..... Respondent.

Through Ms. Amita Gupta and Naveen
Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be
allowed to see the judgment?

2. To be referred to the Reporter or not ? YES.

3. Whether the judgment should be reported
in the Digest ? YES.

SANJIV KHANNA, J.:

1. Arguments on the above two writ petitions were heard together and as similar legal issues arise for consideration, they are being disposed of by this common judgment.

2. The property involved in Writ Petition(Civil) No. 8219/2006 is HS-11, Panchsheel Park, New Delhi (hereinafter referred to as the Panchsheel Property, for short) and the property involved in

Writ Petition (Civil) No. 12758/2005 is C-6/5, Vasant Vihar, New Delhi (hereinafter referred to as the Vasant Vihar Property, for short).

3. By assessment order dated 1st July, 1999, annual rateable value of the Panchsheel Property was fixed at Rs.17,14,580/- . Similarly, by assessment order dated 1st April, 2002, annual rateable value of Vasant Vihar Property was fixed at Rs.6,12,000/- with effect from 1st April, 1998, Rs.10,45,500/- with effect from 1st April, 1999, Rs.11,22,000/- from 10th October, 1999 and Rs.11,31,300/- from 10th April, 2000. It is admitted by the petitioners that the rateable value so fixed were in accordance with the Delhi Municipal Corporation Act, 1957(Act for short) and the by-laws then applicable. The petitioners have accepted the said rateable values and have not challenge the same. It is not the contention of the petitioners that the rateable values were wrongly fixed.

4. In respect of Panchsheel Property, respondent-MCD had issued a notice under Section 126 of the Act for enhancement of rateable value from Rs.17,14,580/- to Rs.30,00,000/- with effect from 1st April, 2001. In the case of Vasant Vihar Property, a notice for enhancement of rateable value with effect from 1st April, 2001 to Rs.25,00,000/- was issued under Section 126 of the Act.

5. While the two proposals for enhancement were pending, provisions of the Act relating to property tax underwent amendments by the Delhi Municipal Corporation (Amendment) Act, 2003. The amendments resulted in change in the very basis, mode and method of computing property tax. Under the pre-amended provisions, property tax was payable on annual rateable value, which required determination of annual rent at which land or building might be reasonably accepted to be let out from year to year. In terms of the Act and the then applicable by-laws, annual rateable value was determined either on the basis of notional rent payable under the rent legislation depending upon cost of construction and cost of land at the time of construction or the purchase price or on the basis of annual rent received. Under the amended provisions, a new method, commonly known as Unit Area Method was introduced. Under this new method, annual value of the property is calculated on the basis of location and size of the property and by applying multipliers depending upon user, date of construction etc.

6. The Delhi Municipal Corporation (Amendment) Act, 2003 was applicable with effect from 1st April, 2004 onwards. However, the Act also provides transitory provisions in Section 116G of the Act, which reads as under:-

“116G. Transitory provisions.-
Notwithstanding anything contained in this

Act, as amended by the Delhi Municipal Corporation (Amendment) Act, 2003, a tax on vacant land or covered space of building or both, levied under this Act immediately before the date of coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, shall, on the coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, be deemed to be the tax on such vacant land or covered space of building or both, levied under this Act as amended by the Delhi Municipal Corporation (Amendment) Act, 2003, and shall continue to be in force until such tax is revised in accordance with the provisions of this Act, as amended by the Delhi Municipal Corporation (Amendment) Act, 2003.

(2) Notwithstanding anything contained in sub-section (1), where assessment has not been finalized in respect of a vacant land or covered space of a building or both, on the date of the commencement of the Delhi Municipal Corporation (Amendment) Act, 2003 the assessee may have such land or building or both, as the case may be, assessed on the basis of the annual value.”

7. It is an admitted case of the parties that the petitioners in both cases had exercised their option under Section 116G(2) to be assessed on the basis of annual value under Unit Area Method in respect of proposals for enhancement from Rs.17,14,580/- to Rs.30,00,000/- with effect from 1st April, 2001 in respect of Panchsheel Property and Rs.11,31,300/- to Rs.25,00,000/- with effect from 1st April, 2001 in the case of Vasant Vihar Property.

8. The Joint Assessor and Collector disposed of the proposal in the case of Panchsheel property by assessment order dated 22nd February, 2005 fixing annual value at Rs.8,03,099.88 with effect from 1st April, 2001 and in the case of Vasant Vihar property by order dated 13th January, 2005 fixing annual value at Rs.5,03,067/- with effect from 1st April, 2001. Thus, in both cases, as a result of the two assessment orders, the annual value of the property was fixed at Rs.8,03,099.88 and Rs.5,03,067/-, instead of the earlier annual rateable values of Rs.17,14,580/- and Rs.11,31,300/- . Instead of enhancement, the annual values so fixed were much lower than the annual rateable values already fixed. Appropriate remedy or course available to the respondent-MCD was to drop the proposal for enhancement from Rs.17,14,580/- to Rs.30,00,000/- in the case of Panchsheel Property and from Rs.11,31,300/- to Rs.25,00,000/- in the case of Vasant Vihar Property. Strangely, the Joint Assessor and Collector did not do so and she went on and finalized the assessment on the basis of proposal for enhancement and fixed annual value of both properties at figures which were much lower than the annual rateable values of the properties already fixed. Why these orders were passed or why no remedial steps were taken has not been answered by the respondent-MCD. This court is not examining or answering questions whether any remedial

steps can be taken and whether limitation or laches bars remedy, if any. These questions are left open.

9. The two petitioners had continued to voluntarily pay property tax for the period from 1st April, 2001 onwards till Joint Assessor and Collector had passed Assessment Orders dated 22nd February, 2005 and 13th January, 2005 in Writ Petition (Civil) Nos. 2819/2006 and 12758/2005 respectively. These payments were made on the annual rateable value of Rs.17,14,580/- and Rs.11,31,300/- for the property in Panchsheel and Vasant Vihar. As a result of the new annual values fixed with retrospective effect from 1st April, 2001, the petitioners claim that they are entitled to refund as the annual value now fixed was much lower than the annual rateable value on which they had paid taxes.

10. Respondent-MCD made computation and raised bills after the Assessment Orders dated 22nd February, 2005 and 13th January, 2005 were passed. In the bills raised, amount of Rs.8,23,060/- was shown as excess payment made in the case of Panchsheel property. The respondent-MCD has been adjusting this excess payment from the property tax payable for Panchsheel property for the future years. Partial adjustment has been made but some amount is still "refundable". In the case of Vasant Vihar property, the amount refundable was Rs.3,01,552/-.

The said refundable amount has been adjusted towards property tax payable for future years. The adjustment is recorded in the Order dated 8th February, 2007. Learned counsel for the petitioners had stated before the Court that adjustment of excess payment paid earlier had been made and the only question that required consideration is the rate of tax.

11. The three questions which have been raised by the petitioners are: (i) Whether the petitioners/assesses are entitled to refund in case they have made excess payment of property tax; (ii) whether the respondent-MCD is liable to pay interest on the excess amount retained by them and (iii) in a case where assessment had been done on annual value under Section 116G(2) what rate of tax is applicable.

Refund:

12. Learned counsel for the petitioners had drawn my attention to Section 123B(9) of the Act which stipulates that after finalization of assessment, if it is found that excess payment had been made, such excess amount should be refunded. The Section 123B of the Act, reads as under :-

“Self-assessment and submission of return.- (1) After the coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, any owner of any vacant land or covered space of building or any other person liable to pay the property tax or any occupier in the

absence of such owner or person, shall file a return of self assessment within sixty days of the coming into force of the aforesaid Act.

(2) Such owner or other person or occupier, as the case may be, shall, thereafter, file the annual return only in those cases whether there is a change in the position as compared to the previous return, within three months after the end of the financial year in which the change in position has occurred.

(3) Any owner of any covered space of building or vacant land or any other person liable to pay the property tax, or any occupier in the absence of such owner or person shall compute the tax due under section 114A or section 114C, as the case may be, and pay the same in equated quarterly installment by the 30th day of June, 30th day of September, 31st day of December and 31st day of March of the financial year for which tax is to be paid. In the event of tax being paid in one lump sum for the financial year by the 30th day of June of the financial year, rebate of such percentage not exceeding fifteen per cent. as may be notified by the Corporation, of the total tax amount due shall be allowed.

(4) Any owner of any vacant land or covered space of building or any other person liable to pay the property tax or any occupier in the absence of such owner or person, who computes such property tax under this section, shall, on such computation, pay the property tax on such vacant land or covered space of building, as the case may be, together with interest, if any, payable under the provisions of this Act on—

(a) any new building or existing building which has not been assessed; or

(b) any existing building which has been redeveloped or substantially altered or improved after the last assessment, but has not been subjected to revision of assessment consequent upon such redevelopment or alteration or improvement, as the case may be.

(5) Such owner or person, as the case may be, shall furnish to the Commissioner a return of self-assessment in such form, and in such manner, as may be specified in the by-laws and every such return shall be accompanied by proof of payment of property tax and interest, if any.

(6) In the case of any new building for which an occupancy certificate has been granted, or which has been occupied, after the coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, such payment shall be made, and such return shall be furnished, within thirty days of the expiry of the quarter in which such occupancy certificate is granted or such building is occupied, whichever is earlier.

Explanation:- For the removal of doubt, it is hereby declared that occupancy certificate may be provisional or final and may be for the whole or any part of the building and occupancy may be of the whole or any part of the building.

(7) After the determination of the annual value of vacant land or covered space of building under section 116E or section 116F or revision thereof under section 123C has been made, any amount paid on self-assessment under this section shall be deemed to have been paid on account of such determination under this Act as amended by the Delhi Municipal Corporation (Amendment) Act, 2003.

(8) If any owner or other person as aforesaid, liable to pay the property tax under this Act, fails to pay the same

together with interest thereon, if any, in accordance with the provisions of this section, he shall, without prejudice to any other action to which he may be subject, be deemed to be a defaulter in respect of such property tax, or interest, or both, remaining unpaid, and all the provisions of this act applicable to such defaulter shall apply to him accordingly.

(9) If after the assessment of the annual value of any land or covered space of building finally made under this Act, the payment on self-assessment under this section is found to be less than of the amount payable by the assessee, the assessee shall pay the difference within two months from the date of final assessment, failing which recovery shall be made in accordance with the provisions of this Act, but, after the final assessment, if it is found that the assessee has paid excess amount, such excess amount shall be refunded:

Provided that in any case where the amount of tax determined in the final assessment is more than the amount of tax paid under self-assessment, and the difference in the amount of tax is, in the opinion of the Commissioner, the result of willful suppression of facts as defined in the bye-laws, the Commissioner may levy a penalty not exceeding thirty per cent. of such difference in the tax besides the interest thereon:

Provided further that the levy of such penalty shall be in addition to any other punishment provided for under this Act:

Provided also that the procedure for sending of notice, hearing of objection and determination of tax and penalties shall be such as may be specified in the bye-laws.

(10) Where no notice is sent by the Commissioner under section 123C within

twelve months after the year to which such self-assessment relates, such self assessment shall be regarded as assessment made under this Act:

Provided that in any case, where there has been willful suppression of facts, penalty upto thirty per cent. of the tax due may be imposed:

Provided further that the procedure for sending of notice, hearing of objection and determination of tax and penalties shall be such as may be specified in the bye-laws.

13. Section 123B(9) relates to computation made on the basis of annual value i.e. Unit Area Method. Admittedly, the two Assessment Orders passed are on the annual value or Unit Area Method. Under section 123B(9) of the Act, the respondent-MCD is liable to refund and should have refunded the excess tax paid. The respondent-MCD should not have retained the excess payment after having computed the amount refundable. The respondent MCD has acted contrary to the express language of section 123B(9) of the Act. In view of the express statutory provision, I am not examining common law rights, right to restitution under section 72 of the Contract Act, 1872 or under the Doctrine of unjust-enrichment. To be fair to the petitioners these contentions were not raised by the respondent-MCD but were put to the petitioners by the court.

14. In the case of Vasant Vihar property, the excess amount paid has already been adjusted and therefore no order of refund is required to be passed in the said case. In the case of Panchsheel property, some amount is refundable and the respondent-MCD will compute the same and refund the excess payment due and payable.

Interest

15. The question relating to interest can be divided into two periods viz., period prior to filing of the present Writ Petitions and pendente lite and future interest. To decide this question, it may be relevant to refer to Section 123B and 152 of the Act. Section 123B has been quoted above and section 152 of the Act, reads as under:-

“152. Time and manner of payment of taxes.”-(1) Save as otherwise provided in this Act, any tax levied under this Act shall be payable on such dates, in such number of instalments as in such manner as may be determined by bye-laws made in this behalf:

Provided that if, on the coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, there is any increase in the amount of property tax which was being paid or was payable immediately before the coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, the difference in the amount of property tax in excess of fifty per cent, above the tax being paid or being payable, shall be given effect to by stages covering a period of three years by

dividing the amount of such increase in the property tax by three, the quotient being added to the amount of property tax which was payable immediately before the coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, and to the amount of property tax which shall be payable respectively in each of the remaining two successive years after such addition.

(2) Where any person liable for the payment of property tax under this Act has failed to pay-

(a) such tax by the date as specified in sub-section (3) of section 123B; or

(b) the arrear of tax, interest and penalty, if any, and any other sum in the nature of tax up to the 31st March of the preceding financial year;

He shall be liable to pay simple interest at the rate of one per cent. for every month or part of the month comprising the period from the expiry of the due date, till the amount is actually paid.”

16. The provisions mentioned above do not provide for payment of interest to assessee on refund. Section 123B(9) of the Act provides for refund of excess payment made but does not stipulate that any interest will be paid on the excess Tax paid by assessee. On the other hand, under certain circumstances an assessee may be liable to pay interest as per the provisions of Section 152 of the Act. We are not concerned with the validity of the said Sections. I am merely interpreting the provisions as they

exist and whether under the said provisions, the respondent-MCD is liable to pay interest for the two periods.

17. A tax payer is not entitled to interest on tax if a statute does not provide for payment of such interest. In the case of ***Modi Industries Ltd versus CIT*** reported in 1995 (216) ITR 759, the Supreme Court examined the term “Regular Assessment” and the question whether an assessee is entitled to interest on self-assessment tax, advance tax and tax deducted at source on the basis of an appellate order whereby additions made by the Assessing Officer were set aside. After examining the provisions of the Income Tax Act, 1961, the Supreme Court held that interest can be paid only if the statute provides for the payment of the same and it was observed that interest is not payable in equity. It was held:

58. The argument, which was upheld in some of the cases now under appeal, is that it will be inequitable if the assessee does not get interest on the amount of advance tax paid, when the amount paid in advance is refunded pursuant to an appellate order. This is not a question of equity. There is no right to get interest on refund except as provided by the statute. The interest on excess amount of advance tax under Section 214 is not paid from the date of payment of the tax. Nor is it paid till the date of refund. It is paid only up to the date of the regular assessment. No interest is at all paid on excess amount of tax collected by deduction at source. Before introduction of Section 244(1-A) the assessee was not entitled to get any

interest from the date of payment of tax up to the date of the order as a result of which excess realisation of tax became refundable. Interest under Section 243 or Section 244 was payable only when the refund was not made within the stipulated period up to the date of refund. But, if the assessment order was reduced in appeal, no interest was payable from the date of payment of tax pursuant to the assessment order to the date of the appellate order.

59. Therefore, interpretation of Section 214 or any other section of the Act should not be made on the assumption that interest has to be paid whenever an amount which has been retained by the tax authority in exercise of statutory power becomes refundable as a result of any subsequent proceeding.”

18. In ***Ferro Alloys Corporation Limited versus A.P. State Electricity Board and another*** reported in AIR 1993 SC 2005, the Supreme Court examined whether interest can be claimed on the basis of the Interest Act, 1978, equity or common law on deposits made with the Electricity Board. It was observed that strictly speaking interest would be payable only in cases where there is a relationship of a debtor and a creditor and the lender of the money allows the borrower to use certain funds thereby depriving himself of the use of the said funds. Interest is a kind of rent for use of the said funds. Halsbury's Law of England was referred to, wherein it has been observed that interest is payable in Common Law when there is an express agreement or an implied agreement to pay which can be inferred from the

course of dealing between the parties, from the nature of transaction, custom or usage or by way of damages for breach of contract. On the question of equitable right of interest, it was observed as under:

“128. If this be the position, could interest be claimed either on equity or common law? The argument on behalf of the consumers is, if money belonging to any person is used by someone else he is obliged to pay interest for the period of its user. *Halsbury*, Volume 32 (page 53, para 106) defines “interest” as “the return or compensation for the use or 179 retention by one person of a sum of money belonging or owed to another....

129. Strictly speaking, the word “interest” would apply only to two cases where there is a relationship of debtor and creditor. A lender of money who allows the borrower to use certain funds deprives himself of the use of those funds. He does so because he charges interest which may be described as a kind of rent for the use of the funds. For example, a bank or a lender lending out money on payment of interest. In this case, as already noted, there is no relationship of debtor and creditor.

130. We may now refer to *Halsbury*, 4th Edn., Vol. 32, para 108:

“108. *When interest is payable at common law.*— At common law interest is payable (1) where there is an express agreement to pay interest; (2) where an agreement to pay interest can be implied from the course of dealing between the parties or from the nature of the transaction or a custom or usage of the trade or profession concerned; (3) in

certain cases by way of damages for breach of a contract (other than a contract merely to pay money) where the contract, if performed, would to the knowledge of the parties have entitled the plaintiff to receive interest.

Except in the cases mentioned, debts do not carry interest at common law.”

Consumption security deposit does not fall under any of the categories mentioned above. Para 109 says:

“Equitable right to interest.— In equity interest may be recovered in certain cases where a particular relationship exists between the creditor and the debtor, such as mortgagor and mortgagee, obligor and obligee on a bond, personal representative and beneficiary, principal and surety, vendor and purchaser, principal and agent, solicitor and client, trustee and beneficiary, or where the debtor is in a fiduciary position to the creditor. Interest is also allowed on pecuniary legacies not paid within a certain time, on the dissolution of a partnership, on the arrears of an annuity where there has been misconduct or improper delay in payment, or in the case of money obtained or retained by fraud. It may also be allowed where the defendant ought to have done something which would have entitled the plaintiff to interest at common law, or has wrongfully prevented the plaintiff from doing something which would have so entitled him.”

131. Even a case of wrongful detention of money cannot arise. In *Bengal Nagpur Railway v. Ruttanji Ramji* the question arose whether interest was payable on damages on account of wrongful detention of money. It was held: (IA pp. 71-72)

“The Interest Act, however, contains a proviso that ‘interest shall be payable in all cases in which it is now payable by law’. This proviso applies to cases in which the Court of equity exercises jurisdiction to allow interest. As observed by Lord Tomlin in *Maine and New Brunswick Electrical Power Co. Ltd. v. Alice M. Hart*:

‘In order to invoke a rule of equity, it is necessary in the first instance to establish the existence of a state of circumstances which attracts the equitable jurisdiction, as for example, non-performance of a contract of which equity can give specific performance.’

The present case does not however attract the equitable jurisdiction of the Court and cannot come within the purview of the proviso.”

19. Similarly in ***Union of India and others versus Orient Enterprises and another*** reported in (1998) 3 SCC 501, the Supreme Court referred to an earlier judgment of the Constitution Bench in ***Suganmal versus State of Madhya Pradesh*** reported in AIR 1965 SC 1740 and held that ordinarily a writ petition seeking Mandamus for refund of money and interest may not be maintainable but a decision challenging and questioning legality of assessment is maintainable and as a consequential order, a Court can direct refund. However, in the case of ***Oriental Enterprises*** (supra), the Supreme Court clearly observed that a Writ Petition seeking relief of payment of interest on delayed refund of the amount so collected cannot be maintained. The

Supreme Court in ***Union of India versus E.Merck I*** reported in (1998) 9 SCC 412 has observed as under:-

“3. Admittedly, there is no statutory basis for the claim of interest made by the respondent in its writ petition inasmuch as there is no provision in the statute imposing an obligation on the Revenue to pay interest on the amount refunded. The respondent’s claim for interest was also not based on any other statutory provision.

4. In short, there is no statutory or legal basis for making the claim of interest indicated in the writ petition to furnish a ground for issuance of a writ of mandamus. We may also add that the Tribunal’s order did not by itself indicate the precise liability of the Revenue to refund any specific amount to the respondent so as to give rise thereby to a liability to refund any specified amount on the date of the Tribunal’s order.

5. In other words, in the facts and circumstances of this case, there is no basis on which a legal obligation of the Revenue to refund a specific sum of money on a particular date is shown to have arisen to provide foundation necessary for issuance of a writ of mandamus. It is, therefore, unnecessary to examine in the present case the larger question urged on behalf of the respondent that the liability of payment of interest on the amount of excess duty refunded may, in a given case, give rise to a legal obligation providing foundation for issuance of a writ of mandamus to direct payment of interest also on the amount refunded.”

20. In ***H.P. State Financial Corporation, Shimla versus Prem Nath Nanda and another*** reported in (2000) 8 SCC 528, the

Supreme Court once again rejected claim for interest on the ground that there was no statutory provision or agreement to pay interest. However, the Court noticed that in appropriate cases interest may be awarded in lieu of compensation or damages for wrongly retaining a amount payable to a party. For this, the Supreme Court relied upon ***Satinder Singh versus Umraon Singh*** reported in AIR 1961 SC 908 and ***Laxmichand versus Indore Improvement Trust*** reported in (1975) 1 SCC 565. The Supreme Court referred to another judgment in the case of ***Soviltorg (India) Ltd. Versus State Bank of India*** reported in (1999) 6 SCC 406 wherein it has been observed as under

“6. Relying upon the provision of Section 34 of the Civil Procedure Code, the learned counsel for the appellant submitted that the appellant was entitled to the payment of interest at the rate at which moneys are lent or advanced by Nationalised Banks in relation to commercial transactions. Referring to IA No. 2 filed in this Court and Banking Law and Practice in India issued in 1991, she had contended that the appellant was entitled to the payment of interest minimum at the rate of 19.4 per cent per annum. The general submission made in this behalf cannot be accepted in view of the provision of Section 14 of the Act. There was no contract between the parties regarding payment of interest on delayed deposit or on account of delay on the part of the opposite party to render the services. Interest cannot be claimed under Section 34 of the Civil Procedure Code as its provisions have not been specifically made applicable to the proceedings under the Act. We, however, find that the general

provision of Section 34 being based upon justice, equity and good conscience would authorise the Redressal Forums and Commissions to also grant interest appropriately under the circumstance of each case. Interest may also be awarded in lieu of compensation or damages in appropriate cases. The interest can also be awarded on equitable grounds...”

21. The petitioner herein had paid tax as per the provisions of the Act and the Property Tax Bye Laws - 1994 for the period after 1st April, 2001. These payments were made pursuant to calculations made by the petitioners themselves on the basis of the then prevailing provisions for assessment of property tax. There is also no dispute that the amounts paid by the petitioners were due and payable under the existing provisions of law. In fact the annual rateable value of the property was liable to be enhanced pursuant to the notice of enhancement as the petitioners were getting enhanced rents. However, pursuant to the amendments made in the Act and adoption of the unit area method, the petitioners got reprieve as they opted for assessment on the basis of annual value. In these circumstances, I do not think that the petitioners are entitled to any interest on the amount paid by them on the basis of annual rateable value on the property, prior to the passing of the assessment orders, from the date of payment. There is no provision in the Act which entitles a tax payer to claim interest. Even under the amended provisions

an assessee is not entitled to interest on the excess tax paid by him, which is liable to be refunded on final assessment.

22. The next question which arises for consideration is whether the petitioners should be paid any pendente lite interest on the balance principal amount which was outstanding and had remained unpaid/unadjusted on the date when the writ petition was filed till the date of payment/adjustment. In normal course, if the petitioners had filed a civil suit for recovery, section 34 of the Code of Civil Procedure, 1908 would have been applicable. In Writ proceedings however Section 34 of the Code is not strictly applicable but in appropriate cases a writ court has discretion to award pendente lite and future interest.

23. Thus, where the respondent-Corporation does not refund the excess payment under Section 123B(9) of the Act, it may be be liable to pay pendente lite interest from the date the assessee/tax payer files a writ petition or suit for refund of the said amount. The plea that the Act itself does not contain any provision for payment of interest will not apply after filing of the Writ Petitions/suits as Courts have right to award interest from the date the suit/writ petition is filed. However, this power is discretionary. Having examined the facts and circumstances of the present case and an interpretation of various statutory provisions involved, I am not inclined to grant pendente lite

interest in the present cases on the excess payment made. I may also note that the petitioners herein have been fortuitous and are entitled to refund in view of the failure the respondent –MCD to act with due care and caution. The tax paid was payable. It was levied and collected under authority of law. In light of the above facts I am inclined to exercise my discretion and not award interest. The respondent-MCD were also under bonafide belief that 123B(9) of the Act was not applicable.

24. As provisions of law stand interpreted and explained, if in future respondent-Corporation does not refund the excess payment made within a reasonable time, a Civil Court or a Writ Court will be competent and entitled to award pendente-lite or future interest in its discretion and in accordance with law, to the tax payer/assessee.

Rate of Tax

25. The issue of rate of tax where an assessee/owner has opted for Unit Area Method under Section 116-G(2) of the Act is already decided by a Single Judge of this Court in Writ Petition (Civil) No. 20255/2005 titled *Pramod Kumar Jain versus Municipal Corporation of Delhi* vide judgment dated 18th November, 2005. The judgment records difference between the basis for computing rateable value of a property prior to amendment of the Act by the Delhi Municipal Corporation

(Amendment) Act, 2003 and determination of annual value under the amended provisions. The Court noticed problems that were being faced in computation of property tax on the basis of rateable value as it required determination of annual rent at which the land or building might be reasonably expected to be let out from year to year. Unequitable results of the said valuations, especially in cases of recent purchases of properties are well known. Old constructed properties continued to be assessed at a very low rateable value. The problems were compounded by litigations in view of the discretion in fixing rateable value and vast disparity. The Court noticed that the Act, both prior to and after the amendment by the 2003 Act had specific provisions with regard to the rate of tax. Under the unamended provisions, rate of tax, under Section 114 of the Act could be between 10%-30% of the rateable value depending upon the rate of tax fixed for that particular year. By Amendment Act of 2003, Section 114D was introduced and the same provided that *save as otherwise provided, the minimum rate of tax on buildings would be 6% and the maximum will be 20% of the Annual value of the said buildings as may be specified by the Corporation from time to time.*

26. Under Section 114 and 114D, the minimum and maximum rates of tax which can be levied has been specified. These can

vary and in fact have varied from year to year. The respondent-Corporation has liberty to fix any rate within the minimum and the maximum limit. These rates can be changed and are not static or permanent. Rate of tax for each year can be different. Learned Single Judge in this regard referred to Section 109 of the Act which provides for adoption of Budget Estimates which have to be determined before 15th day of February each year for the next/following Financial Year. Thus while adopting the budget estimates the respondent-Corporation also determines the rate of tax on the rental value or the annual value. Thereafter, it was observed that annual value and rateable value are distinct from the rate of tax and therefore inescapable conclusion is that the rate of tax enforced in a particular year would be applicable, even if an assessee has exercised his option under Section 116G(2) of the Act.

27. Mr. B.B. Jain, learned counsel for the petitioners herein had also appeared for the petitioners in the case of **Pramod Kumar** (supra), had raised the contention that after introduction of the unit area method, rate of tax for residential/self occupied property and residential let out properties is the same but the use factor is taken at 2 compared to self-occupied properties where the use factor is taken as 1. It was submitted that as use factor was already higher, the petitioner should pay tax as per rates

applicable when unit area method was introduced. The argument was considered and rejected on two grounds. Firstly, tenanted properties where rents were more than Rs.3500/- p.m. were subjected to determination of rateable value on the actual rent and secondly, Section 116G(2) gives option to assessee. Therefore, the assessee has to determine what would be more advantageous for him.

28. Section 116G(2) gives option to an assessee to have his property assessed on the Unit Area Method even for years prior to 1st April, 2004, where assessment has not been finalized on the date when the Amendment Act of 2003 was enforced. Language of Section 116 G(2) as quoted above is categorical and crystal clear. It gives option to the assessee to be “assessed on the basis of annual value”. Section 116G(2) does not talk about rate of tax that will be charged on the basis of assessed annual value. Sections 116A to E deal with the method for determination of the annual value and the parameters which have to be taken into consideration. Sections 114D and 114E, on the other hand, deal with the rate of tax but the said provisions have come into force w.e.f. 1st August, 2003. Prior thereto, rates of property tax were specified in Section 114 of the Act. Section 116-G(2) does not deal with rate of tax or stipulate that rate of tax specified in the first year after introduction of Unit Area Method, w.e.f. 1st April, 2004 shall be applicable for earlier Assessment Years also. Under Sections 114 D and 114 E, rate of tax can vary for different years and the Sections only provide for the minimum and the maximum rate of tax. In taxation law, each year is a separate and self-contained period. Any tax legislation has to necessarily have charging provisions, computation sections as well as recovery

provisions. The computation provisions provides for the method and the manner to determine income, wealth or the value on which tax is to be paid. Tax is thereafter payable on the sum so determined as per the rates specified. These are two separate and distinct steps which have to be undertaken.

29. Learned counsel for the petitioner submitted that the decision of the learned Single Judge in ***Pramod Kumar*** (supra) case requires consideration as the learned Single has not examined the effect of Section 164 of the Act which provides for remission, refund of tax in cases where property had remained vacant and unproductive for 60 or more consecutive days. Section 164 of the Act stands omitted w.e.f. 1st August, 2003 and on the date when the assessment Orders were passed, the said provision was not in the statute. It was not applicable. The said provision applies to assessment made under the rateable value method and is not applicable to assessment computed under Unit Area Method. In case of vacant/unproductive property under Unit Area Method use factor is taken as 1. In the present case it may also be noted that both petitioners do not satisfy the requirements specified in Section 164 of the Act before it was deleted.

30. The petitioner, Ms. Ritu Sengupta has made allegations that there is miscalculation about the tax payable by her and the amount of refund has been wrongly calculated. It is stated that the amount refundable is Rs.3,76,941/- and not Rs.3,01,5522/-. The respondent-Corporation has not specifically answered and dealt with the said contention in the counter affidavit. The

petitioner, Ms. Ritu Sengupta will make a representation in this regard to the respondent-Corporation within a period of three weeks from the date of this judgment and the respondent-Corporation will pass a speaking order dealing with the said representation within four weeks after it is received. The respondent-Corporation will also make computation of the adjustments made from the excess amount of Rs. 8,23,060/- paid by the petitioner, Mr. Ashish Goyle within two weeks from today and refund the balance amount within four weeks thereafter. The respondent-Corporation will be liable to pay interest @ 12% p.a. on the balance amount refundable from date of passing of this judgment/today till payment, if the excess unadjusted amount is not paid within six weeks. The Writ Petitions are accordingly disposed of.

In the facts and circumstances of the case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

AUGUST 1, 2008.

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