

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 10.09.2009

+ **W.P.(C) 7913/2008**

**SHRI BANARASI DASS CHANDIWALA SEWA SMARK TRUST
SOCIETY** Petitioner

versus

MCD & ORS Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. B.B. Jain, Advocate

For the Respondents : Ms. Amita Gupta, Advocate

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

The petitioner has challenged the order dated 08.08.2008 passed by the Assessor and Collector in rectification proceedings. The main grievance of the petitioner is that although he had made a request for computing the property tax on unit area method for the period 01.04.2000 to 31.03.2004 in terms of Section 116 (G)(2) of the Delhi Municipal Corporation Act, 1957 as amended by the DMC Amendment Act, 2003, the same has been rejected on an absolutely incorrect premise.

2. When this matter was heard on 01.09.2009, we had noted that the petitioner's request for rectification and for being assessed under the unit area method was rejected by the Assessor and Collector in the following

terms:-

“The assessment file and documents were examined. The request to make the rectification under unit area method cannot be accepted as the provision of Section 116(G)(2) of the DMC Amendment Act, is available for the pending assessment between 01.08.2003 to 31.03.2004. Here case has already been finalized on 29.03.2004. The applicant has given a letter dated 02.04.2004 objecting the order dated 29.03.2004. Going through records till 02.04.2004, no option for UAM is available. Only on 03.04.2004 a letter for rectification under UAM is available which is even not diarized. Hence it cannot be covered under Section 116(G)(2) at this stage”.

3. In the previous order, we had also noted that the assessment order dated 29.03.2004 was on *ex-parte* basis, when according to the petitioner, it could not have been done in view of the fact that the petitioner had supplied all the information, at all times, as requested by the Assessing Officer. Our attention was also drawn to the very first sentence of the impugned rectification order dated 08.08.2008 wherein it is recorded that the assessment order dated 29.03.2004 was done on an *ex parte* basis “due to non-submission of information from the taxpayer”. Since the learned counsel for the petitioner had stated that this statement was *ex facie* wrong and would be clear from the records, we had directed the learned counsel for the respondent to produce the relevant file before this Court on the next date of hearing. Today the file has been produced before us and we have examined the same. From the file it appears that a letter dated 31.12.2003 was issued by the Joint Assessor and Collector requiring the petitioner to provide the following details/documents w.e.f. 01.04.2000:-

“I]. Copies of balance-sheets w.e.f. 1.4.2000 onwards

II]. Details of tenancies in your premises w.e.f. 1.4.2000 till date

III}.Valuation report with regard to constructions/ additions/alterations & Renovations etc.

IV} Copies of Income tax returns for the relevant period may also be filed.”

4. We find from the records of the file that the said letter dated 31.12.2003 was replied to by the petitioner by a letter dated 15.01.2004. The same was received in the office of the MCD on 29.01.2004. Through the said letter dated 15.01.2004, the petitioner supplied the following information:-

“1. Copies of balance-sheets w.e.f. 1.4.2000 onwards

2. Details of Tenancies w.e.f. 1.4.2000 till date

3. Cost of construction has been given in the balance sheet. If desired, separate valuation report can be obtained and furnished.

4. Copies of Income Tax Returns for A.Y. 1.4.2000 till date enclosed.”

5. We may also point out that another letter was written by the petitioner on the same date, that is, on 15.01.2004, to the Joint Assessor and Collector. The original letter is also available in the file produced by the learned counsel for the respondent. In that letter the petitioner made a specific request for disposal of its case under the unit area method as per the provisions of Section 116(G) of the said Act.

6. In view of the aforesaid facts, it is clear that the finding of the Joint Assessor and Collector in the impugned order dated 08.08.2008 that the request for assessment under the unit area method was received only on 03.04.2004 after the assessment had been finalized on 29.03.2004, is *ex facie* wrong. The petitioner has clearly established that the request was made as

far back as on 15.01.2004 when the assessment was admittedly pending. Therefore, the petitioner was fully entitled to seek rectification of the *ex parte* assessment order dated 29.03.2004 on the ground that he had made a request for assessment under the unit area method which had not been heeded to by the Joint Assessor and Collector while finalizing the assessment on 29.03.2004. From the aforesaid facts, it is also clear that the assessment could not have been completed *ex parte* without hearing the petitioner particularly when the petitioner had supplied all the information that was sought by the Assessing Officer.

7. We are, therefore, of the view that both the impugned orders, the rectification order dated 08.08.2008 and the original *ex parte* order dated 29.03.2004, ought to be set aside. They are set aside. The matter is, therefore, remanded to the Assessing Officer to complete the assessment under the unit area method. In the first instance, the petitioner shall appear before the Assessing Officer on 18.09.2009 at 4.30 P.M. The assessment proceedings would be completed within a period of three months thereafter.

Dasti.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

SEPTEMBER 10, 2009
srb