

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

Date of decision: 31st July, 2012

+ **LPA. No.48/2006**

% **SHRI PRAMOD KUMAR JAIN** Appellant

Through: Mr. B.B. Jain, Adv.

Versus

MUNICIPAL CORPORATION OF DELHI Respondent

Through: Ms. Amita Gupta, Adv.

AND

+ **LPA. No.97-98/2006**

% **M/S JAYANITA EXPORT (P) LTD. & ANR.** Appellants

Through: Mr. B.B. Jain, Adv.

Versus

MUNICIPAL CORPORATION OF DELHI Respondent

Through: Ms. Shyel Trehan, Adv.

AND

+ **LPA. No.225-26/2006**

% **M/S KRISHNA DYEING FACTORY & ANR** Appellants

Through: Mr. B.B. Jain, Adv.

Versus

MUNICIPAL CORPORATION OF DELHI Respondent

Through: Ms. Amita Gupta, Adv.

AND

+ **LPA. No.658/2008**

% **SHRI ASHISH GOYLE** Appellant

Through: Mr. B.B. Jain, Adv.

Versus

MUNICIPAL CORPORATION OF DELHI Respondent

Through: Ms. Amita Gupta, Adv.

AND

+ **LPA. No.123/2011**

% **SMT. RITU SENGUPTA** Appellant
Through: Mr. B.B. Jain, Adv.

Versus

MUNICIPAL CORPORATION OF DELHI Respondent
Through: Ms. Amita Gupta, Adv.

AND

+ **W.P.(C) No. 4498/2003**

% **SHRI SUMAT JAIN** Petitioner
Through: Mr. B.B. Jain, Adv.

Versus

**MUNICIPAL CORPORATION OF DELHI
& ANR.** Respondent
Through: Ms. Amita Gupta, Adv.

AND

+ **W.P.(C) No. 4501/2003**

% **SH. K.C. MITTAL & ANR.** Petitioners
Through: Mr. B.B. Jain, Adv.

Versus

MUNICIPAL CORPORATION OF DELHI Respondent
Through: Ms. Shyel Trehan, Adv.

AND

+ **W.P.(C) No. 8174-75/2005**

% **SHRI DEEPAK JAIN & ANR.** Petitioners
Through: Mr. B.B. Jain, Adv.

Versus

MUNICIPAL CORPORATION OF DELHI Respondent
Through: Ms. Amita Gupta, Adv.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. All these appeals were listed together on the statement of the counsel for the appellants that all entail common question of law and are either arising from the common judgment of the learned Single Judge in writ petitions filed by each of the appellants or arising from orders of the learned Single Judge following the earlier order. The writ petitions, were transferred by the learned Single Judge to this Bench to be heard along with the appeals, since entailed same question. The arguments have been addressed by Mr. Bharat Bhushan Jain, Advocate on behalf of the appellants/petitioners and by Ms. Amita Gupta and Ms. Shyel Trehan, Advocates on behalf of the MCD. The question argued being only of law, neither any facts have been discussed nor do we feel any need to burden this judgment with the same.

2. The question for adjudication is as to what is to be the ‘rate’ at which property tax is to be charged when the assessee opts for assessment under Section 116G (2) of The Delhi Municipal Corporation Act, 1957, as amended w.e.f. 1st August, 2003.

3. Section 116G titled “Transitory provisions” of the Act is as under:-

“116G. Transitory provisions. – (1) 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 amendment 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”.

4. The assessment of the properties of all the appellants/petitioners, for the years prior to amendment w.e.f. 1st August, 2003 had not been finalized and each of the appellants/petitioners claim to have opted for assessment under Section 116G (2) supra. The counsels state that the properties were so assessed. However what led to the filing of the writ petitions including from which the appeals arise, was the dispute as to the rate at which the tax was to be charged i.e. whether @ 10% of the annual value, as was the rate prescribed after the amendment had come into force or at the rates prevalent, ranging from 20% to 30%, in the years to which the property tax pertained.

5. The learned Single Judge in the judgments impugned before us held that while the ‘rateable value’ or ‘annual value’ was to be assessed under Section 116 of the Act, the rate of taxation is to be fixed under Section 109 of the Act and having regard to the budget for the relevant year. Accordingly, the learned Single Judge observing that the ‘rateable

value’/’annual value’ was distinct from the ‘rate of tax’, held that even though the assessee’s, assessment of whose properties for the period prior to 1st August, 2003 had not been finalized, were entitled to opt for assessment of annual value under the Amended Act instead of the rateable value under the un-amended Act, but the rate for payment of tax even on the annual value will have to be as fixed under Section 109 of the Act for the year to which the assessment pertained and could not be the rate of tax after the amendment had come into force, including under Section 114 (D) of the Act.

6. The counsel for the appellants/petitioners has argued that the learned Single Judge though has referred to Section 109, providing for rate of tax, has failed to notice that the same also permits the rate of tax to be subsequently altered, if so provided for under the Act.

7. Section 109 (2) of the Act, which remains unaffected by the amendment, is as under:-

“109 Adoption of budget estimates. (2) On or before the 15th day of February of each year the Corporation shall determine the rates at which various municipal taxes, rates and cesses shall be levied in the next following year and save as otherwise provided in this Act the rates so fixed shall not be subsequently altered for the year for which they have been fixed”.

8. The argument is that the Act itself, by insertion of 116G (2), has provided for alteration even of the rate of tax; that the word ‘assessed’ used in Section 116G (2) is a wide enough and takes within its ambit ‘rate of tax’ also. It is yet further argued that Section 116G (1) refers to ‘tax’ and which

would take within its ambit not only assessment of rateable/annual value but also the rate of tax and which is indicative of the transitory provision applying not only to assessment of rate/annual value but also to the rate of tax.

9. The counsels for MCD have invited attention to Section 114(D) which provides for base rate of property tax on buildings in Delhi to be between a minimum of 6% and a maximum of 20% of the annual value.

10. Chapter VIII of the Act, from Section 113 to Section 183 deals with Taxation. Section 113(1)(a) prescribes property tax as one of the taxes which the Municipal Corporation of Delhi, constituted under the Act, is authorized to levy. Section 113(3) prescribes for the levy, assessment and collection of taxes in accordance with the provisions of the Act and the Bye-Laws made thereunder. Section 114 of the Act as it existed prior to the amendment w.e.f. 1st August, 2003 provided for levy of property tax on lands and buildings in Delhi and consisting *inter alia* of a water tax, scavenging tax, fire tax and general tax of not less than 10% and not more than 30% (i.e. rate of property tax) of the Rateable Value of lands and buildings within the urban areas (with which we are concerned in these appeals/petitions). Though Section 114(1)(d) laid down the minimum and maximum limit of the rate of tax as 10% to 30%, whether the same was to be 10% or 30% was/is under Section 109 of the Act left to be determined by the MCD and was required to be determined on/or before 31st day of March of every year for the ensuing year. MCD, under Section 3 of the Act, is a body corporate composed of councillors to be chosen by direct election on the basis of adult suffrage from various wards into which Delhi is divided

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and of Aldermen chosen by the councilors, with the term of office of such councillors or Aldermen, under Section 4 of the Act, being of four years from the date of publication of the result of the election. Section 124 of the un-amended Act, provided for the assessment of the property tax.

11. The aforesaid rate of tax was to be applied, earlier i.e. prior to amendment w.e.f. 1st August, 2003, on rateable value as determined under Section 116 and now, post amendment, on annual value, as determined under the amended Section 116.

12. The levy of property tax thus comprises of two distinct stages. Firstly, assessment/determination of, pre-amendment, the rateable value and post-amendment, the annual value of the property and secondly, of computation of tax by applying the rate of tax for the relevant year to the said rateable/annual value. While the formula for assessment/ determination of rateable/annual value is prescribed in the Act itself by the makers thereof i.e. the Parliament, the rate of tax to be applied to rateable/annual value so assessed/determined has been left to the MCD, as aforesaid, an elected body, though the Parliament has also prescribed the outer limits thereof. Thus, while MCD cannot change the formula for assessment/determination of rateable/annual value, laid down by the Parliament in the Act, the Parliament cannot change the rate of tax fixed by the MCD as long as within the outer limits.

13. Though Section 109(2) permits subsequent alteration of the rate but such subsequent alteration has to be, naturally, by the entity empowered to determine the 'rate' i.e. MCD and cannot be by the Parliament.

14. The word 'assessed' in Section 116G (2) thus refers to determination/assessment of rateable/annual value and not to applicability of rate of tax thereto. There is nothing in Section 116G (2) to suggest that the Parliament itself intended to determine the rate of tax also. The Supreme Court in *Assistant Collector of Central Excise, Calcutta Division v. National Tobacco Company of India Limited* (1972) 2 SCC 560 held that the term 'levy' is wider in its import than the term 'assessment'. 'Levy' was held to include both imposition of a tax as well as assessment. 'Assessment' on the other hand was held to be generally used in this country for the procedure adopted in fixing the liability to pay a tax. It was thus held that levy cannot be equated with assessment. Applying the said law to the present facts, 'assessment' is only the determination of rateable/annual value and the process of applying the rate of tax prescribed by MCD, is the 'levy' of tax.

15. The Constitution Bench of the Apex Court in *Mathuram Agrawal v. State of Madhya Pradesh* (1999) 8 SCC 667, in the context of municipal taxes only held that the intention of the Legislature in a taxation statute is to be gathered from the language of the provisions, particularly where the language is plain and unambiguous and it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It was further held that it is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute and an interpretation which does not follow from the plain, unambiguous language of the statute is equally impermissible - words cannot be added to or substituted so as to give a meaning to the statute

which will serve the spirit and intention of the Legislature. The three components of the tax law were described as (i) the subject of the tax; (ii) the person who is liable to pay the tax; and, (iii) and the rate at which the tax is to be paid.

16. Applying the aforesaid law we find that while the Parliament in the statute i.e. the DMC Act, 1957, has laid down, (i) the subject of property tax as rateable/annual value, (ii) the person liable to pay the tax, and (iii) also fixed the maximum and the minimum rate of tax but has left the function of levy of exact rate of tax within the said limits to the elected body i.e. the MCD. The said elected body, being the MCD, having not altered the rate of tax fixed by it for the earlier years, the transitory provision of Section 116G has to be necessarily read as giving the option to the assessee, only to switch to annual value instead of rateable value, even for the years prior to introduction of the concept of annual value and of which the assessment had not been finalized but cannot be read/interpreted as entitling the assessee also to avail of the reduced rate of tax.

17. Even otherwise we are of the opinion that the tax becomes chargeable/payable when the taxable events takes place and it is the taxing event which is crucial and fixes the liability to tax. The taxing event under the amended as well as un-amended Act is the ownership of property and the point of taxation is the beginning of the financial year. Though Section 116G (2) is an exception to the said principle but the scope thereof cannot be extended beyond what is permissible under the language thereof.

18. The counsel for the appellants/petitioners had also argued that even

de hors the aforesaid, MCD has collected tax from the appellants/petitioners in excess of that due and the appellants/petitioners in these appeals/petitions have also sought a direction for refund thereof. Direction is also sought for payment of interest @ 12% per annum which the MCD itself charges from the defaulters, on such excess amount recovered by the MCD.

19. However since neither the learned Single Judge has dealt with this aspect nor any facts have been shown to us in this regard, we only direct that upon the appellants/petitioners making a demand on the MCD giving all the particulars of the excess amount paid, MCD to within one month of the receipt of the said demand, if not disputing the same, refund the excess amount received. As far as interest is concerned, again since no facts have been shown, we refrain from giving any direction. We, may however, notice that the question of interest has been dealt with in the judgment under challenge i.e. *Ritu Sengupta v. MCD* 152 (2008) DLT 68 in LPA No.123/2011. However, we are not called upon to adjudicate the said aspect.

20. We accordingly, save for the directions aforesaid for refund wherever due, dismiss these appeals/petitions. No costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JULY 31, 2012

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