

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 04.04.2018

+ **W.P.(C) 1461/2013& CM Nos.2767/2013, 2961/2013 & 20639/2017**

POWER GRID CORPORATION OF INDIA Petitioner

Versus

**EAST DELHI MUNICIPAL CORPORATION
AND ANR**

..... Respondents

Advocates who appeared in this case:

For the Petitioner :Mr Parag Tripathi, Senior Advocate with Mr Pawan Upadhyay, Mr S. Upadhyay, Mr Rajesh Chhetri, Mr Appoorv Tripathi and Mr Srinivasan Ramaswamy.

For the Respondents :Ms Pinky Anand, ASG, Mr L. D. Joshi, Standing Counsel, EDMC and Mr Sudhamani, Advocates for R-1/EDMC Ms Madhu Tewatia, Advocate for Intervener.

WITH

+ **W.P.(C) 1372/2014& CM No.22981/2015**

DELHI TRANSCO LTD. Petitioner

versus

EAST DELHI MUNICIPAL CORPORATION Respondent

Advocates who appeared in this case:

For the Petitioner :Mr S. K. Dubey, Mr Rajmangal Kumar and Mr Farhan Ahmed Chazi.

For the Respondents :Ms Pinky Anand, ASG, Mr L. D. Joshi,
Standing Counsel, EDMC and Mr
Sudhamani, Advocates for R-1/EDMC.
Mr Rakesh Kumar, CGSC for R-2/UOI.

AND

+ **W.P.(C) 2486/2015 & CM Nos.20640/2017 & 36490/2017**

**POWER GRID CORPORATION OF INDIA
LTD.**

..... Petitioner

versus

**EAST DELHI MUNICIPAL CORPORATION
AND ORS.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner :Mr ParagTripathi, Senior Advocate with
Mr Pawan Upadhyay, Mr S. Upadhyay, Mr
Rajesh Chhetri, Mr Appoorv Tripathi and
Mr Srinivasan Ramaswamy.

For the Respondents :Ms Pinky Anand, ASG, Mr L. D. Joshi,
Standing Counsel, EDMC and Mr
Sudhamani, Advocates for R-1/EDMC.
Ms Madhu Tewatia, Advocate for
Intervener.

CORAM:

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed the present petitions, *inter alia*, challenging the assessment orders passed by the concerned assessing authorities assessing Electricity Transmission Towers to property tax under the Delhi Municipal Corporation Act, 1957 (hereafter 'the MCD Act').

2. Power Grid Corporation of India Ltd. (hereafter ‘PGCIL’) – petitioner in W.P.(C) 1461/2013 and W.P.(C) 2486/2015 – is a Government Company and a “Central Transmission Utility” notified under Section 38(1) of the Electricity Act, 2003. In W.P.(C) 1461/2013, PGCIL impugns the assessment order dated 02.02.2013 assessing its seven Electricity Transmission Towers located within the jurisdiction of the respondent (hereafter ‘EDMC’) to property tax in the sum of ₹38,81,48,253/- for the period 01.08.2007 to 31.03.2013. In W.P.(C) 2486/2015, PGCIL impugns an assessment order dated 25.02.2015 assessing its seven Electricity Transmission Towers to property tax in the sum of ₹13,66,31,829/- for the financial years 2013-14 and 2014-15. In W.P.(C) 1372/2014, Delhi Transco Ltd. – a transmission company constituted on unbundling of Delhi Vidyut Board in terms of Delhi Electricity Reforms and Transfer of Scheme Rules, 2001 – impugns an assessment order dated 14.02.2014 assessing property tax in the sum of ₹1,77,34,74,818/- in respect of one hundred and forty Electricity Transmission Towers located within the jurisdiction of EDMC, for the period of 01.04.2004 to 31.03.2014.

3. These petitions involve a common controversy: whether the Electricity Transmission Towers are assessable to property tax as buildings under Section 114A of the MCD Act read with Byelaw 9(1) of the Delhi Municipal Corporation (Property Tax) Byelaw, 2004 (hereafter ‘Property Tax Byelaws’). The petitioners, *inter alia*, contend that Electricity Transmission Towers do not fall within the term ‘building’ as defined under Section 2(3) of the MCD Act and,

therefore, such towers are not chargeable to Property Tax under Section 113(1)(a) of the MCD Act. It is further contended that Electricity Transmission Towers do not fall within the scope of ‘towers’ as covered under Byelaw 9(1) of the Property Tax Byelaws and, therefore, there is no machinery provision for assessing property tax under the Property Tax Byelaws.

4. In view of the above, the principal questions that fall for consideration of this Court are (i) whether Electricity Transmission Towers fall within the scope of the definition of ‘Building’ under Section 2(3) of the MCD Act; and (ii) whether Electricity Transmission Towers are assessable to property tax as “towers” under Byelaw 9(1) of the Property Tax Byelaws.

5. Briefly stated, the relevant facts necessary to address the controversy are as under:-

Re: W.P.(C) 1461/2014 and W.P.(C) 2486/2015

6. EDMC issued a notice dated 30.11.2012 to PGCIL alleging non-submission of property tax returns for the period April 2004 to March 2013 under the amended provisions of Section 123A and Section 175 of the MCD Act and the Property Tax Byelaws. Thereafter, EDMC issued another notice dated 19.12.2012 in respect of Electricity Transmission Towers (seven in number) located within the area falling within the jurisdiction of the EDMC. PGCIL responded to the said notices contending that PGCIL was not covered under the Property Tax Byelaws. Thereafter, the representatives of

PGCIL also appeared on 11.01.2013 before the Assessment and Collection Department of EDMC.

7. The concerned Assessor and Collector of EDMC rejected the contentions advanced by PGCIL. He held that the Electricity Transmission Towers fall within the scope of Byelaw 9(1) and 14 of the Property Tax Byelaws, as the Electricity Transmission Towers also fall within the scope of 'towers' as defined under Byelaw 9(1) of the Property Tax Byelaws. The Assessor and Collector proceeded to assess the property tax on the basis of the area computed by multiplying the area covered by the extremities at the foundation with the height of the Electricity Transmission Towers. The annual value of seven towers was computed at ₹34,15,79,572/- and EDMC raised property tax bill dated 04.02.2013 for a sum of ₹38,81,48,253/- for the period 01.04.2004 to 31.03.2013.

8. Thereafter, EDMC issued a notice dated 08.02.2013 for recovery of the property tax under Section 123A and Section 175 of the Delhi Municipal Corporation (Amendment) Act, 2003. This was followed by a show cause notice dated 21.02.2013 under Section 156A of the MCD Act. Thereafter, EDMC proceeded to attach PGCIL's bank account by issuing a notice dated 01.03.2013. This led the petitioner to file the present petition.

9. By way of W.P.(C) 2486/2015, PGCIL impugns the assessment order dated 25.02.2015 assessing the property tax in respect of the seven towers in question of ₹13,66,31,829/- (without penalty and

interest) for the financial years 2013-14 and 2014-15.

Re: W.P.(C) 1372/2014

10. This is a petition filed by Delhi Transco Ltd. (Delhi Transco) impugning the assessment order dated 14.02.2014 passed in respect of one hundred and forty Electricity Transmission Towers. EDMC issued a notice dated 29.12.2012 to Delhi Transco, *inter alia*, stating that Delhi Transco has not filed any property tax as required under Section 123A of the MCD Act for the financial years 2004-2005 to 2012-13 in respect of number of Electricity Transmission Towers located within the jurisdiction of EDMC. This was followed by another notice dated 08.01.2013, whereby EDMC called upon Delhi Transco to appear before the concerned officer on 15.01.2013.

11. On 30.01.2013, Delhi Transco submitted details of the properties within the area falling within the jurisdiction of EDMC. Thereafter, representatives of Delhi Transco appeared before the concerned officer of EDMC on 12.02.2013. On 04.04.2013, EDMC issued a show cause notice, which was responded to by Delhi Transco by a letter dated 12.04.2013. EDMC issued a second show cause notice dated 27.05.2013 alleging that there was no plausible justification shown for non-submission of property tax returns. This notice was responded to by Delhi Transco, *inter alia*, contending that the primary liability for discharging the property tax dues was on the owner of the immovable property and Delhi Transco was not the owner of the land in question.

12. EDMC sent another letter dated 27.12.2013 reiterating its stand that the Electricity Transmission Towers were chargeable to property tax and, thereafter, the Assessment and Collection Department of EDMC sent an assessment order dated 14.02.2014 assessing the property tax payable by Delhi Transco in respect of one hundred and forty Electricity Transmission Towers at ₹177,34,74,818/- for the period 01.04.2004 to 31.03.2014.

Submissions

13. Mr Tripathi, the learned Senior Counsel appearing for PGCIL contended that Electricity Transmission Towers do not fall within the meaning of the term ‘building’ as defined under Section 2(3) of the MCD Act, stating that the expression “any other structure” as used in the said definition would necessarily take colour from the preceding terms, namely, ‘house’, ‘outhouse’, ‘stable’, ‘latrine’, ‘urinal’, ‘shed’ and ‘hut’ etc. which included buildings used by human beings and could not mean structures such as Electricity Transmission Towers, which were, essentially, sophisticated poles for anchoring the conductors.

14. Next, he submitted that there was no machinery provision for assessing the property tax payable in respect of Electricity Transmission Towers. He referred to Byelaw 9(1) of the Property Tax Byelaws which defined “towers”. He submitted that the Electricity Transmission Towers will not fall within the scope of “any other towers”, since the same were not erected on the surface or top or any

other open space of a building. He further referred to Section 116E(1) of the MCD Act and contended that the annual value of a covered space of a building is a product of the total area of the covered space and the final base unit area value and since in the present case, there was no base unit area value determined for the Electricity Transmission Tower, the same could not be assessed to property tax. He relied on the decisions of the Supreme Court in ***Sunil Siddharth bhai v. Commissioner of Income Tax, Ahmedabad, Gujarat: (1985) 4 SCC 519***, ***Commissioner of Income Tax, Bangalore etc. v. B.C. Srinivasa Setty, etc.: (1981) 2 SCC 460*** and ***Commissioner of Income-Tax, Ernakulam, Kerala v. Official Liquidator, Palai, Central Bank Ltd.: (1985) 1 SCC 45*** in support of his contention that if there was no machinery provision for computing the tax, the charge itself must fail. Mr Tripathi also contended that so far as the assessment order dated 02.02.2013 is concerned, the same was barred by limitation. He relied on the decision of the Division Bench of this Court in ***Commissioner of Income-Tax v. NHK Japan Broadcasting Corporation: (2008) 305 ITR 137 (Del.)*** as well as the decision of the Supreme Court in ***State of Punjab and Ors. v. Bhatinda District Cooperative Milk Producers Union Ltd.: (2007) 11 SCC 363***.

15. Ms Pinky Anand, the learned ASG countered the submissions advanced on behalf of the petitioners. She referred to the decisions of the Supreme Court in ***Ahmedabad Municipal Corporation v. GTL Infrastructure Ltd. and Ors.: 2017 (3) SCC 545*** and contended that the expression “building” as appearing in Entry 49 of List II of the

Seventh Schedule of the Constitution of India was very wide and could not be confined to residential buildings, as commonly understood, or structures raised for the purposes of habitation. She submitted that in this view, the Electricity Transmission Towers would fall within the definition of ‘building’ as defined under Section 2(3) of the MCD Act. She also referred to the decision of the Supreme Court in ***M.C. Mehta v. Union of India & Ors: (2006) 3 SCC 399*** and on the strength of the observations made in the said decision, contended that the expression “building” is very wide and encompasses any structure. She relied on the decision of the Full Bench of this Court in ***MCD v. M/s Pradeep Oil Mills Pvt. Ltd.: AIR 2010 Delhi 119*** in support of her contention that the expression “any other structure” as used in Section 2(3) of the MCD Act, cannot be given a restricted meaning.

16. She also relied on the decisions of a Coordinate Bench of this Court in ***Cellular Operators Association of India & Ors. v. Municipal Corporation of Delhi: (2011) 179 DLT 381*** and the decision of the Supreme Court in ***Pradeep Oil Corporation v. Municipal Corporation of Delhi and Anr.:(2011) 5 SCC 270***.

17. Ms Madhu Tewatia, who appears on behalf of North Delhi Municipal Corporation (the Intervenor) adopted the arguments advanced by Ms Pinky Anand, the learned ASG.

Reasons and conclusion:

18. The first and foremost question to be addressed is whether the

Electricity Transmission Tower is a ‘building’ as defined under Section 2(3) of the MCD Act? Section 2(3) of the MCD Act is set out below:-

“2(3) "building" means a house, out-house, stable, latrine, urinal, shed, hut, wall (other than a boundary wall) or any other structure, whether of masonry, bricks, wood, mud, metal or other material but does not include any portable shelter.”

19. The contention that the expression “any other structure” must take colour from the preceding terms, namely, house, out-house, stable, latrine, urinal, shed and hut, and by applying the doctrine of *ejusdem generis*, is persuasive at the first blush. The expression “any other structure” cannot be read to mean any structure, which is not used for the purposes of habitation or storage or for attendant purposes thereto. A house, out-house, stable, latrine, urinal, shed and hut are all used either for human inhabitation or for other activities or in connection therewith. House and out-house and a hut are used for human inhabitation; a shed is used in connection with the activities carried out by human beings or as a storage; a stable is used to house horses; and a latrine and a urinal are also clearly a building for human purposes. In view of the same, the contention that the expression “any other structure” could not take within its ambit Electricity Transmission Towers appears attractive. This is also the *prima facie* view expressed by the Division Bench of this Court in ***Power Grid Corporation of India v. East Delhi Municipal Corporation and Anr.***: ***LPA No. 161/2013, decided on 18.03.2013*** (this was an appeal

preferred by PGCIL against an interim order passed in W.P.(C) 1461/2013).

20. However, in the said decision, the Division Bench had also noted the contention of the learned Attorney General advanced on behalf of PGCIL that the word “structure”, as used in Section 2(3) of the MCD Act, “*should be read ejusdem generis with the word “house”, “out-house”, etc. which precede the word “structure” in the sub-Section, particularly, when the definition given in the sub-Section is exhaustive and not inclusive*”. The Court had, thereafter, referred to the decision of the Full Bench of this Court in ***Municipal Corporation of Delhi v. Pradeep Oil Mills P. Ltd.: AIR 2010 Delhi 119*** and the decision of the Division Bench of this Court in ***United Taxi Operators Co-operative (Urban) Thrift & Credit Society Ltd. and Anr. v. Municipal Corporation of Delhi: (2) 1966 DLT 281 (DB)*** and had observed that “*considering the decisions referred earlier by us, it would be difficult for us to outrightly accept the contention of the learned Attorney General*”.

21. In ***Pradeep Oil Mills*** (*supra*), the Full Bench of this Court had, *inter alia*, considered the question “*Whether the erection of storage tanks on the lands in question amounts to erection of a building which is taxable under the Delhi Municipal Corporation Act?*” The Court referred to the decision of the Supreme Court in ***Municipal Corporation of Greater Bombay & Ors. v. Indian Oil Corporation Ltd.: AIR 1991 SC 686***, wherein the Court had held that the Oil Tanks made for storage and petroleum products would be covered under the

definition of the word “building”, and held that the definition of expression “building” in terms of Section 2(3) of the MCD Act was of a very wide import and it encompassed “any other structure”.

22. In ***M.C. Mehta v. Union of India and Ors*** (*supra*), the Supreme Court had observed that the definition of the term “building” in Section 2(3) of the MCD Act shows that “*it is very wide and encompasses any other structure only excluding portable shelter.....*”.

23. As stated above, the contention that the words “any other structure” must take colour from the preceding terms appears to be attractive. However, in view of the decision of the Full Bench of this Court in ***MCD v. Pradeep Oil Mills*** (*supra*), the words “any other structure” cannot be given a restrictive meaning even though the Electricity Transmission Towers would not be considered as building in common parlance.

24. In ***Cellular Operators Association of India and Ors. v. Municipal Corporation of Delhi*** (*supra*), a Coordinate Bench of this Court, while considering the question whether mobile towers are a building, observed as under:-

“40. I am however firmly of the view that the said towers definitely fall within the definition of “building” which includes within its ambit a structure of metal or other materials. What else is a tower but a metallic structure. The contention of the senior counsels for the petitioners that a building has to be necessarily a house/habitable cannot be accepted.”

25. In view of the clear observations made by the Full Bench of this Court in *MCD v. Pradeep Oil Mills (supra)* as well as the Coordinate Bench of this Court in *Cellular Operators Association of India and Ors. v. Municipal Corporation of Delhi (supra)*, this Court is unable to accept the contention that the words “any other structure” as used in Section 2(3) of the MCD Act must be read *ejusdem generis* with the preceding terms. Undisputedly, if the term “any other structure” is read in a disjunctive manner, it would include the Electricity Transmission Towers as well since the same are, indisputably, structures and are made of metal and other material.

26. The next question that needs to be addressed is whether the MCD Act and the Property Tax Byelaws provide any machinery provisions for levy and computation of tax on Electricity Transmission Towers.

27. Chapter VIII of the MCD Act contains provisions for taxation. Section 113 provides for the taxes to be levied by a Corporation. Section 113(1)(a) specifically provides for levy of ‘property taxes’. Section 114 of the MCD Act provides that the property tax shall be levied on lands and buildings in Delhi and shall consist of (a) building tax and, (b) vacant land tax.

28. Section 114A of the MCD Act specifies that a building tax shall be equal to the rate of building tax as may be prescribed by a Corporation under Section 114D of the MCD Act multiplied by the annual value of the covered space of a building determined under sub-

Section (1) of Section 116E or Section 116F of the MCD Act.

29. Section 116 of the MCD Act provides for constitution of a Municipal Valuation Committee. In terms of Section 116(5) of the MCD Act, the functions of such Municipal Valuation Committee are to make recommendations on matters relating to classification of vacant lands and buildings and fixation of the base value per unit area of vacant land or per unit area of covered space of a building. Section 116A(1) of the MCD Act mandates that the Municipal Valuation Committee shall recommend the classification of the vacant lands and buildings in any ward of Delhi into colonies and groups of lands and buildings after taking into account the parameters as indicated therein.

30. Section 116B of the MCD Act provides for notification of the classification of vacant lands and buildings into colonies and groups as well as the specification of the base unit area value thereof. Section 116C of the MCD Act provides for the procedure for hearing objections to the classification of vacant lands and buildings into various colonies and groups or the fixation of the base value per unit area of vacant land or covered space of a building in any group. Section 116D(1) of the MCD Act, *inter alia*, provides that the base unit area value of covered space of a building in any group as specified under Section 116C(3) of the MCD Act would be final.

31. Section 116E provides for determination of the annual value of a covered space of a building and of a vacant land. Section 116E(1) of the Act reads as under:-

“116E(1) The annual value of any covered space of building in any ward shall be the amount arrived at by multiplying the total area of such covered space of building by the final base unit area value of such covered space and the relevant factors as referred to in clause (b) of sub-section (2) of section 116A.

Explanation—“covered space”, in relation to a building, shall mean the total floor area in all the floor thereof, including the thickness of walls, and shall include the spaces of covered verandah and courtyard, gangway, garrage, common service area, staircase, and balcony including any area projected beyond the plot boundary and such other space as may be prescribed.”

32. It is apparent from the plain reading of the provisions as mentioned above that the annual value of any covered space of a building is the value arrived at by multiplying the total area of covered space of the building by the final base unit area value as may be adjusted by other factors. Thus, for the building tax to be computed, it is necessary to ascertain (a) the covered space of the building; and (b) the “final base unit area value”.

33. In exercise of powers under Section 481 of the MCD Act, the Municipal Corporation of Delhi has framed the Delhi Municipal Corporation (Property Taxes) Bye-laws, 2004.

34. Bye-law 9 of the Property Tax Byelaws provides for the use-wise category of buildings for the purpose of Clause (f) of Section 116A(1) of the MCD Act. In terms of Byelaw 9, the buildings have been categorized as (a) residential building; (b) business building; (c) mercantile building; (d) building for recreation and sports purposes;

(e) industrial building; (f) hazardous building, (g) hospital and nursing home; (h) education buildings; (i) public purpose; (j) farmhouse; (k) star hotels; (l) towers; and (m) hoardings.

35. Clause (l) of Byelaw 9 which categorizes certain buildings as towers is set out below:-

“9(l) “towers” shall include TV towers, cable towers, telecom towers or any other tower erected on the surface or top or on any other open space of a building;”

36. According to EDMC, Electricity Transmission Towers fall within the category of towers as specified under Byelaw 9(l) of the Property Tax Byelaws.

37. A conjoint reading of Section 116A of the MCD Act read with Byelaw 9 of the Property Tax Byelaws clearly indicates that the Municipal Valuation Committee is required to recommend classification of buildings in any ward of Delhi into colonies and groups after taking into accounts the use-wise category of such buildings. Thus, if a building falls outside the scope of Byelaw 9 of the Property Tax Byelaws, the classification of such building into any groups of buildings would be flawed.

38. It is relevant to note that it was readily conceded on behalf of EDMC that Electricity Transmission Towers do not fall under any other category as specified under Byelaw 9 of the Property Tax Byelaws. Thus, the limited question to be addressed at this stage is whether Electricity Transmission Towers falls within the category of

‘towers’ as defined under Byelaw 9(1) of the Property Tax Byelaws.

39. Before proceeding to address the aforesaid question, it would be relevant to observe that there was no dispute that Electricity Transmission Towers have to be constructed in accordance with the relevant Electricity Rules. It is not disputed on behalf of EDMC that such towers require to have a vertical clearance of approximately 7-8 meters and a minimum horizontal clearance of approximately 7-8 meters from any buildings or part of the buildings over which or adjacent to which the conductors pass. It has also been asserted on behalf of the petitioners that the Electricity Transmission Towers are built to support the conductors that facilitate transmission of electricity. Whereas, an average weight of a TV/Cable/Telecom tower is about 10 tons, the average weight of an Electricity Tower is 60 to 80 tons and, therefore, it is not feasible to install the same on the top of any building.

40. Bearing the aforesaid in mind, it is apparent that the Telecom/TV Towers are not by their very nature comparable with Electricity Transmission Towers, even though both the towers may be erected by metal and other material. The nature, the purpose and the construction of the towers are different.

41. A plain reading of Byelaw 9(1) of the Property Tax Byelaws classifies towers into four categories: (i) TV Towers; (ii) Cable towers; (iii) Telecom Towers; and (iv) any other tower erected on the surface or top or any other open space of a building. Concededly, the

Electricity Transmission Towers do not fall within the first three categories. It was earnestly contended on behalf of EDMC that the Electricity Transmission Towers are squarely covered as within the scope of the expression “*any other tower erected on the surface or top or on any other open space of a building*”. This Court finds the said contention to be unpersuasive, as Electricity Transmission Towers are standalone towers and are not erected on the surface or top or any other open space of a building.

42. Ms Pinki Anand contended that since the towers by themselves are buildings within the meaning of Section 2(3) of the MCD Act, it is not necessary that the said towers be constructed on top or any other open space of a building for being classified as towers. This contention is also unmerited, as in order for a tower to fall under the fourth category – that is, any other tower erected on the surface or top or on any open space of a building – it is necessary that the tower be constructed in conjunction with another building; either on the surface or on top or in any other open space of the said building.

43. As noticed above, the applicable property tax in respect of a building is a product of the area covered space of the building and the final base unit area value of such covered space. Thus, in computing the property tax, it is necessary to determine the said two variables namely, (a) the covered space; and (b) the final unit area value.

44. As noticed above, the unit area value can be recommended under Section 116A of the MCD Act only after taking into account the

use-wise categories. If the Electricity Transmission Towers are not included in the use-wise categories as provided under Byelaw 9 of the Property Tax Byelaws, it would not be possible to determine any base rate value of such buildings.

45. The Second variable to be determined is the covered area. There does not appear to be any statutory defined method of determining such covered area as well. Explanation to Section 116E(1) of the MCD Act provides for a definition of the expression “covered space” in relation to a building to mean *“the total floor area in all the floor thereof including thickness of walls and shall include spaces of covered verandah and courtyard, gangway, garrage, common service area, staircase, and balcony including any area projected beyond the plot boundary and such other space as may be prescribed”*. Clearly, explanation “covered space” is inadequate in case of Electricity Transmission Towers inasmuch as there is no floor area covered by the towers. Thus, in absence of any machinery provision to determine the covered space, it is not possible to determine the building tax payable on such buildings.

46. At this stage, it is relevant to refer to Byelaw 14 of the Property Tax Byelaws which reads as under:-

“14. Other spaces to be included in covered space in relation to building. –In addition to the covered spaces specified in the Explanation to sub-section (1) of section 116 E, the covered space in relation to a building shall also include basements, mezzanine floors, barsatis and stilts meant for parking and TV/Telecom towers and

hoardings erected on the surface or top or any other open space of a building.

Explanation.—In case of buildings with common areas/services shared by more than one owner/occupant, it shall be divided proportionately according to the covered area enjoyed by the owner/occupier. A fire escape (staircase) added subsequently to a building, loft floor, refuse areas in multi-storeyed buildings, shall not be counted towards covered area calculation. In the case of TV /Telecom and other such towers, the covered area shall include the area covered by the extremities of foundation multiplied by the total height, while in the case of hoarding, covered area shall mean the square of extremities of the poles on which hoardings are erected plus the area of the hoarding.”

47. A plain reading of the aforesaid Byelaw indicates that in case of TV/Telecom Towers and hoardings erected on “*surface or top or any other open space of a building*”, the covered space shall be included in the covered space of the building. The Explanation to Byelaw 14 of the Property Tax Byelaws provides for the manner of calculating such covered space in case of “*TV/Telecom and other such towers*”.

48. It is at once clear that a machinery provision has been provided for calculation of TV/Telecom towers and other such towers, which are erected on the surface or top or any other open space of a building and the methodology is to club the covered space of such towers with that of the building and apply final base unit area value. Plainly, there is no mechanism to determine the covered space in relation to a standalone Electricity Transmission Tower, which is neither erected on the surface or top of a building nor in an open space adjacent to any

building connected with such tower.

49. In view of the absence of any machinery provision to determine the measure of property tax, the charge itself must fail.

50. In ***B.C. Srinivasa Setty*** (*supra*), the Supreme Court had considered the question of levy of capital gain tax on sale of goodwill of a business. Although, admittedly, goodwill of a business is an asset; however, the machinery provision for computing capital gains required that the cost of the asset be deducted from the sale consideration. Since there was no cost that could be quantified for acquisition of the asset of goodwill, the machinery provisions for calculating the capital gains on sale of a goodwill were found wholly inadequate. In this context, the Supreme Court held as under:-

“Thus the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section. Otherwise one would be driven to conclude that while a certain income seems to fall within the charging section there is no scheme of computation for quantifying it.”

51. In the present case, the machinery provisions have not been enacted for computing the property tax on Electricity Transmission Towers and, therefore, the assessments framed in this regard must also fail.

52. It is also trite law that taxation laws must be strictly considered. In ***Banarsi Debi & Anr. v. Income Tax Officer, Calcutta & Ors.*** :

AIR 1964 SC 1742, the Supreme Court held as under:

“6. Before construing the section it will be useful to notice the relevant rules of construction of a fiscal statute. In *Oriental Bank v. Wright* (1880) 5 A.C. 842, 856 the Judicial Committee held that if a statute professed to impose a charge, the intention to impose a charge upon a subject must be shown by clear and unambiguous language. In *Canadian Eagle Oil Co. v. R.*, [1946] A.C. 119, 140 Viscount Simon L.C. observed:

“In the words of Rowlatt J.....in a taxing Act one has to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.”

In other words, a taxing statute must be couched in express and unambiguous language. The same rule of construction has been accepted by this Court in *Gursahai Saigal v. Commissioner of Income-tax, Punjab* (1963) 48 ITR (SC) 1, wherein it was stated:

“It is well recognized that the rule of construction that if a case is not covered within the four corners of the provisions of a taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter applies only to a taxing provision has no application to all provisions in a taxing statute.....”

53. In view of the above, the petitions are allowed and the

impugned assessment orders are set aside. The pending applications also stand disposed of.

VIBHU BAKHRU, J

APRIL 04, 2018

RK

