IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18079 of 2012
Date of decision: 14.12.2015

M/s Nestle India Limited

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

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

Present: - Mr. M.L. Sarin, Sr. Advocate, with
Mr. Rohit Khanna, Advocate, for the petitioner.
Mr. S.S. Chandumajra, Addl. A.G., Punjab.
Mr. H.K. Aurora, Advocate, for respondents No.2 and 3.

PARAMJEET SINGH, J.

Instant civil writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 19.07.2012 (Annexure P-1) passed by Principal Secretary to Government of Punjab, Department of Local Government, Punjab, as well as the demand notice dated 28.03.2008 (Annexure P-10) issued by respondent No.2 – Municipal Council, Moga, and for setting aside the house tax demand for the years 2001-02 to 2009-10 raised vide house tax bill dated 21.01.2010 (Annexure P-14) and also bill dated 31.08.2012 (Annexure P-22) issued once again for the period 2001-02, 2005-06, 2006-07 till 2012-13 and for restoration of order dated 03.04.2012 (Annexure P-19) passed by respondent No.4 – Additional Deputy Commissioner-cum-Collector, District Moga.

Brief facts of the case are that Municipal Council, Moga, issued a notice to the petitioner under Section 65 read with Section 67(3) of the Punjab Municipal Act, 1911 (hereinafter referred to as 'the Act') whereby respondent No.2 proposed to revise the house tax assessment and sought objections qua increasing the annual assessment of petitioner-company's factory at Moga. The notice was issued with a purpose to re-assess the house tax in view of amended definition of Section 3(1)(b) of the Act. It is pertinent to mention here that earlier assessment was done under Section 3(1)(c) of the Act as Section 3(1)(b) was struck down by a Division Bench of this Court in ***Model Town Residents Association v. State of Punjab*** *, 2002(2) R.C.R. (Civil) 248*, however, the order of this Court was set aside by Hon'ble Supreme Court in ***Municipal Committee, Patiala v. Model Town Residents Association****, (2007)8 SCC 669* and thereafter Municipal Council, Moga, proposed a fresh assessment under Section 3(1)(b) of the Act. Petitioner filed objections to the notice, which were declined vide order dated 13.11.2009 (Annexure P-13). Thereafter, the annual value of the property of the petitioner was revised and house tax thereon was re-assessed as under: -

"(a) For the financial year 2001-02 to 2005-06, the taxable assessment value of Moga factory of the petitioner was increased to ₹3,19,82,888/- and house tax of ₹47,97,433/- per annum was levied for the said years.

> (b) *For the financial year 2006-07 till the date of the order, the taxable assessment value of factory of the petitioner was increased to ₹14,09,94,908/- and house tax of ₹2,11,49,236/- per annum was levied for the said years."*

Against the order dated 13.11.2009, petitioner preferred an appeal before the Additional Deputy Commissioner-cum-Collector, Moga. The Additional Deputy Commissioner set aside the order dated 13.11.2009 (Annexure P-13) passed by the Municipal Council, Moga, vide order dated 27.03.2011 (Annexure P-15) and remanded the case to House Sub Committee, Municipal Council, Moga, for passing a well-reasoned and speaking order. On remand, petitioner again filed objections with the House Sub Committee, Municipal Council, Moga on 25.07.2011 (Annexure P-16). Respondent No.2 vide order dated 25.07.2011 (Annexure P-17) dismissed the objections filed by the petitioner company. Aggrieved against the order dated 25.07.2011, petitioner company filed an appeal before respondent No.4 – appellate authority. Respondent No.4 vide order dated 03.04.2012 (Annexure P-19) accepted the appeal of the petitioner and set aside the demand raised by respondent No.2. Against the order dated 03.04.2012 (Annexure P-19) Municipal Council, Moga, filed a revision petition before the Principal Secretary, Department of Local Government, Punjab. Principal Secretary vide order dated 19.07.2012 (Annexure P-1) set aside the order dated 03.04.2012 (Annexure P-19) and upheld the assessment carried out by respondent No.2. While setting aside the order dated 03.04.2012, Principal Secretary observed that the appellate authority had set aside the assessment on the plea that retrospective assessment cannot be made out but the judgments relied upon by the petitioner in this regard were not applicable to the facts of this cases. In pursuance of order dated 19.07.2012 (Annexure P-1), respondent No.2 raised the demand of house tax for the period 2001-02 till 2005-06 and 2007-08 till 2012-13 for ₹17,54,72,453/- vide its demand/bill dated 31.08.2012 (Annexure P-22) Hence, this writ petition.

In pursuance of notice of motion, respondents appeared and filed their written statements.

In their written statement respondents No.2 and 3 have stated that impugned order dated 19.07.2012 (Annexure P-1) is legal and in accordance with the amended provisions of the Act. Respondents have every right to recover the amount of house tax after assessing the same retrospectively as held by the Hon'ble Supreme Court.

Respondent No.1 filed written statement on the same lines as filed by respondents No.2 and 3.

Petitioner filed rejoinder to the written statement filed by respondent No.1 stating that respondent No.1 has failed to take independent stand when petitioner has raised serious, important and pertinent questions of law. Respondent No.1 has wrongly interpreted the law laid down by Hon'ble Supreme Court in ***Model Town Residents Association*** (supra) relied upon by the Municipal Council.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that order dated 19.07.2012 (Annexure P-1) passed by respondent No.1 is contrary to the settled principles of law. House tax assessment is factually incorrect for the reasons that the total area of the plot has been taken at 8565 marlas and covered area has been taken at 7,83,874 sq.ft.; for the years 2001-02 to 2005-06 cost of the plot has been taken at the rate of ₹50,000/- per marla i.e. ₹42,82,50,000/- for 8565 marlas and for the years 2006-07 and 2007-08 cost of the plot has been taken at the rate of ₹3,00,000/- per marla for 8565 at the rate of ₹2,56,95,00,000/-; cost of construction has been taken at ₹325/-, ₹315/-, ₹310/-, ₹166/- per sq. feet for the years 2001-02 to 2005-06 and at the rate of ₹390/-, ₹360/-, ₹350/-, ₹195/- for the years 2006-07 and 2007-08; in the notice dated 28.03.2008 it is mentioned that the same has been issued as per orders of the Hon'ble Supreme Court of India dated 01.08.2007; and the notice dated 28.03.2008 sought to revise the house tax by enhancing it by about 14 times than the earlier assessed house tax so far as years 2001-02 to 2005-06 are concerned and for the years 2006-07 and 2007-08 by about 57 times than the earlier assessed house tax. Learned counsel for the petitioner further contended that the Principal Secretary has not taken into consideration all the points considered by the appellate authority. The order passed by the Principal Secretary is non-speaking and all the findings recorded by the Additional Deputy Commissioner have not been dealt with. While setting aside the order/judgment of the lower Court, higher Court is required to record the reasons and deal with all the findings. There is complete mis-reading of the judgment of the Hon'ble Supreme Court in ***Model Town Residents Association*** (supra). Learned counsel for the petitioner made reference to para 21 of the judgment of Hon'ble Supreme Court in ***Model Town Residents Association*** (supra), which reads as under: -

> *"For the aforestated reasons we set aside the impugned judgment. We declare the aforestated Section 3(1)(b) and Section 3(8-aa) as valid. Accordingly, we uphold the validity of the said sections. Since we have upheld the validity of the aforestated impugned sections we make it clear that all pending disputed assessments and appeals therefrom shall be decided in accordance with the provisions of the Punjab Municipal Act, 1911, as amended. The civil appeal filed by Patiala Municipal Committee as well as the State Government are allowed with no order as to costs."*

Learned counsel for the petitioner contended that Hon'ble Supreme Court has clarified that all the pending disputed assessments and appeals arising therefrom should be decided in accordance with the amended provisions of the Act. At that point of time when the judgment was passed by the Hon'ble Supreme Court, no appeal was pending and fresh assessment has been made, which is contrary to the settled principles. The increase in the assessment is manifold. The provisions of assessment have also not been taken into consideration.

On the other hand, learned counsel for respondents No.2 and 3 vehemently contended that the order passed by Principal Secretary is legal and valid and is in consonance with the judgment of the Hon'ble

Supreme Court. Earlier the assessment was set aside for the reason that the provisions of the Act were held ultra vires by this Court, which now have been held to be valid by the Hon'ble Supreme Court.

I have considered the contentions raised by learned counsel for the parties.

Admittedly, initially the assessment for the previous years was much less and now increase has been made manifold. Apparently, this aspect has not been taken into consideration by the Principal Secretary. Contention of the learned counsel for the petitioner that no finding has been recorded by the Principal Secretary that any dispute or appeal was pending with regard to property in question when the judgment was passed by the Hon'ble Supreme Court, appears to be well-founded. The Hon'ble Supreme Court has specifically mentioned in para 21, reproduced above, that the judgment will be applicable to the pending disputes. Otherwise also all the findings recorded by the Additional Deputy Commissioner have not been dealt with by the Principal Secretary and only general findings have been recorded.

In view of above, order dated 19.07.2012 (Annexure P-1) passed by Principal Secretary to Government of Punjab, Department of Local Government, Punjab, is set aside. Case is remanded to Principal Secretary to Government of Punjab, Department of Local Government, Punjab, to re-examine the issue, specifically in view of para 21, reproduced above, of the judgment of the Hon'ble Supreme Court in ***Model Town Residents Association*** (supra). Detailed fresh order shall be passed after affording opportunity of hearing to the parties. Parties are directed to appear before the Principal Secretary on 01.02.2016. The Principal Secretary shall dispose of the case on or before 31.03.2016.

Learned counsel for the petitioner submits that petitioner has already paid the entire amount, however, an additional bank draft was also deposited with the Registry of this Court.

Registry is directed to return the bank draft to the petitioner.

Disposed of.

(Paramjeet Singh)
Judge

December 14, 2015
R.S.