HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.13002 of 2015 (O&M)
Date of Decision: 16.07.2015

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M/s Jugtumal Murari Lal ... Petitioner

VS.

State of Punjab & Anr. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE P.B. BAJANTHRI

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1. Whether Reporters of 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?

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Present: Mr. KVS Kang, Advocate for the petitioner

Mr. Aman Bahri, Addl. AG Punjab

Mr. Sanjeev Soni, Advocate for respondent No.2

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<u>SURYA KANT, J</u>. (Oral)

(1) This order shall dispose of CWP Nos.13302 & 13028 of 2015 as both the writ petitions have raised a common question of law. The facts are extracted from CWP No.13002 of 2015.

(2) The petitioner is a partnership firm who has taken a Cinema Hall site at Patiala City on 99-years' lease from the Government of Punjab. The Cinema Hall known as "Phul Cinema" is run at the site.

(3) The Municipal Corporation has vide order dated 15.06.2015 levied property tax of ₹6,67,325/- on the petitioner for the assessment year 2014-15. The above-mentioned tax has been levied under the Punjab Municipal Corporation Act, 1976 Section 112-A of the Act contemplates self-assessment of tax on land and

building and its sub-Section (3) provides that where the tax calculated under sub-Section (1) is not fully paid by the 31st December of the relevant financial year and is paid on or before the 31st March of that financial year, a penalty of twenty five per cent of the remaining amount of tax so calculated shall be payable.

(4) The petitioner through this writ petition has questioned the constitutionality of Section 112-A(3), as according to it, the provision is coercive, harsh and *per se* arbitrary as it has vested the authority with an unguided powers.

(5) When the case came up for preliminary hearing on July 3, 2015, it was pointed out by counsel for the petitioner that the provision of statutory appeal under the Act, namely, Section 112-C is equally unreasonable as no appeal is maintainable unless the entire amount of property tax assessed by the Corporation is deposited in advance.

(6) Since the Cinema Hall of the petitioner was meanwhile sealed due to non-deposit of the dues of property tax, we called upon the respondent-Corporation and as an interim measure directed that if the petitioner would deposit a sum of ₹1 lac, the premise of the Cinema Hall be unlocked.

(7) In compliance thereto, the respondents have unlocked the premises of Cinema Hall as the petitioner has deposited the amount referred to above.

(8) In our considered view, the question of legality of Section 112-A(3) need not be gone into at this stage. If the Appellate Authority accepts the petitioner's plea that property tax in its case has to be assessed by treating it as a 'lessee' and not the 'owner' of subject property, it is obvious that the question of law raised in this petition would be rendered academic only. The petitioner has admittedly got an effective alternative remedy of appeal under the Act and should such a remedy be made available, the factual or mixed question of law and facts can be agitated by the petitioner before that forum. The only impediment against invoking the appellate remedy is the pre-condition of deposit of the entire amount of tax assessed by the Corporation. The effect of that impediment can be neutralized by directing the Appellate Authority to entertain the petitioner's appeal on deposit of 25% of the assessed amount which shall include the amount already deposited by it pursuant to our order dated July 3, 2015.

(9) Such an arrangement would be without prejudice to legal rights of both the parties as it won't cause any serious prejudice to either party. In the event of failure of petitioner's appeal, the Corporation can recover the due amount through legitimate means. Similarly, if the petitioner's appeal is allowed, it shall be entitled to seek refund of the excess amount in accordance with law.

(10) For the reasons afore-stated, we dispose of the writ petition with a direction that if the petitioner files an appeal before the Appellate Authority under the Act within a period of *one month* from the date of receipt of certified copy of this order and deposits 25% of the assessed tax minus the amount which it has deposited in compliance to order dated July 3, 2015, the Appellate Authority shall entertain the appeal on merits and decide the same in accordance with law as early as possible and preferably within *four months* from the date of its filing. The interim order passed on July 3, 2015 shall continue to operate till the appeal is decided provided that the petitioner files the appeal within *one month* from the date of receipt of certified copy of this order.

(11) Ordered accordingly. ***Dasti***.

(Surya Kant)
Judge

16.07.2015
vishal shonkar

(P.B. Bajanthri)
Judge