

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**Date of Decision: 29.10.2015**

**1. CWP No. 2000-2012**

M/s. Omaxe Ltd. and another

... Petitioner(s)

Versus

Municipal Corporation, Patiala and another

... Respondent(s)

**2. CWP No. 3066-2012**

M/s. Omaxe Ltd. and another

... Petitioner(s)

Versus

Municipal Corporation, Patiala and another

... Respondent(s)

**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. Munish Gupta, Advocate for  
Mr. P.K.Gupta, Advocate for  
the petitioners in both the petitions.

Mr. H.P.S.Ghuman, Advocate,  
for respondent No.1.

Mr. B.S.Cheema, DAG, Punjab.

**Paramjeet Singh, J.**

This order shall dispose of CWP No.2000-1995 and CWP-3066-2012 as common questions of fact and law are involved in both the petitions.

Before proceeding further, a brief reference to the facts is necessary which are being extracted from CWP-2000-2012.

CWP-2000-2012 has been filed under Articles 226/227 of the Constitution of India for setting aside the ante date order (Annexure P-3), stated to be passed on 18.08.2010 and the order dated 06.12.2011 (Annexure P-6) passed by respondent No.2-Divisional Commissioner, Patiala Division, Patiala.

Brief facts of the case are to the effect that petitioner No.1 is the owner of Omaxe Mall known as M/s Macdonald's Mall Road, Patiala, Opp. Mata Kali Devi Mandir, Patiala. A notice of assessment bearing Sr. No.75/39 dated 26.02.2010 (Annexure P-1) under Sections 101/103 of the Punjab Municipal Corporation Act, 1976 (for short, '1976 Act') was issued by Tax Superintendent, Nagar Nigam Patiala assessing the rental value of property as ₹5,00,000/- per month i.e. ₹60,00,000/- as annual value and after giving rebate @ 10%, the annual rental value was assessed at ₹54,00,000/- whereupon ₹8,10,000/- was assessed as annual house tax @ 15% of the annual rental value. On receipt of notice (Annexure P-1), objections were filed by the petitioners before the House Tax Assessment Sub Committee, Municipal Corporation, Patiala who without considering the objections and relevant documents assessed

the property to the house-tax @ ₹5,60,358/- per year vide ante dated order 18.08.2010 (Annexure P-3). Thereafter, the petitioners preferred appeal before respondent No.2-Divisional Commissioner, Patiala with the averments that area under the possession of the Macdonald's is 3459 square ft. which includes covered area on ground floor, lower ground floor and basement. A specific objection was raised that the petitioners have an agreement dated 03.11.2006 with M/s Connaught Place Restaurants Pvt. Ltd., New Delhi and annual rental value of the property is not more than ₹30/- per month per square ft. and annual letting value of the rent cannot be more than ₹12,45,240/- and specifically stated that annual house tax leviable is ₹1,68,107/- but without considering the same, the appeal has been dismissed vide impugned order dated 06.12.2011 (Annexure P-6). The petitioners had not received copy of the order dated 06.12.2011, however, the petitioners were issued notice dated 29.12.2011 (Annexure P-5) wherein it has been stated that property of the petitioners was going to be sold by way of auction for the recovery of the due amount. In order to save their property from auctioning, the petitioners filed CWP No.563 of 2012 in this Court which was disposed of vide order dated 12.01.2012 observing as under:

*“In the circumstances, in my considered opinion, the interest of justice would be met if respondent No.1 is directed to restrain from any penal recovery action for a period of 7 days, after the preparation of certified copy of the order by the appellate authority.”*

On receipt of copy of order dated 06.12.2011 on 25.01.2012, the petitioners filed the present petition.

In pursuance of notice of motion, respondent No.1 filed reply with the averments that the property in question has been rightly assessed under Section 93(b) of the 1976 Act on the basis of assessment of the adjoining property i.e. Shop No.14-B on the same/ground floor which has not been challenged. A notice under Section 108 of the 1976 Act was issued on 01.02.2010 directing the petitioners to supply the information required for assessment of the property within seven days, but they had not supplied the same and thereafter assessment notice (Annexure P-1) was issued under Sections 101/103 of the 1976 Act *ibid* on 26.02.2010 for assessment of the property in question. The impugned order (Annexure P-3) has been passed after considering all the objections raised by the petitioners. In para no.17 of petition, the petitioners have wrongly stated that the assessment made by the authority was ₹54,00,000/- . In fact, it was the assessment as proposed in the notice (Annexure P-1) which has considerably been reduced to ₹37,35,720/-. The agreements referred by the petitioners cannot be considered in this case as the same pertain to three different properties. The assessment notice (Annexure P-1) was issued for the year 2009-10 on 26.02.2010 and contents of para no.7 of objections (Annexure P-2) show that the petitioners started receiving the gross sales in the year 2009-10. The MOU dated 03.11.2006 (Annexure P-10) filed by the petitioners could not be taken into consideration as it was a profit

sharing document. The adjoining property No.14-B was assessed on the basis of monthly rent of ₹133/- per square ft., however, the property in question was assessed on the basis of monthly rent of ₹100/- per square ft. Other averments made in writ petition have been denied.

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

Learned counsel for the petitioners vehemently contended that assessment was made under Section 93 of the 1976 Act in the absence of the petitioners and without issuing any notice to the petitioners. The notice (Annexure P-1) issued under Sections 101 and 103 of the 1976 Act was signed by the Superintending Tax whereas the same should be signed by the Commissioner, Municipal Corporation, therefore, the same has no value in the eyes of law. There is no provision for delegation of powers of the Commissioner to the Tax Superintendent at all. The proposed assessment was not correct as per the factual position at the spot. No fair rent/standard rent of the property has been assessed. The assessment of house-tax was to be made as per the agreement in between the petitioners and Cannaught Plaza Restaurnats (P) Ltd. New Delhi and annual rent value cannot be more than Rs.30/- per month per square ft. and annual tax leviable comes to be ₹1,68,107/-. The assessment order has been made in the middle of the year 2010 and has been made operational from 2009-2010, in fact no house tax can be recovered from the petitioners before 01.04.2011. The Municipal Corporation has erred

in taking recourse to provisions of Section 93(c) of the 1976 Act whereas Section 93(b) of the 1976 Act is applicable to the present case. The Municipal Corporation has to take recourse to the provisions of Section 93(b) of the 1976 Act and the annual value is to be calculated on the basis of rent on which the building is reasonably be expected to let and if the valuation for some reason cannot be adopted the words 'reasonably be expected to let' connote that the provisions of the Rent Act are to be taken into consideration for determining the annual value.

Per contra, learned counsel for respondent No.1 and learned State counsel vehemently opposed the contentions of learned counsel for the petitioners and supported the impugned orders. The assessment has been made on the basis of rental value prevailing in adjoining property i.e. Shop No.140B on the same/ground floor. They contended that the petitioner was given opportunity of hearing at every stage. They contended that Section 93(c ) of the 1976 Act provides that where the annual value of the building cannot be determined under Section 93(b) of the 1976 Act, the Municipal Corporation can take recourse to clause (c ) of Section 93 and in the preset case, the value cannot be assessed under Section 93(b) of the 1976 Act and, therefore, recourse taken by the Corporation to the provisions of Section 93(c ) of the 1976 Act is proper and legal.

I have considered the rival contentions of learned counsel for the parties.

The sum and substance of the arguments of learned counsel for

the parties revolves on the interpretation of Section 93(b) and (c) of the 1976 Act. The provisions of Section 93(b) and 93 (c) of the 1976 Act read as under:

***"93. Determination of rateable value of lands and buildings assessable to taxes. -***

*Subject to the rules, if any, made by the State Govt. in this behalf, the rateable value of any land or building assessable to taxes specified in Section 91 shall be:*

*(a) xxx xxx xxx*

*(b) in the case of any building, the gross annual rent at which such building, together with its appurtenances and any furniture that may be let for use for enjoyment therewith, may reasonably be expected to let, subject to the following deductions:-*

*(i) such deduction should not exceed 20 per cent of the gross annual rent as the Commissioner in each particular case may consider a reasonable allowance on account of the furniture let herewith;*

*(ii) a deduction of 10 per cent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross annual rent. The deduction under this sub-clause shall be calculated on the balance of the gross annual rent after the deduction (if any) under sub-clause (i);*

*(iii) where land is let with a building, such deduction, not exceeding 20 per cent of the gross annual rent, as the Commissioner in each particular case may consider reasonable on*

*account of the actual expenditure, if any, annually incurred by the owner on the upkeep of the land in a State to command such annual rent.*

*Explanation I. - For the purpose of this clause, it is immaterial whether the house or building, and the land let for use or enjoyment therewith, are let by the same contract or by different contracts, and if by different contracts, whether such contracts are made simultaneously or at different times.*

*Explanation II. - The term "gross annual rent" shall not include any tax payable by the owner in respect of which the owner and tenant have agreed that it shall be paid by the tenant.*

*(c). in the case of any building, the gross annual rent of which cannot be determined under clause (b), 5 per cent on the sum obtained, by adding the estimated present cost of erecting the building less such amount as the Commissioner may deem reasonable be deducted on account of depreciation (if any), to the estimated market value of the site and any land attached to the building :*

*Provided that-*

*(i) in the calculation of the rateable value of any premises no account shall be taken of any machinery thereon;*

*(ii) when a residential building is occupied by the owner or is not let the rateable value shall be fifty percentum of the annual market rent prevalent at the time of assessment in the locality for similar accommodation :*

*Provided further that in respect of any land or building*

*the fair rent whereof has been fixed under law relating to rent restriction for the time being in force, the rateable value thereof shall not exceed the annual amount of the fair rent so fixed or the actual rent for which the same has been let, whichever is higher."*

The matter in hand is no more *res integra*. A Full Bench of this Court in ***Banarsi Dass Mahajan vs. State of Punjab and another*** 1990 (1) PLR 1 (Full Bench) while interpreting the provisions of Sections 93 (b) and 93(c) of the 1976 Act held as under:

*"21. Before leaving this aspect of the case it is significant to note that clause (c) of Section 93 of the Corporation Act has an identical provision as in the Municipal Act and the Supreme Court in Devan Daulat Rai Kapoor's case (supra) was not unaware of that provision. Repeatingly and summingly, we hold that the Commissioner must first do the exercise under clause (b) to determine at what figure the building may reasonable be expected to let in accordance with the principles of the Rent Laws, give permissible deductions in the light of the Explanations, deviate to sub-clause (ii) of the first proviso if he can but keep foothold on his deliberations under clause (b), apply both the provisos in the above manner and then determine the annual rateable value. If he is unable to do so for any substantive reason, then he may take resort to clause (c) again keeping a foothold thereon and applying the provisos when applicable so as to arrive at a just figure. In so far as clause (c) is concerned, it provides determining the estimated present cost of erection of the building minus depreciation and adding to it estimated market value of the site and of any*

*land attached to the building, from which 5 per cent of the sum total represents the gross annual amount. Now it is known that the cost of erection of buildings keeps rapidly changing, the rates of depreciation are minimal and the estimated market value of the site and any land attached to the building goes sky rocketing. The whole thing is inchoate in clause (c). The employment of this clause, as preferred by learned counsel for the Corporation, on the prospect of legitimate expectancies of a higher revenue dividend, and a justified measure to meet the cost of running day to day affairs of the Corporation which, at the Bar, were stated to be bordering on bankruptcy, cannot be permitted. The Legislature designedly made clause (c) apply only in the situation when the gross annual value of a building cannot be determined under clause (b). As stated before, to both clauses do the provisos apply but as an integral part the said two clauses, and that too as safeguards, so that neither the Corporation nor the tax-payer is dealt with unjustly. In the event of conflict between two successful determinations, the determination which is favourable to the tax-payer would normally have to govern the field, and we hold it so, well settled as it is a principle.*

*XXXXXX*

27. *Even if there is a tenancy or there is not, the concept of the hypothetical tenant still has a brooding influence in the determination of the fair rent. To repeat we say that clause (b) of Section 93 has first to be exhausted and when gross annual letting value can in no event be determined under the said clause, then the gross annual value may be*

*determined under clause (c), and both the provisos, and in particular the first proviso cannot be read in isolation so as to render otiose the main provisions of clauses (b) and (c). Viewed in this light, we are of the confirmed view that Punjab Concast Steel Ltd's case (supra) was rightly decided and the decisions to the contrary i.e. A.R. Skinner's and Hukam Chand's case (supra) and other cases of the kind are no good law in view of Devan Daulat Rai Kapoor's case (supra)."*

The Hon'ble Apex Court in ***Devan Daulat Rai Kapoor and others vs. New Delhi Municipal Committee***, 1980 (1) R.C.R.(Rent) 618 and ***Balbir Singh vs. Municipal Corporation, Delhi*** 1985 (1) R.C.R. (Rent) 224 had held that annual value of the building has to be determined on the basis on which building is reasonably expected to let and, therefore, the rent has to be determined under the provisions of the Rent Act for determining the annual value. Moreover, the notice (Annexure P-1) was issued by Tax Superintendent, who has no authority to do so. Sections 101 and 103 of the 1976 Act clearly reveal that it is the Municipal Commissioner, who has the power to issue notice for assessment.

In view of the above settled legal position, it is held that the Municipal Corporation, Patiala has erred in taking recourse to the provisions of Section 93(c) without first taking recourse to the provisions of Section 93(b) of the 1976 Act and, therefore, the action of the Municipal Corporation is legally not sustainable in the eyes of law.

As a result of above discussion, the impugned ante date order

(Annexure P-3), stated to be passed on 18.08.2010 and the impugned order dated 06.12.2011 (Annexure P-6) are set aside. The matter is remanded to House Tax Assessment Sub Committee to decide the matter and re-assess the house-tax afresh, in accordance with law, after affording opportunity of hearing to the parties. Parties through their counsel are directed to appear before the Commissioner, Municipal Corporation, Patiala on 26.11.2015 who will fix a date for appearance of the parties before the House Tax Assessment Sub Committee and will be at liberty to hand over notice on that day to the petitioners who will file objections, if any, to the notice within 15 days thereafter. Learned counsel for the petitioners has submitted that the petitioners have already deposited the tax without prejudice to their rights. It is made clear that the house tax, if any, as stated to have been deposited by the petitioners, shall be subject to adjustment.

Disposed of accordingly.

**29.10.2015**  
parveen kumar

**(Paramjeet Singh)**  
**Judge**