IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2879 of 2015
DATE OF DECISION: October 20,2015

Jetair Pvt. Ltd.

....Petitioner

versus

Assistant Commissioner/Tax Superintendent and others

…..…Respondents

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON’BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.Aman Bansal, Advocate for the appellant.
Mr.Piyush Kant Jain, Addl.A.G., Punjab.

RAMENDRA JAIN,J.

Briefly, the facts of the case are that the petitioner had purchased property bearing No.B-9/2/27/82/1, a part of Masand Motors Premises situated at Jalandhar for consideration of ₹6,00,000/-. A notice under Section 103 of the Punjab Municipal Corporation Act, 1976 (for short, `the Act’) was issued on 11.6.1985 by respondent No.1 for the assessment year 1985-86 showing the Annual Rental Value of the above property (for short, `the ARV) at ₹1,08,000/- while proposing the rateable value as self occupied commercial accommodation at the rate of ₹10,000/- per month on the basis of prevalent market value. The reply was to be filed within 30 days of the receipt of notice. Accordingly, reply was filed on 4.7.1985, taking the plea that the petitioner was owner of only $1/6^{th}$ share portion of the building. In the previous year 1984-85, the ARV of the entire building was assessed at ₹27,000/-, therefore, in view of the same, the proposed enhancement of ARV to ₹1,08,000/- for $1/6^{th}$ share was excessive. After affording an opportunity of personal hearing and considering the reply, the ARV of the premises was fixed at ₹64,800/- by the Municipal Corporation, Jalandhar vide order dated 10.9.1985. The petitioner continued depositing the ARV with minor upward calculation for the assessment year 1985-86 to 2009-10. However, the petitioner executed a lease agreement on 27.1.2010 in favour of respondent No.3 renting out $2/3^{rd}$ portion of the demised premises for three years for consideration of ₹1,00,000/- per month. Out of the aforesaid lease money, an amount of ₹40,000/- per month was to be deducted towards maintenance of fixtures, furniture etc.

Respondent No.1 raised a demand of taxes of ₹18,468/- for the assessment year 2010-11 in respect of the demised premises payable by 21.10.2010 based upon the prevalent rateable value at ₹1,29,600/-. A notice under section 103 of the Act was issued on 3.8.2010 by respondent No.1 enhancing the AVR of the premises to ₹17,28,000/- instead of

₹1,29,600/- consisting "Specification of Commercial Portion" at ₹6,48,000/- and "Specification of Commercial Portion on Rent" at ₹10,80,000/- without assigning any reason. Dis-satisfied with the above action of respondent No.1, the petitioner took the objection that the ARV being unreasonable and arbitrary was quite exorbitant, inasmuch as, 2/3rd share of the premises was rented out and it was using only 1/3rd share. A communication was received by the petitioner calling it to appear on 30.9.2010 before respondent No.1. However, the petitioner could not make arrangement of any authorised official within such a short span and as such made a request for adjournment for 15 days. However, no communication was received from the respondent No.1 in response to the reply of the petitioner. The petitioner continued making numerous representations to revise the AVR, but to no fruitful result. In the end, the petitioner deposited an amount of ₹18,468/-. On continuous visits and considerable persuasions, respondent No.1 granted a meagre reduction of 30% in valuation of the portion of ground floor occupied by the petitioner, i.e. ₹42,000/- per month as against ₹60,000/-. However, without assigning any reason, the respondent No.1 enhanced the rateable value of the premises from prevailing ₹1,29,000/- to ₹15,33,600/- vide order dated 11.11.2010 without any basis. By way of another demand notice dated 17.11.2010, respondent No.1 demanded further tax of ₹2,21,130/- on the purported rateable value of ₹14,04,000/-.

That being so, the petitioner filed an appeal under section 146 of the Act before respondent No.2 which resulted into dismissal vide order dated 19.2.2014. Thus, the petitioner has approached this Court challenging the above action of the respondents of demanding the unreasonable tax and for quashing the notice dated 3.8.2010 issued by respondent No.1 (Annexure P5), demand notice dated 17.11.2010 (Annexure P9) and order dated 19.2.2014 dismissing its appeal.

Contrary to it, respondent No.1 by way of his written statement pleaded the legality and validity of the above notices and demands.

Learned counsel for the appellant argued that ARV of the demised property could not have been assessed unilaterally without inviting and considering the objections of the petitioner (Annexure P.6). The impugned orders being non speaking, passed without any basis by respondent Nos.1 and 2 were violative of section 103 of the Act and principles of natural justice. Even no opportunity of personal hearing was afforded to the petitioner.

On the other hand, learned Additional Advocate General, Punjab appearing for the State submits that the order dated 17.11.2010 is legal and valid. Even the appeal of the petitioner has met with the fate of dismissal. In the appellate order, the petitioner was given liberty to challenge the assessment order, by way of appeal. That being so, the petitioner should have approached the Appellate Authority for redressal of its grievance and, not this Court.

We have given our thoughtful consideration to the submissions of learned counsel for the parties.

A perusal of the order dated 17.11.2010 clearly shows that the same was passed by respondent No.1 fixing the ARV of Rs.14,04,040/- per annum for the assessment year 2010-11, without taking into consideration the objection/reply filed by the petitioner. It is completely a non-speaking and cryptic order and, thus, is violative of the principles of natural justice. It is well settled proposition of law that the adjudicating authority should pass a well reasoned and speaking order while fixing any liability. Thus, it can safely be held that the order dated 17.11.2010 passed by respondent No.1 being illegal, unjust and completely non-speaking requires interference by this Court. Resultantly, the demand notice dated 17.11.2010 (Annexure P.9) issued by respondent No.1 and the order dated 19.2.2014 (Annexure P.11) passed by respondent No.2 (appellate authority) are not legally sustainable.

In view of the aforesaid discussion, the present writ petition is partly allowed and the order dated 19.2.2014 (Annexure P.11) passed by respondent No.2 and demand notice dated 17.11.2010 issued by respondent No.1 are set aside. Respondent No.1 is directed to pass a speaking order after taking into consideration the objection/reply filed by the petitioner and after affording an opportunity of personal hearing without influenced by its earlier order/demand notice.

(RAMENDRA JAIN)
JUDGE

October 20, 2015
Kd

(AJAY KUMAR MITTAL)
JUDGE