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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>W.P.(C) 3629/2013 & CM 6799/2013</u>**

KAMLA SINGHAVI ..... Petitioner

Through Mr Joy Basu, Sr. Advocate with Mr Sumit Chander and Mr L.K. Garg, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL ..... Respondent

Through Mr Manish Mohan, Ms Sidhi Arora, Mr Gaurav Sharma, Ms Puja Sarkar and Ms Hina Shaheen, Advocate for NDMC.

\+ **<u>W.P.(C) 3153/2013</u>**

RUKMAN SETH ..... Petitioner

Through Mr Subhash C Jindal, Advocate.

versus

NDMC & OTHERS ..... Respondents

Through Mr Manish Mohan, Ms Sidhi Arora, Mr Gaurav Sharma, Ms Puja Sarkar and Ms Hina Shaheen, Advocate for NDMC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% 05.02.2015

1. The controversies involved in these petitions are similar. The petitioners claim refund of the excess property tax paid by them in respect of their respective properties, for the year 2009-10, 2010-11 and 2011-12.

2. The petitioners claim that excess tax was paid since the property tax payable in respect of their properties under the previous tax regime prior to 2009 was higher; with effect from 01.04.2009, the property tax was liable to

be computed in accordance with NDMC (Determination of Annual Rent) Bye –Laws 2009 by following the unit area method. The petitioners claim that they paid tax at the same rate as assessed prior to 2009 and without following the applicable bye-laws. The petitioners, therefore, claim refund/adjustment of the tax already paid.

3. The claims made by the petitioners were rejected by the respondent for the reason that the petitioners had not filed their returns for the years in question, namely, 2009-10, 2010-11 and 2011-12.

4. Learned counsels for the petitioners contend that excess tax was paid by them by mistake and thus, should be refunded. The counsel have also referred to the decision of the Supreme Court in ***Belapur Sugar & Allied Industries Ltd vs. Collector of Central Excise Aurangabad***: **(1999) 4 SCC 103** in support of their contention that a tax which has been paid under a mistake or under ignorance of law cannot be withheld by the State. The relevant extract of the said decision reads as under:

> "New submission for the Revenue is that at least those assesses who have cleared and paid the excise duty, as the appellant has done, cannot claim benefit under the amended notification. We do no find any merit even in this submission. When the notification granted exemption to such factories which produced in excess of average production and such assesseeif otherwise is entitled to such exemption, it cannot be defeated merely on the ground that such factory has already paid the duty for the period in question. Even if duty is paid under ignorance of law or otherwise, if by subsequent legislation or valid notifications the obligation to pay the duty is withdrawn, it cannot be refused since he has already paid the duty. If duty paid is shown to be not leviable or entitled to rebate, the Revenue has to refund, adjust, credit such amount

to the assessee, as the case may be."

5. In my view, there would be no justification for the respondent to withhold excess property tax paid by the petitioners, if the assessment as furnished by the petitioners is accepted.

6. In the circumstances, the present petition is disposed of with a direction that the parties will appear before the Director (Tax) of NDMC who shall examine the assessment with respect to their respective properties. The petitioners further state that they shall not claim any rebate for the past years. If the Director (Tax) concludes that the excess tax has been paid, he shall calculate the excess and either refund the same or grant the credit for the same in respect of future tax.

7. Learned counsel for the respondent states that the unit area method (i.e. the 2009 Bye-laws) has been impugned in another writ petition which is pending before the Division Bench of this Court. It is clarified that in the event the unit area method of assessment is struck down and it is subsequently found that the higher property tax is payable, the petitioners shall forthwith refund any benefit that they may receive pursuant to this order.

VIBHU BAKHRU, J

FEBRUARY 05, 2015
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