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

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Judgment delivered on: January 14, 2015

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W.P.(C) No. 4195/2013

FOUNDATION FOR APPLIED RESEARCH IN CANCER

..... Petitioner

Represented by: Mr. Rakesh Kumar Khanna,
Senior Advocate with Mr. Vinod
Kumar, Ms. Shefali Jain and
Mr. Anirudh Tanwar, Advocates.

Versus

DDA & ORS.

..... Respondents

Represented by: Mr. Arun Birbal and Mr. Sanjay
Singh, Advocates for Respondent
No.1/DDA.
Ms. Mini Pushkarna, Standing Counsel
and Ms. Yoothica Pallavi, Advocate for
Respondent No.2/SDMC.
Ms. Ferida Satarawala, Advocate for
Respondent No.4/GNCTD.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The petitioner is a Cancer Research Institute, registered as a Trust and enjoying a tax exemption under Section 80-G of the Income Tax Act, 1961. The respondent No.1/Delhi Development Authority (for short 'DDA') vide para 6(g) of the Notifications dated 10.10.2008 and 23.12.2008 levied additional Floor Area Ratio (FAR) charges for institutional plots, i.e., including hospital plots and 50% of the updated Zonal market rate of institutional properties for those disposed of by

auction and for those properties which were allotted to private parties as well. However, the same is not applicable to those institutions which were allotted land @ Rs.1 for whom no such charges is recommended.

2. Para 6(g) of the aforementioned Notifications was challenged before a Division Bench of this Court in a batch of writ petitions, lead matter being W.P.(C) No. 9572/2009 titled *as 'South Delhi Education Society Vs. DDA & Anr.'*. During the pendency of those writ petitions, the DDA issued a clarificatory Notification dated 17.07.2012, whereby para 6(g) of the earlier Notifications dated 10.10.2008 and 23.12.2008 was modified to the extent that educational societies/healthcare and social welfare societies having income tax exemption were exempted from levy of additional FAR charges.

3. During the pendency of the aforementioned batch of writ petitions, the respondent No.3/Municipal Corporation of Delhi herein(for short 'MCD') raised a demand on the present petitioner on 08.07.2010 for a sum of Rs.13,17,32,564/- as additional FAR charges. The aforementioned clarificatory Notification was brought to the notice of the Division Bench of this Court, the said Court while disposing of the aforesaid batch of writ petitions vide its final order dated 20.07.2012, directed refund in favour of the petitioners therein.

4. In view of the aforementioned order passed by this Court, the petitioner also being similarly situated person filed a representation dated 14.01.2013 to the respondent No.2/Sought Delhi Municipal Corporation (for short 'SDMC') and sought a refund. However, the said representation has been declined vide impugned order dated

23.04.2013 on the ground that subsequent Notification has prospective effect and not retrospective in nature.

5. Vide the present petition, the petitioner seeks direction thereby directing that Notification dated 17.07.2012, passed by the DDA, is clarificatory in nature and its operation is retrospective, therefore, the impugned order dated 23.04.2013 passed by the respondent No.2 on the ground that the Notifications dated 10.10.2008 and 23.12.2008, being prospective in nature, is liable to be quashed.

6. Consequently, seeks direction against the respondent No.2/SDMC to refund a sum of Rs.13,17,32,564/- along with interest at the rate of 18% *per annum* in its favour.

7. Mr. Rakesh Khanna, learned Senior Counsel appearing on behalf of the petitioner has submitted that in W.P.(C) No.1149/2013 decided on 22.11.2013, this Court clarified that though while allowing the batch of writ petitions, the Division Bench of this Court in its order dated 20.07.2012 had observed that the said decision shall be applicable only to the petitioners therein, yet the petitioner (in W.P.(C) No. 1149/2013) being a similarly placed person cannot be denied the benefit of the same. Accordingly, on parity the aforementioned petition was allowed.

8. Moreover, in LPA No. 107/2014 decided on 30.04.2014, the Division Bench of this Court held as under:-

“24. In the instant case the moment the notification dated December 23, 2008 was promulgated, representations were made to do away with the condition of paying extra premium for the extra FAR. A committee was constituted to look into the issue, which decided that for three category of bodies : (i) Education, (ii) Health

Care and (iii) Social Welfare, the additional charges need to be withdrawn. The Central Government accepted the same. The notification dated July 17, 2012 was promulgated. The object of the legislation is to confer a benefit without taking away anybody's vested right and without inflicting a corresponding detriment on some other person or on the public generally. To confer a benefit is the express object of the legislation. The presumption thus would be that that intent was to give a retrospective effect.

25. We have already reasoned above that the decision of the Division Bench of this Court dated July 20, 2012, though not so expressly stating, meaningfully read, has treated the notification dated July 17, 2012 as retrospective and thus the respondent in LPA No. 107/2014 and the writ petitioners in the three captioned writ petitions would be entitled to succeed on three distinct and independent reasons. Firstly, parity with the writ petitioners of the various writ petitions which were allowed on July 20, 2012, which decision was affirmed by the Supreme Court. Secondly, on the doctrine of fairness adopted by the Supreme Court in Indian Tobacco Association's case (supra) and Vijay's case (supra). Thirdly, that the notification dated July 17, 2012 has to be given a retrospective operation."

9. Being aggrieved, the DDA challenged the aforesaid decision before the Supreme Court vide SLP (C) No.15420/2014, which was dismissed vide order dated 25.07.2014.

10. And similar view has been taken in W.P.(C) No.3205/2014 decided by this Court vide its order dated 21.05.2014.

11. On the other hand, Ms. Mini Pushkarna, learned standing counsel appearing on behalf of the respondent No.2/SDMC, submitted that case of the petitioner was finalized for sanction of building plan as

per the Notification dated 23.12.2008 and as per the prevailing law, once a case stood finalized, the same attains finality and cannot be reopened if some amendment in the law is made subsequently. Moreover, the petitioner never challenged the Notification dated 23.12.2008 issued by DDA. In fact, the petitioner has taken the benefit under the said DDA Notification. Thus, once the aforesaid Notification has been accepted by the petitioner, then it is bound by the decision taken under the same.

12. Ms.Pushkarna further submitted that the petitioner has erred in relying upon the order dated 20.07.2012 passed by this Court in batch of writ petitions, lead matter being W.P.(C) No. 9572/2009, as the said order is not applicable to the facts and circumstances of this case on two counts. Firstly, the said order was passed in case of petitioners who had not accepted the DDA Notification dated 23.12.2008 and had in fact, challenged the same. Secondly, the case of the petitioner herein had already stood finalized under the Notification dated 23.12.2008 as the petitioner had not challenged the aforesaid Notification and accepted the same without any protest. Therefore, the cases relied upon by the petitioner have no bearing to the present case.

13. I have heard the learned counsel for the parties.

14. Keeping in view the decisions taken by this Court in the cases cited by the petitioner as noted above, which have been testified upto the Supreme Court of India, the issue raised is no more *res integra*.

15. Admittedly, the petitioner is registered as a Trust and enjoying a tax exemption under Section 80-G of the Income Tax Act, 1961.

Therefore, applying the doctrine of parity, the petitioner herein being similarly situated of the petitioners whose cases have been allowed by this Court, the petitioner is also entitled for the same relief.

16. At the cost of repetition, it is again opined that the subsequent Notification dated 17.07.2012, which is clarificatory in nature, has retrospective effect in its operation.

17. Consequently, the impugned order dated 23.04.2013 passed by the respondent No. 2/SDMC is hereby set aside.

18. Accordingly, the respondent No.2/SDMC is directed to refund a sum of Rs.13,17,32,564/- to the petitioner within a period of two months from today, failing which the petitioner shall be entitled for the interest at the rate of 9% *per annum* on delayed payment.

19. In view of the above, the present petition is allowed with no order as to costs.

**SURESH KAIT
(JUDGE)**

JANUARY 14, 2015

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