

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 20.03.2015

+ **W.P.(C) 150/2015 & CM 244/2015**

M/S JAMIA HAMDARD

..... Petitioner

versus

SOUTH DELHI MUNICIPAL CORPORATION

..... Respondent

+ **W.P.(C) 153/2015 & CM 250/2015**

M/S JAMIA HAMDARD

..... Petitioner

versus

SOUTH DELHI MUNICIPAL CORPORATION

..... Respondent

+ **W.P.(C) 185/2015 & CM 296/2015**

M/S JAMIA HAMDARD

..... Petitioner

Versus

SOUTH DELHI MUNICIPAL CORPORATION

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr H.L.Narula in all the Items.

For the Respondent : Ms Madhu Tewatia with Ms Sidhi
Arora in all the Items.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. These petitions have been filed by the petitioner, *inter alia*, impugning an assessment order dated 28.12.2012 passed by the Assessor & Collector, South Delhi Municipal Corporation assessing the Annual Value of the property of the petitioner w.e.f. 2004-05, w.e.f 2005-06 and w.e.f

2009-10. The petitioner also impugns a common order dated 14.11.2014 (hereafter ‘the impugned order’) passed by the Municipal Taxation Appellate Tribunal, Delhi (hereafter ‘the Tribunal’) whereby three separate appeals filed by the petitioner impugning the assessment order dated 28.12.2012 with respect to three years, viz. 2004-05, 2005-06 and 2009-10 respectively were held to be non-maintainable. The sole reason for the Tribunal’s conclusion was that the petitioner had not preferred appeals with respect to other years i.e. 2006-07, 2007-08, 2008-09, 2010-11 and 2011-12. However, the Tribunal gave liberty to the petitioner to file separate appeals with respect to the remaining assessment years which were not challenged.

2. Briefly stated, the facts that are relevant for considering the controversy in the present petitions are as under:-

2.1 The petitioner – Jamia Hamdard filed its property tax return, from 2004-05 onwards, as per the Unit Area Method as introduced by the Delhi Municipal Corporation (Amendment) Act, 2003. The self assessment of the property tax returns filed by the petitioner for the year 2004-05 to 2009-10 were examined by the assessing authority and, according to the said authority, certain discrepancies were found relating to payment of vacant land tax; incorrect application of unit area value; and incorrect use factor. Consequently, the Deputy Assessor & Collector (GRP) issued a notice dated 08.09.2010 under Section 123D of the Delhi Municipal Corporation Act, 1957 (hereafter ‘the Act’) as inserted by Delhi Municipal Corporation (Amendment) Act, 2003 and sought various details in respect of the properties of the petitioner.

2.2 The Assessor & Collector, by an assessment order dated 28.12.2012, assessed the Annual Value as ₹10,12,55,600/- w.e.f. 2004-05; ₹15,27,71,450/- w.e.f. 2005-06 and ₹15,79,99,450/- w.e.f. 2009-10 and also directed that a show cause notice under Section 123D(d) of the Act be issued as to why penalty upto 30% of the difference should not be imposed for wilful suppression of facts.

2.3 The petitioner filed three separate appeals (being HTA No.1/MTT/2013, HTA No.2/MTT/2013 and HTA No.3/MTT/2013) before the Tribunal challenging the assessment order dated 28.12.2012 with respect to three years, viz. 2004-05, 2005-06 and 2009-10. The Tribunal considered the question whether an assessee can choose to file appeals for some of the years while leaving the Annual Value of remaining intervening years unchallenged. The Tribunal, by the impugned order held that, *prima facie*, the appeals were not maintainable in view of the decision of the Supreme Court in the case of **Premier Tyres Ltd. v. Kerala State Road Transport: AIR 1993 SC 1202**. However, the Tribunal did not dismiss the appeals but gave liberty to the petitioner to file separate appeals for each remaining assessment year.

3. The petitioner contended that the principle of *res judicata* is not applicable in taxation matters as each assessment year is separate; an assessment order is only confined to assessing the tax payable with respect to that assessment year. The learned counsel for the petitioner submitted that, in this view, the decision of the Tribunal in calling upon the petitioner to file appeals with respect to other years, i.e. 2006-07, 2007-08, 2008-09, 2010-11 and 2011-12, is not sustainable.

4. The learned counsel for the petitioner further submitted that the assessment order itself was limited to three assessment years i.e. 2004-05, 2005-06 and 2009-10 and, therefore, the petitioner had filed three separate appeals and also deposited the tax pertaining to the said three years. It was submitted that the appeals filed by the petitioner were, thus, competent and could not be rejected as not maintainable.

5. Ms Tewatia, the learned counsel for the respondent corporation controverted the contentions urged on behalf of the petitioner and submitted that the petitioner's contentions were based on an erroneous premise that the assessment order was only limited to three assessment years. She contended that the assessment order was a consolidated assessment order for several years and had expressed the assessed annual value w.e.f. the specified years; in other words, annual value was assessed at ₹10,12,55,600/- for the year 2004-05; ₹15,27,71,450/- for the year 2005-06, 2006-07, 2007-08 and 2008-09; and ₹15,79,99,450/- w.e.f. 2009-10 i.e. for the years 2009-10, 2010-11 and 2011-12. She submitted that as the petitioner had only filed appeals with respect to only three years, it would necessarily follow that the petitioner had accepted the assessment in respect of other assessment years and, therefore, the findings recorded in the assessment order were conclusive on the principle of *res judicata*. Consequently, the petitioner would be precluded from pursuing its appeals as the issues involved were common with the assessment for other years, which were not appealed against.

6. The learned counsel for the petitioner was specifically asked as to whether the petitioner would accept the assessment for the other years for

which no appeal had been filed. He responded by stating that since the assessment order related only to three years, the petitioner had preferred appeals in respect of only those years and reserved its right to file an appeal in respect of other years as and when assessments were framed in respect of those years. The learned counsel, however, conceded that it would be necessary for the petitioner to file appeals in respect of other years also, if it was held that the assessment order assessed the tax in respect of those years, as well.

7. In view of the above, it is, first and foremost, necessary to examine the question whether the assessment order spans over more than the three years (i.e. other than the years in respect of which appeals were preferred by the petitioner).

8. The notice under Section 123D of the Act issued on 08.09.2010 indicates that the Assessing Authority was not satisfied with the self-assessment property tax returns filed for the years 2004-05 to 2009-10 and, therefore, had called upon the petitioner to provide the details of the properties. The proceedings before the Assessing Authority record that no response was received to the said notice. Thereafter, another notice dated 02.11.2010 was issued, once again affording the petitioner an opportunity to be heard and to furnish the relevant details for computing the annual value of the property for the financial years 2004-05 to 2010-11.

9. Thereafter, the proceedings culminated in the assessment order dated 28.12.2012 which is impugned in the present petition. The relevant extract of the said assessment order is quoted below:-

“Total Annual Value of the property comes to Rs.10,12,55,600/- which is fixed w.e.f. 1.4.2004. Vacant land AV is applicable w.e.f. 1.4.2005 which comes to Rs.5,15,15,580/- and by adding the AV of built-up structure, total AV comes to Rs.15,27,71,450/- which is fixed w.e.f. 1.4.2005. The Annual Value of additional area measuring 5228 sq.mtr. added in the property during the year 2008-09 and put in use during the year 2009-10, comes to Rs. 52,28,000/-. By adding this AV, total annual value of property comes to Rs.15,79,99,450/- p.a. which is fixed w.e.f. 1.4.2009. To sum up, following AVs are fixed:-

1. Rs.10,12,55,600/- p.a. w.e.f. 1.4.2004;
2. Rs.15,27,71,450/- p.a. w.e.f. 1.4.2005; and
3. Rs.15,79,99,450/- p.a. w.e.f. 1.4.2009.

In view of the above mentioned facts and circumstances, I am of the opinion that the assessee through its representatives has concealed the material facts and willfully not filed the said return in accordance with the law. Assessment of the above mentioned property is done accordingly. The said AVs are based on the information / documents on file. Property Tax be computed and bill raised for the tax further payable. The assessment order is subject to acceptance of the Audit.”

10. A plain reading of the proceedings that culminated in the assessment order indicate that the said order is a consolidated order in respect of the years 2004-05 to 2010-11. Although the initial notice was issued with respect to the years 2004-05 to 2009-10, the notice dated 02.11.2010, clearly, indicated that the proceedings will be conducted with respect to the assessment for the years 2004-05 to 2010-11. The Annual Value of the property as assessed for this period, which was under consideration, has been conveniently expressed as ₹10,12,55,600/- p.a. w.e.f. 01.04.2004; ₹15,27,71,450/- p.a. w.e.f. 01.04.2005; and ₹15,79,99,450/- p.a. w.e.f.

01.04.2009. In the circumstances, the petitioner's contention that the said assessment order is only with respect to three years, is not sustainable. However, the Tribunal's conclusion that since demands were raised for the year 2011-12, the assessment order would include the same cannot be sustained as the proceedings were only in respect of the years 2004-05 to 2010-11

11. Although, the said assessment order has been impugned in the present proceedings, I am not inclined to examine the rival contentions on merits of the said order as the petitioner has an alternative remedy of appealing against the said order, before the Tribunal.

12. The next issue to be examined is whether the Tribunal was correct in coming to a conclusion that the appeals filed by the petitioner were liable to be dismissed on the ground that the petitioner had not appealed against the assessment order in respect of other assessment years. The Tribunal had reasoned that since the petitioner had not filed an appeal against the common assessment order with respect to other years, the same was binding on the petitioner even in respect of the years for which appeals had been preferred. The Tribunal had relied on the decision of the Supreme Court in **Premier Tyres Ltd.** (*supra*) in arriving at the said conclusion.

13. It is well settled that in matters of taxation, each assessment year is independent and the issues decided in respect of a particular assessment year only conclude those issues with respect to that year. Thus, the fact that the petitioner had not filed appeals in respect of other assessment years would not bar the petitioner's appeal on the principle of *res judicata*.

14. In **Instalment Supply (P) Ltd. v. Union of India**: AIR 1962 SC 53 – a Constitution bench of Supreme Court held as under:-

“There is another answer to the point of res judicata raised on behalf of the petitioners, relying upon the decision of the Punjab High Court in *Instalment Supply Ltd., New Delhi v. State of Delhi* [AIR 1956 Punj 177]. It is well settled that in matters of taxation there is no question of res judicata because each year's assessment is final only for that year and does not govern later years, because it determines only the tax for a particular period. [See the decision in the House of Lords in *Society of Medical Officers of Health v. Hope (Valuation Officer)* [(1960) AC 551] approving and following the decision of the Privy Council in *Broken Hill Proprietary Company Limited v. Municipal Council of Broken Hill* [(1925) AC 94].”

15. In **M.M. Ipoh v. CIT**: AIR 1968 SC 317, the Supreme Court held as under:-

“The doctrine of res judicata does not apply so as to make a decision on a question of fact or law in a proceeding for assessment in one year binding in another year. The assessment and the facts found are conclusive only in the year of assessment: the findings on questions of fact may be good and cogent evidence in subsequent years, when the same question falls to be determined in another year, but they are not binding and conclusive. The finding recorded by the High Court that in the year 1951-52 there was no association of persons constituted by Meyyappa (I) and Chettiappa for earning income from M.M. Ipoh properties will not in the present case have any effect on the finding of the Tribunal that in year 1952-53 and the subsequent years such an association existed. It must again be remembered that the association of persons which traded in 1952-53 and the subsequent years was an association different from the association in 1951-52. After the reduction in the shares of Meyyappa (I) and Chettiappa in the “M.M. Ipoh properties” a fresh arrangement for

entrustment of the management of the properties to the M.S.M.M. firm was necessary and according to the findings of the Tribunal, Alagammal assented on behalf of Chettiappa to that arrangement.

16. The reliance placed by the Tribunal on the decision of the Supreme Court in the case of **Premier Tyres Ltd.** (*supra*), in my view, is misplaced. In that case, the Supreme Court was concerned with two connected suits where common issues had been struck. The suit was filed by the appellant for recovery of an amount based on the invoice price. The respondent also filed a suit alleging that payment in excess of the DGS & D contract rate had been made. Both the suits were connected and tried together.

17. As stated above, the issues were also common. The Trial Court held that the respondent was entitled to refund to the extent of excess payment made and the appellant was entitled to recover the amount to the extent payable on the basis of DGS & D contract rates. The appellant did not file an appeal against the dismissal of a part of its claim in its suit. But, appealed against the decision rendered in favour of the respondent in the suit preferred by the respondent. It is, in this context, that the Supreme Court concluded that the finality of the findings in the connected suit due to non-filing of an appeal precluded the Court from hearing an appeal in respect of the other suit.

18. Since the principle of *res judicata* is not applicable in taxation matters, the fact that no appeal has been preferred by the petitioner in respect of other years cannot lead to the conclusion that the assessment in respect of those years, precluded the Tribunal from hearing the petitioner's appeal.

19. A Division Bench of this Court in **Delhi Golf Club Limited v New Delhi Municipal Corporation**: AIR 1997 Del 347 had also held that “*If a property is liable to be taxed under a statute which is the law of the land it must be so taxed without regard to the fact that for an earlier year it has successfully escaped taxation on an erroneous view of facts and/or law*”. This Court further referred to Turner on Res judicata (Second Edition) to emphasize that the rule of estoppel would not be applicable in taxation matters. The relevant extract from the said judgment is quoted below:

“**23.** We may refer to Turner on Res-Judicata (Second Edition), where the subject has been succinctly dealt with and stated with precision.

23.1 Question of assessment from one year to another in taxation and rating cases form an interesting exception to the principles of issue estoppel, by which they are not governed. They are sui generis in this regard, and issues involved in the determination of a question inter partes as to liability for tax or rates in one year, or on the fixing of one assessment list, even though the question determined be fundamental to liability, will not form the basis of an estoppel inter partes in other and subsequent proceedings in which the assessment for that year or that list is not involved. (Turner, para 219 at p.193)

23.2 It is now settled law that decisions on questions of land tax, income tax and rating assessments constitute an important exception to the general rules as to res judicata, and that such decisions given in regard to one year's tax or rates, or as to given rating or assessment lists, do not give rise to estoppels binding the parties in respect of another year's tax or rates, or a later assessment list. (para 309 at P.260 ibid)

23.3 But not only decisions at an administrative level, but also those given by courts of competent general jurisdiction fall within the exception to the general rule, and no

estoppel can be founded upon them when the same point is raised again in another year of assessment, or in respect of a list other than that fixed in the original decision. This will be so even in cases where there is a formal admission that no material circumstance has in the meantime changed. The reason appears to be because the question of the liability of the taxpayer for the subsequent year's tax or rate is not to be regarded as the same question as that of his liability for the first, (para 310 at P.261 *ibid*).

(emphasis supplied)”

20. Having stated above, it must be cautioned that the assessment for the years 2006-07, 2007-08, 2008-09 and 2010-11 would be treated as final as the appeals in respect of those years has not been filed. In the event, the petitioner succeeds in the appeals already filed, the same would also not enure to the benefit of the petitioner in respect of other years on the principle that each assessment year is separate. Thus, although a common assessment order has been passed, fixing the annual value in respect of several assessment years, appeals filed in respect of three assessment years would not disturb the assessment framed in respect of other years.

21. Thus, in my view, the conclusion of the Tribunal that the appeals filed by the petitioner were not maintainable, cannot be sustained. However, it cannot be over stressed that the opportunity afforded by the Tribunal to the petitioner to file appeals in respect of other years is a valuable opportunity and in the event the petitioner fails to avail of the same, it would not be open for the petitioner to challenge the assessment in respect of other years, which would necessarily stand concluded by the assessment order dated 28.12.2012.

22. Accordingly, the impugned order dated 14.11.2014 passed by the Tribunal is set aside. However, the petitioner would be at liberty to file appeals before the Tribunal with respect to the years: 2006-07, 2007-08, 2008-09 and 2010-11 within 4 weeks from today. All pending applications also stand disposed of. No order as to costs.

VIBHU BAKHRU, J

MARCH 20, 2015
RK

