IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2016

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.39163 of 2016 &
WMP No.33534 of 2016

M/s HCL Corporation Pvt. Ltd.,
rep. by its Authorized Signatory
New Delhi-110 065 [ PETITIONER ]

Vs

1 The Assistant Commissioner
Greater Chennai Corporation
Zonal Office-7
CTH Road (opp. to Dunlop)
Chennai 600 053.

2.The Commissioner
Greater Chennai Corporation
Rippon Buildings, Chennai 600 003.
[RESPONDENTS]

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records passed by the first respondent dated 08.08.2016, in Ref. No.Z.07 R.DC.No.R2/002572/2016 and quash the same and direct the second respondent to consider the Revision Petition of the petitioner dated 05.05.2016.

For Petitioner : Mr.Srinath Sridevan

For Respondents: Mr.T.C.Gopalakrishnan
Standing Counsel



O R D E R

Heard Mr.Srinath Sridevan, learned counsel for the petitioner and Mr.T.C.Gopalakrishnan, learned Standing Counsel appearing for the respondents. By consent, the Writ Petition itself is taken up for disposal.

2.The petitioner has come forward with this Writ Petition, challenging the proceedings of the first respondent dated 08.08.2016, and to direct the second respondent to consider their Revision Petition dated 05.05.2016.

3.The petitioner-Company owns a property in Ambattur Industrial Estate, which was originally falling within the jurisdiction of Ambattur Municipality. The property was assessed to tax at the rate of Rs.1,41,595/- per half year and it is not disputed by the respondent-Corporation that the entire tax at the said rate has been fully paid by the petitioner. A Notice was issued by the respondent-Corporation on 10.03.2016, stating that the petitioner's property has now fallen within the jurisdiction of the Greater Chennai Corporation and they propose to revise the property tax with retrospective effect from II/2011-2012 from Rs.1,13,276/- to Rs.4,22,358/-. This notice issued in Form-7 stated that within fifteen days from the date of receipt of the Notice, the petitioner can prefer an Appeal to the Commissioner, Greater Chennai Corporation. The petitioner filed an objection before the second respondent, Commissioner of respondent Corporation, however, they titled the objection as a Revision Application, filed under Schedule IV of the Chennai City Municipal Corporation Act, 1919.

4.In any event, the Application was addressed to the second respondent and rightly so, because Form-7 notice states that the Commissioner of Greater Chennai, would be the Authority to whom Appeal can be preferred. However, it is seen that the first respondent has rejected the Application by the impugned order, stating Revision Application need not be submitted by the petitioner, but, Appeal alone has to be preferred as against the enhancement of property tax to the Commissioner of Greater Chennai Corporation.

5.If such was the finding rendered by the first respondent, it is not known as to why the first respondent has taken up the objection and rejected the same by passing an order. Therefore, the petitioner's contention is that the impugned order passed by the first respondent is without jurisdiction.



6.The learned Standing Counsel appearing for the respondent Corporation would submit that all Appeal Petitions cannot be considered by the Commissioner because of the vast area of Greater Chennai Corporation and the first respondent is the delegate of the Commissioner, who is entitled to pass the impugned order.

7.On a perusal of the impugned order, it is seen that there is no specific reference to any order conferring power on the first respondent to exercise the Appeallate power of the second respondent. In fact, as mentioned above, the first respondent also does not take such a stand, but, states that an Appeal can be preferred to the Commissioner. This is sufficient to hold that the first respondent has in effect usurped the powers of the second respondent and decided the petitioner's Application, which the first respondent was not entitled to do. Therefore, this Court holds that the impugned order suffers from the vice of lack of jurisdiction and this is sufficient to set aside the impugned order.

8.Thus, the larger issue would be that the property owned by the petitioner should be assessed to the correct rate of tax and the respondent Corporation could be in a position to recover the property tax fully. Considering the fact that the proposed revision is with retrospective effect from II/2011-12, during which period, the property was within the jurisdiction of the Ambattur Municipality, the petitioner should have an effective opportunity to putforth their objections against the proposed revision.

9.It is not in dispute that the property owned by the petitioner has not been inspected by the officials of the respondent Corporation, after the property has fallen within the jurisdiction of the Greater Chennai Corporation. Therefore, the proper procedure for revision of assessment would be, first to cause inspection on the petitioner's property, after due notice to the petitioner, issue a provisional order of assessment, give an opportunity to the petitioner to submit their objections and then complete the assessment in accordance with law. This procedure alone would satisfy the principles of natural justice, as these are the rudimentary principles for any tax assessment.

10.For all the above reasons, the Writ Petition is allowed, the impugned order is set aside and the competent authority of the respondent Corporation is directed to cause inspection of the petitioner's property, after due notice to the petitioner, within a period of two weeks from the date of receipt of a copy of this order and after noting all the details, a provisional order be served on the petitioner to which the petitioner shall be entitled to submit their objections, and after considering the objections that may be submitted by the petitioner, final order of assessment should be passed in accordance with law. As the respondent-Corporation has accepted the fact that there are no arrears as on date, the petitioner shall continue to pay the pre-revised property tax, till final orders are passed in terms of the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rpa

To

1 The Assistant Commissioner
Greater Chennai Corporation
Zonal Office-7
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Chennai 600 053.

2.The Commissioner
Greater Chennai Corporation
Rippon Buildings, Chennai 600 003.

+1 cc to Mr.Srinath Sridevan Advocate sr 64874
+1 cc to Mr.T.C.Gopalakrishnan Advocate sr 64563

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