**IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH**

**RSA-5767-2014(O&M)**
**Date of decision : 22.04.2016**

The State of Punjab and another

... Appellants

Versus

Parbhat Chand Aggarwal

... Respondent

***CORAM: HON'BLE MR. JUSTICE AMIT RAWAL***

Present: Mr.Piyush Bansal, DAG, Punjab
for the appellants.

Mr.Tavinder Singh, Advocate
for the respondent.

***AMIT RAWAL, J.(ORAL)***

**CM-13691-C-2014**

Prayer in this application is for condonation of delay of 27 days in filing the appeal.

Counsel for the respondent states that he has no objection if the application is allowed.

Heard. In view of averments made in the application and submissions made by counsel for the respondent, the application is allowed and delay of 27 days in filing the appeal is condoned.

**RSA-5767-2014**

The appellants are in regular second appeal against the concurrent findings of fact and law whereby the suit for recovery of ₹55,040/- as arrears of service tax has been decreed.

Mr.Piyush Bansal, DAG, Punjab submits that as per Clause 18 of the lease deed, the service tax is liable to be paid by the respondent-plaintiff.

Learned courts below have mis-interpreted the aforementioned clause and fastened the liability upon the tenant. However, the lower appellate Court accepted that the provisions of Punjab Municipal Corporation are applicable to the Chandigarh. Clause 12(A)(i) and (iii) of the Chandigarh Municipal Corporation Tax which deals to the assessment of tax specified in Section 91. As per provisions of Section 97, in case the building is taxable to certain other taxes then service tax is liable to be paid by the tenant. However, in the instant case, building was taken on rent, therefore, aforementioned provisions has not been pressed into service.

In support of his contention, he has relied upon judgment of Hon'ble Supreme Court of India in ***Rashtriya Ispat Nigam Limited Vs. M/s. Dewan Chand Ram Saran, 2012(3) RCR (Civil) 720*** to contend that party can enter into contract by fixing the liability of service tax. He further submits that even if the lease deed for a period of 3 years is unregistered but same can read into evidence for collateral purpose. The landlord can not take benefit of promulgation of notification dated 22.05.2007, amendment of the Finance Act 1994 and provisions of

Section 65(105)(zzzz) of the Finance Act whereby the service tax has been ordered to be imposed upon premises let out to the tenants.

Learned counsel appearing on behalf of the plaintiff-respondent submits that as per the notification referred to above, the liability to pay service tax is upon the tenant and therefore, Clause 18 of the lease deed being unregistered document cannot be looked into. It is further submitted that two suits in regard to the property tax and service tax was filed and Regular Second Appeal bearing No.5815 of 2014 with regard to the suit filed for recovery of property tax at the instance of the State of Punjab has been dismissed vide order dated 10.12.2014 and the terms of lease deed has also been interpreted, therefore, the appeal sans merit and thus, liable to be dismissed.

I have heard learned counsel for the parties and of the view that there is no substance in the force and submission of Mr.Piyush Bansal, and reliance upon the judgment ***Rashtriya Ispat Nigam Limited's case (supra)*** is also not applicable as terms and condition of the agreement have been interpreted in arbitration proceedings, whereas indisputably and inescapably in present case the appellants-defendants had taken the premises on rent. In view of the promulgation of notification as well as amendment in the Finance Act, the liability of the service tax has been fastened on the tenant to whom the building is let out on rent. Therefore, suit was filed and decreed. Issue of unregistered document cannot be looked into even for collateral purpose as clause 18 has already been interpreted in the judgment rendered by this Court in RSA(supra).

Keeping in view the aforementioned facts and circumstances, I am of the view that there is no illegality and perversity in the judgments of the courts below. However, findings of the learned appellate Court by taking add of Section 12(A)(i) is not sustainable and justified as the property in dispute was not subjected to tax as enshrined in Section 91. However, the reference to the said findings is expunged, therefore, the impugned judgment and decree of appellate Court is modified in the aforesaid terms and the judgment and decree of trial Court is hereby affirmed.

No substantial question of law arises for adjudication by this Court.

Dismissed.

**(AMIT RAWAL)**
**JUDGE**

**April 22, 2016.**
*Davinder Kumar*