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

\+ W.P.(C) 1338/2013

SRI AUROBINDO EDUCATION SOCIETY (REGD.)..... Petitioner

Through: Mr. Pulkit Agarwal, Adv.

versus

MUNICIPAL CORPORATION OF DELHI ..... Respondent

Through: Ms. Mini Pushkarna, Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

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

% 15.03.2016

By this writ petition under Article 226 of the Constitution of India, petitioner has challenged the order dated 11th October, 2012 passed by the Appellate Tribunal whereby petitioner's appeal against the assessment order passed by the respondent has been dismissed.

Petitioner filed Self Assessment Property Tax Returns for the assessment years 2004-05 to 2009-10, in respect of the school building, under Sub-Section (1) of Section 116 E(1) of The Delhi Municipal Act, 1957 (for short, 'the Act'), on the unit area method. Petitioner computed the tax as per Section 114A and paid full amount of tax as prescribed under Sub-Section (3) of Section 123 B of the Act before 30th June of each assessment year. Subsequently, respondent assessed the tax under Section 123 D of the Act when it was noticed that Self Assessment Property Tax

Returns of the petitioner were not in accordance with the statute, consequently, a demand notice dated 29th March, 2010 was served whereby additional demand of ₹54,26,578/- towards tax for the period 2004-05 to 2009-10 was raised. A corrigendum was also issued on 28th June, 2010 by the respondent. This additional demand was paid by the petitioner on 31st March, 2010 without any pretext.

Subsequently, petitioner filed an application before the Assessor & Collector for review of order dated 29th March, 2010, alleging therein that additional tax amount works out to be ₹30,00,726/- and asked for the refund of ₹24,25,852/-. The review application was considered and respondent found that an amount of ₹16,75,445/- was excess deposit, accordingly, this amount was given adjustment of towards the future tax demand.

Petitioner remained dissatisfied with this order and filed an appeal before the Municipal Tax Tribunal (for short, 'the Tribunal'). He alleged that petitioner had availed rebate of 15% of the total tax amounting to ₹7,50,407/-, in respect of the tax deposited pursuant to the Self Assessment Property Tax Returns for the assessment years 2004-05 to 2009-10 but this rebate was not allowed by the respondent while assessing the tax. This rebate could not have been denied in terms of the Departmental Instruction bearing no. 21 of 1988 dated 11th August, 1988.

The Tribunal has considered this plea and rejected the same. Tribunal has held that on scrutiny of Self Assessment Property Tax Returns for the assessment years 2004-05 to 2009-10 respondent found that petitioner had furnished incorrect information and had calculated less tax resulting in passing of an order under Section 123 D of the Act by the respondent. This order passed under Section 123 D of the Act was not assailed by the petitioner before any forum. Since the petitioner had not paid the total amount of property tax which was legally payable during the assessment year 2004-05 to 2009-10, he did not become entitled to rebate. In other words, petitioner was liable to pay the entire assessed property tax amount. As regards the circular is concerned, Tribunal has noted that the same had become inapplicable in view of the amendment in the Act whereby unit area method was introduced and specific provisions were incorporated including that of rebate. Since petitioner had not paid the tax due and payable pursuant to Self Assessment Property Tax Returns which was re-assessed and the total due tax was paid subsequently and not in time during the relevant financial years, petitioner did not become entitled to rebate. I do not find any jurisdictional error in the view taken by the Tribunal. Self Assessment

Property Tax Returns were not in accordance with law, inasmuch, as deficient tax was paid, which fact came to the notice of respondent in scrutiny of returns and thereafter tax was re-assessed and was, in fact, paid by the petitioner without demand. Thus, it cannot be said that entire property tax was paid in time thereby making the petitioner entitled to rebate.

Writ petition is dismissed.

A.K. PATHAK, J.

MARCH 15, 2016
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