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

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Judgment reserved on: 02.12.2016.

Judgment delivered on: 06.12.2016

+ W.P.(C) 1037/2016 & C.M. No.4516/2016

SOUTH DELHI MUNICIPAL CORPORATION

..... Petitioner

Through Ms.Madhu Tewatia and Mr. Sachin
Saini, Advocates.

versus

CENTRAL WAREHOUSING CORPORATION

..... Respondent

Through Mr.K.K.Tyagi, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioner before this Court is the South Delhi Municipal Corporation. It is aggrieved by the order passed by the Municipal Tax Tribunal (MTT) dated 17.02.2015 vide which 10 appeals had been disposed of. These appeals were qua the tax liability of the Central Warehousing Corporation (respondent).

2 The controversy in the present case relates to the property of the Central Warehousing Corporation situated at 4/1, Siri Institutional Area, August Kranti Marg, New Delhi. The question which had arisen for decision before the MTT was whether the premises in question had to be levied a Use Factor-4 or whether Use Factor-1 would be applicable; this would have been

dependant on the fact as to whether the premises were being used as a “business building” or not. The Assessor and Collector vide his order dated 20.05.2014 had held that the premises were being used as a ‘business building’ and thus it invited Use Factor-4. The annual value was fixed accordingly; assessment order was directed to be revised. The tax payer was advised to file his correct PTR and the difference of tax with interest @ 1 % per month in terms of Section 152 (2) of the Delhi Municipal Act, 1957 (hereinafter referred to as the ‘DMC Act’). A fresh demand was to be raised as a demand upon the assessee. This order was subject matter of appeal before the MTT. The MTT did not interfere with the Use Factor-4. It was of the view that the premises were being used as a “business building” within the meaning of Clause ‘2’ of Byelaw 9 of the DMC (Property Tax) Byelaws, 2004. This part of the order was not interfered with. However the impugned order had noted that the interest which has been levied upon the assessee was liable to be set aside as Section 123-B (9) was held to be applicable and the two month period permitting the assessee to pay the tax was noted in his favour. It was noted that Section 152 (2) of the said Act would not be attracted and reliance by the Joint Assessor and Collector on the aforementioned provision was set aside. Thus, the result was that the interest liability of the

assessee was set aside.

3 This order has been impugned before this Court.

4 Learned counsel for the petitioner has restricted her submissions only qua the interest factor. Her submission is that Section 152 of the DMC Act would be squarely applicable as Section 152 (2) clearly provides that where any person is liable for payment of property tax and has failed to pay the same, he shall be liable to pay simple interest @ 1% per month. The impugned order has wrongly set aside the interest component. Reliance by the Tribunal on the provisions of Section 123-B (9) was misplaced; the first proviso to that Section has been ignored; reliance has also been placed upon Byelaw 19 (2) of the Byelaws, 2004. Submission being reiterated that the assessee in his self-assessment had wrongly applied the Use Factor resulting in the lower annual value and as such deposit of less tax only for the fault of the assessee, the revenue which was due to the Department was not received by the Department entitling the Department to levy interest under the aforementioned provision. Further submission being that the Tribunal had gone wrong on the factual submission that the assessee had paid his tax within two months from the date of the first assessment; the first assessment in this case was made on 07.10.2013; the assessee had deposited his tax on 19.12.2013

which was beyond the period of two months which has been contemplated under Section 123-B (9). On this ground also, the impugned order is liable to be set aside. Learned counsel for the petitioner submits that this second argument is in the alternative; her first submission being that this is a case which was squarely covered under Section 152 (2) of the DMC Act.

5 Arguments have been negated. Learned counsel for the respondent submits that the impugned order calls for no interference. Section 123-B (9) allows the assessee to make payment within two months from the date of the assessment order. Submission being that the assessment order which had been passed on 07.10.2013 related to two properties; it being a common assessment order it had been set aside by the Tribunal on 16.04.2014 with the direction to the Assessor and Collector to issue a fresh assessment order. This fresh assessment order was passed on 20.05.2014. Admittedly the respondent had made the deposit of tax on 19.12.2013 which was in pursuance of the first assessment order dated 07.10.2013 and thus this deposit already having been made his case would be adequately covered under Section 123-B (9) of the said Act. The impugned order calls for no interference.

6 Arguments have been heard. Record has been perused.

7 Before dealing with the legal position, relevant would it be to extract the following provisions of law.

Section 123-B (9)

Self Assessment and submission of return:-

(9) If after the assessment of the annual value of any land or covered space of building finally made under this Act, the payment on self-assessment under this section is found to be less than of the amount payable by the assessee, the assessee shall pay the difference within two months from the date of final assessment, failing which recovery shall be made in accordance with the provisions of this Act, but, after the final assessment, if it is found that the assessee has paid excess amount, such excess amount shall be refunded.

Provided that in any case where the amount of tax determined in the final assessment is more than the amount of tax paid under self-assessment, and the difference in the amount of tax is, in the opinion of the Commissioner, the result of willful suppression of facts as defined in the bye-laws, the Commissioner may levy a penalty not exceeding thirty per cent, of such difference in the tax besides the interest thereon.

Bye-law 19 (2)

Form of furnishing return self-assessment to Commissioner:-

(2) For the purpose of the first proviso to sub-section (9) of section 123-B, the suppression of any material fact in the return of self-assessment submitted under sub-section (5) of that section; resulting in the payment of an amount of tax which is lower than the amount of the tax determined in the

final assessment, shall be deemed to be willful suppression of fact, regardless of the consequences or effects of such suppression.

Section 152 (2)

Time and manner of payment of taxes:-

(2) Where any person liable for the payment of property tax under this Act has failed to pay:-

(a) such tax by the date as specified in sub-section (3) of Section 123-B; or

(b) the arrears of tax, interest and penalty, if any, and any other sum in the nature of tax up to the 31st march of the preceding financial year; he shall be liable to pay simple interest at the rate of one per cent, for every month or part of the month comprising the period from the expiry of the due date, till the amount is actually paid.

8 Section 123-B was introduced into the Act by the Amendment Act 6 of 2003 w.e.f. 01.08.2003. The Bye-laws were made operational w.e.f. 27.02.2004. These Bye-laws had been promulgated by the MCD by virtue of its powers under Section 481 (1) read with Section 483 of the said Act. By these amendments, property tax by way of self-assessment of returns based on the unit area method had been introduced.

9 A reading of Section 123-B (9) stipulates that if the payment of self-assessment is found to be less than the amount actually payable by the assessee, the assessee will pay the difference within two months from the

date of final assessment, failing which recovery shall be made in accordance with the provisions of the Act. The first proviso attached to this Section states that where the difference in the amount of tax is in the opinion of the Commissioner, the result of a willful suppression of facts as defined in the Bye-laws, the Commissioner can in addition to interest also impose a penalty not exceeding 30 %.

10 Bye-laws 19 (2) states that the suppression of any material fact in the return of self-assessment resulting in the assessee paying less tax than the amount actually due from him would be deemed to be a willful suppression of facts regardless of consequences or effects of such suppression.

11 Learned counsel for the petitioner submits that the assessee was well aware of the fact that Use Factor 4 had to be applied in his case and not Use Factor 1 and this is in fact clear from the document filed by him which is a communication dated 12.09.2013 written on his letterhead addressed to the Joint Assessor and Collector wherein the information sought for by the Department had been furnished in terms of this communication. The use of the property i.e. 4/1, Siri Institutional Area, August Kranti Marg, New Delhi was described as commercial with the Use Factor 4. Submission of the petitioner being that this document filed by the assessee himself clearly

shows that the assessee was fully aware of the fact that the Use Factor 4 was to be applied for his commercial property and as such his continuance to pay his property tax at Use Factor 1 clearly amounted to a willful suppression of fact.

12 This submission has been negated by the learned counsel for the assessee. His submission is that all show-cause notices which had been issued by the petitioner under Section 123-B which includes the notice dated 14.08.2013 had merely asked the petitioner to give details of his property and to file his returns; he was never put to notice that a lower tax was being paid by him; there was no willful suppression of any fact.

13 This Court is not in agreement with this submission of the learned counsel for the assessee. The document discussed supra (dated 12.09.2013) in fact forecloses all arguments on behalf of the assessee. The assessee was well aware of the fact that his property was a commercial property. He was aware on 12.09.2013 that Use Factor 4 was to be applied. He wrongly having filed his return for the previous years as also for the current year 2012-2013 under Use Factor 1; the amount of payment of tax was admittedly less than the amount actually payable by the assessee and thus deemed to be a willful suppression of fact within the meaning of Byelaw 19 (2). The proviso of

Section 123-B (9) clearly empowered the Commissioner to impose not only the component of interest but also levy a penalty.

14 In the instant case, no penalty has been imposed. The impugned order has imposed a tax of 1% per month which is the grievance of the assessee. This Court is of the view that this grievance of the assessee is ill-founded.

15 Section 152 (2) gives ample powers to the Commissioner to impose interest on the assessee at the simple rate of 1% every month. The case of the assessee is covered under both the sub-Clause i.e. (a) & (b) of Section 152(2). The assessee (in terms of Section 123 (3) read with Section 152 (2)(a)) had paid his tax by availing of the benefit of a 15% rebate. This tax amount was admittedly less than the amount actually due from the assessee as he had paid this tax by calculating the tax on his property by use of Factor 1 when admittedly he was liable to apply Use Factor 4. The arrears of tax which were due from him {(in terms of Section 152 (2)(b))} were payable.

16 The impugned order had noted that the assessee had paid his tax within two months of the moratorium granted to under Section 123-B (9). This moratorium would not be available to the assessee as in this case, the assessee having made a willful suppression of a fact the proviso attached to Section 123-B (9) (discussed supra) had to be necessarily invoked. In fact the

impugned order has itself in para 10 noted that the assessee had furnished wrong information regarding the use Factor and as such the Department was well within its right to reopen assessment for the years 2004-2005.

17 The fact that the property was a “business building” within the meaning of Bye-laws 9 of the said Act is not in dispute. What has been argued before this Court is only on the question of interest. That has been answered supra.

18 This Court is of the view that the impugned order is liable to be set aside; the Corporation was well within its right to inflict the liability of interest upon the assessee within the parameters of Section 152 (2) of the said Act. The order passed by the MTT on this count is set aside and the order of the Assessor and Collector in this context is restored.

19 Petition allowed and disposed of in the above terms.

INDERMEET KAUR, J

DECEMBER 06, 2016

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