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

\+ W.P.(C) 6183/2013 & C.M. No.13584/2013

INDIRA GANDHI NATIONAL OPEN UNIVERSITY

..... Petitioner

Through Ms.Manjeet Kaur, Adv.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR.

..... Respondents

Through Ms. Mini Pushkarna, standing counsel with Mr. Kathuri, Ms. Anushruti, Ms. Vasundhara Nayyar and Ms. Namrata, Advs.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

O R D E R

% **01.09.2016**

The petitioner before this Court is Indira Gandhi National Open University. They are aggrieved by the order dated 17.09.2013 vide which a warrant of distress was issued by the Assessment and Collection Department of the South Delhi Municipal Corporation seeking to attach a sum of Rs.71,01,657/- of the petitioner on account of property tax for the period ending 31.03.2013 which as per the respondent was liable to be paid by him under Section 114 of the Delhi Municipal Corporation Act, 1957 qua the property of the petitioner.

Record shows that the petitioner was being assessed to property tax. On 01.08.2012, he received a notice from the respondent Corporation seeking details of his properties. He replied to the same. This notice was reiterated on 24.09.2012 to which again the petitioner replied. Submission of the petitioner is that the petitioner has been paying property tax at an earlier rate which was 10% for institutional building of the university and 7% for the residential portion; he was categorized in category ‘H’. The use factor applied was No. 1. On 04.07.2013, he received an assessment order wherein an ex-parte demand of Rs.71,01,657/- was raised upon the petitioner as property tax for the period ending 2010-2011 to 2012-2013; this demand was made in view of a revised tax regime adopted by the respondent wherein his tax rates were enhanced; the residential user of 7 % was enhanced to 11% and for the commercial properties, percentage of 10% was enhanced to 15%. Submission of the petitioner is that this was an illegal demand made upon him as all along up to that date, he was paying tax at the earlier rate and this demand being illegal, is accordingly liable to be set aside.

Learned counsel for the petitioner to support her submission has placed reliance upon a document which is a website upload of the Corporation itself; submission being that the petitioner is a University which has been created by the Act of the Parliament and the non-residential and residential user has been separately categorized in this uploaded site at serial Nos. 94 and 95 (page 62 of the paper book). Since the petitioner University has been granted a special category (as is clear from the document of the respondent itself), the rate of 10% for commercial and 7% for residential was being charged from the petitioner. This enhancement per se without even giving a personal hearing to the petitioner is illegal.

The respondent has filed its counter affidavit. The stand of the Department is that although admittedly the petitioner has been paying property tax on the basis of the rate of tax at 10% for commercial portion and 7% for residential portion but the rate of tax applicable would now be 15% and 11% respectively and this would be for the assessment years in question. Attention has been drawn to the Explanation contained in Section 119 of the DMC Act which as per the respondent clearly states that the property owned by a Government Company or a Statutory Corporation which has a separate corporate personality would not be deemed to be a property of Union; submission being that the petitioner University is an independent autonomous body and it has rightly been covered for payment of property tax at the rate of 15% for commercial user and 11 % for residential user as per the schedule of tax w.e.f. 2010-2011. Additional submission being that it is the Municipal Valuation Committee (MVC) who gives the use factor for various categories of buildings/lands.

The fact that the MVC gives use factor for commercial building and land for the purpose of tax is not disputed. It is also not disputed that the tax slab of 15% for commercial and 11% for residential has been created for Government companies and autonomous bodies (as is evident from the Annexure filed by the respondent along with their counter affidavit which is a self-assessment tax form). In the column 'Type of Properties' 'Educational Institutions comprise of Government companies, autonomous body, public sector undertaking and statutory corporation' are mentioned. For an autonomous body, the use factor applicable in category 'H' is 11% and 15% for residential and commercial blocks. All these facts are undisputed.

The only question which has arisen for decision before this Court is as to whether the petitioner University would be covered under the definition of 'autonomous body' and would thus be liable to be covered under the tax bracket of 15% and 11% for commercial and residential blocks for the aforenoted assessment years. The contention of the petitioner on this score being bordered on the argument that the petitioner University has been categorized as a separate category for which again attention has been highlighted on the uploaded circular of the Department wherein under serial No. 94 & 95 (noted supra), a University created by the Act of the Parliament having a special categorization, this tax structure would not be applicable to the petitioner.

This Court is not in agreement with this submission of the learned counsel for the petitioner. The uploaded website of the respondent Corporation (as per the counter affidavit of the respondent) is not *per se* a document of the Department itself. The public notice vide which (page 191 of the paper book), the rates of property tax for the years 2010-2011 had been enhanced making it 11% and 15% for residential and non-residential (in category 'H') is also a part of the record. In fact this document is not disputed. The submission of the Department that for subsequent years i.e. for the year 2014-2015, the petitioner University is paying the enhanced tax which is applicable to an autonomous body i.e. at the rate of 20% and 15% and the same has also been paid for the assessment years 2014-2015 is also not disputed. This payment of property tax at the aforenoted rate by the petitioner itself amounts to an admission that the petitioner has agreed to come within the domain of an autonomous body and as such would be liable to pay tax at the enhanced rate which for the assessment years in question which would be 15% and 11% for commercial and residential respectively. At the cost of repetition what is only disputed before this Court by the petitioner is her special categorization status not entitling her to be encompassed with the higher tax rates slabs. This submission of the petitioner is incorrect as the petitioner clearly falls within the category of an 'autonomous body' and being an autonomous body which is an educational institution for the relevant years, the tax structure would be 11% for residential and 15% for non-residential for category 'H'. The fact that the petitioner had also paid tax for the following years 2014-2015 at this enhanced slab rate itself also establishes that the petitioner has agreed to be taxed as an autonomous body. An uploaded website document relied upon by the petitioner, at the cost of repetition, is not an authentic document of the Department. The categorization of the petitioner is clear in the self-assessment form of the Municipal Corporation which shows that in column of "Types of Property" for "Educational Institutions" an autonomous body would be liable to pay tax as per the schedule prescribed which again at the cost of repetition, is not disputed and for the relevant years, 15% for commercial and 11% for residential. The Explanation to Section 119 of the DMC Act also provides that a property owned by a statutory corporation which has a corporate personality of its own is not deemed to be a property of the Union. Thus no special category status can be given to the petitioner which is an autonomous body.

The liability of the petitioner to pay additional tax which has been claimed by the respondent thus does not suffer from infirmity. Writ petition is without any merit. Dismissed.

INDERMEET KAUR, J

SEPTEMBER 01, 2016
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