

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Judgment : 22.11.2016

+

W.P.(C) 3088/2015 & C.M. No.5526/2015

SOUTH DELHI MUNICIPAL CORPORATION..... Petitioner

Through Ms.Madhu Tewatia, Advocate.

versus

SHRI GHANSHYAM DASS SETH THROUGH LRS..... Respondent

Through Mr.S.K.Jain, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (oral)

1 Petitioner before this Court is the SDMC. It is aggrieved by the order dated 22.01.2014 passed by the Municipal Taxation Tribunal. By this common order 9 appeals had been decided.

2 Facts at the outset disclose that this dispute relates to the determination of the annual value under the Unit Area system of the property tax which was for the Assessment Years 2004-05 to 2012-13. The averments in the petition disclose that the petitioner had been issued a show cause notice dated 03.10.2012 under Sections 123-D of

the Delhi Municipal Corporation Act, 1957 notifying the respondent to produce relevant evidence/documents to explain as to why his assessment should not be revised/re-opened. Simultaneously a notice under Section under Section 152A of the said Act has also been issued to him asking him to explain as to why penalty be not imposed upon him for filing an incorrect tax return.

3 On 27.11.2012 an assessment order (determining annual value of the property at Rs.33,58,596/- on the basis of the available record and after getting the property inspected) was made. A rectification application seeking rectification of the assessment order dated 27.11.2012 was filed.

4 The impugned order was passed on 22.01.2014. It inter alia held that no notice was given to the assessee to revise the annual value and as such the assessment order was illegal and contrary to law. A direction had been given by the Tax Tribunal (in terms of the impugned order) to refund the tax deposited to the assessee along with the interest at 12% per annum. This order has been impugned.

5 Learned counsel for petitioner confines her submission to two aspects of the matter. She has not assailed the order of the Tax

Tribunal directing the petitioner to refund the principal amount which had been deposited by the assessee; she has however assailed the interest part. Her submission is that in view of the judgment of the Bench of this Court in W.P.(C) 12758/2005 Ritu Sengupta Vs. M.C.D. (delivered on 01.8.2008) since there is no statutory provision in the DMC Act entitling the petitioner to claim interest, the interest component should be set aside. Her additional submission is that the impugned order directing the petitioner to issue fresh notices under Section 123 (C)(2) of the DMC Act is also illegal; no specific statutory provision should have been enunciated; submission being that notices will be issued by the petitioner Corporation in accordance with law;

6 Learned counsel for the respondent submits that the impugned order calls for no interference. Additional submission is that the interest ordered by the petitioner Corporation payable to the respondent is also an order which calls for no interference. Learned counsel for respondent has placed reliance upon a judgment delivered by the Division Bench of this Court in LPA No.1750/2005 Municipal Corporation of Delhi Vs. Ramesh Chand Aggarwal on 15.5.2008 to

support his submission that the interest component awarded by the Tribunal is an order which suffers from no infirmity.

7 Arguments have been heard. Record has been perused.

8 Record discloses that a notice under Section 123D of the DMC Act had in fact been issued to the assesses informing them that the return of self-assessment property tax as required to be filed by them had not been filed. They had been granted liberty to appear before the Assistant Assessor and Collector. The date fixed was 16.10.2012. The impugned order had noted the stand of the Corporation which was to the effect that the petitioner had not appeared and had not filed his return. This was, however, negated by the record. The record of the Corporation had been examined by the Tribunal. It had noted that the respondent Corporation had admitted that the reply of the assessee was on the record and in fact he had filed his return within time.

9 After hearing the parties, this Court is of the view that the conditions stipulated in paras 8 and 10 of the impugned order that notices have to be issued under Section 123(C)(2) of the DMC Act be read as notices to be issued by the petitioner in accordance with law. The fact that the petitioner Corporation will issue fresh notices to the respondent has not been disputed. Dispute only being that there could

be no direction to the petitioner Corporation to issue notice under any fixed provision of law. The impugned order is modified to that extent.

10 Question of the component of interest was examined by the Bench of this Court in the judgment of Ritu Sengupta (supra). That Bench of this Court after examining the contention as to whether a refund is permissible to an assessee with or without interest was of the view that since there was no statutory provision in the DMC Act entitling an assessee to a refund along with interest, interest up to the date of the filing of the petition had been disallowed. That Court had also examined gone on to examine whether the assessee could be paid pendentelite interest on the principal amount. The Bench had drawn a conclusion that this was within the discretion of the Judge depending on the facts and circumstances of each case. However, this grant of interest could be resorted to only either by a Writ Court or in a regular suit. The Court in that case had disallowed the pendentelite interest as well.

11 This Court is of the view that that the judgment of Ritu Sengupta (supra) would not come to the aid of the petitioner. There is admittedly no statutory provision permitting refund of principal

amount along with interest; however, the powers of a Writ Court to grant interest has not been negated. The submission of the learned counsel for petitioner that the Tax Tribunal could not have granted the interest is a submission with force; thus that part of the impugned order granting refund of interest on the principal amount passed by the Tax Tribunal is set aside. However, this Court is admittedly at liberty to examine the aspect of interest and if the discretion weighs in favour of the assessee this Court is not prohibited from granting interest. This position at law is undisputed.

12 In the facts of this case, this Court is of the view that the assessee had been coerced to deposit the principal amount along with interest; this was by attachment of his rent. The assessee also could not have filed an appeal assailing the assessment order without deposit of the full tax amount. The assessee had no option but to deposit the tax amount, if, he wanted to assail the assessment order. The fact that the assessment order was prima facie illegal for the reason that it had noted that the assessee has not filed his income tax return was negated by the examination of the record by the Tribunal which had come to a conclusion to the contrary. The Tribunal after the

examination of the record had noted that the assessee has filed his tax return well within time. Thus the forced deposit of the principal amount along with interest by the assessee worked to the prejudice of the assessee.

13 Learned counsel for the respondent has argued on the doctrine of “unjust enrichment”. Submission being that the petitioner is enjoying the money of the assessee without any fault on the part of the assessee; in these circumstances, he is entitled to a refund of the principal amount along with the interest.

14 This submission of learned counsel for respondent is well founded. This Court also notes that in the judgment of Ramesh Chand Aggarwal (supra) the Division Bench of this Court had noted a similar argument vis-a-vis the parties; in that case the refund of the principal amount had been ordered to be refunded to the assessee along with interest @ 15% per annum.

15 Relevant extract of the aforementioned order reads herein as under:

“4.The second submission of the learned counsel for the MCD is that the Tribunal ought not have directed payment of interest on the amount of refund and, in any event, the interest granted @ 5% p.a. is excessive and unreasonable. We are afraid that this contention of the

counsel is also without any merit. When the MCD is enjoying the amount of excess tax which the MCD was not entitled to have, then there is no reason why the assessee should be deprived of the benefit of the interest which otherwise he was entitled to if he had deposited the said amount in bank of invested in the market. The MCD has used this amount and the assessee was deprived of the same. It is also required to be noted that in this case that during the relevant time the MCD used to charge interest @ 22% p.a. for delayed payment of tax. In the facts and circumstances of the case we feel that interest @ 15% p.a. cannot be said to be excessive or unreasonable.”

16 In this background, this Court is of the view that the grant of interest @ 12% per annum to be refunded along with the principal amount is an order which does not suffer from any infirmity.

17 Thus the second submission of the learned counsel for the petitioner is rejected.

18 Petition disposed of in the above terms.

INDERMEET KAUR, J

NOVEMBER 22, 2016
ndn