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

\+ W.P.(C) 13877/2009

SMT PUSHPA RANI W/O O P KUKREJA

..... Petitioner

Through Mr. R.P. Sharma, Adv.

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through Ms. Mini Pushkarna, Standing Counsel with Ms. Anushruti, Ms. Namrata Mukin and Ms. Vasundhara Nayyar, Advs.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

O R D E R

% **07.09.2016**

The petitioner has filed the aforenoted writ petition seeking quashing of an ex-parte assessment order dated 16.03.2004; additional prayer being that the case of the petitioner qua his property tax assessment qua property No. CG-04, first floor, Block C Complex, Ansal Plaza, HUDCO Place, New Delhi be assessed under the unit area method.

Record shows that the ex-parte assessment order had been passed 31.03.2003 qua the property tax of the petitioner for the aforenoted period on 16.03.2004. This assessment order was never challenged. This has attained finality. This question is not in dispute. The contention of the petitioner before this Court is that the unit area method should be made applicable to his property for that year as a rectification order has been passed on 12.08.2005 (page 31 of the paper book). The aforenoted rectification order has been perused. This order was passed pursuant to a request made by the petitioner seeking a prayer that he should be assessed under the unit area method. This letter of the petitioner is dated 24.03.2004. The rectification order dated 12.08.2005. The relevant extract of the aforenoted order reads herein as under:-

"Annual Value 159.30x500x1x1x4=3,18,600 which is determined w.e.f. 28.06.2000 subject to any amendment on later stage in the Act or by Anomaly Committee and any competent authority. Tax up to 31.03.2004 shall be calculated on the basis of old rates on commercial basis. The property is used as commercial."

Contention of the respondent is that this rectification order does not accrue to the benefit of the petitioner as admittedly this rectification order clearly states that up to 31.03.2004, the tax of the petitioner shall be calculated on the basis of old rates on commercial basis. He could not be considered for unit area method for the assessment year up to 31.03.2004.

Reliance by the learned counsel for the petitioner on the judgment of (2015) 9 SCC 719 Municipal Corporation of Delhi and Another Vs. Mehrasons Jewellers Private Limited to support a submission that in appropriate cases, the Department has also assessed a party under the unit area method even prior to coming into existence of the unit area method and reliance on para 16 is misplaced. In this judgment, the Supreme Court had noted that only those cases where the assessment orders were pending and had not been ‘finalized’, the case of a party could be reconsidered for the purpose of application of the unit area method. Para 16 of the judgment in fact clearly states that a finalized assessment in the context of Section 116-G (2) of the DMC Act means an assessment that has been accepted by the assessee and is not the subject matter of a statutory appeal. Admittedly against the assessment order dated 16.03.2004, no appeal has been filed by the petitioner.

The rectification order has also been perused. This Court is of the view that no relief can be granted to the petitioner qua the assessment order dated 16.03.2004 against which admittedly no appeal has been filed and which has attained a finality.

The prayer in the writ petition accordingly cannot be granted. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

SEPTEMBER 07, 2016
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