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

%   **Date of decision: 8th March, 2016.**

+   **W.P.(C) 7647/2015 & CM No.14928/2015 (for stay)**

JAMIA HAMDARD (DEEMED UNIVERSITY) ..... Petitioner

Versus

SOUTH DELHI MUNICIPAL CORPORATION ..... Respondent

+   **W.P.(C) 7648/2015 & CM No.14931/2015 (for stay)**

JAMIA HAMDARD (DEEMED UNIVERSITY) ..... Petitioner

Versus

SOUTH DELHI MUNICIPAL CORPORATION ..... Respondent

+   **W.P.(C) 7650/2015 & CM No.14936/2015 (for stay)**

JAMIA HAMDARD (DEEMED UNIVERSITY) ..... Petitioner

Versus

SOUTH DELHI MUNICIPAL CORPORATION ..... Respondent

+   **W.P.(C) 7651/2015 & CM No.14938/2015 (for stay)**

JAMIA HAMDARD (DEEMED UNIVERSITY) ..... Petitioner

Versus

SOUTH DELHI MUNICIPAL CORPORATION ..... Respondent

Counsel for the petitioners: Mr. Sandeep Sethi, Sr. Adv. with Mr. Saket Sikri, Adv.

Counsel for the respondent: Ms. Madhu Tewatia, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petitions impugn the order dated 16th July, 2015 of the Municipal Taxation Tribunal (Tribunal) in HTAs No.197/MTT/2015 to 200/MTT/2015 (HTAs No.197/2015 to 200/2015) preferred by the petitioner, dismissing the applications of the petitioner praying that HTAs No.1/MTT/2013 to 3/MTT/2013 (HTAs No.1/2013 to 3/2013) be heard before hearing HTAs No.197/2015 to 200/2015 and directing the petitioner to deposit the amount of principal tax in dispute in HTAs No.197/2015 to 200/2015.

2. The petitions also impugn the letters dated 27th July, 2015 and 7th August, 2015 of the respondent South Delhi Municipal Corporation (SDMC) attaching the bank accounts of the petitioner and seek a mandamus for refund of the amount already recovered from the said accounts.

3. The petitions were listed first on urgent mentioning on 11th August, 2015, when the counsel for the respondent SDMC appeared on caveat and with the consent of the counsels were finally heard and judgment reserved. It was informed that the attachment order under challenge was with respect to two bank accounts of the petitioner, with Industrial Development Bank of

India (IDBI) and with the Bank of India (BoI) and that from the account with the BoI, a sum of Rs.3.47 crores had already been released in favour of the respondent SDMC. It was directed that till the pronouncement of judgment, no further amount be released from the bank accounts attached. Thereafter, vide orders dated 13th August, 2015 and 21st August, 2015 it was further clarified that subject to the petitioner maintaining a sum of Rs.3 crores in the account with IDBI, Kalkaji, New Delhi, the petitioner would be entitled to operate the subject bank accounts.

4. Though the controversy in the petitions is in a narrow compass but pronouncement of the judgment has been delayed.

5. Assessment order dated 28th December, 2012 was passed assessing the annual value of the property known as Jamia Hamdard situated at Tuglaqabad, Delhi, of the petitioner, a Deemed University at Rs.10,12,55,600/- per annum with effect from 1st April, 2004, at Rs.15,27,71,450/- per annum with effect from 1st April, 2005 and at Rs.15,79,99,450/- per annum with effect from 1st April, 2009. The petitioner filed HTAs No.1/2013 to 3/2013 challenging the said assessment orders for the years 2004-2005, 2005-2006 and 2009-2010 and claims to have complied with Section 170(b) of the Delhi Municipal Corporation Act, 1957 (MCD

Act) requiring the amount in dispute in the appeal to be deposited. The Tribunal however vide order dated 14th November, 2014 held the appeals to be not maintainable for the reason of no appeals having been preferred for the years 2006-2007, 2007-2008, 2008-2009 and 2010-2011. Liberty was however given to the petitioner to file separate appeals with respect to the said years also. The petitioner preferred W.Ps.(C) No.150/2015, 153/2015 & 185/2015 against the said order of the Tribunal and which were disposed of vide order dated 20th March, 2015 by setting aside the order dated 14th November, 2014 of the Tribunal and holding HTAs No.1/2013 to 3/2013 to be maintainable but granting liberty to the petitioner, if desirous of challenging assessment qua other years also, to also file appeals with respect to the other years aforesaid. In accordance with the said liberty, HTAs No.197/2015 to 200/2015 were filed. However, the petitioner while filing the said appeals, did not comply with the requirement of Section 170(b) of the MCD Act.

6. On the contrary, the petitioner moved the application before the Tribunal for hearing of HTAs No.1/2013 to 3/2013 before hearing of HTAs No.197/2015 to 200/2015. The reason therefore is obvious. If HTAs No.197/2015 to 200/2015 also were to be heard along with HTAs No.1/2013

to 3/2013, the petitioner would be required to comply with Section 170(b) of the Act i.e. deposit the disputed tax for those years also. The petitioner hopes that if HTAs No.1/2013 to 3/2013 are heard first and decided in its favour and the decision wherein will bind the decision of HTAs No.197/2015 to 200/2015 also, the petitioner may not be required to deposit any tax for hearing of HTAs No.197/2015 to 200/2015 or if at all required to deposit, deposit it for a short time.

7. The said application has however, as aforesaid, been dismissed by the Tribunal. Though the order of the Tribunal runs into as many as 9 pages but the same till paragraph 17 on page 8 thereof records the contentions of the counsels for the appellant/petitioner and of the respondent SDMC and then in para 18 thereof merely records as under:

> *"18. We feel that each and every argument of Counsel for respondent carries weight and deserves to be accepted. Accordingly, we are of the view that the earlier three appeals should be heard along with the present appeals and not in piecemeal."*

Besides, it has been recorded that the Tribunal as an Appellate Authority has no power to grant exemption from deposit of disputed tax and which would amount to staying the demand which has been prohibited in

Shyam Kishore Vs. Municipal Corporation of Delhi (1993) 1 SCC 22 and vide judgment dated 23rd August, 2012 of the Division Bench of this Court in W.P.(C) No.4683/2008 titled ***Gagan Makkar Vs. Union of India***. It is also reasoned that similar contention raised before the Tribunal in another matter titled ***M/s. Aries Developers Pvt. Ltd. Vs. SDMC*** had not been accepted and in writ petition / LPA preferred thereagainst also, the assessee had been directed to deposit 50% of the tax. The Tribunal thus, while dismissing the application, granted one more opportunity to the appellant / petitioner to deposit the amount of disputed tax in HTAs No.197/2015 to 200/2015.

8. Section 170 of the MCD Act provides that "no appeal shall be heard or determined" unless *inter alia* "the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Corporation".

9. Section 169 of the MCD Act amended with effect from 1st August, 2003, while provided for an appeal against levy or assessment or revision of assessment of any tax under the Act to the Municipal Taxation Tribunal, introduced "provided that the full amount of the property tax shall be paid before filing any appeal". The Division Bench of this Court in ***Gagan Makkar*** supra was concerned with the challenge to the said amendment *inter*

alia on the ground that by requiring the full amount of property tax to be paid before filing of the appeal, made the remedy of appeal illusory and being in-consistent with Section 170(b) of the Act. The said proviso was held to be unconstitutional and invalid and the Tribunal directed to consider the appeal in that case in the manner indicated in ***Shyam Kishore*** supra.

10. During the hearing, it was informed that the amount in dispute within the meaning of Section 170(b) of the Act in HTAs No.197/2015 to 200/2015 is in the sum of Rs.6,36,64,388/- and of which Rs.3.47 crores has already been recovered under the attachment aforesaid and Rs.3 crores are still lying in the bank account of the petitioner under attachment and which under the interim orders in these petitions, as aforesaid, have been ordered to be retained.

11. It was the contention of the senior counsel for the petitioner that the dispute subject matter of the appeals is qua the inclusion, by the assessor and collector of the respondent SDMC, of the land of mosque, graveyard and herbal garden as leviable to tax and which according to the petitioner is not. It was argued that since the said question is under adjudication in HTAs No.1/2013 to 3/2013 and in the event of the petitioner succeeding therein, the petitioner would not be required to pay the said tax of about Rs.6.36

crores, HTAs No.197/2015 to 200/2015 be not ordered to be heard along with HTAs No.1/2013 to 3/2013, inasmuch as, if HTAs No.197/2015 to 200/2015 are also to be heard, the petitioner would be required to pay the said sum of Rs.6.36 crores. It was further argued that the petitioner is a Deemed University and there can be no possibility of the tax being not recovered from the petitioner and that in the event of the petitioner losing in HTAs No.1/2013 to 3/2013, the respondent SDMC can always recover the tax.

12. Per contra, it was the contention of the counsel for the respondent SDMC that the petitioner has not even pleaded any hardship in payment of tax and there is no reason pleaded or made out for granting deferment of compliance with Section 170(b) of the Act. It was further contended that the petitioner, by not paying the tax at this stage, would avoid payment of interest as well. Attention was invited to Section 156A also inserted in the MCD Act with effect from the amendment of 1st August, 2003, specifically empowering the SDMC to recover the tax due under a warrant of attachment and sale of movable or immovable property. Attention was also invited to Section 152(2) providing for interest @ 1% per mensem on the arrears of tax. Reference was invited to Section 123B(9) of the Act in the context of,

when the tax becomes due. It was further contended that even if HTAs No.1/2013 to 3/2013 are favourably decided in favour of the petitioner, since assessment for each year is separate, the petitioner for hearing of HTAs No.197/2015 to 200/2015 will in any case have to deposit the tax.

13. I have considered the rival contentions.

14. Supreme Court in ***Shyam Kishore*** supra held that the condition to deposit the amount of the tax in dispute contained in Section 170(b) is not a *sine qua non* for entertainment of the appeal itself and the Appellate Tribunal may admit the appeal and grant adjournment in appropriate cases to enable the appellant to deposit the tax but hearing cannot commence without pre-deposit of the tax. It was further held that the Appellate Authority has no jurisdiction to waive the condition or stay collection of tax pending disposal of appeal. Subsequently vide order dated 19th April, 1993 in Special Leave Petition No.1248/1993 titled ***Municipal Corporation of Delhi Vs. M/s Sunil Rai & Co. (P) Ltd.*** (***Shyam Kishore*** is dated 3rd September, 1992), it was held that the extension of time granted under Section 170(b) of the Act is only for the purpose of making the appeal ready for actual hearing and cannot be interpreted to operate an a stay against recovery of tax.

15. It thus follows (i) that HTAs No.197/2015 to 200/2015 filed without compliance of Section 170(b) of the Act are maintainable; (ii) however, the same cannot be heard till the said requirement is satisfied; (iii) SDMC is free to take appropriate steps in accordance with law for recovery of the tax due subject matter of HTAs No.197/2015 to 200/2015 also, notwithstanding the pendency thereof before the Tribunal and the pendency thereof or grant of time therein to comply with the requirement of Section 170(b) of the Act does not amount to stay of recovery of the tax dues.

16. The same however still leaves open the question whether the Tribunal can insist upon hearing of HTAs No.1/2013 to 3/2013 along with HTAs No.197/2015 to 200/2015.

17. The only reason decipherable in the impugned order dated 16th July, 2015 in this regard is that since the appeals raise same question, it is desirable to hear the same together and not in piecemeal.

18. Though no fault can be found with the aforesaid reasoning of the Tribunal and which is in the discretion of the Tribunal but at the same time, I have been unable to gauge the inconvenience which would be suffered by the Tribunal by hearing HTAs No.197/2015 to 200/2015 at a date subsequent to the decision in HTAs No.1/2013 to 3/2013. The counsel for the

respondent SDMC also has not cited any such reason. Rather, from the nature of the controversy disclosed, it appears that once HTAs No.1/2013 to 3/2013 are decided, the order therein has to be followed in HTAs No.197/2015 to 200/2015. In this regard, it cannot also be lost sight of that the order of the Tribunal holding HTAs No.1/2013 to 3/2013 to be not maintainable without the petitioner preferring appeals with respect to the other years, has been set aside by this Court and it has been held that HTAs No.1/2013 to 3/2013 were maintainable, even if the petitioner were not to prefer the appeal for other years. It thus transpires that but for the erroneous order of the Tribunal which was corrected by this Court, HTAs No.1/2013 to 3/2013, qua which the petitioner had complied with the provisions of Section 170(b) of the Act, would have been heard and disposed of and if had been disposed of favourably to the petitioner, the petitioner may not even have been liable for the amount for which attachment has been issued.

19. I am therefore of the opinion that the insistence of the Tribunal, of not hearing HTAs No.1/2013 to 3/2013 without HTAs No.197/2015 to 200/2015 being also ripe for hearing, i.e. on compliance with Section 170(b) is misconceived. The impugned order dated 16th July, 2015 of the Tribunal to the said extent has to be set aside and is set aside and it is ordered that if the

petitioner still so desires, HTAs No.1/2013 to 3/2013 be segregated from HTAs No.197/2015 to 200/2015 and HTAs No.1/2013 to 3/2013 being ready for hearing, be heard first.

20. However that still leaves the challenge to the order of attachment.

21. Though ordinarily this Court would not grant stay of recovery of tax, since Municipal Corporations which perform public functions also need revenue to provide public services and several Municipal Corporations today are even unable to pay the salaries of their employees resulting in agitation and the citizens suffering but in the facts and circumstances aforesaid of the present case and considering that the petitioner is an educational institution of repute, shaping the future of the citizenry and further that the interest of the respondent SDMC is sufficiently protected by the provisions regarding interest etc. cited by the counsel for the respondent SDMC and yet further considering that a sum of Rs.3.47 crores has already been recovered in attachment, I am of the view that a case qua restraining the respondent SDMC from recovering any further amount for the assessment years to which HTAs No.197/2015 to 200/2015 pertain is made out. However, to ensure that further dues, if any of the respondent SDMC are not indefinitely

held up, it is also deemed expedient to expedite the disposal of the controversy.

22. The petitions are thus disposed of, with the following directions/observations:

(I) The Tribunal is requested to take up HTAs No.1/MTT/2013 to 3/MTT/2013 for hearing as expeditiously as possible and to decide the same on or before 8th July, 2016;

(II) The parties are directed to appear before the Tribunal in this regard on 18th March, 2016 for fixing of a date of hearing and are directed not to take any unnecessary adjournments before the Tribunal;

(III) The amount of Rs.3.47 crores already recovered by the respondent SDMC by attachment of the bank accounts of the petitioner shall remain with the respondent SDMC, subject to the adjudication of the dispute as to the tax for the relevant years;

(IV) If the respondent SDMC is found liable for refund thereof, it shall be liable for interest thereon as may be determined;

(V) However, recovery of further demand for the assessment years to which HTAs No.197/MTT/2015 to 200/MTT/2015 pertain is stayed till 31st July, 2016 i.e. till after the last date for adjudication of HTAs No.1/MTT/2013 to 3/MTT/2013;

(VI) If the petitioner is ultimately found liable to pay the tax, it shall also be liable for interest thereon in accordance with law;

(VII) The time for compliance of provisions of Section 170(b) of the MCD Act vis-a-vis HTAs No.197/MTT/2015 to 200/MTT/2015 is extended till 15 days after the decision of HTAs No.1/MTT/2013 to 3/MTT/2013.

No costs.

RAJIV SAHAI ENDLAW, J.

MARCH 08, 2016
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