BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2017

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Writ Petition(MD)No.3499 of 2015
and
M.P(MD)No.1 of 2015

Hotel Blue Star,
No.36, Madurai Road,
Tirunelveli Junction,
rep by its Partner ... Petitioner

Vs.

1.Tirunelveli Municipal Corporation,
through its Commissioner,
Municipal Corporation Office,
Tirunelveli Town

2.The Taxation Appellate Tribunal/
District Judge, Tirunelveli. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari calling for the records relating to the impugned judgment and decree in Taxation Appeal No.25 of 2011 dated 23.04.2014 on the file of the 2nd respondent and quash the same in so far as the direction to the 1st respondent to assess the tax for period 1-10-1993 and collect the tax up to 30.9.1998 and to assess for the general revision period 1.10.1998 as illegal.

For Petitioner : Mr.N.Subbarayalu
For 1st Respondent : Mr.Aayiram K.Selvakumar

ORDER

The challenge in this writ petition is to the order of the learned District Judge, Tirunelveli in an appeal filed under Rule 23 of Schedule II of the Act 28 of 1994 (Tirunelveli City Municipal Corporation Act).

2.The petitioner is the owner of a commercial building in Madurai Road, in Tirunelveli Junction. A special notice was issued increasing the tax payable for the building on 15.03.1994. The said notice was challenged by way of a suit in O.S.No.566 of 1994 by the petitioner. The said suit was decreed on 14.12.1998 setting aside the said notice. However, liberty was reserved to the respondent Corporation to reassess the property as per the provisions of the Act and thereafter, refix the tax. Thereafter, the Tirunelveli Municipal Corporation issued a special notice on 15.03.1999 revising the tax payable by the petitioner with effect from 01.10.1998 without reference to the decree passed in the suit.

3.It is not in dispute that the petitioner has been paying the said tax as assessed. While so, the Assistant Commissioner of the respondent Municipal Corporation issued notice on 19.10.2009 refixing the tax payable for the period from 01.10.1993 and the tax was payable was fixed from the period from 01.10.1993 to 31.03.1994.

4.Aggrieved by the said notice, the petitioner approached the Taxation Appellate Tribunal of the municipality seeking to set aside the said notice. The Taxation Appellate Tribunal without going into the merits of the question of limitation directed the Commissioner to identify the Door No.36 alone and assess the tax on the basis of Section 4 of the Tamil Nadu Building Lease and Rent Control Act. Aggrieved by the same, the petitioner filed an appeal before the District Court. The learned District Judge heard the appeal and issued the following directions:-

> *"10.In the result, the appeal is partly allowed and the order of the Taxation Appellate Tribunal is modified to the effect that the respondent is directed to assess the half yearly tax regarding door No.36 of the appellant building prevailing annual rental value as on 01.10.1993 as per Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act and collect the same up to 30.09.1998 and thereafter, the next general revision period i.e., assessed the half yearly tax from 01.10.1998 onwards as per the area and depending upon the zone, value and the prevailing procedure and assess the same and collect the tax and on the next general revision 01.04.2008 onwards the respondent has to direct to collect the same from 80% raised for the half yearly tax fixed as on 01.10.1998. No costs."*

5.It is this order which is challenged by the petitioner in this writ petition.

6.I have heard Mr.N.Subbarayalu, learned counsel for the petitioner and Mr.Aayiram K.Selvakumar, learned counsel for the respondent corporation.

7.The present assessment sought to be made is from 1993-1994 to 30.09.1998. As already pointed out from 01.10.1998, a fresh assessment has been made and it is not in dispute that the petitioner has been paying tax as per the fresh assessment.

8.Learned counsel for the petitioner would contend that the very assessment is beyond the period of six years prescribed under Section 168 of the Tirunelveli City Municipal Corporation Act. Therefore, the municipality is denuded of the power to assess or reassess the property tax after the expiry of six years.

9.Section 168 of the Act reads as follows:-

> *"168.Power to assess in case of escape from assessment:-Notwithstanding anything to the contrary contained in this Act or the rules made thereunder, if for any reason any person liable to pay any of the taxes or fees leviable under this Chapter has escaped assessment in any half year or year or has been assessee in any half year or year at a rate lower than the rate at which he is assessable, or in the case of property tax has not been duly assessed in any half year consequent on the building or land concerned having escaped proper determination of its annual value, the commissioner may, at any time within [six year] from the date on which such person should have been assessed, serve on such person a notice assessing him to the tax or fee due and demanding payment thereof within fifteen days from the date of such service; and the provisions of this Act and the rules made thereunder shall so far as may be apply as if the assessment was made in the half year or year to which the tax or fee relates."*

10.The assessment in the present case has to be treated as an escaped assessment only. The assessment originally made was set aside by the Civil Court with a direction to the authorities to reassess and the said decree of the Civil Court was made on 14.12.1996 and the present notice has been issued nearly after 13 years. Therefore, it is clear that the respondent Corporation did not have the power to issue the present notice seeking to revise the tax after 13 years.

11.The similar question was decided by this Court in ***K.R.Santharam Vs.The Commissioner, Madurai City Municipal Corporation (2000 (1) CTC 518)*** wherein it was held that a notice issued after the expiry of the statutory period prescribed under the Act cannot be sustained. The provision was considered in the said judgment is Section 168 of the Madurai City Municipal Corporation Act, 1971 which is in *pari materia* with the provisions of the Tirunelveli City Municipal Corporation Act also. Therefore, the impugned proceedings are liable to be set aside on the ground of limitation alone.

12.Hence, the order of the District Judge, dated 23.04.2014 made in Tax Appeal No.25 of 2011 is quashed on the sole ground that the Municipal Corporation does not have the power to reassess after the expiry of the statutory period of limitation prescribed under Section 168 of the Tirunelveli Municipal Corporation Act. The writ petition is accordingly allowed. Rule nisi is made absolute. No costs. Consequently, M.P(MD)No.1 of 2015 is closed.

Sd/-
Assistant Registrar (AD-II)

/True copy/

Sub Assistant Registrar

To:

1.The Commissioner,Tirunelveli Municipal Corporation,
Tirunelveli Town.

2.The District Judge, Taxation Appellate Tribunal,
Tirunelveli.

+2 CC to MR.N.SUBBARAYALU, Advocate, SR No. 54829 & 55014

SMS

PSM/MMS/09.05.2017/4P/5C

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