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

\+ LPA 189/2017

ANSAL HOUSING AND CONSTRUCTION LTD ..... Appellant

Versus

SOUTH DELHI MUNICIPAL CORPORATION ..... Respondent

\+ LPA 191/2017

ANSAL HOUSINGH AND CONSTRUCTION LTD ..... Appellant

Versus

SOUTH DELHI MUNICIPAL CORPORATION ..... Respondent

Present: Mr. Sachin Datta, Sr. Adv. with Mr. Amit Mahajan, Mr. Aamir Jamal, Mr. Tapas Tyagi, Ms. Mikita Pandey & Mr. Aubert Sebastian, Advs. for appellant.
Mr. Gaurang Kanth with Ms. Biji Rajesh and Ms. Pushkar Taimni, Advs. for SDMC.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

% **17.03.2017**

CM No.10657/2017 *(exemption)* **in LPA No.189/2017**
CM No.10680/2017 *(exemption)* **in LPA No.191/2017**

Allowed, subject to all just exceptions.

LPA No.189/2017 & CM No.10656/2017 *(stay)*
LPA No.191/2017 & CM No.10679/2017 *(stay)*

1. By separate orders passed on 03.03.2017, the learned Single Judge disposed of W.P.(C) Nos.2982/2015 and 2990/2015 holding that the petitioners have to avail the alternative remedy of appeal before the Municipal Tax Tribunal. However, the petitioners/appellants were permitted to deposit 50% of the demanded amount instead of entire demanded amount towards pre-deposit in terms of Sections 169 and 170 of DMC Act. Hence, these two appeals by the writ petitioners.

2. Placing reliance upon the decision of a Division Bench of this Court in ***Springdales School v. North Delhi Municipal Corporation & Ors.*** vide judgment dated 08.02.2017 in W.P.(C) No.6417/2015, it is contended by Shri Sachin Datta, the learned Senior Counsel for the appellants/writ petitioners that deposit of demand relatable to one year would be sufficient compliance with Section 170(b) of DMC Act. In ***Springdales School*** (supra), it was held by a Co-ordinate Bench of this Court:

> "21. xxxx xxxx xxxx xxxx
> Following the logic in *Bhatinda (supra)* and *DDA* (*supra),* the Court is of the opinion that a harmonious construction of the two provisions would mean that even the power under Section 123D is to be exercised for a maximum period of one year after the lapse of the period indicated in Section 123B(10). There is, furthermore, a need to clarify that in the event of exercise of the suo motu powers under Section 123D, by the Commissioner, which leads to any reassessment for the permissible years (say 2-3 previous years), it would be sufficient compliance with Section 170(b) if the assessee deposits the demand relatable to one year, in the light of the changed circumstances, because that will operate less onerously, and facilitate meaningful exercise of the right of appeal available. This logic had

prevailed and persuaded the Court to hold that the "base year" rateable value related tax alone could be deposited in compliance with the pre-deposit condition in *Sunil Raj (supra)* although that is *per* se not the mandate of Section 170(b). As far as the issue of use factor is concerned, this Court notices that the question is covered by *V.K. Kaul v. UOI* 192 (2012) DLT 241 (DB). In that judgment, the Court had held that the basis for determining the rateable value by deploying Use Factor 3, i.e. the nature of fees charged by the institution, is untenable. ...."

3. Accordingly, it was concluded:

> "3. In compliance with Section 170(b) it would be sufficient if an assessee deposits one years' tax demand, wherever the corporation's assessments for multiple years are in issue. The appellate authority in such case should decide the appeal for all years, treating such deposit as sufficient compliance with Section 170(b). This Court, therefore, holds that the use factor applicable in the present case is 1 and not 3."

4. We have also heard the learned counsel appearing for the Corporation who has not disputed the fact that the case on hand is fully covered by the ratio laid down in ***Springdales School*** (supra).

5. We are, therefore, of the view that the appellants herein can be permitted to prefer the appeals on depositing base year's tax demand as held in ***Springdales School*** (supra).

6. Accordingly, we modify the orders under appeal and permit the appellants to present the appeals on deposit of base year's tax demand within two weeks from today after adjusting the amounts, if any, already

paid by the appellants for the period in question. On such payment, the appeals be entertained by the Tribunal and be decided in accordance with law.

Both the appeals are accordingly disposed of.

CHIEF JUSTICE

V. KAMESWAR RAO, J

MARCH 17, 2017
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