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

+ W.P.(C) 6221/2008

NDMC

..... Petitioner

Through: Mr. Arjun Mitra, Advocate with
Ms. Jaskaran Kaur, Advocate

versus

SANJIV MITTAL

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

07.02.2017

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1. The petitioner/NDMC has impugned the order dated 23.04.2008 passed by the learned ADJ, Delhi, allowing the appeal preferred by the respondent against the assessment order passed in respect of commercial space bearing No.815, measuring 505 sq. feet super area on the 8th floor of a multi-storied building, namely, Navrang House, Kasturba Gandhi Marg, New Delhi, that was assessed for the purpose of property tax at a rateable value of Rs.2,72,700/-, with effect from 01.04.2005, by fixing the rental of the said property at Rs.50/- per sq. feet, on a comparable rental basis.

2. Notice was issued on the present petition on 26.08.2008, whereafter appearance was entered on behalf of the respondent but he failed to file the counter affidavit. Vide order dated 04.09.2009, the right of the respondent to file the counter affidavit was closed. The present petition was admitted for regular hearing on 02.11.2011.

3. The present petition has remained pending in the regular cause list for the past several months but none has appeared for the respondent. The case came up for arguments on 29.08.2016, on which date none had appeared for the respondent. As a result, notice of default was directed to be issued to the respondent through counsel returnable on 03.10.2016. On 03.10.2016 again, none had appeared for the respondent. Due to paucity of time, the matter was adjourned to 08.12.2016. On 08.12.2016, it was recorded that counsel for the respondent and the respondent had both been duly served. Despite the same, none was present on behalf of the respondent. In the interest of justice, no adverse orders were passed on 08.12.2016 and the matter was directed to be listed in the regular cause list in the week commencing from 02.01.2017.

4. Post the winter recess, the present petition was listed in the regular cause list on 03.1.2017. As none was present on behalf of either side on the said date, no adverse orders were passed. On 06.01.2017, counsel for the petitioner was present but counsel for the respondent had remained absent. Even thereafter, none appeared for the respondent on 09.01.2017, 11.01.2017 and 18.01.2017.

5. On 31.03.2017, Mr. Mitra, learned counsel for the petitioner had stated that he had given a written intimation of the pendency of the present case to Mr. Sunil Lalwani, counsel for the respondent and he had handed over a copy of the letter dated 19.01.2017 alongwith the proof of dispatch. Despite the same, none was present on behalf of the respondent. In view of the fact that the tracking report of the letter of intimation was not readily available with the counsel for the petitioner on 31.3.2017, he was requested to download the same from the website of the postal authorities and keep the

same handy. He was also requested to make an effort to telephonically inform the counsel for the respondent about the pendency of this case.

6. Learned counsel for the petitioner states today that he has tried his best to locate the telephone number of Mr. Sunil Lalwani, Advocate but could not do so. He, however, hands over the tracking report of the letter sent by him by speed post to the counsel for the respondent, which shows that the same was duly delivered to the addressee on 24.01.2017. The said documents are taken on record. Learned counsel has proceeded to address arguments on merits.

7. The undisputed facts of the case are that the respondent had purchase the subject premises on 27.02.2001, for a total sale consideration of Rs.8,96,375/-. The said property was occupied by the respondent as a Karta of the HUF that was carrying on its business therefrom under the name and style of M/s Mittal Company. On receiving the proposal of the petitioner/NDMC for assessing the rateable value of the subject premises for the year 2005-06 at Rs.3,27,200/-, objections were filed by the respondent, who had stated that he had leased out the property to his own HUF @ Rs.29.70 paise per sq.feet. The assessee had also appeared before the assessing authority and was granted a hearing. The rectification order dated 18.09.2006, records that the assessee was informed that the prevalent rent of the area was Rs.50/- per sq. feet, to which he had given his consent. As a result, the rateable value of the subject premises was finalised on comparable rent of Rs.50/- per sq. feet with effect from 01.04.2005, which aggregates to Rs.2,72,700/- per year.

8. Aggrieved by the aforesaid order, the respondent had filed an appeal under Section 115 of the NDMC Act stating *inter alia* that the assessing authority had erred in discarding the lease agreement in respect of the subject premises, which reflected that the rent received by him from his HUF is @ Rs.29.70 paise per sq. feet. The Assessing officer of the petitioner/NDMC had personally appeared before the learned ADJ and had stated that the subject premises had not been let out previously and the lease deed produced by the respondent had to be discarded as it reflected a much lower rent as compared to the rent being received in respect of other flats in the very same building.

9. The learned ADJ had however disagreed with the justification sought to be offered by the petitioner/NDMC for discarding the lease deed produced by the respondent and had observed that since the premises was occupied by the respondent himself, though in the capacity of a lessee, being the Karta of the HUF that was using the premises for running its business, it cannot be stated that the agreement is tainted or fraudulent. Consequently, the impugned order was quashed and set aside and the petitioner/NDMC was directed to carry out a fresh assessment in respect of the subject premises on the basis of the actual rent received in the hands of the respondent.

10. Mr. Mitra, learned counsel for the petitioner states that much water has flown under the bridge after passing of the impugned order dated 23.4.2008 inasmuch as vide judgment dated 03.02.2016, passed in a batch of petitions, lead matter being **Civil Appeal No.2772/2009** entitled “State Trading Corporation India Ltd. vs. New Delhi Municipal Corporation Ltd.” the Supreme Court has overturned the judgment of the Division Bench of

this court dated 15.12.2005, in New Delhi Municipal Council vs. The State Trading Corporation of India Ltd. (reported as **2006 (126) DLT 191**) and has held that after the Punjab Municipal Act, 1911 stood repealed on enactment of the NDMC Act, the New Delhi Municipal Committee House Tax Bye-laws, 1962 became inconsistent with the provisions of the NDMC Act, 1994 and in view of the specific provisions contained in the said statute, which provide for the levy, assessment and collection of property tax, reference need not be made to the said Bye-laws. Holding that the judgment of the High Court dated 15.12.2005 was based on the said Bye-laws, which had been knocked down and observing that the provisions of the NDMC Act alone would apply for the purposes of fixation of rateable value, which is based on the rent which can be reasonably fetched by letting out the premises, the Supreme Court directed that the guidelines laid down in the cases of Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others reported as **(1980) 1 SCC 685** and India Automobiles Ltd. Vs. Calcutta Municipal Corporation and Another reported as **(2002) 3 SCC 388** be followed and held that the said fixation shall have to be made only as per the provisions of the NDMC Act and not under the old Bye-laws.

11. In view of the aforesaid position of law, the plea taken by the petitioner/NDMC in the present petition to the effect that Bye-law 12 of the Bye-laws would apply, falls to the ground. The judgment of the Supreme Court in State Trading Corporation (supra) makes it abundantly clear that in cases where the actual rent payable by a tenant to the landlord is available for verification by the Assessing Authority, then unless the said rent is found to be inflated or depressed due to extraneous considerations, the same ought to be accepted. As far as self-occupied properties that are capable of

fetching rent in excess of Rs.3,500/- per month and above are concerned, the question of the landlord reasonably expecting to fetch only the standard rent does not arise and it is for the assessing authority to assess the rateable value of the subject premises on the basis of the rent that the property was reasonably expected to fetch from a hypothetical tenant in the relevant year in question.

12. Thus, the findings returned by the learned ADJ in the impugned judgment to the effect that the assessment of the subject premises ought to be made on the basis of the actual rent received in the hands of the respondent, stands negated. At the time of passing an assessment order, the Assessing Authority is expected to analyse from reliable evidence on record as to what the landlord might reasonably expect to get from a hypothetical tenant if the subject premises was to be let out from year to year, keeping in mind the parameters laid down in the case of Dewan Daulat Rai Kapoor (supra). As a result, the impugned order cannot be sustained and is quashed and set aside, though for different reasons than those offered by the petitioner/NDMC in the petition.

13. The present petition is accordingly disposed of with directions issued to the petitioner/NDMC to pass a fresh assessment order in respect of the subject premises for the assessment year 2005-06, in accordance with law as laid down in State Trading Corporation (supra). Before passing a fresh order for assessment in respect of the subject premises, the petitioner/NDMC shall give a written intimation to the respondent/assessee to appear before the assessing authority on a fixed date and time. The said notice shall be issued within eight weeks from today. After granting a hearing to the respondent/assessee, a fresh assessment order shall be passed

by the petitioner/NDMC within eight weeks reckoned therefrom, under intimation to the respondent. If the respondent is aggrieved by the said order, he shall be entitled to seek legal recourse.

14. The petition is disposed of while leaving the parties to bear their own expenses.

HIMA KOHLI, J

FEBRUARY 07, 2017

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