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

\+ W.P.(C) 8761/2014 & C.M. No.20118/2014

NORTH DELHI MUNICIPAL CORPORATION ..... Petitioner

Through Mrs.Amita Gupta, Advocate.

versus

M/S. EIH LTD PROP. MAIDEN HOTEL ..... Respondent

Through Mr.Narender M. Sharma, Ms.Abhishek Sharma and Ms.Suman Rastogi, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

O R D E R

% **27.01.2017**

1 Petitioner i.e. the North DMC is aggrieved by the order dated 23.7.2014 passed by the learned Municipal Tax Tribunal (hereinafter referred to as the MTT). While disposing of the appeal and remanding the matter back to the respondent Corporation, the impugned order had directed the respondent to decide question of interest i.e. whether interest was at all payable or not; apart from the order impugned (17.5.2012), two subsequent orders passed by the respondent (dated 13.5.2013 and 31.12.2013) had also been set aside; the MTT had noted that the effect of the subsequent orders would be that the liability of the assessee remained the same and thus had thought it fit to set aside the subsequent order orders as well.

2 The petitioner is aggrieved. Her main contention is that the question of levy of interest could not have been taken up by the MTT when this was never an issue raised before the MTT; the subsequent

orders dated 13.5.2013 and 31.12.2013 also could not have been set aside as the order impugned before the MTT was the single order of 17.5.2012. For all the aforenoted reasons, the impugned order is liable to be set aside.

3 At the outset, learned counsel for the respondent has drawn attention of this Court to an earlier order passed by this Court on 10.12.2014. The predecessor Bench of this Court had issued notice confined only to the issue of interest. Learned counsel for the respondent submits that the other contentions now sought to be raised by the petitioner cannot be considered.

4 Record shows that for the assessment year 2009-10 a notice under Section 123 D was served upon the petitioner i.e. Maidens Hotel at Sham Nath Marg; this was for the reason that the property tax for the years 2009-10, 2011-12 had not been filed. On 08.01.2012 the annual value of the property was computed at Rs.7,18,86,225/- use factor 10 was applied; category B was adopted as the nearest colony to the petitioner was Sarswati Kunj. At the request of the petitioner the annual value was again recalculated and w.e.f. 01.4.2004 it was recalculated at Rs.3,69,75,500/-. This was vide assessment order dated 17.5.2012. This assessment order was challenged before the MTT. The MTT vide the impugned order had remanded the matter back to the respondent Corporation holding that the question of the application of the category i.e. Category C or B would be re-decided by the respondent Corporation as the property in question falls near Civil Lines and this probably had not been considered by the Assessing Authority. The question of interest was

also to be re-considered; orders dated 13.5.2013 and 31.12.2013 were also set aside.

5 The writ petition has assailed this order of the MTT.

6 This Court notes with approval the submission made by the learned counsel for respondent which is to the effect that although vide order dated 10.12.2014 notice of this petition had been issued only on the question of interest yet the entire body of the petition and the averments disclosed therein do not whisper a word about the interest quotient. Submission of the petitioner is that the impugned order at best could have ordered a reconsideration of the category in which the petitioner's property falls i.e. in category C or category B; it could not have directed either a reconsideration of interest or have set aside two subsequent orders. Submission being that the body of the petition and the prayer in the petition also do not in any manner aver this grievance.

7 This Court thus notes that the impugned order does suffer from any infirmity on this count. The question of categorization had necessarily to be gone into by the Assessing Authority as the Assessing Authority had proceeded on a wrong assumption that no category has been allotted to the property in question which is situated at Sham Nath Marg, Delhi; the Assessing Authority should have decided the area; whether it was located in Civil Lines or not and then gone on to hold as to whether the property in question falls in category C or not; it had not done so; it had merely ordered the category of the property in question without any discussion on its location. The order of the MTT on this count suffers from no

perversity. It is based on a factual submission of the parties. On this count the impugned order suffers from no infirmity. It cannot be interfered with.

8 The order on other counts i.e. the question of re-decision on interest quotient as also on the point of setting aside of the subsequent orders dated 13.5.2013 and 31.12.2015 also suffers from no infirmity; this is largely for the reason that this is not the grievance of the petitioner in this petition; that apart the question of interest had to be gone into; provisions of Section 123B(9) of DMC Act had not been considered; whether the assessee has a right to make payment within two months or not was not answered. The subsequent orders dated 13.5.2013 and 31.12.2013 had also as a necessarily corollary to be set aside in view of the fact that the order dated 17.5.2012 had been set aside; these subsequent orders had the same effect as that of the earlier order dated 17.5.2012.

9 The appeal is thus without any merit. Dismissed.

INDERMEET KAUR, J

JANUARY 27, 2017
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