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

Decided on: 08.02.2017

+ **W.P.(C) 6417/2015**

SPRINGDALES SCHOOL

..... Petitioner

Through: : Sh. B.B. Jain with Sh. Abhay Jain, Sh. Amitava Marwah and Sh. Akhil. P. Chhabra, Advocates.

Versus

NORTH DELHI MUNICIPAL CORPORATION & ORS.

..... Respondents

Through : Sh. Rajan Sabharwal, Standing Counsel, for North DMC.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner school is aggrieved by a Show Cause Notice dated 24.01.2013 and consequential Assessment Order dated 19.06.2015, both issued by the North Delhi Municipal Corporation (hereafter called “the Corporation”).

2. The admitted facts are that the petitioner has and continues to file returns as required by the provisions of the Delhi Municipal Corporation Act, 1957 [hereafter “the Act”] in respect of the premises under its control. It also deposits the municipal taxes and property taxes in terms of its returns from time to time. With the amendment to the Act in 2003 and the introduction of the “Unit Area Method” of valuation and consequential assessment, it consistently reported and paid taxes on a self-assessment

basis. While doing so, on 24.01.2013, it received a notice in the following terms:

*“M/s. Patel Education Society
Springdales School,
Pusa Road, New Delhi-05*

Subject: Assessment of Property no.Springdales School, Pusa Road Under Section 123D of DMC (Amendment) Act, 2003.

Whereas, as per available record, Self-assessment Property Tax Return, as required u/s 123A & 123B of the DMC Act has not been found filed by your for the period

OR

*Whereas, in the Self-Assessment Property Tax Return, filed for the year _____ the following discrepancies have been found:
Due to wrongly PTR and the XXX paid of property tax of play gound.*

And therefore, invoking the powers conferred u/s 123D of the DMC Act, you are hereby given an opportunity to appear before the undersigned in person or through your authorised representative on 29.1.2013 at 11 AM and to produce the relevant evidences and documents in support of your case of property at M/s. Patel Education Society, Springdales School and as to why the assessment should not be made/revised/reopened.

You may bring to our attention any stay/direction from any Court with regard to assessment/payment of property tax or having already, filed the correct PTR alongwith the payment of due tax, failing which it will be presumed that you have nothing to say and, thereafter, the assessment will be finalized on the basis of information available, without further communication to you, thereby precluding you from objecting to any assessment made. You may also be liable for interest or/and penalty in addition to tax, as per provisions of DMC Act.”

3. It is contended by the petitioner that the notice is vague and entirely unspecific so far as it does not relate to any year or spell out particulars with respect to the so called alleged default or suppression of material facts practiced by it. In these circumstances, it was on account of repeated coercion exercised by the respondents' inspectors, who continued to frequently visit them, that the petitioner was compelled to part with ₹21,65,000/-. Ultimately, it received the impugned assessment order dated 19.06.2015; the said order/assessment notice reads as follows:

*"No. Tax/NDMC/A85C/KBZ/201S-16/D-762
19.06.2015*

Dated

***Name of the Taxpayer: Springdales School,
(The Springdales Education Society)
Property Address: Pusa Road, Upper Ridge Road Junction,
New Delhi-110005.***

**Assessment Order under Section 123D of DMC(Amendment)
Act 2003.**

In the instant case, a notice u/s 123 D of DMC (Amendment) Act, 2003 dated 24.1.2013 was issued due to filing of wrong/incorrect Property Tax Return and non-payment of property tax on vacant plot meant for playground.

*Again a letter dated 28.1.2015 explaining the deficiency in detail was sent to the taxpayer and was further requested to deposit the difference of tax within fifteen days from issue of letter. In response to letter dated 28.1.2015, the taxpayer deposited an amount of Rs. 21,65,000.00 only through various cheques dated 20.3.2015, 27.3.2015 and 16.4.2015 as '**on account payment**' for the period 2004-05 to 2014-15. Finally, a letter dated 25.5.2015 was sent to the taxpayer requesting therein to deposit the balance amount of due tax alongwith vacant plot / playground tax. But the taxpayer failed to deposit*

the due tax within the stipulated period. Under these facts and circumstances, no other alternative is left except to assess the property suo-motu on the basis of available record.

In view of above, under the provisions of DMC Act, and Bye laws framed there under. Annual Value (AV) of the above property under the Unit Area Method (UAM) is determined as under:

Floor	UAV	Covered Area	Age factor	Structure Factor	Occupancy factor	Use factor	Annual value
-1	320	340.00	0.6	1	1	3	195840.00
-1	320	43.00	0.7	1	1	3	28896.00
0	320	1262.00	0.6	1	1	3	726912.00
0	320	1134.50	0.7	1	1	3	762384.00
0	320	62.00	0.8	1	1	3	47616.00
1	320	711.00	0.6	1	1	3	409536.00
1	320	1128.00	0.7	1	1	3	758016.00
1	320	62.00	0.8	1	1	3	47616.00
2	320	810.00	0.6	1	1	3	466560.00
2	320	1064.00	0.7	1	1	3	715008.00
2	320	62.00	0.8	1	1	3	47616.00
3	320	810.00	0.6	1	1	3	466560.00
3	320	1064.00	0.7	1	1	3	715008.00
3	320	62.00	0.8	1	1	3	47616.00
4	320	333.00	0.7	1	1	3	223776.00
		8947.50				Total	5658960.00

Accordingly, Annual Value of school property comes to Rs. 5658960.00 which is fixed w.e.f. 1.4.2004.

Vacant land tax is leviable from 1.4.2005 onwards. Under Bye Laws 2004, if the built up area on the Ground floor is less than 25% of the total plot area, vacant land tax shall be leviable. As per Property Tax Returns filed, the plot area of school has been shown as 1.8 acres on which the structure has been built up and the covered area of Ground floor is 2458.50 sq.mtr. which is more than 25% of the plot area. Hence, no plot tax is leviable on the said plot.

However, as per available record, another plot of land admeasuring 2.341 acres has been allotted to the society for use as playground purposes which are taxable. Annual Value (AV) of the playground under the Unit Area Method (UAM) is determined as under:

Annual value of Vacant Plot = Vacant land area x Unit area value x 0.3

$9473.38 \times 320 \times 0.3 = 909444.00$ which is fixed w.e.f 1.4.2005.

By adding the school portion A.V. of Rs. 5658960.00 with vacant plot AV of Rs.909444.00, total AV comes to Rs. 6568404.00 which is fixed w.e.f 1.4.2005.

To sum up, the following Annual values are fixed:

1. Rs. 5658960.00 w.e.f 1.4.2004

2. Rs. 6568404.00 w.e.f 1.4.2005

The Property Tax will be recovered on the above determined Annual Values.

It is seen that the assessee has deliberately filed wrong Property tax returns, giving wrong information / willful suppression of facts and inspite of notice, has failed to discharge obligation u/s 114 read with Sections 123A and B of the DMC (Amendment) Act 2003. Hence, in terms of Section 123D of the DMC Act, I hereby impose a penalty of thirty percent of the difference in tax; arising from the period; property tax becomes due.

The assessee is also required to pay simple interest @ 1% per month on the differential amount, till the same is actually paid.

The above AVs are fixed on the basis of whatever information /documents available on record. Further, in case, if any, information/document is found to be contrary, in future, the order shall be amended accordingly. This is subject to Audit."

4. It is stated that the assessment order is entirely based upon two glaring erroneous premises, i.e. that the annual value is to be calculated on a "Use Factor" of 3 and consequently that vacant land tax is payable in respect of licensed land which is under the occupation of the petitioner school. Here it is contended that such levy is untenable because of Section 120(2), which expressly states that if the premise is let for less than one year, there shall be no levy. It is contended that since the arrangement by which the school is

allowed use is an annual license renewable for a nominal payment, the question of it being treated as a taxable premise does not arise.

5. It is argued more fundamentally that this Court should entertain the present proceedings and declare Section 170(b) of the Act as arbitrary because the available alternative remedy of an appeal is completely inefficacious and impracticable. Elaborating on this, it is argued that when the precondition for deposit of tax itself was introduced in the form of Section 170(b) and the said provision was eventually upheld by the Supreme Court in *Shyam Kishore and Ors. V. MCD of Delhi and Anr.* 1992 (48) DLT 277 (SC), the regime for valuing and assessing residential and other premises was entirely different. It is submitted that at that point of time, the unamended Sections 124-127 provided for an entirely different mechanism whereby rateable values were fixed after due enquiry, for a base year. The fixation of such value was preceded by notice and hearing. The said base year would then guide the determination of a rateable value adopted for subsequent years till revised under Sections 126/127, again after following due procedure and affording proper opportunity. In such an event the Supreme Court had clarified, in *Shyam Kishore (supra)*, that in the appeals concerning tax demands and assessments for multiple years, it was sufficient if the predeposit was made for the base year alone. However, with the complete overhaul of the basis for assessment, i.e. with the introduction of the Unit Area Method, the “base year” concept no longer prevails. This automatically results in the entire tax burden being satisfied first as a precondition for the hearing of appeal. This in turn results in utter pervasiveness and arbitrariness thus rendering the remedy of an appeal illusory.

6. Learned counsel for the Revenue urged that the Court should not exercise its discretion under Article 226. He submits that there is no limitation on the power of the Commissioner to determine afresh the rateable value in the unit area system. He relies upon Section 123D(c) to say that the Commissioner can exercise his powers *suo motu* to revise the rateable value declared if he is satisfied that deliberate suppression of fact has occurred “any time even after one year”. It is submitted that this Court should give the expression “one year” its plain meaning. In the unit area system of assessment, the Revenue urges that in the event the Commissioner or the competent assessing authority does not exercise its powers and scrutinise the returns filed, a default assessment, as it were, takes place by virtue of Section 123(B)(10) at the end of one year succeeding the concerned assessment year. Therefore, Section 123D(a) clearly envisions that there is no impediment in the power of the Commissioner who may, in appropriate cases, reassess the rateable value.

7. It is argued that so far as the question of vacant land tax or its tenability is concerned, the matter is not open for scrutiny by this Court as that is the subject matter of appeal.

8. To appreciate the first aspect, it would be necessary to extract Sections 170A and B which is as follows:

“170. Conditions of right to appeal - No appeal shall be heard or determined under section 169 unless—

(a) the appeal is, in the case of a property tax, brought within thirty days next after the date of authentication of the assessment list under section 124 (exclusive of the time requisite for obtaining a copy of the relevant entries therein) or, as the case may be, within thirty days of the date on which an amendment is finally made under section 126, and, in the case

of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days after the date of the presentation of the first bill or, as the case may be, the first notice of demand in respect thereof:

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the [Municipal Taxation Tribunal] that he had sufficient cause for not preferring the appeal within that period;

(b) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Corporation.”

9. In *Shyam Kishore (supra)*, after analyzing relevant provisions of the act, a three Judge Bench of the Supreme Court approved a Full Bench decision of this Court rendered in 1991. It was pertinently observed as follows:

“24. [Section 156\(1\)](#) of the Act provides as under:

“Recovery of tax.

(1) If the person liable for the payment of the tax does not, within thirty days from the service of the notice of demand, pay the amount due, such sum together with all costs and the penalty provided for in [Section 155](#), may be recovered under a warrant, issued in the form set forth in the Eighth Schedule, by distress and sale of the movable property or the attachment and sale of the immovable property, of the defaulter;

Provided that the Commissioner shall not recover any sum the liability for which has been remitted on appeal under the provisions of this Act.

(2).....”

The proviso to [Section 155\(1\)](#) contemplates that even at the stage of recovery by distress/attachment any remission of the liability in appeal should be given effect to automatically. Thus, if the assessment list is adopted in subsequent years, and there is modification in appeal of such an assessment list, the relief automatically has to be given even in proceedings for recovery by distress/attachment in respect of tax liability of the later years as well. As we have noticed earlier, after the assessment list is amended finally in view of notice under [Section 126](#) the rateable value is automatically determined for the year in which the notice was given and since the provisional amendment in the assessment list has been adopted for the later years till the assessment is finalised, on the finalisation of the list of the assessment lists which were adopted for the subsequent years would also get amended. Thus where the provisional assessment is finalised it will be legitimate for the authorities to make the demand on the basis of the list so finalised. It would also be legitimate for the authorities to raise demand for a subsequent year where the provisional list had been adopted for the later years. The purpose of the proviso to [Section 156\(1\)](#) is that where liability in respect of an assessment order has been finalised and it is disputed in appeal only for the year in which it was finalised the benefit as a result of appeal, if any, is given not merely for the year in question but also for the years in which the assessment list was adopted. The proviso contemplates that without any appeal for the later years the Commissioner will be bound to give the remission granted in appeal for the year for which the assessment list was amended and adopted for the later years.

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44. The appeal is disposed of accordingly. There will be no order as to costs.”

10. *Shyam Kisore (supra)* was further clarified in *Sunil Raj and Company Pvt. Ltd. v. MCD* 48 1992 DLT 621 where it was clearly stated that as long as the demand relatable to base year is satisfied, the appeals – even if they

concern more than one year, can be heard on the merits under Sections 169-170 of the Act. Furthermore, the Court clarified that it is not necessary for an assessee to appeal against each base year and that only one appeal is maintainable in such eventuality concerning the base year. The Court pertinently held as follows:

“(8) In other words, as in the present case, when vide one assessment order assessments have been framed for a number of years and there is assessment made in respect of base year which is followed in the subsequent years the proper exercise of the discretion of the appellate authority would be to have the disputed tax in respect of the base year deposited from the appellant and then to proceed to hear and decide the appeal filed in respect of base year assessment and after deciding the said appeal the decision of the appeal in respect of the base year would automatically govern the assessments of the subsequent years.

(9) It is clear that the District Judge can go on extending the time for deposit of disputed tax by passing necessary orders in respect of the appeals pertaining to the assessments of the subsequent years till the appeal in respect of the base year is heard and determined. The District Judge in its discretion can direct deposit of admitted tax in the said appeals and can extend the period of deposit of disputed tax. As soon as the appeal against assessment of the base year is determined, the legally payable tax in respect of subsequent years can be got deposited and appeals of subsequent years disposed of. Rather the decision of appeal of base year would automatically govern the subsequent years assessment of which is based on base year assessment.”

11. The above analysis clearly shows that the rigors of Section 170B were softened as it were, by clarifying that even if the common assessment order pertained to more than one or possibly even five years, if the demand for the

first year was satisfied, common appeal was maintainable and had to be heard. However, there is a sea change in the circumstances today. The Act as it stands does not reflect the “base year” as the foundation for an assessment. It has made way to an entirely different regime whereby the area, the locality, the constructed area etc. are relevant factors. Furthermore, unlike the fixation of a base year, the unit area method is premised upon self-assessment returns filed by the assessee/property owner. This regime has resulted in extensive amendments to the statute – in fact a radical overhaul, by substitution of Sections 120, 124 & 127 as it existed earlier with the present sections 123A to D and further amendments to Sections 124 to 127; in fact Sections 126 and 127 have been deleted altogether.

12. There is established authority for the proposition that an enactment once held valid, can on account of changed circumstances be re-examined. It was stated in *Acharya Malpe Viswanath Acharya v. State of Maharashtra* 1998 (2) SCC 1 as follows:

“15. The aforesaid decisions clearly recognize and establish that a statute which enacted was justified may, with the passage of time, become arbitrary and unreasonable. It is, therefore, to be seen whether the aforesaid principle is applicable in the instant case, Can it be said that even though the provisions relating to the fixation of standard rent were valid when the Bombay Rent Act was passed in 1947 the said provision, as amended, can still be regarded as valid now?”

13. The above view was based upon the previous rulings of the Supreme Court in *Motors General Traders v. State of Andhra Pradesh* 1984 (1) SCC 222. In the present case too, therefore, the Court is of the view that in view of the extensive amendments to the Act, the rationale in *Shyam Kishore*

(*supra*) has been virtually rendered ineffective. Would the above conclusion result in invalidation of Section 170B? It is established law that the Court should endeavour to construe a statute in harmony with the Constitution and if necessary, read down the pernicious effects and the unjustified burdens it imposes on the citizens rather than striking it out completely. If this philosophy is kept in mind, the facts of this case demonstrate that the foundation of the petitioner's grievance in this case is the notice issued on 24.01.2013. The notice has been extracted in the previous part of the judgment. In the opinion of the Court, the notice does not specify the basic or essential ingredients which precondition the exercise of statutory power under Section 123D(c). Here it would be relevant to notice Section 123B(10) which stipulates a deemed assessment in the event the assessor/Commissioner does not examine the matter. All returns filed by the assessee are deemed to have been accepted by virtue of the said provision:

“123B. Self-assessment and submission of return -(1) After the coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, any owner of any vacant land or covered space of building or any other person liable to pay the property tax or any occupier in the absence of such owner or person, shall file a return of self assessment within sixty days of the coming into force of the aforesaid Act.

(2) Such owner or other person or occupier, as the case may be, shall, thereafter, file the annual return only in those cases where there is a change in the position as compared to the previous return, within three months after the end of the financial year in which the change in position has occurred.

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(9) If after the assessment of the annual value of any land or

covered space of building finally made under this Act, the payment on self-assessment under this section is found to be less than that of the amount payable by the assessee, the assessee shall pay the difference within two months from the date of final assessment, failing which recovery shall be made in accordance with the provisions of this Act, but, after the final assessment, if it is found that the assessee has paid excess amount, such excess amount shall be refunded:

Provided that in any case where the amount of tax determined in the final assessment is more than the amount of tax paid under self-assessment, and the difference in the amount of tax is, in the opinion of the Commissioner, the result of wilful suppression of facts as defined in the bye-laws, the Commissioner may levy a penalty not exceeding thirty per cent of such difference in the tax besides the interest thereon:

Provided further that the levy of such penalty shall be in addition to any other punishment provided for under this Act:

Provided also that the procedure for sending of notice, hearing of objection and determination of tax and penalties shall be such as may be specified in the bye-laws.

(10) Where no notice is sent by the Commissioner under section 123C within twelve months after the year to which such self-assessment relates, such self assessment shall be regarded as assessment made under this Act:

Provided that in any case, where there has been wilful suppression of facts, penalty up to thirty per cent of the tax due may be imposed: Provided further that the procedure for sending of notice, hearing of objection and determination of tax and penalties shall be such as may be specified in the bye-laws."

14. Section 123D constitutes an exception insofar as it arms the Commissioner with the power to reopen completed assessments. It reads as

follows:

“123D. Power of Commissioner regarding assessment.— The Commissioner may, at any time-

(a) make suo-motu, an assessment in any case where a return on the basis of self-assessment has not been filed;

(b) revise any assessment where the information furnished in the return of self-assessment is found to be incorrect;

(c) reopen any assessment even after the period of one year in any case where it has been detected that there is wilful suppression of information; and

(d) impose a penalty not exceeding thirty per cent of the difference in tax arising from non-filing of a return in time, giving wrong information or wilful suppression of facts.”

15. In the present case, not only is the impugned notice (dated 23.01.2013) silent as to which period it relates to or for which assessment year the Commissioner proposes to revisit completed assessments [i.e. completed in respect of 123B(10)] but also is utterly vague as to how there was any “wilful suppression” practiced by the assessee. This Court, in *K.L. Rathee v. Municipal Corporation of Delhi* AIR 1995 Del 226 and *Savitri Devi v. MCD* 1994 (55) DLT 391, while considering the pre-amended proviso to Section 126 which contained an obligation on the part of the Commissioner to indicate reasons for proposing change in the rateable value, has held that the notice should be effective.

16. The expression “willful suppression” of information has to necessarily relate to rateable or conscious omission on the part of the assessee. In case where the Commissioner proposes to proceed under Section 123D(b) and (c), as a precondition the notice has to necessarily specify what is the incorrect information provided as well as the barest reasons for such opinion and specific grounds for stating “willful suppression” of information. The use of

the expression “willful suppression”, in our opinion, raises the bar and discloses a primary intention to give effective notice as to what is to be answered by the assessee. It is not mere omission or mistake that attracts issuance of a notice under Section 123D which confers exceptional and even draconian powers. The lack of any particulars of the kind enshrined in either 123D(b) or 123D(c) in the facts itself vitiates the notice. On similar lines, while interpreting the words “wilful” and “suppression” in Section 11A of the Central Excise Act, 1994, the Supreme Court in *Continental Foundation Joint Venture Holding v. Commissioner of Central Excise, Chandigarh-I* 2007 (10) SCC 337, held:

“10. The expression “suppression” has been used in the proviso to Section 11A of the Act accompanied by very strong words as ‘fraud’ or ‘collusion’ and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.”

17. More fundamentally, the power under Section 123D is unconstrained at any point of time when recourse is made, such as in the present case, seeking to go back almost a decade, which subjects the assessee/property owner to unrealistic burdens. In a previous instance where such open ended power was conferred upon a statutory authority, i.e. a sales tax authority

official in Punjab, the Supreme Court had outlined in *State of Punjab and Ors. V. Bhatinda District Co-op Milk P. Union Ltd.* 2007 (11) SCC 363 the limitations to exercise of such power.

18. In the context of Section 21 (dealing with revisional powers) which armed the Commissioner with untrammelled power to revise orders *suo motu* the Court held that the statutory grant cannot be given its full effect. The provision concerned with Section 21 of the Punjab General Sales Tax Act, 1948. The Court observed as follows:

“5. In respect of the assessment for the year ending 31.3.2000, the assessment proceedings were completed relying on the return filed by the appellant on 20.3.2001. Indisputably, in terms of [Section 11](#) of the 1948 Act, a period of three years has been prescribed as a period of limitation as contained under sub-section (3) of [Section 11](#) for completing assessment from the last date for filing of return. Sub-section (6) of [Section 11](#) reads as under :

“If upon information which has come into his possession, the Assessing Authority is satisfied that any dealer has been liable to pay tax under this Act in respect of any period but has failed to apply for registration, the Assessing Authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgment, the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and in case where such dealer has willfully failed to apply for registration, the Assessing Authority may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount.” [Section 21](#) of the said Act provides for revision. [Section 21](#) of the Act with which we are concerned herein reads as under: _

21. Revision-(1) The Commissioner may of his own motion call for the record of any proceedings which are pending before, or have been disposed of by any authority subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit.

(2) The State Government may by notification confer on any Officer the powers of the Commissioner under sub-section (1) to be exercised subject to such conditions and in respect of such areas as may be specified in the notification.

(3) A Tribunal, on application made to it against an order of the Commissioner under sub-section (1) within ninety days from the date of communication of the order, may call for and examine the record of any such case and pass such orders thereon as it thinks just and proper.

(4) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.”

19. The court held that such power, even though widely couched, has to be exercised within reasonable period:

“15. Sub-section (1) of [Section 11](#) empowers the Commissioner to extend the period of three years for passing the order of assessment wherefor reasons are required to be recorded in writing subject, however, to the maximum period of five years. Ordinarily, therefore, a period of three years has been prescribed for completion of the assessment in terms of the provisions of the Act. We may also notice that in cases where an assessment order is to be reviewed, the same should be done within a period of one year.

16. A bare reading of [Section 21](#) of the Act would reveal that although no period of limitation has been prescribed therefor,

the same would not mean that the suo moto power can be exercised at any time.

17. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

18. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section (6) of [Section 11](#) of the Act is five years.”

20. The above decision has been noticed and followed subsequently in *DDA v. Ram Prakash* AIR 2011 SC 1399.

21. Following *Bhatinda (supra)* in the present case, Section 123B(10) statutorily finalizes, as it were, the assessment unless the return is scrutinized and notice issued for the purposes of proceedings by the Commissioner one year after the completion of the concerned assessment year. Section 123D constitutes an exception to Section 123B(1) inasmuch as it empowers the Commissioner to revisit the issue even after the expiry of period stipulated under Section 123(D)(b). Exercise of Section 123D *per se* is not conditioned or constrained by any time limit. 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. The court in *V.K. Kaul (supra)* stated as follows:

“59. While we have no difficulty in agreeing with the respondents that there exists an intelligible differentia between government / government-aided schools on the one hand and private un-aided schools on the other, the question that needs examination is whether this differentia has a nexus with the object of such classification. The apparent and ostensible object is that schools which are not running as profit earning businesses ought to be treated at par with government / government-aided schools. That is apparent from the fact that government / government aided schools have a use factor of 1 and so do private unaided schools, which charge fees upto Rs. 600/- per month. The foundation on which the Use Factors of 2 and 3 are assigned to schools charging fees between Rs.601/- and Rs.1200/- per month and those charging fees in excess of

*Rs. 1200/- per month, respectively, appears to be the reasoning or, shall we say, assumption that these schools are profit making enterprises. But, what if that were not true? What if the schools charging higher fees were imparting a better quality of education with a better infrastructure without any individual or group of individuals profiteering from the enterprise? In such a situation, the nexus between the **intelligible differentia** and the object would disappear rendering the classification to be violative of [article 14](#) of the Constitution. Therefore, a classification based merely on the fee structure would not be a satisfactory means of achieving the object. Perhaps, one Use Factor could be assigned to all schools which are not profit making bodies / entities, irrespective of the fee structure. And, a higher Use Factor could be assigned to schools which are being run on a profit-making basis. We have no means to ascertain as to whether the petitioners before us fall into one or the other category. While we agree with the petitioners that the fee structure cannot be the sole determinative factor for ascribing a particular Use Factor, we are also clear that it is not for us to do this exercise. Consequently, we direct that this grievance of the petitioners with regard to the Use Factor assigned to school buildings be considered by the Corporation and the MVC in the light of observations made above. In the meanwhile, however, as we have found the classification based on fee structure alone to be violative of [Article 14](#) of the Constitution and beyond the mandate of the amended Act of 1957, all schools, irrespective of the fee structure, would have to be assigned a single Use Factor. And, since government / government aided schools have been assigned a UF of one (1), that would be applicable for all schools till the exercise is completed by the MVC and the Corporation in the light of the discussion above.”*

22. We hereby record our conclusions:

1. The Show Cause Notice under Section 123D has to contain specific and pointed particulars as to whether, and if so, what are the wilful and deliberate omissions or facts suppressed by

the assessee and in relation to which assessment year/period concerned so as to enable it to effectively answer to the proceedings/assessments, if validly taken up;

2. The power under Section 123D cannot be exercised beyond the period of one year after expiry of the period mentioned in Section 123B(10) in the light of the discussion in *Bhatinda (supra)*.
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. The Show Cause Notice issued to the petitioner in the present case on 24.01.2013 leading to the assessment order dated 19.06.2015 cannot be sustained; it is hereby quashed.
5. It is hereby declared that the Use Factor applicable to the petitioner school is 1 and not 3, as held by the impugned assessment order.
6. In the light of the above conclusions, the respondents are hereby directed to work out the refund together with interest @ 8% per annum for the amounts deposited by it. The said amounts together with interest shall be paid to the petitioner within eight weeks from today.
7. The Commissioner, in addition to indicating the reasons and

disclosing them to the assessee in the notice to be issued shall also record specifically the materials or the reasons that led to the invocation of Section 123D of the Act. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

FEBRUARY 8, 2017

