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

\+ W.P.(C) 8492/2015 & C.M. No.18280/2015

DEEPTAKIRI VERMA, ADVOCATE

..... Petitioner

Through Mr. Dayan Krishnan, Sr. Adv. with Ms. Uttara Babbar, Adv.

versus

SOUTH DELHI MUNICIPAL CORPORATION

..... Respondent

Through Mr. Jagdish Sagar, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

O R D E R

% **08.02.2017**

The petitioner is aggrieved by the assessment order dated 18.09.2013 which has been passed against his under Section 123-D of the DMC Act. This is for the assessment year 2004 up to the year 2013. The petitioner had been directed to pay a sum of Rs.8,95,719/-. The petitioner was aggrieved. His submission is that he had made a representation to the Department on 04.10.2013 as this assessment order was received by him only on 24.09.2013. His grievance in the representation was largely to the effect that he had not been heard and this assessment order has been passed ex-parte; it was behind his back; principles of natural justice had been violated. His representation was still being considered when the second coercive order was passed against him which is dated 21.08.2015 wherein the Department had issued a show cause notice to him asking him to show cause as to why the amount of Rs.11,18,223/- (accumulated up to date) be not attached as he had failed to comply with the assessment order dated 18.09.2013. Learned senior counsel for the petitioner submits that the whole case of the petitioner is that he is running a professional activity from the basement of his residence bearing property No. B-4/157, Safdarjung Enclave, New Delhi; in view of the judgment of a Bench of this Court reported as (2015) DLT 55 *B.N. Magon Vs. South Delhi Municipal Corporation* being a professional activity, the petitioner's basement could have been assessed at the domestic rates; property tax assessing him at commercial rates was an illegal order; the petitioner not having given a chance to represent his case has suffered on this count.

Learned counsel for the respondent has disputed this submission; submission being that this judgment of the Bench of this Court which was delivered on 27.01.2015 would have a prospective operation and cannot be applied retrospectively to the case of the petitioner.

Learned senior counsel for the petitioner additionally points out that the petitioner had started his professional activities in the basement/disputed premises only in May, 2010 and prior thereto although he was enrolled as a lawyer but he was working as a law clerk in the office of the Supreme Court Judge i.e. intervening period between November, 2004 to May, 2006 and thereafter he was working in the office of the Additional Solicitor General between 2006 up to 2010. He also has documents including the certificate from the Registrar General of the Supreme Court to substantiate this submission.

This submission is noted. This Court is of the view that these documents have not been produced before any fact finding body. The Joint Assessor and Collector had not heard the petitioner. The petitioner had not filed any appeal before the Municipal Tax Tribunal (MTT) as the submission of the petitioner is that since his representation was pending and he was awaiting order on that representation and that is why he did not prefer the appeal.

Be that as it may, noting the contentions of the parties and also noting the fact that certain fact findings have to be returned, this Court is of the view that it would be appropriate that the matter be remanded back to the MTT (appellate body of the Joint Assessor and Collector) who shall deal with the contentions and counter contentions of the parties which have been recorded not only before this Court today but the other contentions which may be raised by the respective parties. Parties to appear before the MTT on 02.03.2016. The MTT shall endeavour to dispose of the appeal within an outer limit of six months from the date of the receipt of this order.

At this stage, learned senior counsel for the petitioner points out that the petitioner is a young lawyer and he should not be burdened to pay the entire liability which has been foisted upon him in terms of the attachment order before his appeal is heard. His vehement submission is that the respondent could not have imposed this burden upon him as the petitioner being a professional could not have been taxed at commercial rates; additional submission being that the property tax at the domestic rates has admittedly been paid up to date by the petitioner to the Department.

In the peculiar facts and circumstances of the case, this Court is of the view that on depositing 50% of the amount of Rs.11,18,223/- (in terms of the attachment order dated 21.08.2015), the MTT shall consider the appeal of the petitioner and dispose it of in accordance with law.

The petitioner undertakes to file his appeal before the MTT within four weeks. It is reiterated that the appeal shall be disposed of within an outer limit of six months. Needless to state that in this intervening period, no coercive steps shall be taken by the Department.

No further orders are called for on this petition. It is disposed of.

Order dasti under the signature of the Court Master.

INDERMEET KAUR, J

FEBRUARY 08, 2017
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