IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.09.2018

CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 12785 of 2016
W.M.P.NO.11183 Of 2016

M/s.Tube Investments of India Ltd.,
Unit- TI Cycles of India
Represented by its Company Secretary and
Senior Vice President (Legal) Mr.S.Suresh
No.234, N.S.C.Bose Road,
Chennai - 600 001. ..Petitioner

vs

1. Greater Chennai Corporation,
   represented by its Commissioner
   Rippon Building,
   Chennai - 600 003.

2. The Assistant Revenue Officer,
   (Zone VII)
   Greater Chennai Corporation,
   Anbattur CTH Road,
   Chennai - 600 053. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ in the nature of writ more specifically a writ of certiorari, calling for the records on the file of the second respondent relating to the impugned orders dated 24.03.2016 bearing Ref.No.Z.0.7.R.D.C. No.R-2/ASSR-085/2016; Assessment order Dated 19.03.2016, bearing Ref.Notice 7/15-16/10804; and Demand notice dated 24.03.2016 bearing Ref.No.Z.0.7.R.D.C No.R-2/ASSR-085/2016 and quash the same.

For Petitioner : Mr.T.Saikrishnan
for M/s.Sai Bharath and Ilan

For Respondents : Mr.T.C.Gopala Krishnan

O R D E R

The assessment order dated 19.03.2016 issued by the second respondent and the demand notice dated 24.03.2016, are under challenge in this writ petition.

2. The learned counsel for the writ petitioner states that the petitioner is a company incorporated under the Companies Act, 1913 and is interalia in the business of manufacturing cycles and its components. The writ petitioner is the owner of the property situated at M.T.H.Road, Chennai - 600 053 in the new Greater Chennai Zone VII, Ward 85, within the jurisdiction of the second respondent. The property was originally within the jurisdiction of Ambattur Municipality and now coming under the jurisdiction of Greater Chennai Corporation.

3. The learned counsel for the writ petitioner states that the revised assessment effected on the writ petitioner is erroneous and incorrect in relation to the provisions of the Chennai City Municipal Corporation Act. No proper assessment has been made by the competent authority enabling the writ petitioner to pay the property tax as admissible under the provisions of the Act. The provisional assessment order passed by the respondent in proceedings dated 19.03.2016 is incorrect. The writ petitioner was paying property tax amount of Rs.6,00,000/- to the Ambattur Municipality and now the same is enhanced to Rs.27,55,328/-. Thus, the enhancement is disproportionate and not made in accordance with law.

4. It is contended that the writ petitioner is possessing very old buildings and the age of the building was not taken into consideration for the purpose of assessing revised tax by the Corporation. Thus, the factors to be taken into account has not been considered, while issuing the provisional tax assessment order. For these reasons, the impugned orders are liable to be scraped.

5. The learned counsel appearing on behalf of the respondents disputes the contention raised by the writ petitioner by stating that the Corporation is entitled to assess the escaped assessments with regard to Section 137-B of Chennai City Municipal Corporation Act. The petitioner premises is an industrial premises and they are owning buildings in and around area more than six lakhs square feet. Undoubtedly some buildings are old and some buildings are new. However, those age concessions in respect of the buildings can be provided, only if the writ petitioner submits the documents to show that the age of the building and other details. In the absence of any such documents, the Corporation would not be in a position to provide concession in respect of the age of the building. During the revised assessment and at the time of inspection by the competent authorities, the writ petitioner has not submitted any such documents to the authorities enabling them to consider the claim now made before this Court. The authorities have made a personal inspection with the experts, measured the entire premises and accordingly, effected revised assessment of

property tax. Thus, there is no infirmity or irregularity in respect of issuing the provisional assessment order which is now impugned in the present writ petition.

6. The learned counsel appearing for the respondents has also produced the report submitted by the first respondent in this regard as follows:-

"11. The first respondent has stated that, an Expert Committee comprising of Engineers and Revenue Officials inspected the company premises on 22.07.2016, 23.07.2016 and 25.07.2016 in the very presence of officials of the T.I.Cycles of India (Mr.Balachandar, Manager- Maintenance and Mr.Parthasarathy, P.R.O). The following officials are nominated for the expert committee.

S.No	Name of the official	Designation	Remarks
	ENGINEERS		
1	Th.A.Nachan	Exe.Engg./Z-7	Head
2	Th.Anandaraj	A.E.E./Z-7	Leader
3	Th.Muthu	A.E./Ward-79	Member
4	Th.Manikandan	A.E./Ward-80	Member
5	Th.Arun	A.E./Ward-82	Member
	REVENUE		
6	Th.L.Baskaran	A.R.O./Z-7	Leader
7	Th.C.Prabakaran	Assessor	Member
8	Th.Dilli	Assessor	Member
9	Th.Md.Khalleelluah	L.1	Member

12. The first respondent has stated that, before Expert Committee Team's inspection, they requested the company officials to produce the below mentioned documents and particulars in order to validate the age rebate claimed and area of the company. (vide this office letter Z.O.VII.R.D.C.No.R2/02605/2016 dt:06.07.2016)

(1) Copy of the registered documents pertaining to the land.

(2) Encumbrance Certificate for 25 years.

(3) Copy of the Approved Plan/Topo plan approved by the erstwhile Ambattur Municipality.

(4) Copy of the completion certificate issued by the CMDA authorities.

(5) Stability Certificate of the buildings from PWD Department.

(6) Building sketch mentioning the plinth area of the building in sq.mt. and year of construction.

(7) Buildings Elevation and interior photos (Colour-Maxi size).

13...............

14.............

15. The first respondent submitted that, based on the above said order dated 09.08.2016, the Regional Deputy Commissioner (Central), Zonal Officer-7, Additional Revenye Officer and Expert Committee and super checked the company buildings measurements and usage in the very presence of officials of the T.I.Cycles of India (Mr.Balachandar, Manager-Maintenance and Mr.Parthasarathy, P.R.O.) and issued instructions to the company officials and the Expert Committee members to correlate the same with the data submitted by the company, and to submit the final measurement report. Thus, the expert committee members took a physical measurement of the company buildings and thoroughly correlated and verified all the data in the presence of company officials on 18.08.2016, and 19.08.2016. On physical appearance, some of the buildings seems to be old and some of them new. In this circumstances it is unable to come to a conclusion on the age of the buildings, without documents which has to be provided by the company

16. The first respondent submitted that the final inference for building measurement is given below. The floor-wise details of the measurement of petitioner's building have been attached separately with this report and an abstract of the same is mentioned below :-

Sl.No.	Floor No.	Build up area in Sq.ft.	Type of construction	Remarks
1	Basement	25194	Permanent	During the inspection some buildings seems to be old and some of them new. On receipt of the relevant documents provided by the company the age rebate can be considered."
2	Ground	46017	Permanent	
3	Ground	493927	Semi-Permanent	
4	Mezzanine	21092	Permanent	
5	First	22984	Permanent	
6	Second	4271	Permanent	
	Total	613485		

7. It is contended by the learned counsel for the respondents that the provisional assessment order dated 19.03.2016, is enclosed in page No.2 of the typed set of papers, filed along with petition. In the notice itself, it is stated that if at all the writ petitioner is aggrieved from and out of such assessment, he is at liberty to approach the Commissioner, Greater Chennai Corporation, within 15 days from the date of receipt of a copy of this order. However, no such appeal was preferred along with the said provisional assessment order.

8. An enclosure which is served states that the first appeal lies before the Commissioner Greater Chennai Corporation and thereafter, the writ petitioner is at liberty to approach Taxation Appellate Tribunal under the provisions of the Chennai City Municipal Corporation Act. Admittedly, the writ petitioner has not exhausted the remedy available under the provisions of the Act. Contrarily, the petitioner has chosen to file this writ petition, raising certain factual disputes, which cannot be considered in the absence of any materials or documents.

9. This Court is of an opinion that certain factual details and merits now raised before this Court in this writ petition cannot be adjudicated under the Article 226 of the Constitution of India. All those factual aspects and merits of the case are to be adjudicated before the appellate authorities by producing original documents and by adducing evidence. In the event of submitting any such documents in relation to the age of the building, the respondents are bound to consider the same and grant concessions or reduction of tax as applicable with reference to the Act and Rules. Thus, those factual details can never be adjudicated in the present writ proceedings.

10. Admittedly, the writ petitioner has not preferred any appeal either before the Commissioner or before the Taxation Appellate Tribunal or before the Municipal Tax Appeals under Part-V Rule-12 of the Act. Thus, the writ petitioner has not exhausted the remedy provided under the statutes. Under these circumstances, this Court is not inclined to consider these factual disputes raised in the present writ petition. In respect of providing tax concessions to the old buildings owned by the writ petitioner, the writ petitioner is at liberty to prefer an appeal before competent forum for adjudicating all the factual disputes.

11. In respect of payment of property tax, the writ petitioner is liable to pay the property tax as assessed and any delay in paying the tax will affect the interest of public at large. This Court is of the opinion that the payment of property tax to Chennai Corporation is the source for implementing welfare schemes and to provide infrastructure facilities and

common amenities to the citizens residing within the jurisdiction of Chennai city corporation limits and from and out of the tax payment alone, the welfare schemes are implemented by the Chennai Corporation. There cannot be any compromise in respect of recovery of property tax arrears from the citizens. In the event of delay or non payment, the same will cause prejudice to all other citizens residing within the Chennai City. This apart, the non payers of property tax are infringing the right of other citizens, who all are promptly paying the tax to Chennai City Corporation. The defaulters are not supposed to enjoy the common facilities, on the cost of other citizens, who are all paying the tax in time to Chennai Corporation. Such an attitude of the citizens in delaying the payment of property tax are to be deprecated.

12. In respect of the disputes in relation to errors or mistakes regarding the assessment of property tax, the aggrieved persons shall approach the competent Appellate Authority or the Appellate Taxation Tribunal and thereafter, the Municipal Tax cases under the Act to adjudicate the issues. However, the Courts must be cautious that the persons, who are approaching the Court for reduction of property tax is liable to pay the tax and all such discrepancies and disputes shall be resolved by way of an adjudication as contemplated under the Act.

13. This Court is of the considered opinion that the Appellate Authority and the Tribunals are not expected to show any such leniency or misplaced sympathy in respect of payment of property tax by the assesses. The Hon'ble Supreme Court of India reiterated that the benefit of doubt in respect of the tax matters should go to the revenue and certainly not to the tax payers. However, such doubts can be cleared only through the adjudicative process. The Revenue to the State is the larger interest of the public and the same must have priority. Under these circumstances, all the authorities including Appellate Authority, Tribunals must ensure that the payment of property tax are not evaded nor postponed. Once if it is evaded or postponed on filmsy reasons, then the same will create a wrong precedent in the mind of the people, who all are liable to pay the tax to the State. This apart, all such adjudications in respect of collection of tax are to be undertaken without causing any delay and to be decided at the earliest possible. Long delay in disposing of such tax matters will result financial loss to the State Exchequers. The consequences of financial loss to the State Exchequers are disastrous and the same will affect the welfare schemes and other activities to be provided by the State to the public at large under the Constitution of India. Thus, it affects the Constitutional principles and perspectives. The State is not supposed to waste the money and the tax payers money are to be spent judiciously and reasonably even by the State. Thus, the collection of taxes

are also imminent in respect of running the public administration. Thus, the Courts must also be cautious, while granting interim orders of State of the payment of tax to the State. Only on exceptional circumstances, if there is a gross injustice or direct violation of the statutes, then alone the interim orders can be granted, stalling the payment of tax by the assesses to the State. Adjournments in tax matters can never be claimed as a rule. Adjournments in such matters are only exceptions. Only on certain genuine grounds, adjournments can be granted. In all other circumstances, the Courts are bound to proceed with the tax matters and decide without causing any undue delay. Thus, the efficiency in collection of revenue to the State is of paramount importance as the same has got financial implications in respect of the public administration.

14. In view of the principles, in respect of dealing with property tax matters, the writ petitioner is liable to pay the tax as assessed and if any discrepancy in respect of the claim of tax, the same shall be adjudicated in the manner known to law before the competent forums under the Act. Accordingly, the following orders are passed:

(i) The relief sought for in the present writ petition stands rejected.

(ii) The writ petitioner is directed to pay the arrears of the property tax amount of Rs.2,22,63,117/- within a period of eight weeks from the date of receipt of a copy of this order.

(iii) In the event of failure on the part of writ petitioner in paying the arrears of property tax within the time limit stipulated above, the respondents are directed to initiate all further actions by the following the procedures contemplated under law for the recovery of arrears of property tax and other statutory charges.

15. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pns/rts/kak

1. The Commissioner
Greater Chennai Corporation,
Rippon Building,
Chennai - 600 003.

2. The Assistant Revenue Officer,
(Zone VII)
Greater Chennai Corporation,
Anbattur CTH Road, Chennai - 600 053.

+1cc to Mr.Sai and Bharath, Advocate, S.R.No.64256
+1cc to Mr.T.C.Gopala Krishnan, Advocate, S.R.No.64038

W.P.No. 12785 of 2016
W.M.P.NO.11183 OF 2016

GMR(CO)

rrs 01/11/2018