IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 02.05.2018

1. RSA No.1921 of 1997

Food Corporation of India ...... **Appellant**

Versus

Municipal Committee, Kapurthala ...... **Respondent**

2. RSA No.978 of 2000

Food Corporation of India ...... **Appellant**

Versus

The Municipal Committee, Kharar ...... **Respondent**

3. RSA No.4594 of 2001

Food Corporation of India ...... **Appellant**

Versus

Municipal Council, Barnala etc. ...... **Respondents**

4. RSA No.3755 of 2000

Food Corporation of India ...... **Appellant**

Versus

Notified Area Committee Mullanpur Dakha ...... **Respondent**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Arun Walia, Sr. Advocate with
Mr. Marinal Sharma, Advocate
for the appellant (in RSA No.1921 of 1997).

Mr. K.K. Gupta, Advocate
for the appellant (in RSA Nos.978, 3755 of 2000 & 4594-2001).

Mr. H.S. Sethi, Advocate
for respondents No.1 and 2 (in RSA No.4594 of 2001).

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Mr. Pankaj Jain, Advocate
for the respondent (in RSA No.978 of 2000).

Mr. Sanjeev Sharma, Advocate
for the respondent (in RSA No.3755 of 2000).

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ANIL KSHETARPAL, J.

Vide this judgment, I shall be disposing of four regular second appeals bearing RSA No.1921 of 1997, RSA No.978 of 2000, RSA No.4594 of 2001 and RSA No.3755 of 2000. Learned counsel for the parties are agreed that the common issue needs determination and hence, these appeals can be conveniently disposed of by a common judgment.

In the considered opinion of this Court, the following substantial question of law arise for consideration:-

> "Whether in case of illegal recovery of house tax, cause of action to recover the amount arises on the day the deposit was made or cause of action would arise on the day, the mistake comes to the notice of the plaintiff?"

Facts of each appeal are being noticed.

RSA No.1921 of 1997

Plaintiff-appellant is in the regular second appeal against the judgment of the learned First Appellate Court. The plaintiff-Food Corporation of India filed a suit for declaration, permanent injunction, mandatory injunction and for recovery of Rs.2,51,942.40 illegally recovered as house tax from the plaintiff along with interest @ 18% per annum. It is the case of the plaintiff that it has constructed godowns and as per notification issued by State of Punjab dated 21.07.1980, the relevant provisions of the Punjab Municipal Act, 1911 ceased to operate as the godowns have been declared as new Mandi township. It is further the case of the plaintiff that on account of illegal demands, house tax from the year 1980-

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81 to 1991-92 has been paid. Hence, amount of Rs.17,496/- which is payable with respect to other godowns is liable to be adjusted and the remaining amount of Rs.2,51,941.40 paisa is recoverable. The plaintiff before filing the suit demanded the amount by notice dated 21.12.1991.

The defendant-Municipal Committee, Kapurthala contested the suit and pleaded that such notification would not be applicable and house tax has been correctly recovered. The suit was also contested on limitation. The suit was filed on 19.11.1992.

Learned trial Court after appreciating the evidence held that the house tax was wrongly recovered. The Court held that since the payment was made under a mistaken belief so there is no limitation to recover the amount. With these findings, the suit was decreed. Municipal Committee, Kapurthala filed the first appeal. Learned First Appellate Court upheld the finding of house tax that the amount was wrongly recovered. However, the learned First Appellate Court held that the plaintiff is only entitled to recover the amount paid during three years before the institution of the suit.

The appeal has been filed only by Food Corporation of India.

RSA No.978 of 2000

Food Corporation of India had filed a suit for mandatory injunction on account of illegal recovery of the house tax against the Municipal Committee, Kharar. In the present case, the notification exempting the applicability of the relevant provisions of the Punjab Municipal Committee Act was issued on 04.05.1990. The Court fee for recovery of the amount was paid. The notice for recovery was issued on 08.06.1993 before filing the suit. The Municipal Committee contested the suit on the ground that the house tax has been correctly imposed and reocvered and the suit is barred by time. Learned trial Court after recording a

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finding that the Municipal Committee has wrongly and illegally recovered the amount of Rs.1,29,027/-. However, dismissed on the ground that the suit has been filed beyond the period of three years and hence, the suit is barred under Article 16 of the Limitation Act. The Food Corporation of India filed the first appeal. Learned First Appellate Court also dismissed the appeal.

RSA No.3755 of 2000

The suit was filed by the Food Corporation of India on 11.02.1992 against the Notified Area Committee, Mullanpur for recovery of illegally recovered amount. The notification examining the applicability of the relevant provisions of Municipal Act has been issued by the Government on 16.04.1980 and the house tax recovery has been sought for in respect of 1980-81 to 1990-91. In this appeal, the plaintiff pleaded that they were not in knowledge of the notification examining the payment of tax and came to know of the same in February, 1991. Before filing of the suit, the notice was issued calling upon the defendant to pay back the amount. However, no action was taken. Hence, the suit was filed. In the written statement, the Notified Area Committee defended the suit and pleaded that the house tax is payable and the suit is barred by time. Learned trial Court held that the Notified Area Committee has a right to recover the tax. Hence, dismissed the suit although the suit for recovery was held to be within limitation. In the first appeal, the learned First Appellate Court reversed the finding of the learned trial Court with regard to entitlement of the Municipal Committee to recover the tax amount and it has been held that the Notified Area Committee has no right to recover the tax. However, the learned First Appellate Court held that the suit of the plaintiff is entitled to be decree only to the extent that the payments were deposited three years before the date of filing of the suit.

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<u>RSA No.4594 of 2001</u>

Food Corporation of India filed a suit for declaration and mandatory injunction against Municipal Council, Barnala. In the present case, exemption notification is dated 18.11.1986 whereas the house tax which has been recovered is from 18.11.1986 to 31.01.1991 before filing the suit. The notice was issued. The defendant sent reply. The suit was instituted on 19.03.1997. Learned trial Court held that the house tax is not payable. However, the suit was dismissed on the ground that the plaintiff-Corporation has failed to produce any evidence relating to deposited payment. First appeal was also dismissed as the suit was held to be barred by time. As far as finding of the learned trial Court that the payment of the house tax is not proved, the same has been reversed by the learned First Appellate Court.

Now the stage is set for considering the question of law.

> *"Whether in case of illegal recovery of house tax, cause of action to recover the amount arises on the day the deposit was made or cause of action would arise on the day, the mistake comes to the notice of the plaintiff?"*

In the present case, the facts as noticed above clearly proved that both the parties were under a mistake. Municipal Committee/Municipal Council/Notified Area Committee claim that in spite of exemption notification issued by the State of Punjab on various dates, the house tax is payable and therefore, the amount has been correctly recovered. On the other hand, it is the case of the Food Corporation of India, the plaintiff-appellant that the house tax has been wrongly recovered as it was not payable in view of exemption notification issued by the Government of Punjab. The Courts below have found that the house tax was not payable/recoverable.

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The Municipal Committee/Council/Notified Area Committee have not challenged the aforesaid finding. Hence, as far as the liability of the Food Corporation of India to pay house tax is not in dispute. In other words, the Municipal Committee/Municipal Council/ Notified Area Committee had no right to recover the house tax. In all these cases, Municipal Committee/Municipal Council/Notified Area Committee has taken a stand that the house tax is payable. The stand taken was on account of mistake of law at the part of Municipal Committee. The defendants have been recovering the same under that mistake.

In case of mistake, the relevant provisions of Limitation Act, 1963 is applicable under Section 17 which is extracted as under:-

> *"**17. Effect of fraud or mistake.**—*
> *(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—*
> *(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or*
> *(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or*
> *(c) the suit or application is for relief from the consequences of a mistake; or*
> *(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him, the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:*
> *Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any*

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property which—

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order:

Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be."

A careful reading of the Section 17(1)(c) establishes that the period of limitation was not taken into run until the plaintiff or the applicant has discovered the mistake.

Although, it is true that in most of the cases, the pleadings are not happily worded, however, in each of the plaint, while pleadings cause of action it has been pleaded that the plaintiff got the cause of action to file the suit after expiry of one month from the date of receipt of notice seeking refund of the amount paid. However, the pleadings in RSA No.3755 of 2000 show that the plaintiff came to know of the exemption notification in February, 1991 and thereafter, they initiated proceedings for recovery of the amount. The facts as noticed above clearly point out that both the parties

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were under a mistake and the defendants remained under a mistake even till the filing of the suit whereas the plaintiff in all cases remained under a mistake and came to know of the notification and thereafter served the notice demanding refund of the amount and thereafter filed the suit. In these circumstances, the Courts below have wrongly held that the claim made by the plaintiff is barred by time.

This issue can be examined from another angle. The Courts below have assumed that right to refund arises on the day the tax was paid. In the considered opinion of this Court, the cause of action cannot be said to have accrued on the day the amount was deposited. The cause of action would accrue only when the mistake comes to the notice of the plaintiff. In all the cases, the plaintiff has pleaded cause of action. It has been pleaded that the plaintiff served a notice and thereafter filed the suit. In one case, even the date has been given on which the mistake came to their notice and thereafter, notice was served and the amount was demanded. In all these cases, the declaration has been given by the Courts that the amount of house tax was not payable and hence, recoverable.

Hence, the finding that the house tax is not payable or recoverable has been finally arrived at in this litigation only. In all the cases, the stand of the defendants is that the house tax has been rightly recovered. In these circumstances, the suit filed by the plaintiff could not be held barred by time. The recovery of tax has been declared void and illegal through the judgments passed by the Courts below. Reference in this regard can be made to the judgment passed by the Hon'ble Supreme Court reported as ***AIR 1990 SC 313 titled as 'Mahabir Kishore and others Vs. State of Madhya Pradesh'***. Reference in this regard can be made to para No.21 and 27 of the aforesaid judgment which are extracted as under:-

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"21. Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake becomes known to the party only when a Court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a Court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law.

27. It is thus a settled law that in a suit for refund of money paid by mistake of law, S. 72 of the Contract Act is applicable and the period of limitation is three years as prescribed by Article 113 of the Schedule to the Indian Limitation Act, 1963 and the provisions of S.17(1)(c) of that Act will be applicable so that the period will begin to run from the date of knowledge of the particular law, whereunder the money was paid, being declared void; and this could be the date of the judgment of a competent Court declaring that law void."

In view of the aforesaid discussion, question of law framed above, is answered in favour of the appellants. Hence, the judgment and decree passed by the Courts below shall stands modified. The suit filed by the plaintiff in each case would stand decreed. The amount so claimed shall be liable to be recovered along with interest @ 7.5% per annum, from the date of institution of the suit, till the date of payment.

All the appeals are allowed.

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned Yes / No

Whether Reportable Yes / No

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