IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.6161 of 2016 (O&M)
Date of Decision:11.10.2018

Municipal Corporation Pathankot through its Commissioner

...Appellant

Versus

Food Corporation of India

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.C. Pathela, Advocate
for the appellant.

Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate for the respondent.

ANIL KSHETARPAL, J.(oral)

CM No.16191-C/2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 13 days in re-filing the appeal is condoned.

Application is allowed.

Main Case

It is sad that two public authorities are fighting in Court rather than settling their disputes by sitting across the table.

Defendant-appellant has challenged the concurrent findings of the facts arrived at by the Courts below while decreeing the suit filed by Food Corporation of India for recovery of Rs.21,24,959/- which had been charged as house tax (municipal tax), although it was not payable as per Notification issued by the Government of Punjab dated 25.09.1987, whereby certain provisions of Punjab Municipal Act, 1911 were held to be not applicable to the property located in the New Mandi Township, Punjab. The operative part of the Notification reads as under:-

> "In exercise of powers conferred by sub Section (1) of Section 17 of the Punjab New Mandi Township (Development and Regulations) Act, 1960 (Punjab Act-2 of 1960) The President of India is pleased to direct that the powers under Section 56,58,61 to 86, Section 96 to 102, Section 113 to 140, Section 154 to 166, Section 187 to 197, Section 199 to 221, 225 to 229 and Section 231 to 239 of the Punjab Municipal Act 1911 (Punjab Act No. 3 of 1911) which are relevant to the purpose of the said Punjab New Mandi Township Act 1960 shall cease to operate in such areas of the New Mandi Township as are mentioned in the schedule."

It is not in dispute that some of these provisions enable the Municipal Corporation to charge house tax. It is the finding of the facts by the Courts below which is not disputed that house tax/municipal tax has been charged for the properties which are falling within New Mandi Township, Punjab as notified. Food Corporation of India has filed a suit for refund of the aforesaid amount which has been decreed by both the Courts below.

Learned Counsel for the appellant submitted that incorrect assessment of the house tax/municipal tax can only be challenged by filing the appeal before the competent authority under the Municipal Act and therefore the civil suit was not maintainable.

This Court has considered the submissions, however, it is not a case of incorrect or any error in the assessment of house tax/municipal tax. This case is of wrongful recovery of the house tax/municipal tax which was neither due nor payable. Hence the aforesaid provision of appeal would not be applicable in the facts of the present case.

In view thereof, there is no ground to interfere with the concurrent findings of facts. Hence Regular Second Appeal is dismissed.

All the pending miscellaneous application(s), if any, is/are disposed of in terms thereof.

(ANIL KSHETARPAL)
JUDGE

October 11, 2018
shweta

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No