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HIGH COURT OF CHHATTISGARH BILASPUR**Judgment reserved on 26.11.2018****Judgment delivered on 13.03.2019****Writ Appeal No. 481 of 2018**

Bharat Aluminium Company Ltd. P.O. Balco Nagar, Korba, District Korba (Chhattisgarh) Through Authorized Signatory, Mr. Ajay Yadav S/o Shri R.R. Yadav, Aged About 37 Years, Presently working as Assistant Manager (Estate) Bharat Aluminum, Company Limited, Balco Nagar, Korba, District Korba, Chhattisgarh. **(Originally Petitioner).**

---- Appellant**Versus**

1. State of Chhattisgarh Through Secretary, Department of Urban Administration and Development, New Mantralaya, Mahanadi Bhawan, New Raipur, P.S. Rakhi, District Raipur Chhattisgarh.

2. The Director, Department of Urban Administration and Development, New Mantralaya, Indravati Bhawan, New Raipur, P.S. Rakhi, District Raipur Chhattisgarh.

3. The Municipal Corporation, Korba, Through Commissioner, Municipal Corporation, Korba, District Korba Chhattisgarh. **(Originally Respondents).**

---- Respondents

For Appellant	:	Shri Brian Da Silva, Senior Advocate with Shri Sachin Singh Rajput, Shri Vrushal Bhide and Shri Sarabvir Oberai, Advocates
For Respondent/State	:	Shri U. N. S. Deo, Government Advocate.
For Respondent No.3	:	Shri Rajeev Shrivastava, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V JUDGMENT

Per Parth Prateem Sahu, Judge

1. The appellant is a company incorporated under the provisions of the Companies Act, 1956. It is situated within the territorial jurisdiction of Municipal Corporation, Korba, Chhattisgarh. The appellant filed writ petition challenging legality, validity and propriety of the resolution passed by respondent No. 3-Municipal Corporation for the financial year 2017-2018, whereby respondent No. 3 treating buildings height of more than the normal buildings as a building of special category and treated them as a multiple floors building. Every 16 feet of the height of a building was to be treated as one floor. Based on the resolution, a demand of Rs.24,79,91,502/- by issuing a bill dated 05/08/2017 and a demand of Rs.2,50,68,491/- by way of bill dated 05/08/2017 was raised against Balco Captive Power Plant, Jamnipali, District Korba, Chhattisgarh.

2. The learned Single Judge dismissed the writ petition taking into consideration the provisions of Sections 132, 135, 136, and 138 of the Chhattisgarh Municipal Corporation Act, 1956 (hereinafter referred to as 'the Act of 1956') as well as considering the Chhattisgarh Municipality (Determination of Annual Letting Value of Building/Lands) Rules, 1997 (hereinafter referred to as 'the Rules of 1997').

3. Learned Senior counsel appearing for the appellant submitted that the Municipal Corporation was not having jurisdiction to presume multiple floor of any building only because of its height. He further submitted that the learned Single Judge committed an error in assessing/calculating the constructed area of building contrary to the provisions of Rule 2(h) of Rules of 1997. He lastly submitted that under the taxing provisions, meaning to the word/words are not to be given expanded or extended meaning.

4. Per contra, learned counsel appearing for the respondents submitted that learned Single Judge has considered all the relevant provisions provided under the Act of 1956 and thereafter arrived at a valid conclusion and rightly dismissed the writ petition filed by the petitioner/appellant. He further submitted that the provisions of Section 138 of Act of 1956 and Rules of 1997 provides on what basis the annual letting value of land or building is to be calculated. Section 138 of the Act of 1956 itself provides the factors to be taken into consideration and also gives discretion and powers for taking into consideration other relevant factors which has not been specifically provided under Section 138 of the Act of 1956 for assessing annual letting value of land or building. He lastly submitted that the learned Single Judge after considering the material available on record has rightly dismissed the writ petition filed by the appellant and it does not require any interference.

5. We have heard learned counsel appearing for the parties and perused the record as well as the provisions of Act of 1956, which provides for assessment and factors to be considered for calculating the tax, payable by the owners of the buildings or lands situated within the territorial jurisdiction of the Municipal Corporation.

6. The provisions of Section 132(1) of Act of 1956 provides for taxes to be imposed under this Act. Clause (a) of sub-section (1) of Section 132 of Act of 1956 provides for imposition of taxes on buildings or lands situated within the city with reference to the gross annual letting value of buildings or lands, called the property tax. Property tax is provided under Section 135 of Act of 1956. Section 138 of Act of 1956 provides for annual letting value of land or building. The owner of the land or building becomes liable to pay property tax once he holds any property i.e. land or building within the territory of the Municipal Corporation.

7. The learned Single Judge while considering the issues raised before him in the writ petition has considered the relevant provisions of Act of 1956 and also taking into consideration the judgment rendered by Hon'ble Supreme Court in the matter of **Jage Ram and Others v. State of Haryana and Others**¹ has recorded the following findings:-

“10. A plain reading of the said provision of law itself clearly reflects that the Corporation

¹ AIR 1971 SC 1033

has the power to impose property tax under this Act but the same shall be subject to the provisions of Sections 135, 136 & 138 of the Municipal Corporation Act. Section 135 of the Act specifically deals with imposition of property tax which again for ready reference is being reproduced hereunder:

“135. Imposition of property tax – (1)
Notwithstanding anything contained in this Act, the tax under clause (a) of sub-section (1) of Section 132 shall be charged, levied and paid, at the rate not less than six percent and not more than ten percent of the annual letting value, as may be determined by the Corporation for each financial year.”

11. Section 135 of the Act provides for imposition of property tax as provided under Section 132 of the Act and the tax rate also stands fixed i.e. at the rate not less than 6% and not more than 10% of the “annual letting value” as would be determined by the Corporation for each financial year. Section 136 casts certain exemptions and guidelines in respect of the following properties:

- (a) buildings and lands owned by or vesting in-
 - i) the Union Government
 - ii) State Government
 - iii) the Corporation;

12. If we peruse Section 135 of the Act, what clearly reflects is that it is the annual letting

value which is material while quantifying the property tax. Annual letting value of land and building has been defined in Section 138 of the Corporation Act. According to Section 138 of the Act, the annual letting value of building and land shall be determined as per the resolution of the Corporation adopted in this behalf on the basis of per square meter of the built up area of a building or land, as the case may be, taking into consideration the area in which the building or land situates, its location, situation, purpose for which it is used, its capacity for profitable user, quality of construction of the building and other relevant factors, as may be, made by the State Government in this behalf. Sub Section 1 & 1(a) of Section 138 of the Act reads as under:

“138. Annual letting value of land or building – (1) Notwithstanding anything contained in this Act or any other law for the time being in force, the annual letting value of any building or land, whether revenue paying or not, shall be determined as per the resolution of the Corporation adopted in this behalf, [on the basis of per square meter of the [built up area] of a building or land, as the case may be] taking into consideration the area in which the building or land is situated, its location, situation, purpose for which it is used, its capacity for profitable

user, quality of construction of the building and other relevant factors and subject to such rules, as may be made by the State Government in this behalf.

(1-a). The Commissioner shall prepare the draft resolution under sub-section (1) for the next financial year and submit before the Corporation before 31st December of each financial year. In case the corporation fails to adopt the resolution as required by sub-section (1) by 31st March of each financial year then the draft resolution prepared by the Commissioner shall be presented to the Mayor and the resolution as approved by the Mayor shall be deemed to be the resolution finally adopted by the Corporation:

13. On the basis of the aforesaid resolution adopted by the Corporation, every owner of the land or building has to assess the annual letting value of his land or building and deposit the amount of property tax. The variation up to 10% on either side in the assessment made, shall be ignored where the variation is more than 10%, the owner shall be liable to pay penalty equal to 5 times the differences.

14. The respondents in exercise of the power under Municipal Corporation Act have framed the Municipality (Determination of

Annual Letting Value of Building/Lands) Rules, 1997 (for short 'the Rules, 1997'). Rule 2 (h) defines constructed area which means the constructed area of each floor or the house owned by the owner of the building/land. Rule-4 further has made classification of buildings and lands in different zone and certain criteria have been laid down to be considered while determining the annual letting value. For ready reference Rule-4 is reproduced hereunder:

“4. Classification of Buildings and lands - The classification of buildings and lands situated in every zone shall be as follows:

(a) Quality of construction

- i) Buildings having roof made or R.C.C./R.B.C. or stone;
- ii) Buildings having roof made of sheets of cement or iron or tiles;
- iii) Other semi-pakka or Kuccha buildings which does not fall within sub-clause (i) or (ii).

(b) On the basis of use-

- i) Buildings/lands for the purpose of commercial or industrial;
- ii) Buildings/lands for the purpose of residential.

(c) On the basis of location-

- i) Building/land situated at main road;

ii) Building/land situated at main market.”

15. So far as the rule of construction to be taken into consideration by the Courts to find out the true intention of the Legislature is concerned, it would be relevant at this juncture to refer to **AIR 1971 SC 1033 (Jage Ram and Ors. Vs. State of Haryana and Ors.)** where in paragraphs- 13 & 14 referring to Halsbury's Laws of England the Hon'ble Supreme Court held as under:

“13. The ejusdem generis rule is not a rule of law but is merely a rule of construction to aid the courts to find out the true intention of the legislature. If a given provision is plain and unambiguous and the legislative intent is clear, there is no occasion to call into aid that rule ejusdem generis rule is explained in Halsbury's Laws of England (3rd Edn.). Vol. 36 p. 397 paragraph 599 thus:

"As a rule, Where in a statute there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified, although this, as a rule of construction, must be applied with caution and subject to the primary rule that- statutes are to be construed in accordance with the intention of Parliament. For the

ejusdem rule to apply, the specific words must constitute a category, class or genus; if they do constitute such a category, class or genus, then only things which belongs to that category, class or genus fall within the general words.....

14. It is observed in Craies on Statute Law (6th Edn.) p. 181 that :

"The ejusdem generis rule is one to be applied with caution and not pushed too far, as in the case of many decisions, which treat it as automatically applicable, and not as being, what it is, a mere presumption in the absence of other indications of the intention of the legislature. The modern tendency of the law, it was said, is "to attenuate the application of the rule of ejusdem generis". To invoke the application of the ejusdem generis rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be, called a class or kind of objects."

8. Property tax, as discussed in preceding paragraphs, is liability of the owner only because he is owing a property within the boundaries of Municipal Corporation. Property tax is a compulsory tax imposed by the Government/Municipal

Corporation to generate money for public purpose to be utilised within the whole area of Municipal Corporation. There is a difference in collection of fee and levying of tax. It is not a fee payable with any condition or against any service to be provided to the owner. These funds are utilised for the services which are in the nature of duty of Corporation towards public as provided under Section 66 of the Act of 1956, therefore, we do not find any infirmity in the findings recorded by the learned Single Judge with respect to repelling the claim of appellant that as they themselves are managing the up-keep of the area i.e. industrial area and residential area, by their own efforts and therefore, they are not liable to pay the property tax. Services are rendered to payer against the fee charged by an authority whereas tax is levied as a part of common burden.

9. The second ground with respect to the demand of property tax raised by treating height of each floor at every 16 feet of the height in pursuance of the resolution passed by the Municipal Corporation (Annexure P/1). Section 135 of the Act of 1956 deals with imposition of the property tax wherein it provides for levy of tax as contained under clause (a) of sub-section (1) of Section 132 with the rates mentioned therein of the annual letting value. Annual letting value has been defined under the provisions of Section 138 of the Act of 1956. The legislature has provided for a very wide evaluation of any building, land or property which is put for the property tax. The aforementioned provision gives the factors to be taken into

consideration for assessing the annual letting value of land or building i.e. area where land or building is situated, its location, situation, purpose for which it is used, its capacity for profitable user, quality of construction of the building and other relevant factors. It appears that the legislature had used the word 'other relevant factors' with a purpose for granting liberty to the authorities to re-fix the annual letting value of the building or land on the basis of other considerations which has not been specifically provided under the Act. The Municipal Corporation has been authorised under the Act of 1956 to fix the annual letting value by the resolution itself. In the case in hand, the Municipal Corporation passed the resolution vide Annexure P-1 (part of the writ petition) with respect to assessment of annual letting value of the buildings constructed with commercial and industrial high rise buildings have been treated as special structure and their annual letting value to be assessed on the basis of its floors. The building of special structure having their heights more than the normal buildings to be treated as 'multiple floor building' and each floor to be at 16 feet of its height.

10. The learned Single Judge had interpreted the word “other relevant factor” in its wider sense and arrived at a conclusion that the Municipal Corporation have jurisdiction to consider any of the factors as arrived in the resolution for determination of the annual letting value of the building as the provision is with respect to tax on property within municipal area.

11. A bare reading of provisions of Section 138 of the Act of 1956, it clearly mentions that the annual letting value of the building or land is to be fixed on the basis of per square meter of the “built up area”. This amendment has been brought by the State vide notification dated 09.08.2012.

12. The only issue for consideration before us is whether the interpretation of the word “other relevant factor” has been properly done or not. The word “other relevant factor” has been used under Section 138 of the Act of 1956 which is provided under Part IV Chapter XI which deals with Taxation, which is the provision for imposition of tax i.e. the property tax. The Hon'ble Supreme Court has in en number of judgments considered the issue as to how the words and definition provided under the taxing statute are to be interpreted.

13. The Hon'ble Supreme Court in the matter of **Mohammad Ali Khan and others v. Commissioner of Wealth Tax, New Delhi**², has held as under:-

“6. It is a cardinal principle of construction that the words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary. It has been often held that the intention of the legislature is

² (1997) 3 SCC 511

primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. Obviously the aforesaid rules of construction is subject to exceptions. Just as it is not permissible to add words or to fill in a gap or lacuna, similarly it is of universal application that effort should be made to give meaning to each and every word used by the legislature. In *J.K. Cotton Spg. and Wvg. Mills Co. Ltd. v. State of U.P.*, (1961) 3 SCR 185, it was observed by this Court:-

“....The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect.”

14. The Hon'ble Supreme Court in the matter of **Mathuram Agrawal v. State of Madhya Pradesh**³, has considered the judgment of **Bank of Chettinad Ltd. v. CIT**⁴, which reads as under:-

“13. In the case of *Bank of Chettinad Ltd. v. CIT*, (1940) 8 ITR 522 (PC), the Privy Council quoted with approval the following passage from the opinion of *Lord Russel of*

³ (1999) 8 SCC 667

⁴ (1940) 8 ITR 522 (PC)

Killowen in IRC v. Duke of Westminster, (1936) AC 1:

“I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a Court's view of what it considers the substance of the transaction, the Court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case. As Lord Cairns said many years ago in *Partington v. Attorney General, (1869) 4 HL 100 at p. 122*: 'As I understand the principle of all fiscal legislation it is this; If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be.' ”

15. Further, the Hon'ble Supreme Court in the matter of **Shabina Abraham and others v. Collector of Central Excise**

and Customs⁵, has dealt with the interpretation of the taxing statute and held as under:-

“32.In *Partington v. Attorney General*, (1869) LR 4 HL 100, Lord Cairns stated: (LR p. 122)

“.....If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the State, seeking to recover the tax, cannot bring the citizen within the letter of the law, the citizen is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute.”

33. In *Cape Brandy Syndicate v. IRC*, (1921) 1 KB 64, Rowlatt J. laid down: (KB p.71)

“.....In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied.

⁵ (2015) 10 SCC 770

One can only look fairly at the language used.”

34. This Court has, in a plethora of judgments, referred to the aforesaid principles. Suffice it to quote from one of such judgments of this Court in *CST v. Modi Sugar Mills*, AIR 1961 SC 1047, SCR at p. 198: (AIR p. 1051, para 11)

“11. In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency.”

16. In the case in hand, the subject in question is a property tax and Section 138 of the Act of 1956 specifically provides the factors of consideration for ascertaining the annual letting value of a building. True it is that the legislation has granted some powers to the Tax Assessing Authority to consider any other factor for calculating the property tax. Any other factor would not mean that the factor to be considered which, in fact, is not available but it has to be presumed. Relevant portion of Section 138 of Act of 1956 is reproduced here-in-below :-

“138. Annual letting value of land or building—(1) Notwithstanding anything contained in this Act or any other law for the time being in force, the annual letting value of any building or land, whether revenue paying or not, shall be determined as per the resolution of the Corporation adopted in this behalf, [on the basis of per square meter of the [built up area] of a building or land, as the case may be] taking into consideration the area in which the building or land is situated, its location, situation, purpose for which it is used, its capacity for profitable user, quality of construction of the building and other relevant factors and subject to such rules, as may be made by the State Government in this behalf.”

17. Any other factor may include certain factual status available for consideration, such as height of a building, as considered by the respondent-Municipal Corporation. But the liberty granted by the legislature could not be given so wide a meaning as also to take into consideration by presuming and assuming a fact such as a floor at a particular height. Under the taxing statute, as held in the matter of **Mohammad Ali Khan** (supra), attention should be paid to what has been said, as also to what has not been said.

18. The provisions of Section 138 of the Act of 1956 have been amended in the year 2012 itself and instead of “carpet

area” the words “built up area” has been inserted, but even at that particular time, the legislature has not deemed it fit and proper to use specific words with respect to the consideration of the height of the building and presuming separate floor after each specific height to be the factor for assessing the annual letting value of any building. The height of the building can be taken into consideration as it exists for assessing tax in a particular rate or manner.

19. The statute has specifically provided the factors which are to be taken into consideration for assessment of annual letting value of a building and from perusal of the same it is clear that those factors are of the nature which are existing on the spot and can be visible with open eyes. For imposing tax on the basis of the statute, the same must be read according to the natural construction of its words. It cannot be presumed something which is not available directly from its consideration, particularly, in the subject matter of dispute of this petition. The property tax on the building and land imposed by the Municipal Corporation by its resolution (Annexure P-1) is questioned wherein the Municipal Corporation has resolved to impose property tax on the commercial and industrial high rise buildings treating the height of one floor as 16 feet and height of the building at every 16 feet to be one separate floor. Undisputedly, height of the building exists with the property in question to be taxed, but if it is not partitioned into separate floors, it cannot be presumed. In a taxing act one has to look merely at what is

clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

20. Taxing statute are to be read as it is. It cannot be stretched and it is also not proper to probe into provision to get the intention of the legislature but only it is to be seen that what words the legislature has used in a plain and simple language.

21. The word “any other factor” as used in the provisions of Section 138 of the Act of 1956 is to be understood in the light of the factors which are already specifically worded and provided under the said provision. From perusal of the factor which already provided under the provision of Section 138 of the Act of 1956 for consideration in assessing the annual letting value of the building are the actual status of the building.

22. In view of the above, the height of the building, which is its status and existence can be considered as one of the other factors for assessing the annual letting value of the building, but the height of the building cannot be divided into floors on presumption after a particular height and further floors thereafter.

23. In view of the above discussions and in the light of above judgments passed by the Hon'ble Supreme Court, we are of the view that the impugned order dated 28.03.2018 (Annexure A-1 to the writ appeal) as also the note of resolution dated 01.04.2017

(Annexure P-1 to the writ petition) are set aside meaning thereby that the division of height of a building into floors on presumption at every 16 feet is also set aside.

24. In view of the above, the demand dated 05.08.2017 of Rs.24,79,91,502/- and demand dated 05.08.2017 of Rs.2,50,68,491/- are set aside.

25. Respondents however are given liberty to raise fresh demands in conformity with this judgment.

26. The writ appeal is allowed in part.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge