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

\+ W.P.(C) 3508/2019, CM Nos. 16089-16090/2019

MAMTA HEALTH INSTITUTE FOR MOTHER AND CHILD ..... Petitioner

Through: Mr. T. Singhdev, Mr. Tarun Verma and Mr. Abhijit Chakravarty and Mr. Syed Mukhtar, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through: Mr. Gaurang Kanth, Ms. Biji Rajesh and Ms. Eshita Baruah, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**<u>O R D E R</u>**

% **08.04.2019**

**<u>CM No. 16090/2019 (for exemption)</u>**

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

**<u>W.P.(C) 3508/2019</u>**

1. The present petition has been filed by the petitioner with the following prayers:

> *"In view of the submissions made hereinabove, it is respectfully prayed that this Hon'ble Court may be pleased to:*
>
> *(i) Issue a writ of certiorari or any other writ or direction*

*in the nature thereof calling for the records pertaining to the impugned notices dated 09.01.2019 issued by respondent - Assessment & Collection Department, South Zone, South Delhi Municipal Corporation and quash / set aside the same'*

*(ii) Issue a writ of certiorari or any other writ or direction in the nature thereof calling for the records pertaining to the impugned order dated 18.02.2019 issued by the respondent –Assessment & Collection Department, South Zone, South Delhi Municipal Corporation and quash / set aside the same;*

*(iii) Pass such other order(s), which this Hon'ble Court may deem fit and proper under the circumstances of the case."*

2. In substance, the petitioner has challenged the assessment order dated February 18, 2019 whereby the respondent has determined the rateable value of the property being B-5, Greater Kailash Enclave-II, New Delhi-110048 at Rs. 971502/- w.e.f. April 01, 2004. The respondent has called upon the petitioner to make a payment of an amount of Rs.3582657/-.

3. Mr. T. Singhdev, learned counsel appearing for the petitioner has made two submissions. According to him, the said amount does not exclude an amount of Rs.4,09,744/- the amount of property tax already paid w.e.f. 2004. That apart, it is his submission that the respondent has computed the

rateable value on the basis of Use Factor 4. According to him, given the fact that the petitioner is a charitable society and as such a non profit organisation and does not work for commercial gain, the said use factor could not have been invoked, while computing the rateable value / property tax.

4. It is his submission that proper use factor is one. He has relied upon the judgment of the Division Bench of this Court in the case of ***Bar Council of India vs. South Delhi Municipal Corportion & Ors.*** in ***W.P. (C) 4226/2017,*** decided on January 18, 2018 in support of his submissions.

5. On the other hand Mr. Gaurang Kanth, learned counsel appearing for the respondent has opposed the maintainability of the writ petition on the ground that the petitioner has an alternative remedy before the Municipal Taxation Tribunal and the present petition should be dismissed on this ground.

6. Having heard the learned counsel for the parties at length, since in the peculiar facts of this case, that the petitioner, despite show cause notice dated January 09, 2019, could neither file reply nor appear before the authority concerned, and since the aforesaid two issues have a bearing insofar as the property tax demanded here is concerned, this Court is of the

view that the petitioner should be relegated to the Competent Authority, who shall consider the two submissions made by Mr. T. Singhdev regarding the adjustment of amount already paid / Use Factor and after hearing the representative of the petitioner and considering such material as the petitioner intends to rely upon, pass a fresh order within four weeks from the date of hearing.

7. If any order is passed by which the petitioner is aggrieved, surely the petitioner shall have remedy before the Municipal Taxation Tribunal and such an appeal shall be filed by the petitioner in accordance with law.

The writ petition is disposed of.

**CM No. 16089/2019 (for stay)**

Dismissed as infructuous.

*Dasti*.

**V. KAMESWAR RAO, J**

**APRIL 08, 2019**/*aky*