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

***Judgment reserved on: March 29, 2019***
***Judgment delivered on: April 29, 2019***

\+ W.P.(C) 6530/2013, CM No. 14201/2013

NORTHERN INDIA MASONIC CHARITABLE SOCIETY ..... Petitioner

Through: Ms. Vibha Mahajan Seth, Adv.

versus

SOUTH MUNICIPAL CORPORATION OF DELHI ..... Respondent

Through: Mr. Gaurang Kanth, Adv. for SDMC with Ms.Biji Rajesh and Ms. Eshita Baruah, Advs. for SDMC

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

**J U D G M E N T**

**V. KAMESWAR RAO, J**

1. The challenge in this petition is to an order dated May 30, 2013 passed by the Municipal Taxation Tribunal ('MTT' in short) dismissing the challenge of the petitioner to the assessment order dated August 12, 2005.

2. Some of the relevant facts are that, on May 28, 1997, the rateable value of the land belonging to the petitioner society / school was fixed at Rs.30,00,000/- with effect from April 01, 1997. The said order was subject matter of a writ petition filed

by the petitioner being CWP 4368/1997. The same was decided by this Court on October 27, 1997 remanding the matter back to the assessing authority to hear and decide the case afresh. It is averred in the writ petition that the rateable value of the land of the petitioner, vide order dated November 5, 2001 was fixed as under:-

*"The Rateable Value of the land was fixed as hereunder:-*
*Rs.8,34,620/ w.e.f 01.04.1997*
*Rs.10,03,410/- w.e.f 01.04.1998*
*Rs.12,78,410/- w.e.f 01.04.1999"*

3. It appears that the order also became a subject matter of a writ petition before this court in W.P.(C) 5067/2005 wherein, according to the petitioner this Court directed the respondents to decide the issue of exemption of the petitioner society / school from paying property tax under Section 115 (4) of the DMC Act. On August 12, 2005, the claim of the petitioner for grant of general exemption from paying the property tax was rejected. This order of August 12, 2005 was challenged by the petitioner initially before this Court in W.P.(C) 20507/2005. The said writ petition was disposed of by this Court vide order dated April 21, 2009 whereby the Court had relegated the petitioner to the MTT, by continuing the interim order dated October 26, 2005 passed in

favour of the petitioner till the decision in the appeal by the MTT. Accordingly, the petitioner filed an appeal before the MTT, wherein the impugned order has been passed.

4. At the outset, I may state here, the learned counsel for the petitioner has submitted that the petitioner society is not challenging the denial of exemption to the petitioner from paying the property tax under Section 115(4) of the DMC Act. Her plea is, primarily with regard to the fixation of the cost of the land. According to her the fixation on the basis of byelaw 2(1)(b)(iii) is incorrect, as the case of the petitioner shall fall in byelaw 2(1)(b)(iv) "*in any other category*". She submitted that the respondent do not deny that the subject property is being run only for charitable purpose of imparting education i.e. a school is being run upto secondary level from the said premises and the surplus generated in running the same is also being used for the purpose of education only and not for distribution to its Members. Hence, the same cannot be equated with any other commercial concern and therefore, cannot fall under sub-clause (iii). She also stated, as per the conditions of the allotment letter dated May 28, 1985, there are restrictions imposed on the Society for use of the subject land only for the purpose of running a school failing

which the land along with the structures raised thereon will be resumed by the Government. Hence, by no means the property can be equated with any commercial property falling under sub-clause (iii). She stated that as per sub-clause (iv), the "*cost of premises*" shall be the aggregate of the cost paid for the land and cost of construction of the building or part thereof and other additions and improvements in the premises. The cost paid to the DDA for acquisition of the land in the present case is only Rs.6,00,000/-. Even if, exemption has not been granted to the petitioner under Section 115(4) from paying General Tax, still it cannot be stated that the petitioner is not carrying any charitable activity to determine the use of property for "any other purpose". She placed reliance on the judgment of the Coordinate Bench of this Court in the case reported as ***102 (2003) DLT 409 Municipal Corporation of Delhi v. Delhi Catholic Archdiocese.*** She also relied upon the judgment of the Supreme Court in the case of ***P.c. Raja Ratnam Institution v. Municipal Corporation of Delhi AIR 1990 SC 816*** to contend that the education per-se is a charitable cause.

5. On the other hand, Mr. Gaurang Kanth, learned counsel appearing for the respondent, at the outset submitted that the

present petition is an abuse of process of law, inasmuch as the fixation of cost of land on which basis rateable value was fixed was never challenged by the petitioner. He submitted that the rateable value was initially fixed in the year 1997 on the basis of market price of the land at Rs.80,00,000/-, which became a subject matter of a writ petition being W.P.(C) 4368/1997. According to him, pursuant to orders in W.P.(C) 4368/1997, the rateable value was again fixed on November 05, 2001, the details of which have already been reflected above. Pursuant thereto, the writ petition was filed by the petitioner being W.P.(C) 5067/2005, which was with regard to a plea that the petitioner is entitled to exemption from paying property tax under Section 115(4) of the DMC Act. He submitted that the petitioner having not challenged the rateable value and only sought exemption from paying property tax under Section 115 (4) of the DMC Act, which plea was also rejected by the Joint Assessor and Collector on August 12, 2005, the rateable value as fixed on November 05, 2001 had attained finality. He submitted that it was this order dated August 12, 2005, which was challenged by the petitioner initially before this court in W.P.(C) 20507/2005 and later before the MTT, as is clear from the impugned order at page 18 of the paper book. He submitted that unfortunately, the Tribunal even though rejected the plea of exemption has still gone ahead and decide the issue of rateable value, which was impermissible. He also stated that even the fixing of rateable value having been upheld by the MTT, there was no occasion for the respondent Corporation to challenge the impugned order of the MTT in a separate proceedings. Even on merit, he has drawn my attention to para 8 onwards of the impugned order to contend that there is a finding of fact of the MTT that there was surplus fund available with the society which take away the character of the society / school as charitable concern. According to him, the Tribunal has rightly relied upon the judgment of the Supreme Court in ***MCD v. Children Book Trust AIR 1992 SC 1456.***

**7.** Having heard the learned counsel for the parties, at the outset, I may state here that the Tribunal in the impugned order has considered two aspects (i) the plea of grant of exemption to the petitioner under Section 115 (4) of the DMC Act, 1957 (ii) the issue of cost of the land based on which the rateable value was fixed. On the first aspect, the Tribunal has rejected the plea of the petitioner. In fact, the learned counsel for the petitioner has fairly stated that she is not challenging the finding of the

Tribunal with regard to denial of exemption under Section 115 of the DMC Act. If that be so, the finding of the Tribunal to that extent must be upheld. In so far as the plea of cost of the land / ratable value is concerned, Mr. Gaurang Kanth, learned counsel for the respondent submitted that the petitioner could not have challenged the fixation of cost of land / ratable value fixed vide order dated November 5, 2001, inasmuch as the petitioner's case in earlier round of litigation, i.e., W.P.(C) 20507/2005 was only with regard to exemption under Section 115 (4) of the DMC Act is appealing, on a first blush but on a deeper consideration, I find the Tribunal did examine the issue of cost of the land / ratable value and upheld the same. If that be so, I proceed to examine the said aspect as well. The plea of the petitioner before the Tribunal was that the respondent had fell in grave error in taking the market value of the land for the purpose of determining the cost of the land. According to the petitioner, as per the Clause 2(1)(b)(iii) of the bye-laws the *"cost of the premises"* in the case of non-residential purpose shall comprise of the market price of the land, while as per Clause 2(1)(b)(iv), the same shall comprise of the cost paid for the land. In other words, since the cost paid for the land was Rs.6 Lacs and not Rs.80 Lacs, (which was the market price of the land on the date of commencement of construction in 1995), it should be Rs.6 Lacs as per clause 2(1)(b)(iv) (in any other case) which should be the basis for computing the ratable value. For this purpose, it is necessary to reproduce sub-clause (iii) and (iv) of Clause 2 including explanation of the Delhi Municipal Corporation (Determination of Ratable Value) bye-laws, 1994; and the same reads as under:

> **"**2. *Definition – (1) In these bye-laws:*
>
> *a. xxxxxx*
>
> *b. 'cost of premises' means*
>
> *(i) xxxxxxxx*
>
> *(ii) xxxxxxxx*
>
> *(iii) where the premises are used or to be used for non-residential purposes and are not covered by clauses (i) and (ii) above the cost of the premises shall be the aggregate of the market price of land comprised in the premises on the date of the commencement of construction and the cost of construction of the premises and the cost of additions and improvements in the premises whether made by the owner or occupier.*
>
> *(iv) in any other case, aggregate of the cost paid for the land and cost of construction of the building or part thereof and the cost of additions and improvements whether made by the owner or by the occupier.*
>
> ***Explanation. –*** *For the purpose of this clause:*
>
> *(1) Where the premises have been purchased from the Government or the Delhi Development Authority (for short "D.D.A.") or acquired as a*

*member of a Group House building Co-operative Society the amount paid or payable to the Government or the D.D.A or as the case may be, the Group Housing Building Co-operative Society for the premises shall be the cost of the premises. Where the premises have been acquired from any other person, the cost paid or payable for the premises shall normally be accepted except where the Commissioner has reason to believe that the amount paid or payable has been under-stated and in such a case the Commissioner may estimate the cost of the premises or have it valued under Section 135 of the Act.*

*(2) Market price of land shall be the price for which the land was bought or the land rates notified by the D.D.A. or the Land and Development Officer (for short "L&D.O." or any other agency controlling the price of land for the year of commencement of construction or the year in which there is change in user of the premises, which, ever is higher.*

*(3) The cost of construction shall be the actual amount spent on construction or the cost determined as per the scheduled rates of the Central Public Works Department (for short "C.P.W.D") for the cost of construction for similar constructions for the year in which the premises was constructed, whichever is higher. Where the difference between the cost disclosed and the cost as per C.P.W.D rates is upto twenty per cent of the cost disclosed the cost of construction disclosed shall be accepted. Cost of additions and improvements shall be determined in the same manner.*

*(4) Where the land has been taken from D.D.A & D.O. local body or any other approved developer of lands the cost paid for the land means the amount paid for such land. Where the land has been taken from any other person, the cost of land shall be the*

*amount paid for the land or the amount arrived at the rates notified by the D.D.A / L.&D.O. for the year in which the land is taken whichever is higher. Where construction has been made after purpose of the terrace rights the cost paid or payable for the terrace rights shall be taken as the cost of the land.*

*(5) Premises exclusively used and occupied for charitable purpose within the meaning of clause (a) of sub-section (4) of Section 115 of the Act. shall not be deemed to be used for non-residential purposes."*

8. In support of her contention, learned counsel appearing for the petitioner had relied upon the Judgment of this court in the case of ***MCD v. Delhi Catholic Archdiocese (supra)***, wherein this Court in Paras 9 to 15 has held as under:

*"9. I have considered the submissions advanced by learned counsel for the parties. I am in agreement with the submissions of learned counsel for the respondent that relevant clause of the Bye-laws applicable to the case of the respondent would be Section 2(1)(b)(iv) and not 2(1)(b)(iii).*

*10. The, Supreme Court in Municipal Corporation of Delhi v. Children Book Trust's case (supra), held that in order for education to qualify as a charitable purpose an element of trade and business can be present in running a school on commercial lines and merely because of that it does not mean that it may not be entitled to exemption under Section 115 (4) of the Act.*

*11. The Supreme Court was further of the view that if it is shown that for its support the society has to depend on voluntary contributions either wholly or in part then it would be entitled to exemption in the relevant year. The matter has to be considered with reference to each year. The* *reasonable way devised by the Supreme Court is that a period of 5 years can be taken into consideration to find out whether the society or body depends on the voluntary contributions. It is also held that trade or business could be present in Section 115 (4) of the Act, but if the profit of income was devoted to charitable purpose and not distributed amongst its members, it was charity.*

*12. In the present case it has not been made out that there is distribution of profits amongst its members. That being the position it cannot be said that there is no charitable purpose though it may not qualify for exemption under Section 115 (4). Thus a society like the petitioner society may not be entitled to the exemption, but may still be running a school for charitable purpose.*

*13. This aspect has also to be considered in view of the forceful submission advanced on behalf of the respondent as to the object and interpretation of Clause 2(1)(b)(iv) read with explanation 5. There can be no doubt that in case exemption of payment of general tax is granted under Section 115 (4) of the Act, there would be no issue of liability to pay tax. There may, however, be cases where such an exemption is not granted and the property is subject to tax but yet there is an element of charity and in such a case the property is used neither for residential use nor for non-residential purposes. It is such cases which are sought to be covered by Clause 2(1)(b)(iv) in defining 'any other cases'.*

*14. In view of the aforesaid, I find no infirmity with the finding of the Appellate Authority that premises exclusively used and occupied for charitable purpose cannot be said to be used for non-residential purpose and would thus be covered by Section 2(1)(b)(iv) even though it will not be entitled to exemption under Section 115 (4) of the Act.*

*15. In such a situation it is the aggregate cost paid for land which has to be taken into consideration and not the market value of the land as was sought to be taken by the Assessing Authority which was set aside by the impugned order of the Appellate Authority."*

9. From the reading of the Judgment it is clear, though a society may not qualify for exemption under Section 115 (4) of the DMC Act from paying general tax, but it can if still running the school for charitable purpose, then it is using the property neither for "*residential purpose*" nor for "*non-residential purpose*", but for "*any other purpose*". This is in view of clause of 2 (i)(b)(iv) read with explanation 5 of the bye-laws reproduced above. In such an eventuality, the cost of premises shall be the aggregate of the cost paid for the land and cost for construction of the building or part thereof and the cost of additions and improvements, whether made by the owner or by the occupier.

10. In the case in hand, the Tribunal has taken the cost of the premises to mean the market price of the land in the year of the commencement of construction, which according to the Tribunal was in the year 1995 and as such taken the cost as Rs.80 Lacs. The said cost can be basis, if the premises is used for *"non-residential purposes*" but the presence of explanation 5 is for a purpose and should be given effect to. So, it has to be seen whether the petitioner society, even if not entitled to exemption

under Section 115 (4) of the Act from paying general tax, is running the school for charitable purpose, to be covered in "*any other case*". The charitable purpose shall be, if the society is supported by voluntary contributions; if the society is applying its profits in promoting its object; or pay any dividend or bonus to its members.

11. In the impugned judgment, there is a finding of the Tribunal that Society is collecting donation from the students under the threat of possible striking out their names from the rolls of School or not promoting them to next class. So, it is clear that there is a finding of the Tribunal that the donations are not voluntary. But on the other two aspects, whether the Society apply its income in promoting its object or whether it pays or not any dividend or bonus to its members, there is no finding. The finding on these aspects shall be relevant to come to a conclusion that the Society is running the School for charitable purposes. If the answer is in the affirmative, then it follows that the cost of the premises shall be covered under clause 2(i)(b)(iv) of the bye-laws. Such a finding would depend upon the reading of the documents as were filed before the Tribunal. So, appropriate

shall be to remand the matter back to the Municipal Tax Tribunal for giving a finding on the aforesaid two aspects and to determine whether the cost of the premises has to be computed on the basis of clause 2(i)(b)(iii) or 2(i)(b)(iv), keeping in view the position of law and laid down by this Court in ***MCD (supra)***.

12. I accordingly, set aside the impugned order and remand the matter back to the Tribunal for reconsideration of the issue(s) in the manner held by this court above. Liberty is with the Tribunal to call for such information / documents from the parties as deem fit. The Tribunal shall consider the issue(s) in the manner stated by this court above and the same must be determined by the Tribunal within a period of four months effective from May 13, 2019, the date on which the parties shall appear before the Tribunal. The writ petition is disposed of on the above terms.

13. Let a copy of this order be sent to the Presiding Officer, Municipal Tax Tribunal for holding further proceedings. Liberty is with the parties to place this order on the record of the MTT for listing of the appeal before the Tribunal on the date fixed.

No costs.

**CM No. 14201/2013**

Dismissed as infructuous.

**V. KAMESWAR RAO, J**

**APRIL 29, 2019**/*jg*