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

\+ W.P.(C) 6355/2016 & CM. Nos. 26040/2016 and 22143/2016

DAVINDER SINGH ..... Petitioner

Through: Ms. Rashmi Chopra and Mr. Srivats Kaushal, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through: Ms. Madhu Tewatia and Mr. Adhirath Singh, Advs.

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

O R D E R

% **23.07.2019**

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

"WHEREFOR in the facts and circumstances as enumerated hereinabove and for the grounds so taken, the petitioner doeth most respectfully pray that this Hon'ble Court may be pleased to:-

(a) issue a writ of certiorari or any other appropriate writ, order or direction thereby quashing the Assessment Order NO.TAX/KBZ/2016/D-387 dated 16.05.2016 issued by the respondent;

b) pass such other further order as this Hon'ble Court may *deem fit and proper in the facts and circumstances of the present case."*

2. It is the case of the petitioner that he had purchased Flat No. 307, Third Floor, Plot No. 18, Rattan Jyoti Building, Rajendra Place, New Delhi in the year 1978. On March 16, 1990, tenant of the petitioner in the said property handed over to the petitioner a notice dated March 02, 1990, issued by the respondent for recovery of ₹1,07,573/-. On April 15, 2002, the petitioner filed a writ petition being W.P.(C) 224/2002, which was disposed of with a order dated April 15, 2002 in terms whereof, the Court had directed the Assessing Authority to make a fresh assessment in accordance with law by way of a speaking order. The notice / order dated March 02, 1990 was set aside. On May 14, 2002, a notice was issued for the presence of the representative of the petitioner in the respondent's office. The representative duly filed the objections on behalf of the petitioner along with the relevant documents.

3. It is the case of the petitioner that however till date, the said objections have not been responded to by the respondent. On August 31, 2009, the petitioner received a notice for recovery of the amounts on the basis of the assessment made prior to April 25, 2002. It is also averred that a letter dated October 10, 2013 was issued in terms whereof the petitioner's representative was required at its office on October 22, 2013 at 11 am. Petitioner ensured representation and filed representation/ objections against the said letter along with the list of documents. On October 24, 2013, petitioner moved an RTI seeking copies of the assessment orders after the year 1990, in respect of the said property. The respondent failed to reply to the said RTI application.

4. . It is the case of the petitioner that the show cause notice dated March 18, 2016 was issued purportedly under Sections 155 and 156 of the Act, which according to the petitioner, was issued without taking into account the objections taken and documents filed by the petitioner as also without any notice under Section 126 and 153 or 154 and without disposing of the objections of the petitioner in terms of order dated April 15, 2002. The petitioner challenged the show cause notice and demand raised by way of a writ petition being W.P.(C) No. 2675/2016. At the time of hearing of the aforesaid writ petition, the learned counsel for the respondent, for the first time, brought to the notice of the Court that the demand notice was issued pursuant to alleged *ex-parte* assessment order dated November 12, 1999. The Court with the consent of both sides and leaving all rights and contentions of both sides open, after setting aside the aforesaid show cause and demands raised therein remanded the matter to the respondent for passing a fresh assessment order after giving hearing to the petitioner. On April 06, 2016, the respondent passed the impugned order, whereby the respondent had fixed the rateable value of Flat bearing No. 307, Third Floor, Plot No. 18, Rattan Jyoti Building, Rajendra Place, New Delhi as ₹67,390/- w.e.f December 01, 1988, ₹ 63,650/- w.e.f April 01, 1994 and ₹2,26,340/- w.e.f April 01, 1996. It is in this background, the present writ petition has been filed.

5. A counter affidavit has been filed by the Corporation wherein, it is stated that the property in question, which is a commercial building is 625 sq. ft, was inspected by the area inspector on January 10, 1992 and was found to be let out to M/s Swaraj Import & Export Pvt. Ltd. The tenant, however, refused to divulge the rent of the premises. The assessee also

furnished no information qua the letting out / status of the property. The rateable value of the property in question was proposed to be revised at ₹1,01,090/- w.e.f December 01, 1988 inter-alia vide notice dated March 20, 1992 issued under Section 126 of the DMC Act 1957 inter-alia on letting out value basis / as DRC Act 1958 stood amended bringing the property out of the purview of the Rent Law. It is also stated that neither any objections were received nor did the assessee attended the assessment proceedings pursuant to call letters dated July 27, 1994 and November 23, 1994. No documents qua letting were filed on record by the assessee for the Assessing Authority to ascertain the rentals being fetched by the property in question. In the given premises the Assessing Authority determined the rateable value of the property at ₹1,01,090/- w.e.f. December 01, 1988 vide assessment order dated February 06, 1995 based on average comparable rentals in the absence of rental details and documents qua tenancy. Thereafter, another notice under Section 126 of the DMC Act was issued to the assessee proposing to revise the rateable value at Rs.3,88,010/- w.e.f the assessment order dated April 01, 1996. A notice was issued under Section 126 of the DMC Act on account of increase in rentals as the property continued to be on rent to M/s Swaraj Import & Export Pvt. Ltd. Once again neither any objections were received nor did the assessee attend the assessment proceedings despite three call letters dated September 20, 1999, September 29, 1999 and October 13, 1999 asking the assessee to appear in the matter. No documents qua letting were filed on record. In the given situation, the Assessing Authority confirmed the proposal with effect from April 01, 1996 vide assessment order dated October 18, 1999. It is also stated by the respondents that respondent sent demand bills consequent to the assessment orders and also took out attachment notices but to no avail as the assessee did not respond in any manner nor paid taxes. It is also stated that the assessment orders were given to the representatives of the assessee but no response was received from the assessee, who chose to sleep over the matter. It is averred that the respondent thereafter, issued demand notices, bills, attachment notices consequent to the said assessments, which were not paid by the assessee. It is the case of the respondent that on receipt of the demand notice dated March 18, 2016 under Section 154 of the DMC Act, consequent to the bills / demands remain unpaid, the assessee challenged the same in this Court by way of W.P.(C) 2675/2016. Vide order dated March 30, 2016 passed in the said writ petition, this Court disposed of the writ petition inter-alia with the following directions:-

> *"(a) Notice dated 18th March, 2016 impugned in this petition as well as the demand contained herein is set aside.*
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> *(b) The petitioner/his representative to appear before Joint Assessor & Collector of the Respondent/ NDMC on 6th April, 2016 at 1500 hours along with all the relevant documents.*
>
> *(c) The Joint Assessor & Collector of the respondent NDMC shall after hearing the petitioner and after seeking such other particulars from the petitioner as may be required pass a fresh assessment order on or before 14th May 2016 and a copy of the said assessment order shall be furnished to the petitioner on 17th May, 2016 at 1500 hours."*

6. In due compliance of the order dated March 30, 2016, the Dy. Assessor and Collector, Nr. DMC assessed the property in question vide

assessment order dated May 16, 2016. It is their case that the assessee failed to file the requisite documents as regards the tenancy/ rentals that were being paid by the tenants of the property, which was admittedly on rent. It is also stated that the property continues to be on rent till date. Despite the assessee, undertaking to file the requisite documents in terms of the order of this Court, the same were not filed thereby constraining the Assessing Authority to make the assessment on the basis of available documents on record vide assessment order dated May 16, 2016. The assessment has been made strictly in terms of the orders of this Court in a time bound manner after giving adequate hearing to the petitioner. It is also made after giving notices under Section 126 of the DMC Act by proposing to revise the rateable value with effect from December 01, 1988 to April 01, 1996. The assessment has been made as prescribed under the DMC Act. The arrears of tax have been included in the demand bills sent to the assessee, who chose not to pay the same resulting in the mounting of the demands in successive assessment years and inclusion thereof in all bills / demands raised by the respondent.

7. It is their case that no limitation is prescribed in recovering the tax, if the assessee neither challenges the assessment nor discharges the tax liability that remains outstanding against the assessee / defaulter.

8. During the course of the arguments, Ms. Chopra, learned counsel for the petitioner has drawn my attention to an application filed by the petitioner being CM N. 22143/2019 seeking settlement of the claim of the property tax made by the respondent by applying unit area method. In support of her submission, she has relied upon para 24 of the judgment of the Supreme Court in the case of ***Municipal Corporation of Delhi v. Mehrasons***

Jewellers Pvt. Ltd.(2017) 9 SCC 719 to contend that the petitioner shall have the option to switch over to the unit area method even for the period prior to April 01, 2004. In this regard, she states, as the issue of assessment has not been finalized till date, the petitioner shall be within his right to seek such shift under the unit area method.

9. Ms. Tewatia, on the other hand reiterates the stands as taken by the respondent in the counter affidavit. That apart, she states that an application has been filed by the petitioner for being governed by the unit area method for the period before April 01, 2004.

10. Having heard the learned counsel for the parties, the issue which falls for consideration is, whether the petitioner is entitled to opt for assessment of property tax on the basis of unit area method for the period even before April 01, 2004. The answer has to be in the affirmative in view of the judgment in the case of ***Municipal Corporation of Delhi v. Mehrasons Jewellers Pvt. Ltd. (supra),*** wherein in para 24, the Supreme Court approving the law laid down by the Division Bench of this Court in ***MCD v. Major General Inderpal Singh Kahai, (2010) 169 DLT 352,*** held as under:-

> *"24. This being the position in law, an assessment that has not been finalized in all cases where an appeal is pending before the District Judge as also in all cases which have not become "final" in the sense that the appellate authority or the High Court or Supreme Court (after 2003), in respect of an assessment of property tax prior to 2003, remands the matter for fresh determination, would all be covered by the language of Section 116G(2). We are, therefore, of the view that the*

High Court is correct and this group of appeals, therefore, consequently stands dismissed."

11. From the above, it is clear that an assessment that has not been finalized, in any case where an appeal is pending before the District Judge as also in all cases, which have not become final in the sense that the Appellate Authority or the High Court or the Supreme Court in respect of the assessment of property tax prior to 2003 remains the matter for fresh determination, would all be covered under the language of Section 116-G(2). So, it necessarily follows, the assessment in this case, having not been finalized, and the petitioner has expressed himself for being governed by the unit area method for the period prior to April 01, 2004, it must be construed that the petitioner's assessment, shall henceforth be covered by the unit area method for the period before April 01, 2004

12. The petition is remanded back to the Assessing Authority to re-compute the property tax on the basis of the fact that the petitioner has opted for assessment of property tax for the period before April 01, 2004 on the basis of the unit area method and by giving hearing to the petitioner, pass a reasoned and speaking order within eight weeks from the receipt of copy of the order to enable the petitioner, comply with the same. The petition is disposed of.

CM. Nos. 26040/2016 and 22143/2016

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 23, 2019/*ak*