IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	04.02.2020
Pronounced On	14.02.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.25164 of 2017
and
W.M.P.Nos.26599 of 2017 and
W.M.P.Nos.34800 & 9163 of 2019

Rajeev B. Mehta,
Partner, M/s. R.J. Mehta & Company,
No.32, Sembudoss Street,
George Town, Chennai - 600 001. ... Petitioner

Vs.

1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai - 600 003.

2.The Zonal Officer,
Zone - V,
Greater Chennai Corporation,
No.61, Basin Bridge Road,
Chennai - 600 021.

3.The Assistant Revenue Officer,
Revenue Department / Zone - V,
Greater Chennai Corporation,
No.61, Basin Bridge Road,
Chennai - 600 021. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in Letter No.Z.O.V.R.D.C.No.R2/0414/2017 dated 18.08.2017 and Final Assessment Notice No.10/17-18/31005 dated 26.08.2017, passed by the 1st respondent and quash the same.

For Petitioner : Mr.V.B.R.Menon

For Respondents: M/s.Karthikaa and Ashok
Standing Counsel

O R D E R

In this Writ Petition, the petitioner has challenged the impugned notice dated 18.08.2017 bearing reference No.Z.O.V.R.D.C.No.R2/0414/2017 and Final Assessment Notice No.10/17-18/31005 dated 26.08.2017 passed by the 1st respondent.

2. The petitioner was issued with a Revised Assessment Notice No.7/15-16/9956 dated 19.02.2016 wherein a tax of Rs.2,16,595/- was demanded from the petitioner for the period commencing from 1st half of 2009-10. In the said notice, the total extent of the property was given as 32,870 sq.ft. as against 26,500 sq.ft. in the previous assessment.

3. In the previous assessment, the tax payable was detuned as Rs.66,748/- and was effective from 2nd half of 1998-99 pursuant to an order of the Taxation Appeals Tribunal, Corporation of Chennai in T.A.T.No.213 of 2006 dated 20.10.2006.

4. Thereafter, a Revised Assessment Notice No.7/15-16/9956 dated 19.02.2016 was issued to the petitioner. The petitioner replied to the respondent disputing the basis of the annual value of the property and the tax proposed in the said notice and the extent.

5. The respondent thereafter passed a Final Assessment on 16.03.2017 and confirm in Final Assessment Notice No.10/16-110/23082 the proposal contained in Revised Assessment Notice No.7/15-16/9956 dated 19.02.2016.

6. Under these circumstances the petitioner filed W.P.No.9005 of 2017 before this court and challenged the Final Assessment Notice No.10/16-110/23082 dated 16.03.2017. By an order dated 13.04.2017, the said Final Assessment Notice dated 16.03.2017 was quashed and the case was remitted back to the 1st respondent herein for passing a fresh speaking order of assessment after considering the objection raised by the petitioner.

7. The court also observed that if the 1st respondent considers it is deemed necessary, the property can to be inspected before finalising the order of assessment and allowed the Writ Petition and remitted the case back to the 1st respondent to pass a fresh order.

8. It appears that pursuant to the directions dated 13.04.2017 of this court, the property was also inspected by the officers of Corporation on 22.06.2017. The petitioner had earlier sent the representation dated 26.04.2017 and requested the 1st respondent to inspect the property in terms of the order dated 13.04.2017 of this court.

9. The respondent has passed the impugned notice dated 18.08.2017 bearing reference No. Z.O.V.R.D.C.No.R2/0414/2017 and has issued Final Assessment Notice No.10/17-18/31005 dated 26.08.2017 and has fixed the tax liability of Rs.1,95,530/- effective for the period commencing from 1st half of 2009-10.

10. Challenging the same, the petitioner has filed the present Writ Petition.

11. It is submitted that re-determination of the tax without consideration of the joint inspection report was improper.

12. It is further submitted that it is not open for the respondent to invoke powers under section 137-B of the Chennai City Municipal Corporation Act, 1919 in as much as there is no power vested with the respondents to reopen the assessment beyond a period of six years from the date on which such a person should have been assessed.

13. It is further submitted that for the subsequent assessment year, the respondents have accepted the extent of the property as 27,500 sq.ft. for the period commencing from 1st half of 2018-19 and therefore the assessment made in the impugned order pursuant to the directions of this court dated 13.04.2017 based on the incorrect determination of the extent of the property was liable to be quashed.

14. The learned counsel for the petitioner further relies on the decision of the Taxation Appellate Tribunal, wherein, the half yearly tax liability was determined as Rs.66,748/- effective from 2nd half of 1998-99 and therefore the exercise taken by the respondent while issuing Notice No.7/15-16/9956 dated 19.02.2016, effective from 1st half of 2009-10 was contrary to the law under Section 137-B of the Chennai City Municipal Corporation Act, 1919.

15. The respondents in their counter have disputed the claim of the petitioner and have stated that the Writ Petition was liable to be dismissed. The learned counsel for the respondents submits that the proposal for revision was based on the general revision made in the year of 1998-99 and therefore the determination of the tax as arrears of tax cannot be questioned.

16. The learned counsel for the respondents further submits that the petitioner has deliberately under assessed the property and not paid tax and therefore there a loss of revenue to the Corporation and therefore determination was correct.

17. I have considered the arguments of the learned counsel for the petitioner and the respondents.

18. This is a case where the extent of the property was 26,500 sq.ft. as the order dated 20.10.2006 of the Taxation Appeals Tribunal, Corporation of Chennai in T.A.T.No.213 of 2006.

19. There has been no further construction by the petitioner for the 1st respondent to demand tax from the petitioner on the property by increasing the extent of the property to 32,870 sq.ft. in the impugned assessment order.

20. The fact that the 1st respondent has also made revision admitted that the extent of the property as 27,500 in the course of general revision on 21.01.2019 clearly establishes that the demand of tax on 32,870 sq.ft. was without any factual basis and therefore the impugned order demanding tax from the petitioner for a sum of Rs.1,95,530/- from 1st half of 2009-10 is liable to be quashed.

21. Prima facie it appears that while revising the assessment on account of escape assessment, the machinery can be invoked only within a period of 6 years from date of assessment. In this case, there was a revision which was subject matter of challenge before the Taxation Appeals Tribunal which came to be disposed by an order dated 20.10.2006.

22. As per the said order the petitioner was required to pay a sum of Rs.66,748/- with effect from 2nd half of 1998-99. If there was no general revision for the period after 2nd half of 1998-99, the question of invoking Section 137-B of the Chennai City Municipal Corporation Act, 1919 would not arise except in the case where there was a change of use of the property or where there was further construction which is not the present case. If there was general revision which was not given effect to the respondent can ask the petitioner to pay tax as per the rate applicable pursuant to such general revision.

23. Therefore, I am inclined to remit the case back to the respondents to determine the property tax to be paid by the petitioner. The question whether the 1st respondent can retrospectively revise the assessment for the period commencing from 1st half of 2009-10 from 19.02.2016 may also be examined by the 1st respondent in the light of the express provisions of section 137-B of the Chennai City Municipal Corporation Act, 1919.

24. The issue has remained unresolved for the period commencing from 1st half of 2009-10. The 1st respondent Commissioner, Greater Chennai Corporation is therefore requested to pass an appropriate order preferably within a period of three months from date of receipt of a copy of this

order in accordance with law and keeping the above observation in mind while passing such order.

25. The present writ petition is therefore allowed by way of remand with the above observations. No cost. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai - 600 003.

2.The Zonal Officer,
Zone - V,
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Chennai - 600 021.

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Pre-Delivery Order
in
W.P.No.25164 of 2017
and
W.M.P.Nos.26599 of 2017 and
W.M.P.Nos.34800 & 9163 of 2019

vba(CO)
smn(28/05/2020)