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

\+ W.P.(C) 13969/2019 & CM APPL. 55874/2019

LAKSHMIPAT SINGHANIA
MEDICAL FOUNDATION ..... Petitioner

Through Mr.Rajiv Nayar, Sr.Adv. with Mr.Manu Nair, Mr.Kuber Dewan, Mr.Saurabh Seth and Ms.Manjila Dasgupta, Advs.

Versus

SOUTH DELHI MUNICIPAL
CORPORATION AND ORS. ..... Respondents

Through Mr.Sanjay Poddar, Sr.Adv. with Mr.Sandeep Bajaj, Mr.Govind Kumar, Ms.Aakanksha Nehra and Mr.Naman Tandon, Advs. for R-1/ SDMC.
Ms.Mrinali Sen and Ms.Nidhi Mittal, Advs. for R-3/GNCTD.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

% 27.02.2020

1. This writ petition is filed by the petitioner seeking a writ of certiorari to quash the impugned order dated 19.11.2019 passed by the respondents under section 123D of the Delhi Municipal Corporation Act, 1957(*hereinafter referred to as the 'DMC Act'*).

2. It is an admitted position that this order is appealable before the learned Municipal Tax Tribunal (*in short 'MTT'*) under section 169 of the DMC Act.

3. Learned senior counsel appearing for the petitioner, however, states that the alternate remedy is not an equally efficacious remedy as the entire

tax demanded by the impugned assessment order would have to be paid by the petitioner. He submits that the petitioner is a charitable organisation engaged in providing medical care for the poor. He relies upon the proceedings before the Income Tax Department to plead that the petitioner is a charitable organisation. He points out that the principal amount as per the demand raised without taking into account interest comes to Rs.2.61 crores. The total amount demanded is Rs.4,32,56,562.00 crores.

4. Learned senior counsel appearing for respondent No.1/SDMC refutes the aforesaid contentions of the learned senior counsel for the petitioner. He submits that the MTT in earlier proceedings in 2009 has rejected the plea of the petitioner that it is a charitable organisation and has held that it is not eligible for exemption under section 115(4) of the DMC Act. He further points out to the impugned order shows that the petitioner company is earning profits.

He has also pointed out that broadly there are three propositions on account of which assessment order has imposed the additional tax liability on the petitioner. Firstly, he submits that as per the lease deed, the petitioner's property is situated in Saket and not Sheikh Sarai Phase II as claimed and hence the property would be categorised under category 'C' and not category 'D'. Secondly, he submits that for certain period the tax rate of 12% has been paid under self assessment whereas the rate is 20 %. Thirdly, he submits that the petitioner has been paying property tax based on the multiplier of 2 which is applicable for charitable organisation instead of 3.

5. In my opinion, it is appropriate that the petitioner should approach the MTT. Let the needful be done within 10 days from today.

6. Section 170(b) of the DMC Act provides for pre-deposit of the entire

amount in dispute. The said section reads as follows:

> "**170. Conditions of right to appeal**.—No appeal shall be heard or determined under Section 169 unless—
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> (*a*) the appeal is, in the case of a property tax, brought within thirty days next after the date of authentication of the assessment list under Section 124 (exclusive of the time requisite for obtaining a copy of the relevant entries therein) or, as the case may be, within thirty days of the date on which an amendment is finally made under Section 126, and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days after the date of the presentation of the first bill or, as the case may be, the first notice of demand in respect thereof:
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> Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the court that he had sufficient cause for not preferring the appeal within that period;
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> (*b*) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Corporation."

7. I cannot help noticing the additional affidavit that has been placed on record in court (filed earlier). Reliance has been placed by the learned senior counsel for the petitioner on the assessment order for the period w.e.f. 2015 -16 passed by the Assistant Commissioner, Income Tax dated 13.10.2017. This order records that the activities of the assessee, i.e. the petitioner are charitable in nature and within the meaning of section 2(15) of the Income Tax Act, 1961. It also records that the assessee is notified under section 80G of the Income Tax Act. A similar order is also placed on record for the assessment year 2017-18 dated 26.12.2019. Relevant portion of the order

reads as follows:

> "4. The Institute is running a Hospital under the name and style of "Pushpawati Singhania Hospital & Research Instt (PSRI Hospital), providing medical assistance to general public. PSRI is actively engaged in rendering services to suffering humanity by way of providing treatment for a range of diseases related to Kidney, Liver & Digestive system, which are very prevalent in our community. PSRI also provides free medical and surgical care to the economically weaker sections of society. PSRI hospital is one of the renowned multispecialty hospital and is providing services in many specialties like-Cardiology, Cardiothoracic Surgery, Kidney Transplant, Liver Transplant etc. PSRI Instt. is providing medical relief to public and is duly approved as a charitable institution u/s 12A."

8. Keeping in view the above and the nature of work being done by the petitioner, which *prima facie* is of charitable nature, let the petitioner deposit a sum of Rs.1.75 crores within four weeks from today. This will also be subject to the filing of an undertaking by the Secretary of the petitioner undertaking to pay the entire amount forthwith based on the orders of the MTT. The MTT may hear the appeal on such deposit.

9. I may only clarify that the observations made above are only for the purpose of this order. The MTT may deal with the contentions of the parties uninfluenced by any observations made by this court. All issues are left open for adjudication of the MTT.

10. The present petition is disposed of with liberty to the petitioner as stated above. All pending applications, if any, are also disposed of.

JAYANT NATH, J.

FEBRUARY 27, 2020/v