

\$~A-8

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

%

Date of decision: 16.01.2020

+ W.P.(C) 4436/2014 & CM No. 8861/2014

S.S. JAIN MAHAVIR BHAVAN

..... Petitioner

Through Mr.B.B.Jain and Mr.Amitabh
Marwah, Advs.

Versus

NORTH DELHI MUNICIPAL CORPORATION..... Respondent

Through Ms.Mini Pushkarna, Standing
Counsel with Ms.Latika Malhotra,
Ms.Swagata Bhuyan and
Ms.Khushboo Nahar, Advs. for
NDMC.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. This writ petition is filed by the petitioner seeking to impugn the order dated 06.08.2013 passed by the Municipal Taxation Tribunal (hereinafter referred to as the "Tribunal"). A direction is also sought to the respondent to grant payment of rebate of Rs.1,98,816/- under the Departmental Instructions dated 11.08.1988. The petitioner for the present writ petition confines his relief to the payment of rebate amounting to Rs.1,98,816/-.
2. The case of the petitioner is that the petitioner is a charitable society registered under the Societies Registration Act, 1860. The petitioner leased out certain area to Bank of India w.e.f. 01.04.1997 at monthly rent of Rs.1,65,600/- plus Rs.41,237/- on account of the bank paying property tax. It is stated that the petitioner informed the respondent about the same vide

property tax return dated 16.03.1998.

3. Subsequently, in 2011 the petitioner Society made a representation dated 26.02.2011 regarding non-rectification of two ex-parte assessments w.e.f. 01.04.1997 and 01.04.2000 in relation to the said property. Thereafter, on 11.04.2011, a rectification order was passed. It is the case of the petitioner that pursuant to the said rectification order, the petitioner deposited Rs.7,95,264/- on 29.04.2011 after deducting 20% from the amount due claiming the same as rebate for timely payment.

4. I may note that the rectification order was challenged under appeal. By the impugned order, the appeal of the petitioner was dismissed. The plea regarding rebate was also denied to the petitioner.

5. I have heard learned counsel for the parties.

6. The relevant scheme of the respondent regarding rebate reads as follows:-

“REBATE:

Property Taxes

A rebate as given below shall be allowed on the payment of property taxes for the year 2000-2001, if the payment is made within the time specified below and there are no arrears of property taxes and education cess upto the period ending 31st March, 2000 or the same are also paid before or alongwith the demand for the year 2000-2001.

xxx

(c) Other lands and buildings

xxx

(iv) Where the demand or the additional demand has been raised during the year 2000-2001 and the

payment is made within the time allowed in the bill 20%”

7. Hence, where a demand or additional demand has been raised during the year 2000-2001 and payment is made within the time allowed in the bill, 20% rebate is applicable.

8. The case of the petitioner here is that this scheme continued for subsequent financial years. The rectification order in question was passed for the period w.e.f. 01.04.2000 to 31.03.2004. It is claimed that pursuant to the rectification order, even prior to raising of a bill, the payment towards the tax less rebate of 20% on the additional demand was deposited by the petitioner. The accepted demand had already been paid earlier. It has been stated in the petition that payments have been made by the petitioner as follows:-

Total demand as rectified vide assessment order dated 31.3.2011 on rateable value of Rs.26,53,040/- from 1.4.2000 to 31.3.2004	Rs. 31,77,600/-
--	-----------------

Less: Total tax on the old rateable value of Rs.18,24,600/- p.a. w.e.f. 1.4.2000 to 31.3.2004. (Already paid)	<u>Rs. 21,83,520/-</u>
---	------------------------

Balance	Rs. 9,94,080/-
---------	----------------

Less: 20% prompt payment rebate as per Policy & Public Notices.	<u>Rs. 1,98,816/-</u>
---	-----------------------

Balance payable:	Rs. 7,95,264/-
------------------	----------------

Paid vide Receipt no: AM 66618 dated 29.4.2011 in full.	7,95,264/-
---	------------

Balance Due:	<u>NIL</u>
--------------	------------

9. A perusal of the public notice which contains the scheme for rebate shows that rebate is allowed on payment of property tax for 2000-2001 if the payment is made within the time specified thereunder. The admitted fact is that the petitioner paid the amount based on the earlier rateable value within the stipulated period. The only issue is regarding the enhanced amount which the petitioner was to pay pursuant to the rectification order dated 11.04.2011.

10. In my opinion merely because an assessee seeks to challenge a bill that is raised as per the legal procedure, he cannot be denied the right to avail of the rebate. The policy does not state that where an assessee seeks to challenge the bill, he would not be entitled to the rebate. In the present case, the petitioner had availed of the statutory remedy and had challenged the assessment order of the respondent by filing a rectification petition. After the matter was adjudicated against the petitioner, the respondent could have raised a fresh bill on the petitioner. Before the bill was raised, the petitioner made the necessary payment. This payment would fall within the four corners of the rebate policy of the respondent, namely, "payment having been made within the time allowed in the bill".

11. In this context reference may be had to the judgment of a Coordinate Bench of this court in the case of "***Som Vihar Apartment Owners Housing Maintenance Co-operative Society Ltd. vs. Municipal Corporation of Delhi***" dated 03.03.2000 in W.P.(C) No. 605/1999 relied upon by the learned counsel for the petitioner. The said judgment states as follows:-

"Attention was invited to letter dated 28.2.1996, 21.7.1996, 7.2.1997, 23.2.1998 and 4.3.1998 which were duly received by

the respondent. These letters show that the petitioners had been regularly pursuing the case. It was further contended that the bill dated 1.1.1997 and 11.9.1997 were issued for the first time after the rectification order. The previous bills were on the basis of previous rateable value which had been set aside by the respondent/MCD. Therefore in the circumstances the matter was squarely covered by the policy. The petitioners have paid the correct dues and instalments in accordance with the policy. Thus the stand of the respondent that the petitioners had never applied for rebate or for instalments is not correct. It was also contended that the MCD was resorting to double taxation recovering tax from the flat owners as well as from the petitioner society.”

12. That was a case in which the previous bills raised were set aside by the respondent/MCD as the assessee availed of the statutory remedy and challenged the bill of MCD. In those facts, the court has held that the payment has been made as per the policy and the respondent would be entitled to the rebate. The facts of the present case are somewhat identical. In the present case also the ex parte assessment that was previously made was challenged by the petitioner by filing rectification proceedings.

13. Further assuming two different interpretations are possible of the scheme, I may note that it is settled principal in law that whenever there is a doubt in a taxation provision the benefit of doubt is given to the assessee/subject. Reference in this regard may be had to interpretation in the case of "**J. Srinivasa Rao vs. Govt. of A.P. and Another**" (2006) 12 SCC 607:-

19. In a case of doubt or dispute, it is well-settled, construction has to be made in favour of the taxpayer and against the Revenue. (See *Sneh Enterprises v. Commissioner of Customs*,)

20. In *Ispat Industries Ltd. v. Commissioner of Customs*, this Court opined:

"In our opinion if there are two possible interpretations of a rule, one which subserves the object of a provision in the parent statute and the other which does not, we have to adopt the former, because adopting the latter will make the rule ultra vires the Act."

In "*Manish Maheshwari vs. Asstt. Commissioner of Income Tax and Another*" (2007) 3 SCC 794, the Hon'ble Supreme Court observed as under:-

13. A taxing statute, as is well-known, must be construed strictly. In *Sneh Enterprises v. Commissioner of Customs*, it was held :

"While dealing with a taxing provision, the principle of 'Strict Interpretation' should be applied. The Court shall not interpret the statutory provision in such a manner which would create an additional fiscal burden on a person. It would never be done by invoking the provisions of another Act, which are not attracted. It is also trite that while two interpretations are possible, the Court ordinarily would interpret the provisions in favour of a tax-payer and against the Revenue."

14. Yet again in *J. Srinivasa Rao v. Govt. of A.P. & Another*, it was held:

"In a case of doubt or dispute, it is well-settled, construction has to be made in favour of the taxpayer and against the Revenue."

Clearly in the given facts the case of the petitioner is covered under the rebate policy of the respondent. The same cannot be denied as the petitioner commenced legal proceedings especially as payment was made as stipulated in the policy.

14. In my opinion, the impugned order of the Tribunal to the extent it has declined to grant the rebate to the petitioner suffers from irregularity. The

order to that extent is set aside. Consequently, the petitioner shall be entitled to rebate as already deducted by the petitioner.

15. The petition stands disposed of. Pending application also stands disposed of.

JANUARY 16, 2020/rb

JAYANT NATH, J

