IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.08.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NO.17801 OF 2021
&
W.M.P.NO.18986 OF 2021

Shri.S.S.Radhakrishnan ... Petitioner

Vs.

The Assistant Revenue Officer
Zone XIII (Adyar)
Greater Chennai Corporation
No.115, Muthulakshmi Salai
Adyar, Chennai – 600 020 ... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records pertaining to the impugned order dated June 23, 2021 in Ma.Aa.13.Va.Thu,Na.Ka.No.R2/1268/2021 passed by the Respondent and quash the same as illegal.

For Petitioner	:	Mr.Mohammed Shaffiq for Mr.G.Derrick Sam
For Respondent	:	Ms.S.Vaitheeswari Standing counsel for Chennai Corporation

ORDER

Mr.Mohammed Shaffiq, learned counsel appearing on behalf of Mr.G.Derric Sam, counsel on record for writ petitioner and Ms.S.Vaitheeswari, learned Standing Counsel for Chennai corporation (on behalf of lone respondent) are before this Virtual Court, with the consent of both the learned counsel, main writ petition is taken up as the entire matter turns on a very short point.

2. The subject matter of captioned writ petition pertains to assessment of property tax for a 'property at No.17(9), Customs Colony, 1st Cross Street, Besant Nagar, Chennai – 600 020' (hereinafter 'said property' for the sake of convenience).

3. This Court is informed that writ petitioner is the owner of said property. This Court is informed that the superstructure qua said property consists of two floors, namely ground floor and first floor. There is also no disputation or disagreement qua the fact that said property had already been assessed to property tax and writ petitioner has been paying the property tax promptly at the rate of Rs.3,099/- upto I/98-99 and at the rate of Rs.4,456/- from II/98-99. To be noted, 'I' denotes first half year and 'II' denotes second half year. First half year in property tax parlance is from 1st of April to 30th September of a year in the English Calendar and the second half year is from 1st October of one English Calendar year to 31st March of succeeding English Calendar year.

4. When things stood as above, the writ petitioner sent a communication dated 18.08.2018 to the respondent i.e., Chennai Corporation and a scanned reproduction of this communication is as follows:

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S.S. RADHAKRISHNAN
Advocate & International Consultant
Customs, Central Excise, Exim Policy, Service Tax & FEMA

SPEED POST

August 18, 2018

The Assistant Revenue Officer,
Zone 13 Ward 176,
Greater Chennai Corporation
115 Dr Muthulakshmi Salai
Adyar, Chennai 600 020

Sir,

Sub: My application for change of classification filed on August 1, 2018 – Property tax – Reg

Ref: Assessment No.13-176-02685-000 [Old No.10-152-0581-000]

Please refer to my letter dated August 1, 2018 (copy enclosed).

2. You may please re-classify the portion in the ground floor measuring 473.13 sqft in the above-mentioned premises as "commercial" and the property tax may be computed and intimated to me for payment. It may please be noted that the portion measuring 223.5 sqft leased to M/s.Surabhi Bio-resurgence Pvt. Ltd is being used for commercial purpose only since August, 2018.

3. You may please do the needful early.

Yours faithfully,

S.S. RADHAKRISHNAN

Encl: As above.

5. The above communication speaks for itself. A perusal of the communication brings to light that the writ petitioner voluntarily i.e., by his own volition brought to the notice of Chennai Corporation that a small portion of the aforementioned superstructure qua said property had been leased out to a Company and that the same is being used for commercial purpose. Learned counsel for writ petitioner, on instructions, submits that 473.13 sq.ft in the ground floor is being used for commercial purpose and from and out of 473.13 sq.ft, 223.5 sq.ft has been leased out. The above letter is not happily worded and this is how the above said letter should be understood is

learned counsel's say. To be noted, the quantum of property tax varies depending on the usage i.e., commercial or residential.

6. In response to the above said voluntary communication from the writ petitioner, the officials of Chennai Corporation have gone over to the said property, made a field assessment (fs Ma;t[) and have sent a communication to the writ petitioner and a scanned reproduction of the same together with the annexures is as follows:

அனுப்புநர்

உ. நகர் வருவாய் அலுவலர்
மண்டலம்-13,
பெருநகர சென்னை மாநகராட்சி,
எண்.116, முத்து லட்சுமி சாலை,
அடையாறு, சென்னை–600 020.

பெறுநர்

திரு.என்.எஸ்.ராதாகிருஷ்ணன் அவர்கள்.
எண்: 17 கஸ்டம்ஸ் காலனி
1வது குறுக்கு தெரு
பெசன்ட் நகர் 4வது அவின்யூ,
சென்னை 600 090

ந.க.பெ.ந.க.எண் ஆ.2/ 1268/2021 நாள். 23.06.2021

ஐயா,

பொருள்:	பெருநகர சென்னை மாநகராட்சி – வருவாய்த்துறை – மண்டலம்-13 – சொத்துவரி சம்பந்தமாக தகவல் கோருவது – தொடர்பாக.
பார்வை:	மனுதாரர் திரு.என்.எஸ்.ராதாகிருஷ்ணன் அவர்கள் அவர்களால் அளிக்கப்பட்ட மனு நாள்: 18.06.2021

****

பார்வையில் கண்டுள்ள மனுவின் மீது பின்வருமாறு பதிலளிக்கப்படுகிறது.

சென்னை 600 090 பெசன்ட் நகர் 4வது அவின்யூ 1வது குறுக்கு தெரு கஸ்டம்ஸ் காலனி எண்.17 என்ற முகவரியில் உள்ள தங்கள் வீட்டுமனை கள ஆய்வு மேற்கொண்டதில் தரை தளத்தில் 1300 சதுர அடி குடியிருப்பு அல்லாத பகுதியாகவும், முதல் தளத்தில் உள்ள 1300 சதுர அடி குடியிருப்பு பகுதியாகவும் மற்றும் படி அறை 58 சதுர அடியாகவும் இருப்பது புவியியல் தகவல் சொத்துவரி மதிப்பீடு (GIS) மூலம் முறையாக 1/2020-2021 முதல் சொத்துவரி மறுசீரமைப்பு செய்யப்பட்டுள்ளது என தெரிவித்துக் கொள்ளப்படுகிறது.

23/06/2021
உ. நகர் வருவாய் அலுவலர் / மண்டலம்-13

23/6/21

நகல்: மாநகர வருவாய் அலுவலர்

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(13)

PROPERTY DETAILS

Todays Date : [illegible]

Bill No	13-176-32633-000
Old Bill No	10-152-0551-000
Owner Name	S S RADHAKRISHNAN
Property Address	17(9), Customs Colony 1st Cross Street , Besant Nagar, Besant Nagar, CHENNAI 600020
Correspondence Address	17, Customs Colony 1st Cross Street , Besant Nagar, Besant Nagar, CHENNAI - 600020
Street Name	Customs Colony 1st Cross Street
Property Type	Independent Building
Area of Plot in Sq.feet	2057
Order No	PASS
Order Date	15-10-2008
Date of Completion/Occupation	N/A
Mobile No	9841023[illegible]
Email Address	[illegible]
Annual Value	2,25,093.00
Effective Period	N/A

Floor Details

Floor	Built up Area in Sq.feet	Usage	Occupancy	Type of Construction	Year of Construction
Head Room	88.0	Residential	Owner	Permanent	2011
Ground	1588.0	Non-Residential	Tenanted	Permanent	1995
1st	1588.0	Residential	Owner	Permanent	1995

Current Tax	Rs. 15,515.00
Current Tax Due	Rs. 0.00
Arrears Due	Rs. 0.00
Advance Payment	Rs. 5,632.00
Total Balance	Rs. -5,632.00

Close

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PROPERTY DETAILS

Bill No.:	[illegible]
Old Bill No.:	[illegible]
Current Bill Year:	N/A
Owner Name:	[illegible]
Property Address:	[illegible], CHENNAI - [illegible]
Correspondence Address:	[illegible], CHENNAI - [illegible]
Property Type:	[illegible] Building
Mobile No.:	[illegible]

Floor details

Floor	Built up area in Sq.feet	Usage	Occupancy	Type of construction	Year of Co
[illegible]	[illegible]	Residential	Owner	[illegible]	[illegible]
Ground	[illegible]	Non Residential	Tenanted	[illegible]	[illegible]
1st	[illegible]	Residential	Owner	[illegible]	[illegible]

Current Tax:	Rs. [illegible]
Current Tax Due:	Rs. [illegible]
Total Arrears:	Rs. 0
Total Tax Due:	Rs. [illegible]

Property Tax Online Payment

Zone No

13

Division Code

374

Bill No

3605

Sub No

000

(16) 43

View DCB

Property Id :	[illegible]
Old Property Id :	[illegible]
Ward :	[illegible]
Owner Name :	K R RADHAKRISHNAN
Property Address :	[illegible], Customs Colony 1st Cross Street, [illegible] Nagar, [illegible], CHENNAI - [illegible]
Property Type :	Independent Building
Half Yearly Tax (Rs.) :	[illegible]
Current Half Yearly Tax Amount (Rs.) :	[illegible]

Instalment	Demand			Receipt		Collection		Balance		
	Tax	Cheque Penalty	Late Penalty		Tax	Cheque Penalty	Late Penalty	Tax	Cheque Penalty	Late Penalty
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
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[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Total Demand:

Total Rebate:

Total Collection:

Receipt No.

Close

7. Learned counsel appearing for the writ petitioner notwithstanding very many grounds and averments in writ affidavit makes two submissions and they are as follows:

a) No opportunity has been given to the writ petitioner before making the revised assessment enhancing the tax with effect from I/20-21 from Rs.4,456/- to Rs.15,515/- per half year (nearly four fold increase);

b) From the annexures to the aforementioned '23.06.2021 communication Ma.Aa.13.Va.Thu,Na.Ka.No. R2/ 1268/2021' (hereinafter 'impugned communication' for the sake of convenience and clarity), it comes to light that Chennai Corporation has proceeded on the basis that the entire ground floor of the superstructure is being used for non-residential purpose (commercial) whereas it is factually incorrect as a large portion of the same was and continues to be used as Advocate's office. Furthering his submissions in this direction, learned counsel draws the attention of this Court to an order dated 05.09.2003 passed by the Taxation Appeals Tribunal made in T.A.T.No.513/2002 with regard to the same property i.e., said property wherein the Tribunal has held that Advocate office should be treated as owner residence. The order reads as follows:

(1)

BEFORE THE TAXATION APPEALS TRIBUNAL
CORPORATION OF CHENNAI
Present: S. NAGARAJAN, MA, BL
Judicial Officer

S.No.3
T.A.T.No.513/2002

Decision delivered on 5.9.2003 in the matter of appeal by Mr./Mrs. S.S. RADHAKRISHNAN against the order of the Commissioner, in respect of property tax levied on premises No.9, Customs colony, Besant Nagar, Chennai-90 Division No.152 from the half year 2/98-99.

Thiru Ramachandran, Counsel for the appellant appeared and contested the case. His case is that the appellant is owning a building with 990sq.ft. used as owner residence, and also Advocate Office. The half yearly tax has been revised from Rs.3099/- to Rs.11757/-. The revised tax is abnormal and illegal, hence he filed this appeal to reduce the tax.

Asst. Rev. Officer appeared and contended that the appellant was owning a building with 990sq.ft. used as owner residence. During revision the commissioner can increase 25% over the existing rental value for owner residence. Advocate Office should be treated as owner residence. There is some defect in the working sheet, he request the court to refix the tax accordingly.

The point for consideration is whether the enhanced tax is proper or not?

Perusal of records reveals, previously the appellant was owning a building with 861sq.ft. owner residence, now it has been increased to 990sq.ft. used as owner residence and Advocate office. Advocate Office should be treated as owner residence. The building is situated in Besant Nagar, in that area the rate per sq.ft. for residence is 90paise. During revision the commissioner can increase 25% over the existing rental value for owner residence. I have verified the working sheet, after giving age rebate and owner concession the existing rental value works out to Rs.2731/- by increasing the above percentages the revised rental value becomes Rs.3415/- whereas the commissioner has fixed the revised rental value as Rs.9810/- is not in accordance with the guidelines, it is on the higher side, that requires modification and the appellant deserves tax rebate to that extent.

In the result the appeal is allowed tax is modified and reduced rental value Rs.3415/- annual value Rs.37252/- and the half yearly tax is Rs.4450/- w.e.f 2/98-99.

JUDICIAL OFFICER
TAXATION APPEALS TRIBUNAL
CORPORATION OF CHENNAI
CHENNAI - 600 003.

8. In response to the above, learned Standing Counsel for Chennai Corporation submits that an inspection was made and revised assessment enhancing property tax has been arrived at based on the inspection report. However, the break up has not been made available.

9. Owing to the voluntary disclosure by the writ petitioner it is made clear that this case will not serve as a precedent. This Court finds it appropriate to direct Chennai corporation to give break up to the writ petitioner and give an opportunity to the writ petitioner or his duly authorized representative and then redo the revision/enhancement of property tax assessment and communicate the same to the writ petitioner. Before the operative portion of the order is set out, this Court deems it appropriate to mention that it has noticed that the method of assessment of property tax has been set out in the Chennai City Municipal Corporation Act, 1919 and the parameters that are applied to other properties in the City of Chennai, more particularly the properties in that area shall be applied to the said property also.

10. The following order is passed:

a) Impugned order i.e., communication dated 23.06.2021 bearing reference Ma.Aa.13.Va.Thu,Na.Ka. No.R2/1268/2021 sent by the sole respondent is set aside on the ground that opportunity has to be given to the writ petitioner;

b) As the impugned communication together with the annexure is being set aside only to facilitate an opportunity being given to the writ petitioner, who has made voluntary disclosure, though obvious, it is made clear that no opinion or view has been expressed on the merits of the matter in this order. Respondent or any other Officer in Chennai Corporation who is vested with the power to assess property tax shall carry out the revision/assessment after furnishing the break up in terms of sq.ft, type of usage and other parameters or in other words a working sheet to the writ petitioner within a fortnight from today i.e., on or before 09.09.2021 give an opportunity to writ petitioner to respond to working sheet within a fortnight therefrom i.e., on or before 23.09.2021 (opportunity of being heard to the writ petitioner or his duly authorized representative), do the assessment by applying the obtaining parameters for assessment of similar properties and communicate the same to the writ petitioner under due acknowledgement within one week therefrom i.e., by 06.10.2021. Though obvious, if the petitioner is aggrieved, all other avenues of appeal under IV Schedule to the Chennai City Municipal Corporation Act, 1919 will be available to the writ petitioner qua the revision / assessment notwithstanding this order.

The writ petition is disposed of with the above directives. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

gpa

To

The Assistant Revenue Officer
Zone XIII (Adyar)
Greater Chennai Corporation
No.115, Muthulakshmi Salai
Adyar, Chennai – 600 020.

+1cc to Ms.S.Vaitheeswari, Advocate, S.R.No.43243

+1cc to Mr.G.Derrick Sam, Advocate, S.R.No.43331

W.P.No.17801 of 2021 &
W.M.P.No.18986 of 2021

SSV(CO)
RLP(20/09/2021)