THE HONOURABLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS SECOND APPEAL No.23 of 2017

JUDGMENT:

1. The present second appeal has been directed against the judgment and decree dated 06.06.2017 in M.A.No.135 of 2014 on the file of the Chief Judge, City Small Causes Court, Hyderabad, wherein and whereby, the revised assessment order dated 29.03.2014 issued by the respondent herein was upheld and consequently, appeal was dismissed. Hence, the present second appeal is at the instance of the appellant.

2. Mr. B. Chandrasen Reddy, learned senior counsel for the appellant submitted that the main grievance of the appellant is that in the reassessment proceedings, the respondent has not considered the true plinth area, which alone is taxable. According to him, the plinth area covered under taxation was more than the sanctioned plinth area, which is reflected in the approved plan. The assessment authority while calculating the plinth area included common areas like lift, lobby, stair case and cutouts and imposed tax, which is contrary to Rule 7 of Hyderabad Municipal Corporation (Assessment of Property Tax) Rules, 1990.

3. The second grievance put forth by the learned counsel for the appellant is that the respondent levied tax on the parking area with effect from 01.10.2005. Whereas, as per new policy, the imposition of tax on parking areas has come into effect only from 01.10.2007. Prior to that there was no tax on parking areas. The tax rate for parking areas is only at Rs.2.00 per sft, but Rs.2.50 per sft was charged by the respondent, which is contrary to tax law.

4. The third and last grievance of the appellant is that while taxing the appellant's premises with regard to tin shed area in the upper fourth floor, to an extent of 4,951.88 sft, the respondent imposed tax treating the same as Reinforced Cement Concrete (hereinafter referred to as 'RCC') roof at Rs.17/- per sft, whereas the said area falls under Manglore tilled roof or Asbestos roofed or G.I. roofed buildings, which is only taxed at Rs.1.40 per sft, in terms of proceedings dated 01.02.2008 issued by the assessment authority.

5. According to the learned counsel for appellant all the above aspects were not considered by the Court below while disposing of the appeal and the impugned judgment and decree suffers from illegality.

6. Mr. K. Siddhartha Rao, learned standing counsel for GHMC/respondent, contended that while taxing the area, the plinth area was taken with reference to sanctioned plan only and there was no deviation from the sanctioned plan. In the sanctioned plan, cutout area was already excluded and same was excluded while imposing the tax. He also submitted that there is no question of common area in a single owner building. He further contended that stair case area and area used for lift and lobby were included in the plinth area, in terms of definition of plinth area as defined by Bureau of Indian Standards in 1966.

7. Learned standing counsel for respondent has fairly admitted that tax on parking area has come into effect from 01.10.2007 only and in the reassessment order it was wrongly assessed from 01.10.2005 to 30.09.2007.

8. It is also the contention of the learned standing counsel for respondent that tax for the upper fourth floor was based on sanctioned plan. As per sanctioned plan, upper fourth floor was sanctioned with RCC roof. He submitted that the respondent had no evidence as well as information that the said roof was built with tin shed.

9. In the light of the above submissions made by both parties the following point emerged for consideration before this Court:

> "Whether the impugned judgment and decree of the Court below suffers from any illegality, so as to raise the question of law, on account of non consideration of various issues raised?"

<u>Point:-</u>

10. There is no dispute that the tax is levied on the annual rental value of the building which is fixed on the basis of plinth area of the building. The word 'plinth area' is not defined under Tax Laws and GHMC Act, 1955. Therefore, we have to fall back to general definitions given under Bureau of Indian Standards in the year 1966 and the same is being followed in calculating the plinth area and carpet areas. According to the said definition, plinth area includes carpet area, wall area, lift, shaft openings etc. Further, plinth area also includes stair case, protected open verandah and balcony protected by projection. If the said definition is adapted, the contention of the learned counsel for appellant with regard to inclusion of stair case, lift and lobby areas, has not merit. Therefore, the same is rejected.

11. It is also contended by the learned counsel for appellant that while calculating the plinth area, the cutout areas were included

and same is disputed by the learned standing counsel for respondent. It is not in dispute by the respondent that plinth area is with reference to the sanctioned plan only. It is also contended that in the sanctioned plan cutout areas were excluded. The evidence from the appellant before this Court is not clear that cutout areas were included. However, it is made clear that while taxing plinth area the cutout area has to be excluded in terms of sanctioned plan. This was not considered by the Court below. With this clarification, this contention is answered.

12. Coming to the second grievance, it is not in dispute that prior to 01.10.2007 there was no tax on parking area. From 01.10.2007 only parking tax is imposed at Rs.2.00 per sft. In the present assessment proceedings, the parking area tax was imposed from 01.10.2005 to 30.09.2007. Therefore, the collection of Rs.2.00 per sft from 01.10.2005 to 30.09.2007 is not tenable and the same is liable to be set aside.

13. The last contention of the learned counsel for appellant is that the upper fourth floor was covered with tin shed, which falls under category of Manglore tilled roof or Asbestos roofed or G.I. roofed buildings, in terms of notification proceedings dated

01.02.2008 and under that category tax payable is only Rs.1.40 per sft. The tax per sft for RCC roof building was Rs.17.00 per sft. It is not in dispute that in the present case the sanctioned plan contains upper fourth floor and lower fourth floor. The dispute is regarding the upper fourth floor. According to the appellant, upper fourth floor is covered with tin shed roof and there is no RCC roof. According to respondent, the sanctioned plan only contains RCC roof and not tin shed coverage. It is also not in dispute that the upper fourth floor was treated as RCC roof, as per the reassessment made in the impugned assessment order. There is no evidence placed before this Court to show that the upper fourth floor is covered with tin shed roof. On the contrary, the sanctioned plan shows that the upper fourth floor contains RCC roof. This aspect requires reconsideration by the respondent. If the assessment authority i.e., the Commissioner, GHMC, Hyderabad on re-inspection finds that upper fourth floor is covered with tin shed roof, even though the sanctioned plan was obtained for RCC roof, it shall be treated as tin shed, as there is no RCC roof. Therefore, reassessment in this regard requires to be reconsidered.

14. In the light of the above observations, this second appeal is liable to be allowed to this extent alone and other aspects of the reassessment do not require any interference.

15. In the result, the second appeal is partly allowed as follows:

a. The reassessment order dated 29.03.2014 with reference to fixing of collection of tax on parking area from 01.10.2005 to 30.09.2007 is set aside.

b. The respondent is directed to inspect and reconsider the assessment order dealing with upper fourth floor area covering 4,951.88 sft. If on inspection, it is found that the upper fourth floor is covered with tin shed roof and not RCC roof, then the respondent shall impose tax with reference to tin shed i.e., with whatever rate of tax that was prevailing during the relevant period of assessment. The above said inspection and reconsideration shall be done by giving prior notice and information to the appellant.

c. The rest of the findings of the impugned reassessment order are confirmed.

d. There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

M.LAXMAN, J

Date: 02.12.2022
GVR