THE HONOURABLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS SECOND APPEAL No.44 of 2018

JUDGMENT:

1. The present civil miscellaneous second appeal has been directed against the judgment and decree dated 24.07.2018 in M.A.No.128 of 2017 on the file of Chief Judge, City Small Causes Court, Hyderabad (hereinafter referred to as 'appellate Court'). By impugned order, the appellate Court upheld the challenged demand notice (property tax final orders) issued by the respondent herein *vide* Dis.No.A1/660/Qpur/Cir.15/GHMC/2014-16 dated 30.05.2017. Consequently, the appeal was dismissed. Hence, the present second miscellaneous appeal is filed at the instance of appellant before the appellate Court, who is an assessee. For the sake of convenience, the parties herein are referred to as assessee and assessor.

2. The brief facts of the case are that initially, the assessor issued assessment order dated 02.01.2015 by exercising powers under Section 225 of GHMC Act, 1955 (hereinafter referred to as 'Act'). The said assessment order was challenged before the appellate Court, by way of M.A.No.2 of 2015 and the said appeal was allowed and matter was remitted back to the assessing

authority for fresh assessment. After such fresh assessment, the impugned assessment order dated 30.05.2017 has been passed, which was challenged before the appellate Court in M.A.No.128 of 2017. The said appeal was dismissed. Aggrieved by the same, the present appeal is filed by the assessee before this Court.

3. Learned counsel for the appellant/assessee contended that the Commissioner, GHMC, Hyderabad, by way of impugned order has increased the tax from 2011 onwards by exercising power under Section 225 of the Act, contrary to Section 225(4) of the Act. According to him, such a power cannot be exercised beyond five half years. Therefore, the impugned order dated 30.05.2017 is unsustainable.

4. Mr. M. Dhananjay Reddy, learned standing counsel for GHMC, Hyderabad, has contended that the present proceedings are result of original proceedings dated 02.01.2015 which was challenged in previous appeal in M.A.No.2 of 2015 and such assessment order was quashed by the appellate Court and the case was remitted to the assessing authority for fresh assessment. After such fresh assessment, the present impugned order is passed. According to him, the impugned order is passed by following the

provisions under Section 225 of Act of 1955 and there is no merit in the contention of the learned counsel for appellant/assessee.

5. In the light of such contentions, it is apt to refer to Section 225 of Act of 1955 and it reads as follows:

> Section 225: Assessment book may be amended by the Commissioner during the financial year:
>
> (1) Subject to the provisions of sub-section (2) the Commissioner may upon the representation of any person concerned or upon any other information at any time during the **financial year to which the assessment book relates amend the same** –
>
> (a) by inserting therein the name of any person whose name ought to be so inserted or any premises previously omitted;
> (b) by striking out the name of any person not liable to the property tax;
> (c) by increasing or reducing the amount of any rateable value and of the assessment based thereupon;
>
> (d) by altering the assessment on any land or building which has been erroneously valued or assessed through fraud, accident or mistake;
>
> (e) by inserting or altering an entry in respect of any building erected, re-erected, altered, added to or reconstructed in whole or in part after the preparation of the assessment book;
> (f) by making or cancelling any entry exempting with the approval of the Standing Committee any premises from liability to any property tax.

(2) Where **any amendment** is made under sub-section (1) **which has the effect of imposing on any person any liability for the payment of property taxes** which would not be incurred but for such amendment or which has the effect of increasing the rateable value of any premises as stated in the assessment book, a special written notice as provided in sub-section (2) of section 220 shall be given by the Commissioner, and as far as may be the procedure laid down in sections 221, 222 and 223 shall be followed.

(3) Every such amendment shall be deemed to have been made, for the purpose of determining the liability or exemption of the person concerned in accordance with the altered entry, **from the earliest day in the current financial year when the circumstances justifying the amendment existed**.

(4) (i) If at any time it appears to the Commissioner that any person or property has been **inadvertently omitted** from the assessment records or **inadequately or improperly** assessed relating to any tax, or **a clerical or arithmetical error** is committed in the records maintained in relation to such assessment, **he may assess or reassess or correct such errors,** as the case may be:

Provided that no such action shall be taken where it involves an increase in the assessment, unless the person affected is afforded an opportunity to show cause against the proposed action.

(ii) Such assessment or reassessment or correction of records shall not relate, to a period earlier than the five half years immediately preceding the current half year."

6. A reading of the above provisions would show that Section 225 (1) of the Act, enables the Commissioner, GHMC, Hyderabad, to amend ward assessment book in the circumstances enumerated

from (a) to (f). Section 225 (4) of the Act empowers Commissioner to assess or re-assess or correct errors in records of assessment where there is inadvertent omission or inadequate or improper assessment or clerical or arithmetical error committed in the records.

7. Under Section 225 (4) of the Act, the powers are restricted to five half years immediately preceding the current half year. In the present case, it is borne from the impugned order that reassessment has been taken up on the ground of mistake in area calculated previously. Thus, the restriction imposed under Section 225(4) (ii) of the Act applies. The assessor is entitled to alter/modify such fixation of tax for five half years immediately preceding to current half year. The original assessment order was issued on 02.01.2015 and the relevant current half year falls in October, 2014 to March, 2015. The alteration is restricted to the five half years immediately preceding to October, 2014 to March, 2015 i.e., from April to September, 2012. Beyond that the assessor cannot demand any tax based on alteration. In the impugned assessment order, demand is made from 2011 onwards which is beyond April-September, 2012. Such demand is contrary to

section 225 (4) (ii) of the Act and it is unsustainable. To that extent the appeal is liable to be allowed.

8. In the result, the second appeal is partly allowed setting aside the judgment dated 24.07.2018 on the file of Chief Judge, City Small Causes Court, Hyderabad, as follows:

i). The assessment order dated 30.05.2017 is set aside to the extent of tax demanded from 01.04.2011 to 31.03.2012 and the rest of the assessment order is confirmed.

ii). The amount, if any already paid by the appellant/assessee towards tax shall be adjusted in determining the future tax liability.

iii). The respondent/assessor shall pass fresh revised assessment order calculating tax after deleting the tax prior to April, 2012.

iv). There shall be no order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

M.LAXMAN, J

Date: 15.12.2022
GVR