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

W.P.(C) 10825/2022, CM APPL. 31454/2022,
CM APPL. 31455/2022, CM APPL. 31456/2022

Date of Decision: 19.07.2022

IN THE MATTER OF:

NATIONAL COOPERATIVE DEVELOPMENT CORPORATION
..... Petitioner

Through: Mr. Rakesh Mohan, Mr. Ritesh Kumar Chaudhary and Mr.Sumit Kumar, Advocates

versus

MUNICIPAL CORPORATION OF DELHI ..... Respondent

Through: Mr. Kunal Mimani, Mr. Kartikey Bhatt and Mr. Gurveer Lally, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of present petition filed under Article 226 of the Constitution of India, the petitioner has assailed Notice dated 15.09.2021 issued by the respondent under Section 123D of the DMC Act (hereinafter, referred to as *'the Act'*), whereby certain discrepancies have been pointed out in the self-assessment property tax returns filed by the petitioner for the years 2004-05 to 2021-22. The petitioner has also sought quashing of consequent assessment order dated 10.12.2021 as well as demand notices dated

14.12.2021, 07.01.2022, 14.01.2022, 31.01.2022, 14.02.2022. 02.03.2022 and 23.05.2022 issued by the respondent.

2. In the impugned Notice/order(s), the respondent has alleged that the petitioner has applied wrong Use Factor for the period 2004-05 to 2021-22 as well as wrong rates of tax for the period 2010-11 to 2021-22, in respect of property named *National Co-operative Development Corporation, 4, Siri Fort Institutional Area, Hauz Khas, Delhi-16* (hereinafter, referred to as the *'subject building'*).

3. Mr. Rakesh Mohan, learned counsel for the petitioner, submits that the petitioner is a statutory corporation established under the National Cooperative Development Corporation Act 1962, which does not have any share capital. It is contended that the income of the petitioner is re-deployed and is used for objectives laid down under the Act, such as development of agriculture through cooperatives in the country. As such, the petitioner's property tax ought to be calculated considering Use Factor as 'public purpose' instead of 'business'.

Learned counsel has further submitted that the petitioner has been paying property tax on the basis of Use Factor as 'business' under protest. By way of representations dated 07.01.2022 and 14.01.2022, the petitioner is stated to have requested the respondent to consider the property tax with respect to subject building on the basis of Use Factor as 'public purpose'. It is also submitted that the petitioner being a public institution instead of a commercial institution qualifies under Clause 9(I)(ii) of the Delhi Municipal Corporation (Property Tax) Bye-Laws, 2004 and its building does not fall under the ambit of business building. It is contended that the appropriate Use Factor would be 1 instead of 4.

4. Mr. Kunal Mimani, learned counsel for the respondent, on the other hand, has disputed the submissions made on behalf of the petitioner. He contends that under Section 169 of the Act, the assessment order is appealable before the Municipal Taxation Tribunal (hereinafter, referred to as *'the Tribunal'*). He further submits that a similar issue is pending consideration before this Court in W.P. (C) 15148/2021. It is also submitted that in the proceedings under the Income Tax Act, the income generated by the petitioner has been classified as business income.

5. Learned counsel for the petitioner has referred to the order dated 01.06.2022 passed by this Court in M/s Kaniksha Impex Pvt Ltd *v.* South Delhi Municipal Corporation and Anr., **W.P.(C) 6453/2022** wherein submissions made on behalf of the Govt. of NCT of Delhi were noted to the effect that all the posts in the Tribunal, as on that date, were lying vacant and expeditious steps would be undertaken for its constitution. Learned counsel has also placed reliance on the judgment dated 20.12.2021 passed by a Co-ordinate Bench of this Court in Mother Dairy Fruit and Vegetable Pvt. Ltd. *v.* East Delhi Municipal Corporation, **W.P. (C) 14585/2021** wherein subject to the petitioner continuing to pay property tax as per the base assessment year of 2004, it was directed that no coercive steps be taken against it.

6. At this stage, learned counsel for the petitioner, on instructions, submits that the petitioner shall continue to pay property tax in the manner adopted so far. He also seeks liberty for the petitioner to pursue appropriate recourse before the Tribunal as and when the same becomes functional.

7. In view of the submissions made on behalf of the parties, the present petition is disposed of with a direction to the petitioner to continue to pay property tax in the manner adopted so far, as undertaken by it. The petitioner

shall also be at liberty to pursue appropriate remedy before the Tribunal within four weeks of commencement of its functioning.

8. Subject to the petitioner taking recourse before the Tribunal in accordance with law in the time permitted and continuing to pay property tax in the manner adopted so far, no coercive steps be taken against it till listing of the appeal. It is clarified that continuation of interim protection thereafter shall be subject to the orders to be passed by the Tribunal. Miscellaneous applications are disposed of as infructuous.

9. Needless to state that this Court has not gone into the merits of the contentions raised on behalf of either of the parties. As such, the rights and contentions of the parties shall remain reserved.

(MANOJ KUMAR OHRI)
JUDGE

JULY 19, 2022
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