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

+ **W.P.(C) 4454/2020**

DELHI INTERNATIONAL AIRPORT LIMITED Petitioner
Through: Mr. Parag Tripathi, Sr. Advocate with
Mr. Milanka Chaudhury, Ms. Swet
Shikha, Advocates

versus

**UNION OF INDIA THROUGH MINISTRY OF
HOME AFFAIRS & ORS.** Respondents
Through: Mr. Ravi Prakash, CGSC with
Mr. Farman Ali, Mr. Aman Rewaria,
Mr. Yasharth Shukla, Ms. Usha Jamnal
and Ms. Astu Khandelwal, Advocates
for respondents No.1, 2 and 5.
Mr. Tarveer Singh Nana, Advocate with
Mr. Ankur Mishra and Mr. Sudesh, Tax
Superintendent for Delhi Cantonment
Board/Respondent No.3.
Mr. Digvijay Rai, Advocate with
Ms. Chetna Rai, Mr. Archit Mishra,
Mr. Sachin Yadav, AGM(Law) for
respondent No.4/AAI.

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Date of Decision: 09th August, 2023

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MINI PUSHKARNA

Signature Not Verified

Digitally Signed By: ASWANT
SINGH RAWAT
Signing Date: 10.08.2023
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J U D G M E N T

MANMOHAN, J: (ORAL)

1. By way of the present writ petition, the Petitioner, Delhi International Airport Limited (“**DIAL**”) has *inter-alia* challenged the constitutional validity of Section 73 of the Cantonment Act, 2006 (‘**Cantonments Act**’) and sought the quashing of the final assessment order dated 15th June, 2020 (“**Impugned Order**”) passed by the Respondent No.3 i.e., Delhi Cantonment Board (“**DCB**”). The assessment order for the triennial assessment period 2016-2019 was for INR 2589,10,97,035/- (Two Thousand Five Hundred Eighty-Nine Crores Ten Lakhs Ninety-Seven Thousand Thirty Five only) with respect to 1438.2017 acres of land claimed by the **DCB** as falling within its jurisdiction and which land forms a part of the Indira Gandhi International Airport, at New Delhi (“**Land in Question**”). By far the larger tract of land viz., 3,306 acres falls within the jurisdiction of the Municipal Corporation of Delhi (“**MCD**”) (erstwhile South Delhi Municipal Corporation (“**SDMC**”).
2. Subsequent to the filing of the present writ petition, the DCB issued another order dated 12th March, 2021 determining ARV for the triennial assessment period 2019-2022 for an amount of INR 2890,70,32,375.67 (Two Thousand Eight Hundred and Ninety Crores Seventy Lakhs Thirty Two thousand Three Hundred Seventy Five and Sixty Seven Paise only) with respect to the Land in Question. This subsequent fact was brought to the notice of this Court vide Additional Affidavit filed by the Petitioner dated 12th April, 2021 vide Diary No.363790/2021.



3. It may be pointed out that in addition to the validity and vires of the Cantonments Act, it is also contended by the Petitioner that the Land in Question does not fall within the definition of “Cantonment” as provided under Section 3 thereof and therefore cannot be taxed by the **DCB**.

4. One of the questions which would arise for determination is whether the assessment is to be carried out under Section 73(a) or 73(b) of the Cantonments Act. The provisions are set out hereunder:-

“73. Definition of “annual rateable value”

For the purposes of this Chapter, “annual rateable value” means—

(a) in the case of hotels, colleges, schools, hospitals, factories and any other buildings which the Chief Executive Officer decides to assess under this clause, one-twentieth of the sum obtained by adding the estimated present cost of erecting the building to the estimated value of the land appertaining thereto;

(b) in the case of building or land not assessed under clause (a), the gross annual rent for which such building exclusive of furniture or machinery therein or such land is actually let or, where the building or land is not let or in the opinion of the Chief Executive Officer is let for a sum less than its fair letting value, might reasonably be expected to let from year to year

Provided that, where the annual rateable value of any building is, by reason of exceptional circumstances, in the opinion of the President Cantonment Board, excessive if calculated in the aforesaid manner, the President Cantonment Board may fix the annual rateable value at any less amount which appears to him to be just.

5. Under the statutory arrangement, the Airports Authority of India (“**AAI**”/Respondent No. 4) pursuant to Section 12A of the AAI Act, 1994 and in public interest executed Operation Maintenance and Development Agreement dated 04th April, 2006 (“**OMDA**”). A lease deed dated 25th April, 2006 (“**Lease Deed**”) was also executed in favor of the Petitioner for operation, maintenance, development, design, construction and upgradation of the IGI Airport in Delhi. The total land which was the subject matter of



the Lease Deed is approximately 4744 acres, comprising of 3306 acres of land parcel falling under the jurisdiction of MCD and the remaining 1438 acres claimed by **DCB** to be falling within its jurisdiction.

6. It may be pointed out that these lands leased to the Petitioner are used for operating the runways, taxiways, apron, hangers and the terminal building which are in the nature of passenger facilities associated with an airport. There are two functional runways and a Terminal 1 building situated within the Land in Question which are the subject matter of these proceedings. Likewise, there are two more runways, the Terminal 2 and Terminal 3 building in the overall land parcel which are within the jurisdiction of the MCD. It may be pointed out that 85 per cent of the operational area of the IGI Airport falls under 'No Construction Zone' and is required to be kept vacant and open to sky in compliance with the International Civil Aviation Organization Guidelines ("**ICAO Guidelines**") and other applicable provisions of the Aircraft Act, 1934.

7. It is contended that the airport and passenger facilities comprise the following: -

- i. Runways
- ii. Taxiways
- iii. Apron
- iv. Hangars
- v. Terminal Buildings
- vi. Connecting Roads

8. With respect to the land in question, the Terminal building accounts for approximately 3.5 per cent approximately, out of which the total commercial space for providing facilities to passengers that can be accommodated is up to 20 per cent of the Terminal Building viz., 0.7 per



cent of the said land.

9. With respect to the parcel of land which is under the jurisdiction of MCD, the Terminal Buildings accounts for approximately 5 per cent, out of which the total commercial space that can be accommodated is up to 20 per cent of the Terminal Buildings viz., 1 per cent of the larger area of 3,306 acres.

10. Mr. Parag P. Tripathi contends that the land parcel coming within the jurisdiction of MCD is almost two times and the passenger amenities are also double that of the area claimed to be under **DCB**.

11. It is the case of the Petitioner that the aggregate property tax paid by the Petitioner to the MCD, under whose jurisdiction the majority of IGI Airport Land admeasuring about 3306 acres falls is far lesser than what the **DCB** has demanded for the Land in Question. In other words, the **DCB** is charging the property tax at an exponential factor of more than 140 times and a chart reflecting the aforesaid position is as under:

Financial Year	MCD- Property Tax paid (after rebate) for 3,306 acres	DCB- Property Tax demand for 1438 acres
2016-17	5.88	867.21
2017-18	6.06	867.21
2018-19	6.72	867.21
2019-20	9.96	867.21
2020-21	9.35	867.21
2021-22	12.44	867.21
2022-23	7.22	N.A.

12. The Petitioner also relies on the observations in judgment of the learned Single Judge in *State Trading Corporation of India Ltd. and Ors. v.*



New Delhi Municipal Council (2003) 104 DLT 808 (“STC Judgment”)

wherein it was observed that:

“37. Before parting with this judgment, I must express my anguish at the fact that though Delhi is one city, different parameters are being followed by Municipal authorities in the same town. It is only for purposes of convenience that jurisdiction have been divided among NDMC, MCD and Delhi Cantonment Board. The least that is expected is that all these Municipal authorities should act at tandem and follow similar principles in determination of rateable value. Merely because the house of one person falls in one area or the other, which may even be adjacent, and a different Municipal authority is dealing with the issue of determination of rateable value, should not imply totally different concepts in determination of such rateable value. It is appropriate that all the Municipal authorities must meet and consider this aspect to bring a uniformity in the system of determination of the rateable value in parts of Delhi when they fall within one jurisdiction or the other. This is more so as the provisions under said Act and the DMC Act are para materia. The MCD, in fact, now proposed to apply a different concept of a unit method of taxation, but so far, the NDMC has not finalised any proposal in the same terms.”

13. It may be pointed out that the judgment was upheld by the Supreme Court in ***State Trading Corporation of India Ltd. and Ors. v. New Delhi Municipal Council (2016) 12 SCC 603.***

14. It has also been brought to the notice of this Court that no assessment proceedings were initiated for the period 2006-2016 by the **DCB** for the land in question and now the same is time barred. As already mentioned, the entire land area whether under the jurisdiction of **DCB** or under the jurisdiction of the MCD is one contiguous parcel of land which is presently being subjected to totally different quantum of property tax based on totally different modalities of calculation of property tax.

15. It has been brought to the notice of this Court that the user of the land is also for the same purpose i.e., operating the IGI Airport. Keeping in view the complexities and the significant element of public interest involved and



the peculiar facts and circumstances in the present case, the Court suggested to the parties and their counsel to try and amicably resolve the dispute.

16. This Court was of the view that it would be in the interest of justice if the matter was resolved and a quietus is put to the controversy. This would result in substantial litigation free revenue for the **DCB** and would avoid the present unsettled position of the Petitioner where there are huge demands for property tax for the subject land all of which are under challenge and stayed. The Court appreciates the efforts put in by the parties and the learned counsel for the parties

17. This Court is of the opinion that this unsettled situation in the present case is to the benefit of no party. On one hand, it locks up the revenue of the **DCB** and on the other hand, it hampers the functioning of the Petitioner thereby affecting the operation and maintenance of the IGI Airport at Delhi. Obviously, this uncertainty would also affect public interest.

18. It appears that in order to find a way during the pendency of the instant proceedings, the Respondent No.2 i.e., the Ministry of Defence, issued certain directions vide *MoD ID No. 792/2020-D (Q&C) dated 23.05.2023* to the **DCB** directing to recalculate the property tax of the Petitioner as per the methodology stipulated under Section 73(b) of the Cantonments Act.

19. In terms of the directions of Respondent No. 2, the **DCB** has filed an affidavit dated 15th June, 2023 ("**DCB Affidavit**") *inter-alia* praying for permission to re-calculate the property tax of the Petitioner as per the methodology stipulated under Section 73(b) of the Cantonments Act and also sought a direction to the Petitioner to inform the actual rent received by the Petitioner for the land in question and assets/infrastructure



erected/standing thereon to enable the recalculation of ARV as per Section 73(b) of the Cantonments Act.

20. In response to the DCB Affidavit, the Petitioner has filed an affidavit dated 24th July, 2023 (“**DIAL Affidavit**”) disclosing the actual annual rent received by the Petitioner for letting out the designated spaces in the building(s) situated on the Land in Question as well as portion of the Land in Question. Accordingly, DIAL in its Affidavit dated 24.07.2023 has stated as under:

(a) That the Petitioner has been granted the right to undertake some of the functions of Respondent No. 4 at the IGI Airport, being the functions of operation, maintenance, development, design, construction, upgradation, modernization, finance and management of the Airport and to perform services and activities constituting aeronautical and non-aeronautical services and pursuant to the same the Petitioner has been granted a Lease of the land on which the IGI Airport is situated including the Land in Question.

(b) Pursuant to such right the Petitioner is entitled to sub-lease and/or license the demised premises and to demand, collect and appropriate charges therefrom to enjoy and exercise the above rights, the Petitioner has to pay to the Respondent No. 4 the inescapable fee every year being the annual fee calculated at the rate of 45.99 per cent of its Revenue as more particularly defined and stated in Article 11 of the OMDA (“**Annual Fee**”). This includes the payment of Annual Fee to the Respondent No. 4 on the annual rent received on the portion of land as well as the



designated spaces of the building(s) situated within the Land in Question.

(c) That the Petitioner is receiving annual rent by letting out the portion of land as well as the designated spaces of the building(s) situated within the Land in Question.

(d) The Petitioner submits that it is incurring high cost of operating expenditure in operation of the IGI Airport which includes the portion of land as well as the designated spaces of the building(s) situated within the Land in Question. This annual operating expenditure varies from 7 per cent to 15 per cent of the annual rent received. The Petitioner submits that incurring expenses on these services is essential to obtain the rentals. However, the Petitioner has only claimed the operating expenditure (*which is indicated in the table @ para 7 of DIAL Affidavit*) at the rate of 7.5 per cent of actual rent on average basis (“**Operating & Maintenance Expenses**”). Thus, it is submitted that these amounts being inescapable have to be deducted for arriving at the actual rental.

(e) The Petitioner stated that any fresh assessment to be undertaken by **DCB** under section 73 (b) should only be by determining ARV as per the actual rent received by the Petitioner, which is arrived at after deducting the Annual Fee paid by the Petitioner to the Respondent No.4 under terms of OMDA and the Operating & Maintenance Expenses calculated at the rate of 7.5 per cent of the rent received by the Petitioner. The Petitioner submits that this methodology of accepting the actual rent received



by the Petitioner net of Annual Fee and Operating & Maintenance Expenses should be adopted by the **DCB** in arriving at the ARV in all assessment years.

(f) The Petitioner further submits that a rebate of 25 per cent is available on property tax for timely payment of the same which should also be made available to the Petitioner on any fresh assessment to be carried out by the **DCB** pursuant to the directions of this Court.

(g) The Petitioner further submits that so far, the Petitioner has paid an amount of Rs. 17,31,39,753/- under protest since the year 2016 onwards to **DCB** as property tax, the year wise details of which is provided in the table hereunder. The Petitioner sought appropriate reduction/adjustment of the amounts already paid by the Petitioner while calculating the fresh demand as per the fresh assessment under Section 73 (b) of the Cantonment Act.

Year	Amount (Rs.) (in crores)
2016-17	1.15
2017-18	1.15
2018-19	1.12
2019-20	9.10
2020-21	1.10
2021-22	1.07
2022-23	1.07
2023-24	1.55
Total	17.31

(h) The Petitioner stated that any fresh assessment of property tax as sought to be done by the **DCB** vide its affidavit dated 15th



June, 2023 should be pursuant to further directions from this Court to **DCB** to cancel and withdraw all previous assessments and demands from the FY 2016-17 onwards and thereafter consistently and uniformly determine ARV as per Section 73(b) of the Cantonments Act basis the actual rent received by the Petitioner after deducting the Annual Fee paid by the Petitioner to the Respondent No. 4 under terms of OMDA and the Operating Expenses calculated at the rate of 7.5% of the rent received by the Petitioner.

21. It is clear from the DCB Affidavit and the DIAL Affidavit that there exists a broad element of consensus to calculate the property tax on the Land in Question in accordance with Section 73 (b) of the Cantonment Act. Further, to achieve parity and uniformity with the property tax being levied by MCD, the property tax levied on the actual rent received from building and land let out by the Petitioner on the Land in Question in the manner presented to this court in the affidavits of the parties would meet the ends of justice. After all, it is the same, contiguous parcel of land, used for the same purpose.

22. It is submitted on behalf of the parties that as per Section 73(b) of the Cantonments Act, 2006 the rent received on account of furniture or machinery are generally deducted from the gross annual rent for the purpose of determining Annual Rateable Value. Further, the cost incurred by the assessee in maintenance of the building is generally allowed to be deducted. The Petitioner submits that they cannot obtain the rentals without incurring this annual operating and maintenance expenses. It is stated in *Para 6* of the DIAL Affidavit that the Operating & Maintenance Expenses varies from 7



per cent to 15 per cent and they have restricted it to 7.5 per cent, which seems reasonable.

23. It is thus found that for providing the same facility comprising common infrastructure and one common facility of the airport and its antecedental activities there is entirely different treatment as far as the question of property tax is concerned merely because the land allotted to the Petitioner under the OMDA falls within separate jurisdictions of the **DCB** and **MCD**. Keeping in mind the peculiar facts and circumstances of the present case, which involves the very same parcel of land spread over two jurisdictions, the fact that AAI is a 26 per cent shareholder in the Petitioner company and has a 45.99 per cent in the revenue of the Petitioner company and after hearing the parties at length and examining various ways of obtaining an equitable quietus to the dispute which would be fair to the parties and most importantly to the public which uses the airport facilities, this Court passes the following directions:-

i. The assessment made for triennial assessment period 2016-2019 and all other assessment years are set aside and fresh assessments shall be done as per Section 73(b) of the Cantonments Act, 2006;

ii. The fresh assessment under 73(b) will be carried out based on the following principles: -

a. The ARV shall be determined on the basis of the actual annual rent received by the Petitioner from the 1438.2017 acres i.e. the Land in Question as described in para 2 and 4 of DIAL Affidavit.

b. The Annual Fee paid by the Petitioner to AAI under Article 11 of the OMDA shall be adjusted from the rent as described in para 6 of DIAL Affidavit.



c. In terms of Section 73(b) of the Cantonments Act, the Operating & Maintenance Expenses incurred by the Petitioner (expenditure on the electricity, water, sewage, maintenance, repair, cleanliness, hygiene of terminal, runway, aprons, connecting roads infrastructure and parking facility, watch and ward of Terminal-1 building and adjoining areas, medical facilities for passengers and workers, etc..) on the Land in Question and the buildings thereon, shall be deducted from the annual rent at 7.5% of such rent as set out in para 6 and 9 of DIAL Affidavit.

d. On the basis as aforesaid, the Respondent No. 3 shall determine ARV and levy property tax on the Petitioner as per S.R.O No. 257/A dated 15.12.1979 published vide Registered No. D-(D)-73 in the Official Gazette of India on 02.02.1980 (@ **Annexure A-1 to the Counter Affidavit filed by Respondent No. 3**) within 30 days from the date of this order.

e. This assessment shall be treated as a fresh assessment and if the tax is paid by the Petitioner within 30 days from the date of demand, then the Petitioner shall be entitled to a 25% rebate as per the Cantonment Board Resolution-CBR No. 13 dated 28.08.1995 issued by the Board of the Respondent No. 3, as described in para 12 of the DIAL Affidavit.

f. The Petitioner has submitted a working calculation (@**Para 7 of DIAL Affidavit dated 24th July, 2023**) of the fresh assessment and the amount of property tax to be levied on the Petitioner which is taken on record and is placed as under:-

“ANNEXURE 1

Working Calculation

<u>DCB Area (1438.20 Acres) - Rental Income from FY 2016-17 to FY 2022-23</u>							
<i>Rental Income</i>							
<i>Particulars</i>	<i>FY 2016-17</i>	<i>FY 2017-18</i>	<i>FY 2018-19</i>	<i>FY 2019-20</i>	<i>FY 2020-21</i>	<i>FY 2021-22</i>	<i>FY 2022-23</i>
<i>Land Rental</i>	53.11	59.11	66.27	75.25	61.42	37.89	56.10



<i>Office Space & Hangar Space Rental</i>	<i>43.49</i>	<i>44.81</i>	<i>44.52</i>	<i>37.62</i>	<i>34.43</i>	<i>22.22</i>	<i>15.06</i>
<i>Gross Rent (A)</i>	<i>96.60</i>	<i>103.92</i>	<i>110.79</i>	<i>112.87</i>	<i>95.85</i>	<i>60.10</i>	<i>71.16</i>
<i>Deductions</i>							
<i>AAI fee (45.99% of gross rent)</i>	<i>44.43</i>	<i>47.79</i>	<i>50.95</i>	<i>51.91</i>	<i>44.08</i>	<i>27.64</i>	<i>32.73</i>
<i>Operating Expenditure (7.5% of gross rent)</i>	<i>7.24</i>	<i>7.79</i>	<i>8.31</i>	<i>8.47</i>	<i>7.19</i>	<i>4.51</i>	<i>5.34</i>
<i>Total Deductions(B)</i>	<i>51.67</i>	<i>55.59</i>	<i>59.26</i>	<i>60.38</i>	<i>51.27</i>	<i>32.15</i>	<i>38.06</i>
<i>Actual Annual Rent (ARV) (A-B)</i>	<i>44.93</i>	<i>48.34</i>	<i>51.53</i>	<i>52.50</i>	<i>44.58</i>	<i>27.95</i>	<i>33.10</i>
<i>Property Tax @ 30% of ARV</i>	<i>13.48</i>	<i>14.50</i>	<i>15.46</i>	<i>15.75</i>	<i>13.37</i>	<i>8.39</i>	<i>9.93</i>

g. Needless to say, that out of the total so arrived, the Petitioner shall be given the benefit of the amount of Rs.17,31,39,753/- already deposited by the Petitioner on account since the year 2016 onwards to the Respondent No. 3 as property tax as described in para 13 of the DIAL Affidavit.

h. There is a period prior to the triennial assessment period 2016-2019, being the years 2006-2016 for which the property tax has not been assessed. Notwithstanding that a serious issue of limitation shall arise for the earlier assessment years, the same methodology shall be applied and continued for the years 2006-2016 and the property tax duly calculated. This amount shall be paid by the Petitioner without raising an objection as to



*limitation. The Petitioner is directed to disclose the rentals for the period 2006-2016 to the **DCB** within ninety days from the date of this order. Thereafter **DCB** will calculate the ARV on the same methodology as mentioned above and levy property tax accordingly for the said period. It is needless to mention that the Petitioner will be entitled to timely payment rebate of 25% for the period 2006-2016.*

24. Accordingly, the writ petition stands disposed of in view of the above.

MANMOHAN, J

MINI PUSHKARNA, J

AUGUST 9, 2023

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