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

\+ W.P.(C) 15009/2023 & C.M.Nos.59932-59933/2023

V.P. AGGARWAL ..... Petitioner

Through: Mr.Mritunjay Kumar Singh with Mr.Saikat Khatua, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL ..... Respondent

Through: Mr.Raghav Alok with Ms.Vasudha Trivedi and Mr.Kumar Ravishankar, Advocates.

% Date of Decision : 22nd November, 2023

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present writ petition has been filed praying for summoning the record of the entire proceedings undertaken by the respondent for revising the rateable value of Flat No. 507, Ashoka Estate, New Delhi. The petitioner further challenges the notice dated 25th March, 2013 as well as the Assessment Order dated 08th February, 2023 both issued under Section 72 of the Delhi Municipal Council Act, 1994 (hereinafter referred to as the 'NDMC Act') and the demand letters dated (i) 28th February, 2023 for a sum of Rs.35,71,919/-, (ii) dated 24th April, 2023 for a sum of Rs. 34,12,073/- and (iii) dated 12th October, 2023 for a sum of Rs. 35,71,936/- as house

tax/property tax qua the subject property.

2. Learned counsel for the petitioner states that the proceedings initiated pursuant to the impugned notice dated 25th March, 2013 and assessment order dated 08th February, 2023 are bad in law as the same are barred by limitation and in violation of Section 72 of the NDMC Act. He further states that the impugned orders and demand letters have been issued to the petitioner after an inordinate delay of ten years and as such are beyond the period of limitation. He submits that as per proviso to Section 72(1) of the NDMC Act, no person shall be liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which the notice under sub-section (2) is given. He states that vide the aforesaid notice dated 25th March, 2013, the respondent had intended to amend the rateable value for the subject property to Rs. 33,69,600/- from 01st April, 2010 to 14th November, 2010 and from 15th November, 2010 to 14th November, 2013, which is retrospective in nature and thus, not permissible. In support of his contentions and submissions, he relies upon the judgment of this Court in ***Ved Marwah vs. New Delhi Municipal Corporation & Ors., 2018 SCC OnLine Del 8096***.

3. Learned counsel for the petitioner states that the petitioner has not received any notice dated 22nd March, 2011 as is alleged to have been issued by the respondent under Section 72 of the NDMC Act, and he has only received the notice dated 25th March, 2013.

4. Learned counsel for the petitioner states that the respondent has wrongly computed the rateable value of the subject property, which has been assessed "on estimated market rent" without taking into consideration the documents submitted by the Petitioner such as the lease deeds, showing the

actual monthly rent received by him. He further states that such action of the respondent is in violation of the principles of natural justice and fair play.

5. Learned counsel for the petitioner states that the petitioner has been diligently paying the property tax qua the subject property till the year 2023-2024, and no arrears or dues of property tax are required to be paid qua the subject property.

6. Having heard learned counsel for the parties, this Court finds that the present writ petition raises disputed questions of fact, inasmuch as it is the case of the petitioner that he has not received any notice dated 22nd March, 2011, whereas the impugned order specifically states that the said notice was issued. Further, the impugned order records (though the said fact has been disputed by learned counsel for the petitioner) that the rateable value has been calculated by the respondent on the basis of the lease deeds which had been filed by the petitioner.

7. This Court in the judgment of ***Ved Marwah*** (supra) has held that the finalisation of the assessment proceedings after a delay of more than ten years was unreasonable and thus, liable to be set aside. In such cases of inordinate delay in finalisation of assessment proceedings what needs to be seen by the appellate authorities is that on whose account the proceedings were delayed. In cases where the assessees have fulfilled their obligations by submitting their objections and supporting documents to the authorities and it is the authorities who are delaying the adjudication process, then the assessees cannot be penalised for inaction of the authorities. However, this adjudication involves deciding disputed questions of facts, which cannot be done by this Court in writ proceedings. The petitioner is thus, required to raise his objections before the appellate authorities.

8. This Court is also of the opinion that as the NDMC Act provides a complete machinery for assessment of tax, assessee is not permitted to abandon that machinery and invoke jurisdiction of High Court under Article 226. This Court is of the view that the present case does not fall under the exceptional ground on which a writ petition is maintainable at this stage in tax matters.

9. Consequently, considering that the assessment order has already been passed in the present case, the contentions and submissions advanced by the petitioner must be agitated before the Appropriate Authority.

10. Accordingly, the present writ petition is dismissed with liberty to the Petitioner to raise all its contentions and submissions before the Appellate Authority. This Court clarifies that it has not commented on the merits of the controversy. The rights and contentions of all the parties are left open.

ACTING CHIEF JUSTICE

MINI PUSHKARNA, J

NOVEMBER 22, 2023
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