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

\+ W.P.(C) 489/2024 and CM APPL.2162/2024

JK TYRE AND INDUSTRIES LTD ..... Petitioner
Through: Mr. Subhash C. Jindal, Adv.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS. ..... Respondents
Through: Mr. Arvind Kr. Sharma, SC along with Mr. Aniteja Sharma and Mr. Vaibhav Agnihotri, Adv.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

<u>O R D E R</u>

% **15.01.2024**

1. The present petition assails the property tax bill dated 24.05.2023, in respect of Flat No.A-2, 4th Floor, South Tower, Girdhar Apartments, 28, Ferozshah Road, New Delhi-110001. The petitioner further seeks that the aforesaid property tax bill be rectified in line with the judgment/order dated 08.02.2012, passed by this court and also in line with subsequent representations dated 13.01.2014, 11.10.2014, 09.12.2019 and 30.10.2023 (Annexures P/6, P/7, P/9 and P/13), given by the petitioner from time to time.

2. Admittedly, the impugned demand/ bill is pursuant to an Assessment Order dated 28.09.2017, passed under Section 72 of the NDMC Act, 1994 in respect of the concerned property. The said order under Section 72 of the NDMC Act, 1994 *inter-alia* records as under:

> "*As per clause 1 of the notice dated 31.03.2001, the tax payer was given 35 days time to file objection if any against the proposed RV. The tax payer did not file any objection. <u>A hearing was afforded on</u>*

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20.09.2017. Neither any person appeared for hearing nor any response in writing has been received. It appears that the tax payer has nothing to say against the proposed rateable value and as such RV of Rs.779500/- is finalized w.e.f.01.04.2001."

3. There is no specific prayer in the present petition assailing the aforesaid assessment order under Section 72 of the NDMC Act, 1994, even though the impugned bill/ demand notices are issued pursuant thereto.

4. Learned counsel for the petitioner submits that the aforesaid Assessment Order is in the teeth of the judgment/order dated 08.02.2012,passed by this court in W.P. (C) No.81/2003. The said petition came to be filed by the petitioner assailing a demand notice dated 05.11.2002 for the period ending 31.03.2003. The said writ petition was disposed of vide judgment/order dated 08.02.2012 *inter-alia* directing as under:

"*6. Following the decision of the Division Bench in the case of 'L&T Ltd. (Supra)' and that of the Single Judge in the case of 'Straw Products (Supra)', the impugned demand notice dated 05.11.2002 for the assessment year 2002-03 in respect of the subject flat is quashed and set aside. The petitioner is directed to appear before the Director (Tax), NDMC, on29.02.2011 at 3PM for a hearing. The Director (Tax), NDMC shall consider the submissions made by the petitioner and thereafter positively pass a speaking -order within a period of six weeks from the date of conclusion of submissions under written intimation to it. A copy of the decision taken shall be placed on record by the respondent/NDMC within a period of two weeks thereafter. In case the respondent/NDMC does not pass a speaking order within the time granted hereinabove, the petitioner shall be entitled to approach this Court for appropriate orders.*
The petition is disposed of.
A copy of this order be forwarded by the Registry to the Chairperson, NDMC, for perusal and compliance."

5. Learned counsel for the petitioner submits that in terms of the

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aforesaid directions, the respondent/NDMC, in fact, did not pass any speaking order within the time granted by this court. Admittedly, however, no steps were taken by the petitioner in terms of the liberty granted by this Court vide the aforesaid judgment/ order dated 08.02.2012. Instead, various representations are stated to have been submitted by the petitioner to the respondent from time to time.

6. Ultimately, the Assessment Order dated 28.09.2017 under Section 72 of the NDMC Act, 1994 came to be passed. The said Assessment Order clearly records that an opportunity of hearing was afforded to the petitioner on 20.09.2017, however, the same was not availed of by the petitioner.

7. Admittedly, the aforesaid order under Section 72 of the NDMC Act, 1994 is appealable under Section 115 of the NDMC Act, 1994.

8. Learned counsel for the petitioner submits that the petitioner could not take appropriate steps to file an appeal against the aforesaid Assessment Order dated 28.09.2017 in view of the unfortunate demise of the then counsel for the petitioner. He further submits that the remedy of appeal would not be efficacious in the present case, and that this Court ought to entertain the present petition, since the petitioner is primarily aggrieved with non-compliance with the aforesaid judgement/ order dated 08.02.2012 passed by this Court.

9. The petitioner has been unable to make out a case for bypassing the appellate remedy prescribed under the statute. In the appellate proceedings, it would be open to the petitioner to assail the aforesaid assessment order and the impugned demand/s based thereon; the petitioner is not prevented from urging all relevant aspects in appellate proceedings, and the apprehension of learned counsel for the petitioner in this regard, is

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misconceived. Needless to say, it shall also be open for the petitioner to agitate its grievance as regards alleged invalidity of the assessment order dated 28.09.2017, on account of alleged non-compliance with the directions contained in the aforesaid judgement/ order dated 08.02.2012.

10. It is also noticed that Section 117 of the NDMC Act, 1994, provides for condonation of delay in filing an appeal, if the appellant satisfies the court, there was sufficient cause for not preferring the appeal. The appellant would be at liberty to file an appropriate application seeking condonation of delay in filing the appeal which would be considered by the appellate authority, taking into account the chequered background of the present case, as also the death of the previous counsel for the petitioner. Needless to say, any such application would be decided by the appellate authority on its own merits, taking into account the objection(s) that may be raised by the respondent.

11. Granting liberty to the petitioner to avail the statutorily prescribed appellate remedy, the present petition is disposed of. In the meantime, in order to enable the petitioner to take appropriate steps to file an appeal, it is directed that the respondent shall not take any coercive steps against the petitioner for a period of 30 days.

SACHIN DATTA, J

JANUARY 15, 2024/cl

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