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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **W.P.(C) 4618/2017 & CM APPL. 20133/2017**
W.P.(C) 7434/2017, CM APPLs. 30668/2017, 30669/2017 & 30670/2017
W.P.(C) 7436/2017, CM APPL. 30695/2017, 30696/2017 & 30697/2017
W.P.(C) 7437/2017, CM APPL. 30698/2017, 30699/2017 & 30700/2017
W.P.(C) 7438/2017, CM APPL. 30701/2017, 30702/2017 & 30703/2017
W.P.(C) 7439/2017, CM APPL. 30704/2017, 30705/2017 & 30706/2017
W.P.(C) 7447/2017, CM APPL. 30720/2017, 30721/2017 & 30722/2017
W.P.(C) 7448/2017, CM APPL. 30723/2017, 30724/2017 & 30725/2017

Between: -

SOUTH DELHI MUNICIPAL CORPORATION
THROUGH ITS COMMISSIONER
CIVIC CENTRE, DR. SHYAMA PRASAD MUKHERJI MARG,
DELHI-110002

THE DEPUTY ASSESSOR & COLLECTOR (GRP)
ASSESSMENT & COLLECTION DEPARTMENT
SOUTH DELHI MUNICIPAL CORPORATION
LAJPAT NAGAR, RING ROAD, NEW DELHI ....PETITIONERS

(Through: Mr.Rajan Tyagi, SC with Ms.Vijeta Mukherjee, Adv. with Mr. Satya Parkash, SSA and Mr. Sudhir Kumar, AA & C)

AND

DIRECTOR GENERAL
INDIAN COUNCIL OF FORESTRY RESEARCH & EDUCATION,
P.O. NEW FOREST, DEHRADUN.
CAMP OFFICE AT:
VAN VIGYAN BHAWAN
SECTOR-5, R.K. PURAM, NEW DELHI .....RESPONDENT

(Through: Mr.Sanjay Katyal, Adv.)

Reserved on: 30.07.2024
% Pronounced on: 21.08.2024

J U D G M E N T

This batch of writ petitions stems from a common order dated 23.02.2017. Consequently, the same is being decided analogously. For the sake of brevity, the facts are drawn from W.P. (C) 4618/2017.

2. These petitions, filed at the instance of the erstwhile South Delhi Municipal Corporation (now Municipal Corporation of Delhi [MCD]), challenge the order dated 23.02.2017, passed by the Municipal Taxation Tribunal, New Delhi (hereinafter referred to as 'Tribunal'), whereby, the appeal filed by the respondent under Section 169 of the **Delhi Municipal Corporation Act, 1957** (hereinafter referred to as 'DMC Act') came to be allowed, setting aside the order of assessment dated 30.03.2012.

3. The facts elucidate that an assessment order dated 30.03.2012 was passed by the Deputy Assessor and Collector (GRP) of the MCD. During the course of assessment, the respondent's property was designated as a *"Lodges Guest House"* as per Bye-Law 9(a) of the **Delhi Municipal Corporation (Property Taxes) Bye-Laws, 2004**

(hereinafter referred to as 'Bye-Laws, 2004'). Consequently, use factor-4 was applied, and assessment order dated 23.02.2017 came to be passed. Aggrieved thereby, the respondent preferred an appeal under Section 169 of the DMC Act before the Tribunal.

4. The appeal was subsequently allowed by the impugned order. The petitioner-MCD, therefore, preferred the instant writ petition.

5. Mr. Ranjan Tyagi, learned counsel appearing on behalf of the petitioner, submits that the order passed by the Tribunal is manifestly illegal and egregiously flawed. He contends that Bye-Law 9(A) of the Bye-Laws, 2004 explicitly excludes lodges, guest houses, hotels, or similar establishments from the definition of a residential building. According to him, the provision of transit accommodation for a fee transforms the nature of the activity into a commercial one, thereby falling outside the scope of the definition of residential building, as stipulated under Bye-Law 9(A). He further asserts that the acknowledged practice of charging fees ranging from Rs. 75 to Rs. 250 per day reinforces the contention that the subject property is commercial in nature and thus, the impugned order is untenable and should be annulled.

6. Mr. Sanjay Katyal, learned counsel appearing on behalf of the respondent, ardently refutes the petitioner-MCD's contentions and defends the validity of the impugned order. He submits that the impugned order has been passed strictly in accordance with law. He contends that the Tribunal meticulously considered the foundational objectives of Indian Council of Forestry Research & Education (hereinafter referred to as 'ICFRE') while concluding that its operations are inherently for public benefit. On the aspect of the modest charges applied by the respondent, he asserts that the levy of

nominal charges for accommodation does not, in itself, transmute the nature of the use into a commercial enterprise. In this context, he maintains that the transit accommodation retains its status as a residential building and is therefore, immune to the allegations of commercial misuse.

7. He places reliance on a decision rendered by this Court in ***MCD v. Children Book Trust***[1], wherein, it has been held that the portion of a building where no commercial activity is conducted and only the exempted work is carried out, would be exempted from the imposition of tax.

8. I have considered the submissions made by learned counsels appearing on behalf of the parties and have perused the record.

9. The contention raised by the respondent, which was upheld by the Tribunal, essentially hinged on the fact that the subject transit accommodation could not be categorized as *"Lodges Guest House"*. As per the Tribunal, it should be recognized as camp office of the Directorate General (ICFRE), used for serving a public purpose. The Tribunal further noted that the subject property solely provides transit accommodation for scientists, officers of the ICFRE, and visiting officials from the Government of India, with nominal charges ranging from Rs. 75 to Rs. 250 per day. The Tribunal observed that the assessing authority, however, applied use factor-4 for the purpose of assessment, disregarding the stipulations outlined in Bye-Law 9 of the Bye-Laws, 2004.

10. It has come on record that *vide* order dated 30.05.1991, the Government of India through Ministry of Environment and Forest, had constituted the ICFRE as an autonomous institution, which earlier

[1] 1980 SCC OnLine Del 63.

happened to be a subordinate office of the Ministry of Environment and Forest.

11. On 11.02.1994, the Ministry of Urban Development, through the Land and Development Office, New Delhi, allocated a parcel of land measuring 0.935 acres to the respondent for the purpose of transit accommodation. Learned counsel for the respondent asserts that the respondent receives grants-in-aid sanctioned by the President of India. Apart from the nominal charges ranging from Rs. 75 to Rs. 250 per day for accommodation, there is no evidence on record to suggest that the respondent is engaged in any commercial activity.

12. The petitioner's application of use factor-4 is predicated solely on the definition of a residential building as stipulated under Clause (A) of Bye-Law 9 of the Bye-Laws, 2004, which is reproduced as follows:

> *"9 (A) "residential building" shall mean any building used for dwelling purposes by a family/families/individual but excludes any premises for commercial use including lodging, guest house, hotel or similar purposes:"*

13. A perusal of the definition of a residential building under the applicable bye-laws reveals that it encompasses any structure used for dwelling purposes by families or individuals, while explicitly excluding premises utilized for commercial purposes, such as lodges, guest houses, or hotels.

14. The essence of the exclusion is based on commercial activity. It falls within the domain of reasonable classification to demarcate residential use and commercial use separately for the purpose of assessment. However, the identification of use, residential or commercial, must be based on a sound criterion. In the present case, the transit accommodation cannot be deemed to serve a commercial

purpose solely due to the nominal charges of Rs. 75 to Rs. 250 per day for accommodation. The character of the usage is not altered merely by the imposition of these minimal tariffs. It is evidentthat the ICFRE does not generate any revenue from the transit accommodation. The bye-laws explicitly delineate that use factor-1 applies to a range of property uses, including residential purposes, government or government-aided schools and colleges, public religious institutions, educational institutions recognized by government bodies, medical institutions, and similar entities. Conversely, use factor-4 is designated for properties associated with business activities, such as self-occupied commercial spaces, hazardous buildings, restaurants, hotels up to 2 stars, lodges, guest houses, banquet halls, and mercantile shops. For the sake of clarity, the table illustrating the nature of usage of property alongwith the corresponding use factors as reflected in the Self Assessment Property Tax form is reproduced hereunder as:-

"H. USE FACTOR

Factor ID	Use of Property	Use Factor
1.	Residential	1
2.	Business – Self Occupied/Tenanted	4
3.	Industrial – Self Occupied/Tenanted	3
4.	Govt/Govt aided Schools/Colleges	1
5.	Hotels – 3 Stars and above.	10
6.	Towers	10
7.	Hoardings	10
8.	Public Purpose	1
9.	Public Utility	2
10.	Religious Institution	1
11.	Telecommunication Tower	2
12.	Business - Vacant	2
13.	Industrial - Vacant	2
14.	Hazardous Building	4
15.	Workshops and Auto Repair Garages	3
16.	Restaurant	4
17.	Hotels – upto 2 stars	4
18.	Lodges	4

19.	Guest Houses	4
20.	Banquet Halls	4
21.	Recreation purpose – Theatres, Movie Halls, Assembly Halls, Baratghars, Museums, Exhibition Halls, Auditorium, Swimming Pool etc.	3
22.	Mercantile – Shops, Warehouses, STD Booths, Wholesale Traders, Transporters, Cold Storage, etc	4
23.	Sports Purpose – Gymnasium, Dance Halls, Club Rooms, Health and Sports Club, Bowling Alleys, Stadium, Recreation Piers etc.	3
24.	Colleges – Govt	1
25.	Colleges – UGC Recognised	1
26.	Colleges – Trust	2
27.	Educational Institutions – Fees upto Rs.600 per month	1
28.	Educational Institutions – Fees upto Rs.601 to Rs.1200 per month	2
29.	Educational Institutions – Fees above Rs.1200 per month	3
30.	Educational Institutions – Govt	1
31.	University	1
32.		
33.	Medical Institution – Govt.	1
34.	Medical Institution – Others (including nursing homes)	2
35.	Medical Education Institution – Govt.	1
36.	Medical Education Institution – 1	1
37.	Medical Education Institution – 2 (approved by tech. body)	2
38.	Medical Education Institution – 3	3
39.	Schools – Govt./Govt Aided.	1
40.	Schools – Fees upto Rs.600 per month	1
41.	Schools – Fees upto Rs.601 to Rs.1200 per month	2
42.	Schools – Fees above Rs.1200 per month	3
43.	Vacant Land – In Use	Relevant use factor
44.	Vacant Land – No Use	1

15. The juxtaposition of the sweep of use factor-1 and use factor-4 indicates a distinct demarcation. On one hand, use factor-1 is applied to the premises which do not generate income and are solely

established either for public purposes, such as residential buildings, government institutions, charitable organizations etc. On the other hand, use factor-4 is applicable to premises intended for profit generation and commercial purposes, including businesses, hotels, lodges, guest houses, and similar commercial entities. This clear distinction indicates the unique and non-overlapping purposes sought to be served by each use factor.

16. Even when the applicable Occupancy Factor is considered, it further confirms that for all government establishments, whether Government Residential Self-Occupied, Government Residential Rented, Government Non-Residential Self-Occupied, or Government Non-Residential Rented—the applicable use factor for all such properties remains to be use factor-1. The corresponding occupancy factors as reflected in the Self Assessment Property Tax form is reproduced hereunder as:-

I. OCUPANCY FACTOR (S–SELF OCCUPIED; R-RENTED)

Category	Type	Factor
Residential – Self Occupied.	S	1
Residential – Rented.	R	2
Non - Residential – Self Occupied.	S	1
Non - Residential – Rented.	R	1
Farmhouse - Residential Self Occupied.	S	1
Farmhouse - Residential Tenanted.	R	2
Govt - Residential Self Occupied.	S	1
Govt - Residential Rented.	R	1

Govt – Non - Residential Self Occupied.	S	1
Govt – Non - Residential Rented	R	1
Farmhouse – Non-Residential Self Occupied.	S	1
Farmhouse – Non-Residential Tenanted	R	1

17. In the impugned order, the Tribunal has explicitly considered the underlying objectives of the establishment of ICFRE. In paragraph nos.14 to 18, the Tribunal has rendered the following findings:

> *"14. Self-assessment Form provides for applicability of use factor- '4' in respect of the business activities, hazardous building, restaurants, hotels, lodges, banquet halls, STD booths, etc. The use factor-1 on the other hand, is applicable for educational institutions/ universities, Govt/Govt. aided schools/ Colleges, public purpose/residential purpose, etc.*
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> *15. The record reveals that the Appellant has been undertakingactivities and discharging its duties which are covered under 'Public Purpose'. TheCouncil/appellant is running a deemed university, namely, Forest ResearchInstitute located at Dehradun and the officers and Scientists working at Dehradunstay at the property in question while visiting Delhi. The Appellant chargesRs.75/- to Rs.250/- per day only which is quite nominal as compared to theamount charged by other Guest Houses and Lodges in Delhi.*
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> *16. Ld. Counsel for the Appellant has relied upon – MunicipalCorporation of Delhi vs Children Book Trust 18 (l90) DLT 332 insupport of his contention that the property in question being usedfor education and thus, is for 'charitable purpose'. The assessingauthority rejected the contention' raised by the Appellant observingthat there is no description available for the use wise category ofthe building denoting House Camp/ 'transit accommodation. This reason assigned by the assessing authority cannot be termed 'any reason' at all in the eyes of law. The assessing authority has not considered the purpose for which the property in question has been constructed/put to use or the activities being carried on by it and in fact, has not disputed that such activities are covered under the term "Public Purpose" as defined under Bye Law (9) of Delhi Municipal Corporation (Property Taxes) Bye Laws, 2004.*

> *17. We, therefore, hold that Use Factor-T is applicable in theinstant case. The appeal is accepted, and the impugned order isaccordingly set aside.*
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> *18. The Respondent is directed to refund the amount of 10,00,000/-(Rs. Ten Lakhs) deposited by the appellant for the purpose of compliance of section 170(b) of the Act within 45 days of this order."*

18. It is noteworthy that in determining the character of the assessee, it is imperative to consider the nature of activities undertaken at the relevant place rather than the *profits*. In essence, the test to ascertain the true character of an assessee should be *qua* the nature of the activity performed by the assessee and not the incidental surplus of funds, if any. The said position of law gains strength from the decision of the Supreme Court in the case of ***American Hotel & Lodging Association v. Central Board of Direct Taxes***[2].

19. The Supreme Court in ***Queens Educational Society v. Commissioner of Income Tax***[3], has held that income earned incidentally or profits incidental to main activity *per se* would not alter the innate character of the organisation.

20. Although the aforementioned decisions pertain to the interplay between the Income Tax Act, 1961 and educational institutions seeking tax exemption, the underlying legal principle that can be exposited is that when an authority seeks to impose tax under a particular head/category, the concerned authority must primarily consider the predominant and fundamental characteristics of the assessee, rather than relying on incidental or peripheral factors.

21. It remains incontrovertible that the respondent, in discharging public functions within the purview of the State, cannot reasonably be deemed to be engaged in commercial activity merely by virtue of

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[2] (2008) 10 SCC 509.
[3] (2015) 8 SCC 47.

levying nominal fees for the provision of residential accommodation to government officials who are staying in the subject premises in the course of their official duties. The nature of activity undertaken by the respondent is devoid of any commercial colour.

22. Having considered the facts and circumstances, legal position discussed above and the findings arrived at by the Tribunal, this Court, while exercising powers under Article 226 read with 227 of the Constitution of India, finds no grounds to interfere with the impugned order.

23. The impugned order is, therefore, unassailable. The petitions are consequently dismissed. All pending applications stand disposed of. No order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 21, 2024
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