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

\+ W.P.(C) 1117/2025

TARUN SARUP AGARWAL .....Petitioner

Through: Mr. Amit Sethi, Ms. Ekadhana Sethi and Mr. Rishabh Sharma, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL AND ANR. .....Respondents

Through: Mr. Sanjay Sharma, Additional Standing Counsel with Mr. Anand Sharma, Advocate for NDMC.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

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

% **29.01.2025**

<u>CM APPL. 5554/2025</u>

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

<u>W.P.(C) 1117/2025 & CM APPL. 5553/2025</u>

3. This writ petition is preferred on behalf of the Petitioner under Article 226 of the Constitution of India assailing the Assessment Order dated 26.11.2024 bearing Ref. No. A.O.NO.T.1-(2)/83 J.D(Tax)/2024 and the consequent demand/bill dated 27.11.2024 for a sum of Rs.2,14,84,792/-, both received by the Petitioner on 02.12.2024 as also for a direction to the Respondents to re-calculate and fix the Rateable Value.

4. Case of the Petitioner as averred in the writ petition is that Sh. M.S. Aggarwal, father of the Petitioner, who was the original owner of First

Floor, M-85, Connaught Place, New Delhi, passed away on 12.02.1993 and the property was inherited by the Petitioner, his mother and elder brother. Both relinquished their rights and title in the property in favour of the Petitioner vide Relinquishment Deed dated 05.01.2018 registered on 09.01.2018 and Petitioner became the absolute owner of the subject property *albeit* till date mutation has not been carried out.

5. It is averred that on 21.05.2024, Petitioner learnt about the receipt of notice dated 14.05.2024 sent by NDMC for a hearing scheduled on 22.05.2024 in the office of Respondent No.2. On 22.05.2024, Petitioner sent an e-mail to Respondent No.2 informing of his unavailability as he was out of town due to a prior commitment and requested for another date. However, the hearing was not adjourned and on 02.12.2024, an Assessment Order dated 26.11.2024 passed under Section 72 of NDMC Act, 1994 pertaining to subject property was received, wherein the assessment was at a Rateable Value of Rs.3,45,60,000/-. Tax Bill dated 27.11.2024 was received for a sum of Rs.2,14,84,792/-.

6. It is stated in the writ petition that Petitioner gave a detailed representation to the Respondents on 17.12.2024, bringing forth that right of hearing was not afforded to the Petitioner as also questioning the Rateable Value along with other objections. Receiving no response, Petitioner filed the present writ petition.

7. Learned counsel for the Petitioner *inter alia* urges that notice under Section 72 of the NDMC Act was not received by the Petitioner well in advance intimating the date of hearing of 22.05.2024 and that the notice was received only on 21.05.2024, i.e. one day prior to the hearing. Petitioner was out of town and he was informed telephonically on 21.05.2024 by his

employee of the receipt of this notice. Petitioner immediately sent an e-mail on 22.05.2024 to Respondent No.2 seeking deferment of hearing to a date after 02.06.2024. However, the hearing was not deferred and the impugned Assessment Order was passed without affording an opportunity of hearing to the Petitioner. It is also urged that the Assessment Order is non-speaking and does not even refer to a request made by the Petitioner on 22.05.2024 for deferment and simply records that none appeared for the Petitioner.

8. It is further argued that the Assessment Order is bad in law and cannot be sustained even on merits. In his representation dated 17.12.2024, Petitioner explained that the subject property is situated on the First Floor; has an entrance from common passage, which is in dispute in a litigation before a Court; and has no lift and due to these deficiencies, business of the Petitioner has been declining. It was brought out that the net income from the subject property during Financial Year 2023-24 was Rs.9,54,950/-. Supporting documents with the representation reflected that the actual rent fetched by the subject property was Rs.9-10 Lacs per annum and thus, it was inconceivable that Rateable Value could be assessed at Rs.3,45,60,000/-.

9. Issue notice.

10. Mr. Sanjay Sharma, learned Additional Standing Counsel accepts notice on behalf of NDMC and takes an objection to the maintainability of the writ petition on the ground that Petitioner is raising disputed questions of fact which cannot be adjudicated in a writ petition under Article 226 of the Constitution of India and in support relies on the judgment of the Division Bench of this Court in ***V.P. Aggarwal v. New Delhi Municipal Council, 2023 SCC OnLine Del 7505.***

11. Heard learned counsels for the parties.

12. Broadly understood, the grievances of the Petitioner with respect to the Assessment Order dated 26.11.2024 is that the same was passed without affording an opportunity of hearing to the Petitioner and this violates principles of natural justice. Petitioner takes a stand in the writ petition that notice dated 14.05.2024 under Section 72 of NDMC Act calling upon the Petitioner for a hearing on 22.05.2024 was received only on 21.05.2024, on which day, Petitioner was out of station. On learning of the said notice telephonically from his employee, Petitioner had immediately sent an e-mail on 22.05.2024 to Respondent No.2 intimating that the notice was received only on 21.05.2024 and that he was travelling out because of which he will be unable to attend the hearing on 22.05.2024. Request was made to change the date of hearing to any date after 02.06.2024. In support of this plea, Petitioner has placed on record the e-mail, which does fortify the stand of the Petitioner. Despite the e-mail sent by the Petitioner informing that he was out of town and the notice was received only a day prior to the hearing, NDMC proceeded to pass the impugned Assessment Order dated 26.11.2024.

13. Perusal of the Assessment Order indicates that the order is passed completely oblivious of the request made by the Petitioner on 22.05.2024. In fact, it is recorded in the order that personal hearing was accorded to the recorded owner on 22.05.2024, but none appeared on the said date. Once Respondent No.2 had thought it fit to grant opportunity of hearing and rightly so, on receipt of the e-mail dated 22.05.2024, the hearing ought to have been deferred. This has certainly prejudiced the Petitioner as he was not able to effectively defend the notice. In fact, after receiving the Assessment Order, Petitioner made a comprehensive representation on

17.12.2024, where again he pointed out that notice dated 14.05.2024 was received only on 21.05.2024 and sought recall of the Assessment Order. Detailed submissions were made on merits of the Assessment Order and a fresh hearing was also sought. Despite receipt of this representation also, NDMC made no efforts to grant hearing to the Petitioner. In my view, there is a violation of principles of natural justice and Petitioner deserves to be afforded a personal hearing in the matter and Court cannot agree with the counsel for NDMC that there are any disputed facts and the writ petition is not maintainable.

14. There is another aspect of the matter, as rightly flagged by counsel for the Petitioner. In paragraph 4 of the Assessment Order, it is stated that if the assessee provides correct details with supporting documents within 30 days, case will be considered accordingly. Within 30 days of the Assessment Order, Petitioner made a comprehensive representation dated 17.12.2024 but even then, he was never called for hearing and was not even informed whether his representation was pending or rejected and if so, why.

15. In light of the aforesaid facts and without entering into the merits of the case, this writ petition is disposed of, holding that Petitioner is entitled to a personal hearing so as to effectively represent his case in response to the notice under Section 72 of the NDMC Act. It is directed that Petitioner will appear for a personal hearing before Sh. Hari Singh Meena, Deputy Director (Tax), 9th Floor, Palika Kendra, NDMC, New Delhi, on 19.02.2025 at 03:00 PM. In case, any further information/document(s) are required by NDMC before the hearing, intimation shall be giving to the Petitioner in writing. It will be open to the Petitioner to furnish documents in his defence at the time of personal hearing.

16. After the hearing, fresh Assessment Order will be passed by NDMC, which shall be communicated to the Petitioner, who will be at liberty to take recourse to legal remedies, if aggrieved.

17. Impugned Assessment Order dated 26.11.2024 is set aside. Consequent demand/Bill dated 27.11.2024 is set aside to the extent the demand relates to the impugned Assessment Order.

18. Pending application stands disposed of.

JYOTI SINGH, J

JANUARY 29, 2025/shivam