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

\+ W.P.(C) 17956/2024 and CM APPL. 76382/2024

P. P. INTERNATIONAL SCHOOL .....Petitioner

Through: Mr. Akhil Sibal, Senior Advocate with Mr. Kamal Gupta, Mr. Shivek Trehan, Mr. Kartik Kumar, Ms. Muskan Puri, Ms. Ridhi Bajaj, Ms. Riya Nair, Mr. Ishaan Kumar, Ms. Sugandh Shahi, Ms. Aayushi, Mr. Sparsh Aggarwal, Ms. Yosha Dutt, Ms. Rashi Aggarwal and Mr. Aditya Dhull, Advocates for Petitioners.

versus

MUNICIPAL CORPORATION OF DELHI .....Respondent

Through: Ms. Sunieta Ojha, Standing Counsel with Ms. Divita Vashisht, Ms. Vasundha Priyansha and Mr. Rajeev Kumar Pandey, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

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

% **13.01.2025**

1. This writ petition is preferred on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India laying a challenge to the Suo Moto Assessment Order dated 27.11.2024 passed by the Respondent under Section 123D of the Delhi Municipal Corporation Act, 1957 ('DMC Act'); demand letter/bill dated 29.11.2024; and show cause notice dated 12.03.2021 issued under Section 123D of DMC Act as well as notice dated 18.12.2024 under Section 152A of the DMC Act, calling upon the Petitioner to show cause why penalty proceedings be not initiated against the Petitioner for not complying with demand letter dated 29.11.2024.

2. Mr. Akhil Sibal, learned Senior Counsel for the Petitioner submits that Respondent has unjustly imposed the penalty outlined in Section 123D(d) of DMC Act inasmuch as there is no wilful suppression or furnishing false information and/or non-filing of property tax returns by the Petitioner. Penalty has been levied basis an allegation that Petitioner filed its property tax self-assessment taking Use Factor Value of '1' rather than '3', whereas Petitioner had carried out self-assessment in strict compliance with the then existing judicial directives until the Supreme Court passed the judgment in ***Municipal Corporation of Delhi(s) v. Sri Aurobindo Education Society (Regd.) & Anr., Civil Appeal No.149/2013,*** decided on 21.03.2024. In this context, Mr. Sibal also draws the attention of the Court to order dated 06.01.2025 passed by the Supreme Court in Civil Appeal No.4545/2024 in a miscellaneous application.

3. It is further urged that the expression 'wilful suppression' necessarily relates to a conscious omission on the part of an assessee with the malafide intent to evade tax payment, which is not the case here and had the Respondent given an opportunity to the Petitioner to explain its case after issuance of the show cause notice in accordance with the directions of the Division Bench of this Court in ***Springdales School v. North Delhi Municipal Corporation & Ors., 2017 SCC OnLine Del 7050,*** Petitioner would have explained that there was no wilful suppression and the self-assessment was compliant with the settled law on the subject. It is argued that as per the directive of the Division Bench, a show cause notice under Section 123D of the DMC Act must contain specific and pointed particulars, as to whether, if so, what are the wilful and deliberate omissions or facts suppressed by the assessee and in relation to which assessment year/period

concerned, so as to enable the assessee to effectively answer the proceedings/assessments, if validly taken up. In the present case, impugned show cause notice dated 12.03.2021 is not in consonance with the judgment and after referring only to the period of property tax return, Petitioner was called upon to appear for a hearing with relevant documents to explain why assessment should not be made/revised/re-opened and the notice is in a standard printed format. It is urged by Mr. Sibal that without going into the merits of the case, it would suffice at this stage if a direction is issued to the Respondent to issue a fresh show cause notice to the Petitioner and Petitioner be permitted to explain its case along with relevant documents and effectively defend the allegations of wilful suppression.

4. Ms. Ojha, learned Standing Counsel for the Respondent submits that assessee cannot insist that show cause notice be issued in a particular format so long as opportunity is granted for a personal hearing and in the present case, admittedly, Petitioner was called upon to furnish its response to the show cause notice dated 12.03.2021 and a personal hearing was also granted. Insofar as the judgment of the Division Bench in ***Springdales School (supra)*** is concerned, it is argued that the said judgment was challenged by the Corporation in SLP(C) 14452/2017 and is pending consideration before the Supreme Court and therefore, no reliance can be placed on the same. She also vehemently submits that admittedly, Petitioner has not paid any property tax from the Financial Year 2020-21 till date and cannot claim any relief in equity till entire tax is paid up.

5. At this stage, Mr. Sibal fairly submits, on instructions, that Petitioner will deposit a sum of Rs.25 lacs with the Respondent within a period of two weeks from today without prejudice to the rights and contentions of the

Petitioner and subject to the same, a fresh show cause notice be issued by the Respondent and fresh assessment order be passed.

6. Heard learned Senior counsel for the Petitioner and Standing Counsel for the Respondent.

7. There is merit in the contention of learned Senior counsel for the Petitioner that the show cause notice dated 12.03.2021 is not in consonance with the directions of the Division Bench in ***Springdales School (supra)*** wherein it was *inter alia* held that show cause notice under Section 123D must contain specific and pointed particulars when the allegations against an assessee are of wilful suppression under sub-Section (d) of Section 123D of DMC Act. For ease of reference, relevant observations in the judgment are as follows:-

> *"**22.** We hereby record our conclusions:*
> *1. The Show Cause Notice under Section 123D has to contain specific and pointed particulars as to whether, and if so, what are the wilful and deliberate omissions or facts suppressed by the assessee and in relation to which assessment year/period concerned so as to enable it to effectively answer to the proceedings/assessements, if validly taken up;"*

8. Impugned show cause notice dated 12.03.2021 is a pre-typed standard format calling upon the Petitioner to appear before the concerned officer in person or through Authorized Representative with evidence and documents in support of its case and explain why the assessment should not be revised/ re-opened, with a minimal reference to the property number and the tax years in question. *Albeit* the judgment in ***Springdales School (supra)*** is pending consideration before the Supreme Court but as rightly pointed out by Mr. Sibal, there is no stay of the judgment and vide order dated 08.05.2017, Supreme Court has only suspended the operation of directions

contained in sub-paras (2) and (3) of paragraph 22 of the judgment of the Division Bench of this Court, as an interim measure. Appellant therein was granted liberty to proceed with the assessment but with a direction that effect will not be given to the final order until further orders by the Supreme Court.

9. In view of the aforesaid decision of the Division Bench of this Court and considering that the show cause notice dated 12.03.2021 is completely bereft of any particular with regard to the alleged wilful suppression by the Petitioner, it is directed that Respondent shall issue a fresh show cause notice to the Petitioner, compliant with paragraph 22(1) of the judgment in ***Springdales School (supra)***. After written response is received from the Petitioner, Respondent shall call upon the Petitioner to appear for a personal hearing through an Authorized Representative, for which time, date and venue shall be intimated. It will be open to the Petitioner to furnish requisite documents in support of its pleas and defence against the allegations levelled. After the personal hearing is concluded, fresh assessment order will be passed by the Respondent for the relevant period. This would be, however, subject to Petitioner depositing a sum of Rs.25 lacs with the Respondent within two weeks from today. Needless to state the deposit shall be without prejudice to the rights and contentions of the parties to the *lis*.

10. Accordingly, the impugned Assessment Order dated 27.11.2024 and consequential demand letter/bill dated 29.11.2024 are quashed for the aforesaid reason. Writ petition is allowed and disposed of, making it clear that Court has not entered into or expressed any opinion on the merits of the case.

11. Pending application stands disposed of.

JYOTI SINGH, J

JANUARY 13, 2025/shivam