(2008) 04 DEL CK 0184

In the Delhi High Court

Case No : Writ Petition (C) 7254 of 2005

J.K. Choudhary Charitable and Edu. APPELLANT

Vs

MCD RESPONDENT

Date of Decision : 10-04-2008

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 444
Delhi Rent Control Act, 1958 — Section 116G(2), 126(1), 126(2), 126(3), 126(4)
Evidence Act, 1872 — Section 114
General Clauses Act, 1897 — Section 27

Citation : (2008) 04 DEL CK 0184

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : P.K. Agarwal and Noor Alem, for the Appellant; Smita Shankar, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The petitioner M/s J.K. Choudhry Charitable and Educational Trust has filed the present writ petition impugning order dated 23.3.2005 passed by the Joint Assessor and Collector fixing rateable value of property No. C-17, Community Centre, Safdarjung Area, New Delhi for the period w.e.f. 1.4.1992, as per details give as under:

1) Rs. 3.08,100/- p.a. w.e.f. 1.4.1992

2) Rs. 4,51,050/- p.a. w.e.f. 1.9.1992

3) Rs. 4,25,990/- p.a. w.e.f. 1.4.1994

4) Rs. 7,97,304/- p.a. w.e.f. 21.9.2000

5) Rs. 9,82,254/- p.a. w.e.f. 1.4.2002

6) Rs. 84,890/- p.a. w.e.f. 7.7.2003

7) Rs. 12,50,744/- p.a. w.e.f. 15.2.2004

2. This is the second round of litigation. The petitioner had earlier filed writ petition No. 1634/1998 impugning ex-parte assessment order dated 22.3.1996 fixing rateable value of property at Rs. 8,55,970/- w.e.f. 1.4.1992. The said writ petition was allowed vide order dated 6th December, 2000 with the matter being remanded back to the Assistant Collector, Special Assessment Unit, Minto Road, New Delhi for fresh adjudication. The petitioner was also given liberty to file documents before the authority.

3. Learned Counsel for the petitioner admits that notice u/s 126(2) dated 26.3.1993 was issued for enhancement of the rateable value from Rs. 86,080/- to Rs. 8,55,970/- on account of increase in rent and in view of the amendment made to the Delhi Rent Control Act, 1958.

4. Learned Counsel for the petitioner submits that the impugned order is liable to be set aside because only one notice u/s 126(2) of the Act was issued on 26.3.1993 for revising rateable value w.e.f. 1.4.1992 and therefore rateable value could not have been revised to Rs. 4,51,050/- w.e.f. 1.9.1992, Rs. 4,25,990/- w.e.f. 1.4.1994, Rs. 7,97,304/- w.e.f. 21.9.2000, Rs. 9,82,254/- w.e.f. 1.4.2002 and to Rs. 12,50,744/- w.e.f. Rs. 15.2004. He relies upon proviso to Section 126(1) of the Act.

5. Before I deal with the contentions raised by the learned Counsel for the petitioner I would like to mention that the respondent/MCD had issued another notice u/s 126(2) of the Act dated 10th March, 2002 for revising rateable value of the property from Rs. 8,55,970/- to Rs. 21,09,200/- w.e.f. 1.4.2001. This fact is mentioned by the respondent/MCD in their counter affidavit but has been denied by the petitioner in the rejoinder. Learned Counsel for the respondent/ MCD has produced the original file before this Court. Original file indicates that the said notice was sent by registered post and the postal receipt is pasted at the back side of the said notice. Therefore I am inclined to believe the averments made in the counter affidavit filed by the respondent/MCD. Presumption u/s 27 of the General Clauses Act and Section 114 of the Evidence Act is applicable to the present case. Reference in this regard can also be made to Section 444 of Delhi Municipal Corporation Act, 1957 which provides for service of notice by registered post.

6. In order to examine the contention raised by learned Counsel for the petitioner reference is required to be made to Section 126(1), (2) and (4) of the Act. The said provisions read as under:

126. Amendment of assessment list.

(1) The Commissioner may, at any time, amend the assessment list

(a) by inserting therein the name of any person whose name ought to be inserted; or

(b) by inserting therein any land or building previously omitted; or

(c) by striking out the name of any person not liable for the payment of property taxes; or

(d) by increasing or reducing for adequate reasons the amount of any rateable value and of the assessment thereupon; or

(e) by making or cancelling any entry exempting any land or building from liability to any property tax; or

(f) by altering the assessment on the land or building which has been erroneously valued or assessed through fraud, mistake or accident ; or

(g) by inserting or altering an entry in respect of any building erected, re-erected, altered or added to, after the preparation of the assessment list:

Provided that no person shall by reason of any such amendment become 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].

(2) Before making any amendment under Sub-section (1) the Commissioner shall give to any person affected by the amendment, notice of not less than one month that he proposes to make the amendment and consider any objections which may be made by such person.

(4) No amendment under Sub-section (1) shall be made in the assessment list in relation to

(a) any year prior to the year commencing on the 1st day of April, 1988, after the 31st day of March, 1991;

(b) the year commencing on the 1st day of April, 1988, or any other year thereafter, after the expiry of three years from the end of the year in which the notice is given under Sub-section (2) or Sub-section (3), as the case may be.

7. Section 126(1) of the Act stipulates that the Commissioner can at any time amend the assessment list and change the rateable value of the property mentioned in the assessment list. Section 126(2) of the Act provides for issue of notice to the assessee or the owner of the property, when Commissioner wants to change or amend the rateable value. Use of the words "at any time" in Section 126(1) indicates that assessment list can be amended or modified without limitation. No specific time period is prescribed u/s 126(1) and 126(2) of the Act to amend the assessment list. Proviso to Section 126(1) of the Act however stipulates that assessee will not be liable to pay tax or enhanced tax except for the financial year for which notice u/s 126(2) has been given to him. Amendment of assessment list and revision of rateable value is distinct from liability to pay tax or enhanced tax. It therefore follows that assessment list can be amended or modified and the rateable value can be increased at any time but an assessee will be liable to pay tax or enhanced tax pursuant to the said amendment only

from the beginning of the year i.e. 1st April in the year in which notice for enhancement has been given. Thus, tax or enhanced tax cannot be charged prior to the financial year in which notice of enhancement/notice u/s 126(2) has been given.

8. In line with the above discussion, let us examine the factual background of the present case. It is admitted that notice for enhancement of the rateable value was given on 26.3.1993 for revising rateable value of the property from Rs. 86,080/- to Rs. 8,56,970/- w.e.f. 1.4.1992. by an ex-parte assessment order dated 22.3.1996 rateable value was enhanced to Rs. 8,55,970/-. The said rateable value after enhancement from 1.4.1992 continued to remain in the assessment list for the subsequent period also. It is well settled that rateable value once fixed and mentioned in the assessment list continues thereafter till objections are filed by an assessee or notice u/s 126(2) is issued and assessment order is passed modifying/amending the rateable value.

9. The contention of the learned Counsel for the petitioner that rateable value could be fixed only w.e.f. 1.4.1992 and not for the period subsequent thereafter w.e.f. 1.4.1993 or thereafter in the absence of fresh notice u/s 126(2) cannot be accepted. The reason for the same is apparent. Rateable value of the property was enhanced to Rs. 8,55,970/- by Assessment order dated 22.3.1996 w.e.f. 1.4.1992 pursuant to notice u/s 126 dated 26.3.1993. The said rateable value continued and was part of the assessment list in the financial years, thereafter till the remand order dated 6th December, 2000 was passed for fresh assessment and the order dated 22.3.1996 was set aside. After order dated 6th December, 2000 was passed, the proposal for enhancement of the rateable value got revived and the question of rateable value of the property in the assessment list again became subject matter of adjudication. It was not possible for MCD to perceive as a fortune teller that rateable value of Rs. 8,55,970/- fixed w.e.f. 1.4.1992 would be set aside and the matter would be remanded back. Once notice dated 26.3.1992 was issued and the rateable value was fixed at Rs. 8,55,970/- w.e.f. 1.4.1992 MCD was not required to issue any notice for enhancement u/s 126(2) of the Act as long as the rateable value did not exceed the figure of Rs. 8,55,970/-. MCD is not required to behave like a soothsayer and could not have presumed that assessment order dated 22.3.1996 would be set aside and the matter would have been remanded back vide order dated 6th December, 2000. In view of the above reasoning, I do not find any merit in the present writ petition challenging the rateable value as enhanced from time to time w.e.f. 1.4.1992 onwards till 31.3.2002 as the rateable value fixed vide order dated 22.3.2005 was below Rs. 8,55,970/-.

10. As far as rateable value w.e.f. 1.4.2002 is concerned MCD had issued notice for enhancement dated 10th March, 2002 u/s 126(2) of the Act for increase in rateable value from Rs. 8,55,970/- to Rs. 21,09,200/-. Though this fact is not mentioned in the assessment order but is a relevant and an important fact. This notice was given to the petitioner/assessee in terms of the proviso to Section

126(1) of the Act and the same cannot be ignored. The assessment can be justified on the basis of notice u/s 126(2) of the Delhi Municipal Corporation Act. As already held above amendment of assessment list and liability to pay tax are separate and distinct. Liability to pay tax depends upon the year in which notice is given. Though desirable, the giving of notice need not be mentioned in the assessment order. Like a decree sheet or a bill it can be prepared and dealt with after the order is passed.

11. Learned Counsel for the petitioner submitted that the said notice was issued in the name of Mr. J.K. Choudhry who had expired by then. I may mention here that mutation and change in the municipal records from M/s J.K. Choudhry to M/s Jugal Kishore Choudhry Charitable and Educational Trust was done by passing of the order dated 23.3.2005. There is not document on record to show that the petitioner had at any time applied for transfer of mutation in the prescribed form as provided in Section 128 of the Act. It appears that in the letter dated 1.03.2001, the petitioner trust had filed some documents relating to court proceedings etc. and compromise decree between the legal representatives of Late Mr. J.K. Choudhry to set up their claim for mutation of property in favour of the trust.

12. I may note here that during the course of assessment proceedings after order dated 6th December, 2000, the petitioner had submitted various documents including rent agreements etc. It is on this basis that rateable value has been fixed. The rateable value so fixed has not been challenged and questioned on merits. It is also not denied that the petitioner was not filing returns as required by the bye-laws. The petitioner did not before the assessing officer object to fixation of different rateable values for different periods. Learned Counsel for the petitioner has drawn my attention in this regard to letter dated 29th March, 2004 wherein it is stated that except for notice dated 26th March, 1995 proposing to fix rateable value w.e.f. 1st April, 1992, no other notice has been issued. The aforesaid statement made in the letter dated 29th March, 2004 cannot be construed as an objection before the Joint Assessor and Collector to fixation of different rateable values for different period w.e.f. 1.4.1992.

13. The last submission made by the learned Counsel for the petitioner was that the petitioner is entitled to benefit of Section 116G(2) and the assessment should have been made on unit area method. I am afraid this contention of the petitioner again cannot be accepted as Section 116G(2) requires that option should be exercised by an assessee before assessment proceeding is finalized. Even if it is presumed that after remand, assessment proceeding was pending and had not been finalized, the assessee should have exercised his option for unit area method before assessment order was passed. There is no document on record to show that the assessee had opted for unit area method prior to order dated 23.03.2005.

14. In view of the above I do not find any merit in the present writ petition and is liable to be dismissed.

15. However, I grant the petitioner/assessee six weeks time to make payment of the difference between the amount paid and the amount payable as per assessment order dated 25.3.2005. On such payment being made the petitioner will be granted rebate which is otherwise available on payment within the prescribed time. This concession is being granted to the petitioner as the question involved in the present writ petition relates to interpretation of Section 126 and the plea raised by the petitioner was plausible and required consideration.

No costs.

