(2012) 02 DEL CK 0077

In the Delhi High Court

Case No : CM (M) No. 250 of 2009

M/s Associated Journals Ltd. APPELLANT

Vs

MCD RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:
Delhi Municipal Corporation Act, 1957 — Section 169, 170

Citation : (2012) 3 AD 26 : (2012) 190 DLT 317

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : A.K. Singla with Mr. J.K. Sharma and Mr. Shitesh Khanna, for the Appellant; Maninder Acharya, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—Order impugned before this Court is the order dated 20.02.2009 whereby the Tax Tribunal had directed the petitioner to deposit the entire amount of tax in terms of the mandatory requirement of Section 169 of the Delhi Municipal Corporation Act (hereinafter referred to as the ''said Act''), before his appeal could be heard. This order is the subject matter of the present petition.

2. Record shows that the petitioner M/s Associated Journals Limited had filed an appeal against an order passed by the Assessing Officer wherein the property tax assessed qua his property i.e. Herald House, 5A Bahadur Shah Zafar Marg, New Delhi had been fixed at Rs. 1,73,800/-. He had filed an appeal before the appellate body. As a precondition for hearing his appeal, in view of provisions of Sections 169-170 of the said Act, he had been directed to pay the entire tax amount failing which his appeal could not be heard.

3. Learned counsel for the petitioner has addressed a three fold argument:

i. His first argument is that although Section 169 of the said Act has been amended but there is no difference in the language of the amended and unamended sections; even in the unamended provision of Section 169 (prior to the amendment Act 2003) no orders could be obtained from the Appellate Forum unless and until the disputed amount was deposited; the amended provision while making a reference to the full amount is a reference to the disputed amount. Further contention being that the judgment of the Apex Court Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, followed by the Division Bench of this court in 48 (1992) DLT 621 DB titled as Sunil Rai vs. MCD & Ors. is fully applicable and the petitioner has to deposit only the tax for the base year; the question of deposit of the entire amount does not arise;

ii. the second submission of the petitioner is based upon the judgment of the Apex Court reported in Garikapatti Veeraya Vs. N. Subbiah Choudhury, ; contention being that in para 23 (iv) it has clearly been enunciated that a right of appeal which is a right available to every litigant exists as on the date when the lis commenced and the law prevailing on the date of the institution of the suit or proceedings will be the applicable law. To elaborate this submission it is pointed out that objections had been filed by the petitioner before the Assessing Officer on 04.06.1988 which were finally dismissed on 01.12.1988; lis having commenced prior to the amendment of 2003, unamended provision of the said Act would be applicable and as such ratio of Shyam Kishore and Sunil Rai (supra) being applicable, it is only the tax for the base year which has to be deposited and not the entire tax.

(iii) Last submission of the petitioner is founded upon a submission that the impugned order has noted that the total tax demand is Rs. 3,66,65,533/- against which a deposit of Rs. 2,87,83,890/- has been made; contention being that this demand of Rs. 3,66,65,533/- has wrongly been mentioned as the notice which has been received by the petitioner from the Department (page 4 of the paper book) dated 23.03.2010 has made a demand of Rs. 2,62,30,861/-. On this ground also the impugned order is liable to be set aside; as more than the demanded amount has already been deposited by the petitioner.

4. Arguments have been countered.

5. Last submission of the learned counsel for the petitioner shall be dealt with first. Impugned order has noted certain amounts referred to above; show cause notice filed alongwith the paper book has also been perused. This petition is confined only to the impugned order; impugned order dated 20.02.2008 had directed the petitioner to pay the entire tax amount before his appeal could be heard. This petition is the subject matter of this order only; the contention of the petitioner that the demanded amount is in fact lesser than the amount already deposited by him cannot be gone into by this court at this stage; even if this submission is factually correct it will only be a plea available to the petitioner in the appellate forum. This submission, therefore, at this stage has no force and cannot be gone into.

6. Record shows that on 13.03.2006 at the option of the present petitioner/

assessee the matter had been remanded back to the Assessing Officer to assess his assessment as per the new assessment formula laid down under the said Act which was as per the unit area method. This assessment was for a period of 15 years i.e. with effect from 01.12.1988 to 31.03.2004. The order of the Assessing Officer is dated 13.03.2006. Appeal was filed before the Appellate Forum i.e. before Municipal Taxes Tribunal on 05.11.2008. This appeal was directed against assessment made by the Assessing Officer as per unit area method which was in terms of the option exercised by the petitioner. The judgment of Shyam Kishore (supra) is inapplicable in this scenario. The Apex Court in this case while upholding the vires of Section 170(b) of the said Act had noted that an appeal can be admitted/entertained without pre-deposit of the disputed tax but it can only be heard and disposed of after the disputed tax amount has been deposited; in this intervening period the appellate forum can adjourn the hearing giving time to the assessee to deposit the tax. The judgment of Sunil Rai (supra) which had followed Shyam Kishore (supra) had noted that the proper exercise of discretion by the appellate forum in cases where assessment orders have been framed for a number of years, is to direct the assessee to deposit the disputed tax in respect of the base year and then to proceed to hear and decide the appeal in respect to the base year assessment and after deciding the said appeal the decision of the appeal in respect of the base year would automatically govern the assessment for the subsequent years. These judgments were delivered admittedly at the time when assessment of property tax was being done according to the old method i.e. as per the rate-able value. In the instant case the assessee had opted for the assessment of his taxes by the new method which is the unit area method. It was not on the ratable value (RV) which was an assessment for collective years. The ratio of Shyam Kisore and Sunil Rai (supra) is not applicable.

7. Moreover the amendment of 2003 has brought about a clear change in the amended provision of Section 169 and 170 of the said Act. The relevant unamended provisions read as herein below as under:-

Delhi Municipal Corporation Act, 1975:

169. Appeal against assessment, etc. (1) An appeal against the levy or assessment of any tax under this Act lie to the court of the district judges of Delhi.

(2)-(6)................

170. Conditions of right to appeal-No appeal shall be heard or determined u/s 169 unless-

(a)................

(b) The amounts, if any, in dispute in the appeal has been deposited by the appellant in the office of the Corporation.

After the amendment of 2003, the amended provision reads as under:-

Delhi Municipal Corporation (Amendment) Act, 2003:

169. Appeal against assessment, etc.- (1) An appeal against the levy or assessment or revision of assessment of any tax under this Act shall lie to the Municipal Taxation Tribunal constituted under this section:

Provided that the full amount of the property tax shall be paid before filing any appeal:

8. The distinction in the language of the un-amended and amended provision is clear. Whereas under the un-amended Act, the appeal could not be heard or determined unless the amount in dispute has been deposited meaning thereby that in terms of the judgment of Shyam Kishore (supra) although it could remain on the board of the appellate body yet it could not be finally disposed of unless the assessee deposited the entire disputed amount. The amended provision has taken care of this lacuna. Under the amended provision unless the full amount of the property tax has been deposited by the assessee the appeal cannot be filed. There is a bar to the filing of the appeal itself.

9. Assessee in this case had opted for the unit area method of assessment which is a new method incorporated in the said Act by the amendment of 2003. It is thus clear that the amended provisions of the said Act would be applicable to the case of the present petitioner. Section 169 read with Section 170 of the amended provision bars the filing of the appeal unless the entire tax amount is paid. Impugned order in these circumstances directing the petitioner to pay the entire tax amount before his appeal could be taken up for hearing thus suffers from no infirmity.

10. In this factual scenario, the judgment of Garikapatti Veeraya (supra) dealing with the applicability of a statutory provision would have no application as in this case it was by a consent order and at the option of the assessee that the unit area method contained in the amended provision of the said Act was applied.

11. This impugned order directing the petitioner to pay the entire arrear before his appeal could be heard thus suffers from no infirmity. Petition is without any merit; it is dismissed.