(2017) 02 DEL CK 0292

In the Delhi High Court

Case No : 19958 of 2004

NDMC APPELLANT

Vs

ALOKIT EXPORTS P LTD RESPONDENT

Date of Decision : 13-02-2017

Acts Referred:

Delhi Rent Control Act, 1958, Section 3 - Act not to apply to certain premises
New Delhi Municipal Council Act, 1994, Section 115, Section 63

Citation : (2017) 02 DEL CK 0292

Hon'ble Judges : Hima Kohli

Bench : SINGLE BENCH

Advocate : Arjun Mitra, Jaskaran Kaur, R.P. Sharma

Judgement

1. The petitioner/NDMC is aggrieved by the judgment dated 10.02.2004 passed by the learned ADJ in an appeal preferred by the respondent/company under Section 115 of the NDMC Act, directed against an order dated 12.09.1996 passed by the Assessing Authority in respect of premises bearing No.5A, Amrita Shergil Marg, New Delhi. By the assessment order dated 12.09.1996, the learned Assessing Authority had dismissed the objections filed by the respondent/ company and determined the annual value of the subject premises at Rs.7,70,87,500/-, less 10% for the assessment years 1994-95, 1995-96 and 1996-97. The aforesaid annual value was arrived at on the basis of the cost of acquisition of the subject premises by the respondent/company that had purchased the same by virtue of a registered Sale Deed dated 12.05.1994.

2. Under the impugned order, the learned Appellate Court held that the rateable value of the land/building is required to be fixed on the basis of annual rent at which the land and building might reasonably be expected to let. Relying on the decision in State Trading Corporation of India Ltd. vs. New Delhi Municipal Council reported as 104(2003) DLT 808, wherein a Single Judge of this Court had held that the rateable value in respect of all the properties, residential or

commercial, whether constructed pre-1988 or post-1988 (the date on which Section 3 of the Delhi Rent Control Act was amended), whether rented out for some period or not, which are in selfoccupation, will be determined in accordance with the provisions of Section 6 of the Rent Act, the appeal of the respondent/ company was allowed and the Assessing Authority was directed to re-assess the subject premises by applying the principles of assessment laid down by the Supreme Court in Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others reported as (1980) 1 SCC 685, Lt. Colonel P.R. Chaudhary (Retd.) etc. vs. MCD and Ors. reported as (2000) 4 SCC 577 and State Trading Corporation of India Ltd. vs. New Delhi Municipal Council reported as 104(2003) DLT 808.

3. It is stated by learned counsel for the petitioner/NDMC that much water has flown under the bridge during the pendency of the present petition that was filed in the year 2004. He submits that aggrieved by the decision in the case of State Trading Corporation (supra), NDMC had filed an intracourt appeal, which was allowed by the Division Bench on 15.12.2005. The said decision was assailed by State Trading Corporation India Ltd. before the Supreme Court. By a common judgment dated 03.02.2016 in a batch of appeals, lead matter being State Trading Corporation India Ltd. vs. New Delhi Municipal Corporation Ltd., reported as AIR 2016 SC 1269, the Supreme Court held that where a building is self-occupied and where there is no sub-lease, the annual rent will have to be fixed on the lines laid down in the case of Dewan Daulat Rai Kapoor (supra) and India Automobiles Ltd. Vs. Calcutta Municipal Corporation and Another reported as (2002) 3 SCC 388, i.e., on the basis of what the landlord might reasonably expect to get from a hypothetical tenant. It was further clarified that fixation of the annual rent has to be done only under Section 63 of the NDMC Act as Byelaw 12 of the New Delhi Municipal Committee House Tax Bye-laws, 1962 would not have any application.

4. Counsel for the petitioner/NDMC submits that the Appellate Authority has already issued directions to re-assess the subject premises and the only direction prayed for now is that the said re-assessment be done in terms of the recent judgment of the Supreme Court in the case of State Trading Corporation (supra), by following the principles laid down in Dewan Daulat Rai Kapoor (supra) and India Automobiles (supra).

5. Mr.R.P. Sharma, learned counsel for the respondent/company submits that he has no objection to the above. But a date and time may be fixed for the NDMC to grant a hearing to the assessee and the Assessing Authority be directed to pass an order within a reasonable time.

6. Accordingly, the impugned order dated 10.02.2004 is modified to the extent that on the case being remanded back to the NDMC, the Assessing Authority shall re-assess the subject property by applying the principles laid down in Dewan Daulat Rai Kapoor (supra) and India Automobiles (supra), as has been clarified by the Supreme Court in State Trading Corporation (supra). An

authorised officer of the respondent/company shall appear before the Assessing Authority on 07.04.2017 and submit the objections. The said objections shall be considered by the Assessing Authority and thereafter, a speaking order shall be passed within eight weeks from the date of granting a hearing, under written intimation to the respondent/company. If the respondent/company is aggrieved by the order passed, it shall be entitled to seek its remedies in accordance with law.

7. The petition is disposed of.

