(2010) 09 MAD CK 0182

In the Madras High Court

Case No : Writ Petition No''s. 28957 and 28958 of 2003

Oswal Oils and Vanaspathi Industries Prop: Oswal Wollen Mills Limited — APPELLANT

Vs

The Commissioner Corporation of Chennai — RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:
Constitution of India, 1950 — Article 226
Municipal Corporation Act, 1919 — Section 137B

Citation : (2010) 09 MAD CK 0182

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : K.P. Gopalakrishnan, for the Appellant; P. Wilson, A.A.G. for R.1, for the Respondent

Judgement

M.M. Sundresh, J.—In view of the common issues involved in both the Writ Petitions filed against the Respondent, both the Writ Petitions are taken up together for a common disposal.

2. The Petitioner herein is the owner of the building situated bearing Nos. 106 and 107 in Cochrane Basin Road, Chennai - 21. An order of assessment was passed by the Respondent assessing the Petitioner''s property for property tax for the assessment year 1979 80. The Petitioner filed an appeal to the Taxation appeal committee, which has set aside the order of assessment and remanded the matter to the revenue authorities to levy the property tax afresh. Thereafter, the Respondent passed an order of assessment on 14.7.1986 and thereafter a further assessment was passed for the assessment year 1988-89 by enhancing the annual value from Rs. 19,383/-to Rs. 15,17,880/-. Thereafter a general survey was made directing the Petitioner to pay the half yearly tax of Rs. 1,36,555/-from the half year 1993-1994 by revising the annual value of the property from Rs. 19,383/-to Rs. 11,42,723/-. Further, another notice was issued on 12.3.2003 fixing the half yearly tax at Rs. 2, 82,154/-from the second half of the year 1998-99. The Petitioner gave a representation on 9.4.2003 and

8.5.2003 respectively raising objections. After considering the representations of the Petitioner, an order was passed on 18.9.2003 for the second half of 1993 -94 and also for the year 1998-99. In the said orders, the property tax fixed earlier was reduced marginally. The Respondent has also given the break-up of figures of the basis upon which the assessment has been made. Challenging the aforesaid orders, the Petitioner has filed the present writ petition.

3. Mr. K.P. Gopalakrishnan, learned Counsel for the Petitioner submitted that insofar as the assessment year 1993-94 is concerned, the proceedings have been initiated in the year 2003 and therefore, the same is barred by limitation as provided u/s 137-B of the Chennai City Municipal Corporation Act 1919. The learned Counsel further submits that in as much as the Tribunal remanded the levy of property tax in the year 1979 -1980, the subsequent levy having been made cannot be sustained. The further levy of property tax in the assessment years in question also cannot be sustained. It is further submitted by the learned Counsel that in as much as the demand is barred by limitation for the assessment year 93-94, the consequent levy of assessment made in the assessment year 98-99 also cannot be sustained.

4. Per contra, The learned Additional Advocate General appearing for the Respondent submitted that the question of limitation is a mixed question of fact and law and the same cannot be agitated before this Court under Article 226 of the Constitution of India and therefore, the Petitioner can only agitate his rights before the Taxation appeals Committee under the Chennai City Municipal Corporation Act.

5. The learned Additional Advocate General appearing for the Respondent further submitted that in as much as the Petitioner has accepted the order passed in the assessment year 1979-80, he cannot complain that the order of remand made by the Taxation appeal committee on 29.1.80 has not been complied with. It is further submitted by the learned Additional Advocate General that the assessment is fixed taking into consideration of the various factors including the market value. Therefore, when the assessments made in respect of the earlier years are under challenge, the same cannot be a basis for challenging the assessment made in respect of the subsequent years, which have been passed basing on the material available on record. Therefore, Additional Advocate General prayed that the writ petitions will have be dismissed.

6. It is seen from the records that for the assessment year 1993-94, the Petitioner has submitted representation by way of his objections before the Respondent and he has specifically risen that the demand made by the Respondent is barred by limitation. When such a plea has been taken by a Petitioner, a duty is cast upon the Respondent to consider the said plea while passing the order impugned. A perusal of the order impugned for the assessment year 1993-94 discloses that the Petitioner''s objection regarding the limitation and consequential demand has not been considered. Therefore, considering the subject factual position, the writ petition filed in W.P. No. 28957 of 2003 are

liable to be allowed by setting aside the order dated 18.9.2003 impugned therein and accordingly W.P. No. 28957 of 2003 are allowed and the Respondent is directed to consider the objections of the Petitioner, particularly with reference to the applicability of Section 137 of the Chennai City Municipal Corporation Act 1919 and thereafter pass appropriate orders. The Respondent is directed to pass appropriate orders on the question of limitation within a period of 8 weeks from the date of receipt of a copy of this order.

7. In so far as W.P. No. 28958 of 2003 concerned, this Court is not inclined to interfere with the order impugned on merits for the specific reason that the said order has been passed within the period of limitation. The question of levy of property tax is a question of fact, which cannot be agitated before this Court. When a specific forum is made available, discretion of this Court under Article 226 of the Constitution of India cannot be exercised, move goes in a revenue matter.

8. The difficulty of the Petitioner in complying with the condition of pre-deposit of 50 percent of the disputed tax for filing an appeal before the appellate authority cannot be a ground to approach this Court under Article 226 of the Constitution of India. Further as the learned Additional Advocate General states that the assessment in the year 1998 -99 has been made based upon the materials available on record. Therefore, it cannot be contended that in as much as for the earlier assessment year the order is set aside, the assessment order passed for the the subsequent years also has to be set aside. Even though the order of remand shows that the writ Petitioner succeeded in respect of the earlier assessment year that was passed only on a technical plea. In other words, the basis of the assessment will not go, as the same can only be challenged before this Court only on the question of jurisdiction, but not otherwise. Therefore, it is well open to the Petitioner to agitate his rights by way challenging the order impugned by filing an appeal in respect of the subject matter in W.P. No. 28958 of 2003. Accordingly, the writ petition no. 28958 of 2003 is hereby dismissed giving liberty to the Petitioner to file an appeal before the Taxation appeal committee within a period of 8 weeks from the date of receipt of a copy of this order. As mentioned earlier, if the appeal is filed by the Petitioner subject to the conditional pre-deposit, the same will have to be entertained by the taxation appeal committee without going into the question of limitation in filing the appeal. The writ petition no. 28957 of 2003 are disposed of accordingly. No costs.

