
(2002) 11 DEL CK 0086
In the Delhi High Court
Case No : C.W.P. No. 550 of 2002

R.K. Khanna

APPELLANT

Vs

New Delhi Municipal Council

RESPONDENT

Date of Decision : 29-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226
New Delhi Municipal Council Act, 1994 — Section 61

Citation : (2003) 106 DLT 445

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Sanjiv Khanna, for the Appellant; Arvind Sah, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The writ petition raises a question as to whether an accommodation which is used as a transit accommodation for the employees of a company is liable for property tax at residential or commercial rates.

2. The petitioner is the owner of property No. 90, Jor Bagh, Delhi and rented out the same to M/s. Glencore India Private Limited with effect from 1.5.1996. The Assessing Authority wide order dated 27.12.1999 assessed the property and included the notional interest on advance rent as part of the report and further held that the property is to be construed as one being used as commercial guest house. On the petitioner impugning the said decision before the Appellate Authority, the said order was set aside by an order dated 12.7.2000 and the matter was remanded back to the Assessing Authority with a direction to deal with the aspect of rate of tax.

3. It is stated in the writ petition that despite the said direction the Assessing Authority did not decide the issue of rate of tax and passed an order dated 10.1.2001. The bill was also received for the period from 1.4.1996 to 31.3.2000 in terms whereof the petitioner was charged property tax at rates applicable to

non-residential properties since rates are different.

4. The petitioner preferred four appeals in respect of four assessment years 1997-1998 to 2000-2001 in respect of the assessment order dated 10.1.2000 and the said appeals were dismissed by an order dated 30.8.2001 of the Appellate Authority. The Appellate Authority held that the petitioner was liable to pay property tax applicable to commercial properties and if an accommodation is used as a property for residence of its employees from time-to-time in the nature of transit accommodation, it has to be treated as a property used for commercial guest house or commercial activity. The decision of the Appellate Authority is based on the judgment of the Supreme Court in *New Delhi Municipal Council v. Sohan Lal Sachdev*, 83 (2000) DLT 664 (SC)=AIR 2000 Supreme Court 1859. Petitioner aggrieved by the said decision has filed the present writ petition.

5. The principal contention advanced by learned Counsel for the petitioner is that distinction has to be drawn between a property wherein a commercial guest house is running or the same is being used as a company guest house as against a property which is used merely as a transit accommodation. In case the property is used as a commercial guesthouse, persons come and occupy the room on tariff basis and the income from the property is the tariff charge for use and occupation of the property. It was contended that in the present case the property has been rented out to a company for being used for residence of the employees of the company and thus it cannot be said that any commercial activity is being carried on. Only a small portion of the property, as permissible under law, is being used for office purpose by the company to which even the respondent has no objection.

6. It is further contended on behalf of the petitioner that the property tax rates for the year 2000-2001 show that properties owned by companies, firms and other institutions and used as guest houses for its directors, partners or their employees are treated and regarded as properties being used for residential purpose and are charged property tax at the residential rates though they are not qualified for 25% rebate which is applicable to residential properties occupied by the owners themselves when taxes are paid within stipulated time. Learned Counsel for the petitioner referred to Section 61 of the New Delhi Municipal Act, 1994 (hereinafter referred to as the Act) which is as under:

"61. Rate of Property tax--(1) Save as otherwise provided in this Act, the property tax shall be levied on lands and building in New Delhi and shall consist of not less than ten and not more than thirty percent of the rateable value of lands and buildings:

Provided that the Council may, when fixing the rate at which the property tax shall be levied during any year, determine that the rate livable in respect of lands and buildings or portions of lands and buildings in which any particular class of trade or business is carried on shall be higher than the rate determined in respect of other lands and buildings or portions of other lands and buildings by

an amount not exceeding one-half of the rate so fixed :

Provided further that the tax may be levied on graduated scale, if the Council so determines.

Explanation--Where any portion of a land or building is liable to a higher rate of the tax such portion shall be deemed to be a separate property for the purpose of municipal taxation.

(23) The Council may exempt from the tax lands and buildings of which rateable value does not exceed one thousand rupees."

7. It is the expression used in the section "trade or business" which is in question since it was contended by learned Counsel for the petitioner that the use of accommodation for transit purpose for the employees of the company would not qualify as trade or business.

8. Learned Counsel for the petitioner referred to the judgment of the Supreme Court in *Municipal Corporation of Greater Bombay Vs. Mafatlal Industries and others, etc.*, Learned Counsel for the petitioner thus contended that it was different issue involved in the said case and the reliance placed by the Appellate Authority on the *Mafatlal Industries* case (*supra*), was misplaced since under the present Act in question, it is the expression "used for trade or business", which is in question, and it would be different from a premises "exclusively used as private residential premises."

9. Learned Counsel for the petitioner also further referred to the judgment of the Supreme Court in *Sohan Lal Sachdev* case (*supra*), where the issue concerned was of charging of electricity duty under the Electricity Act and as to whether the same was under the domestic or commercial category. The Supreme Court was of the view that the category would depend on the character of purpose of user of premises by owner and not place of user and held that the running of guest house in premises can be termed as commercial user and thus non-domestic rate would apply. However, learned Counsel for the petitioner referred to the facts set out in para 3 of the judgment to contend that the observations made in the judgment would apply in those facts alone since the premises in question had been let out to Sachdeva Guest House for running a guest house. It was thus contended that the premises in question was specifically let out for running a guest house. This was not so in the present case. It may be noticed that the said judgment was also referred to the earlier judgment in *Mafatlal Industries* case (*supra*).

The Supreme Court observed in para 11 as under :

"11. The two terms "domestic" and "commercial" are not defined in the Act or the rules. Therefore, the expressions are to be given common parlance meaning and must be understood in their natural, ordinary and popular sense. In interpreting the phrases the context in which they are used is also to be kept in mind. In *Stroud's Judicial Dictionary* (Fifth Edition) the term "commercial" is

defined as "traffic, trade or merchandise in buying and selling of goods." In the said dictionary the phrase "domestic purpose" is stated to mean use for personal residential purposes. In essence the question is, what is the character of the purpose of user or the premises by the owner or landlord and not the character of the place of user, for example, running a boarding house is a business, but persons in a boarding house may use water for "domestic" purposes. As noted earlier the classification made for the purpose of charging electricity duty by the NDMC sets out the categories "domestic" user as contradistinguished from "commercial" user or to put it differently "non domestic user". The intent and purpose of the classification, as we see it, is to make a distinction between purely "private residential purpose" as against "commercial purposes". In the case of a "guest house", the building is used for providing accommodation to "guests" who may be travellers, passengers, or such person who may use the premises temporarily for the purpose of their stay on payment of the charges. The use for which the building is put by the keeper of the guest house, in the context cannot be said to be for purely residential purpose, then the question is, can the use of the premises be said to be for "commercial purpose"? Keeping in mind the context in which the phrases are used and the purpose for which the classification is made, it is our considered view that the question must be answered in the affirmative. It is the user of the premises by the owner (not necessarily absolute owner) which is relevant for determination of the question and not the purpose for which the guest or occupant of the guest house uses electric energy. In the broad classification as is made in the rules, different types of user which can reasonably be grouped together for the purpose of understanding the two phrases "domestic" and "commercial" is to be made. To a certain degree there might be overlapping, but that has to be accepted in the context of things. The High Court was not right in setting aside the order of the learned Senior Civil Judge merely on the ground that the use of electricity for running the "guesthouse" does not come under the category of "commercial use". The High Court has not discussed any reason for holding that user in such a case comes under the category of "domestic" use."

10. Learned Counsel for the petitioner referred to certain judgments in order to expound the meaning of trade of business. In *Central Bureau of Investigation Vs. v.C. Shukla and Others*, . The Supreme Court while dealing with the expression "business" observed in para 27 as under:

"27. Coming now to the word "business", we need not search for its meaning in Black's Law Dictionary, or Words and Phrases for this Court has dealt with the word in a number of cases. In *Narain Swadeshi Weaving Mills Vs. The Commissioner of Excess Profits Tax*, , a five-Judge Bench of this Court held that the word "business" connotes some real, substantial and systematic or organized course of activity or conduct with a set purpose; and the above interpretation was quoted with approval in *Mazagaon Dock Ltd. Vs. The Commissioner of Income Tax and Excess Profits Tax*, . Again in *Barendra Prasad Ray and Others Vs. Income Tax Officer, "A" Ward, Foreign Section and Others*, , this Court

observed that the word "business" is one of the wide imports and it means an activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income."

In *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, , wherein it was held that the expression business was more comprehensive than the expression trade, the Supreme Court observed as under:

"81. There is no doubt that the word "business" is more comprehensive than the word "trade" since it will include manufacture which the word "trade" may nor ordinarily include. The primary meaning of the word "Trade" is the exchange of goods for goods or goods for money. However the word "trade" has also secondary meaning viz., business carried on with a view to profit. In fact the words "trade" and "industry" are also used interchangeably many times. It all depends upon the context in which the words occur. In *Words and Phrases Legally Defined*, Third Edition (Volume 4:R-Z by John B. Saunders, the word "trade" is explained as :

"Trade" in its primary meaning is the exchange of goods for goods or goods for money and in a secondary meaning it is any business carried on with a view to profit, whether manual or mercantile, as distinguished from the liberal arts, or learned professions and from agriculture. However, the word is of very general application, and must always be considered in the context in which it is used. As used in various revenue Acts, "trade" is not limited to buying and selling, but may include manufacture. In the expression "restraint or trade" the word is used in its loosest sense to cover every kind of trade, business, profession or occupation (47 Halsbury's Laws (4th edn.) para 1).

82. In *Skinner v. Jac Breach Ltd.*, (1927) 2 KB 220 at 225-227, DC), Lord Hewart, CJ. has observed:

"No doubt in a great many contexts the word "trade" indicates a process of buying and selling, but that is by no means an exhaustive definition of its meaning. It may also mean a calling or industry or class of skilled labour."

83. While interpreting the provisions of the Industrial Courts Act, 1919 Lord Wright, in *National Association of Local Government Officers v. Bolton Corporation*, (1943) AC 166 at 184, 185, has observed thus:

"Section 11 of the Act of 1919 (Industrial Courts Act, 1919) shows that "trade" is used as including "industry" because it refers to a trade dispute in the industry of agriculture..... Trade and industry are thus treated as interchangeable term. Indeed, "trade" is not only in the etymological or dictionary sense, but in legal usage, a term of the widest scope. It is connected originally with the word "tread" and indicates a way of life or an occupation. In ordinary usage it may mean the occupation of a small shopkeeper equally with that of a commercial magnate. It may also mean a skilled craft."

"84. In *Aviation Shipping Co. Ltd, v. Murray (Inspector of Taxes)*, (1961) 2 All ER

805 at 811 C.A., Lord Donovan has observed:

"A trade is an organized seeking after profits as a rule with the aid of physical assets."

11. The Division Bench of this Court in *Bharat Development (P.) Ltd. Vs. Commissioner of Income Tax, Delhi (Central)*, , observed that the definition of business "connotes the fundamental idea of the continuous exercise of an activity and that there should be some real, substantive, systematic or organized course of activity or conduct capable of producing profit."

12. In view of the aforesaid judgments, learned Counsel for the petitioner contended that the use of the premises for transit accommodation cannot fall within the parameters of any such activity of producing profit since there was no charges to be made and thus there would be no question of any profits.

13. Learned Counsel for the respondent on the other hand contended that the nature of the activity of even the transit accommodation would fall within the parameters of commercial activity. Learned Counsel also referred to Clause (v) of the lease agreement dated 21.5.1999 which was quoted in the counter affidavit as under:

"That the LESSEE shall use the said premises for office/guest house purpose provided the lessee shall not carry on any activity other than what is stated hereinbefore in any part of the premises which shall or is likely to be unlawful, obnoxious or is likely to cause nuisance, annoyance or hazard to any person, nor shall it store any goods of hazardous or combustible nature or by weight so heavy as to affect the construction of the structure of the building or to damage any part of the said premises".

14. It was contended that the lease itself provided for use of premises for office/guest house.

15. Learned Counsel for the respondent referred to the judgment of the Supreme Court in *Mafatlal Industries case (supra)*, and contended that the matter in fact was no more rest integra in view of the said judgment of the Supreme Court as also the subsequent judgment of the Supreme Court in *Sohan Lal Sachdev case (supra)*. In this context a reference was specifically made to the observations of the Supreme Court. The Magistrate considered the expression "exclusively used as a private residential premises" under the Bombay Electricity Duty Act. The Supreme Court in para 4 has held that:

"The guest houses are maintained by company or commercial undertaking on the other hand is a part of its commercial venture and such premises by no stretch of imagination can be held to be meant for exclusive use as private residential premises."

16. It is thus contended that the Supreme Court had clearly come to that conclusion that a guest house maintained by the company or commercial

undertaking is part of its commercial venture and cannot be said to be used exclusively as private residential premises.

17. Insofar as the reference made by the petitioner to the non-grant of rebate to such premises as compared to individually property owners for the assessment year 2000-2001, it was submitted that the said term only appeared in the bills for that year even though there was no resolution to that effect of the respondent council which is as under:

"A rebate of 25 percent of the property tax shall be allowed from the property tax for the year 2000-2001 to individual property owners who are using and occupying the property for self and there are no arrears of taxes for the period ending 31.3.2000, or the property tax for 2000-2001 with arrears, if any, are paid within the time allowed in the property tax bill for the year 2000-2001.

Provided that the property owned by the companies, firms and other institutions and used as guest houses or for Directors, partners and their employees shall not qualify for this rebate."

18. It was thus further contended that by reference to the said rebate it cannot be concluded that the property was to be treated as the residential property.

19. I have considered the submissions advanced by learned Counsels for the parties.

20. In my considered view there is no doubt that after the judgment of the Supreme Court in Mafatlal Industries case (supra), and Sohan Lal Sachdev case (supra), it cannot be said that the guest houses which are maintained by a company or commercial undertaking which form part of its commercial venture cannot be said to be exclusively for use as a private residential premises. The user thus cannot be said to be one of residential premises in view of these observations of the Supreme Court. In fact to this extent the matter is no more rest integra.

21. Insofar as the submission of the learned Counsel for the petitioner that the facts of those cases were different since premises were meant to be used as a guest house, though undoubtedly the same is correct, would not have any bearing on this aspect since it is the concept of residential and commercial user which has been laid by the Supreme Court in respect of guest house used by the company for their own officers.

22. Section 61 of the Act provides for the maximum and minimum percentage of the tax livable on the rateable value of property in question. It further provides that the rate can be specified as higher than other land and buildings where a portion of the same is utilised to carry on any particular class of trade or business. It is in this context that the expression trade or business has been used. The judgments referred to by the learned Counsel for the petitioner defines the express trade or business to imply any systematic activity for profit purpose. There is no doubt that on the user of the premises in question, there is no direct

profit motive. However, the Supreme Court in the case of Mafatlal Industries case (supra), and Sohan Lal Sachdev case (supra), has elucidated the concept in the context of user of premises and have come to the conclusion that the same form part of the larger business activity of those companies or commercial undertakings and in that context it came to the conclusion that the guest house maintained by the company form part of this larger commercial venture. This has also to be appreciated in the context that in the absence of the transit accommodation, the employees would be staying on payment of charges in quest house or hotels. This being the position it cannot be said that the carrying on of the activity of guest house/transit quest house for use by the employees of a company, even where no charges are being levied, cannot be said to be a commercial activity.

23. It may also be noticed that the clause of the lease agreement in question itself provides that the lessee would use the premises for office/guest house which has been treated as trade or business for purpose of determination of rate of tax.

24. In view of the aforesaid, I find no infirmity with the impugned order.

25. The writ petition is dismissed leaving the parties to bear their own costs.