

Sr. No.	Date	Orders
	15.08.2003	
		Present : Ms. Madhu Tewatia, Advocate for the petitioner / MCD. Mr. H.L. Narula, Advocate for the respondent.
		<u>CWP 525/2003</u>
		<p>The petitioner Corporation has impugned the order of the appellate authority dated 10.09.2002 in terms whereof the appeal filed by respondent No. 1 was allowed and the complete building was granted exemption under Section 115(4) of the Delhi Municipal Corporation Act, 1957 ( hereinafter to be referred to as, 'the DMC Act' ) from payment of property tax.</p> <p>The assessing authority passed the order in the remanded case to determine this issue regarding exemption from payment of property tax in view of the judgments of the Supreme Court. The assessing authority granted exemption for the self-occupied portion, but held that the area, which is rented out, is subject to property tax. The relevant records were produced before the assessing authority and the assessing authority was of the view that the purpose of the grant of exemption is not to enhance the income of the assessee to make surplus over expenditure as was being done in the present case.</p> <p>The appellate authority, however, found that the full property is liable to be exempted from property tax, since there was no distribution of dividend or bonus.</p> <p>The only issue agitated by learned counsel for the petitioner Corporation is that the impugned order of the appellate authority insofar as it grants exemption from payment of property tax for the portion, which is rented out, cannot be sustained in view of a recent judgment of the Supreme Court in <u>Indian Red Cross Society v. New Delhi Municipal Committee &amp; Ors.</u> , 2003 IV AD (S.C.) 491. In the said case, the Supreme Court was concerned with the provisions of Section 62 of the New Delhi Municipal Act, 1994, ( hereinafter to be referred to as, 'the NDMC Act' ), which is</p>

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		<p><del>para meteria</del> to the provisions of Section 115(4) of the DMC Act. It was held by the Supreme Court that the statutory exemption is not available to the society if a building is not self-occupied but is rented out. It was held that the Section does not make any allowance even if rental income is used for charitable purpose. The Supreme Court considered its earlier decision in <u>Municipal Corporation of Delhi v. Children Book Trust</u>, 1992 (3) SCC 390 and held that the observations made in the said judgment were made in the context of Section 115(4) of the DMC Act, which envisages societies occupying the subject matter premises, making profit or deriving income and not in connection with where a property is not in occupation of the society at all, but is rented out.</p> <p>In view of the aforesaid, the plea raised by the petitioner is no more <i>res integra</i> and is, in fact, fully covered by the aforesaid judgment of the Supreme Court in <u>Indian Red Cross Society's case</u> (supra). However, learned counsel for the respondent seeks to contend that some of the observations made in <u>Children Book Trust's case</u> (supra) have not been taken into account by the subsequent judgment of the Supreme Court in <u>Indian Red Cross Society's case</u> (supra), though he does not seriously dispute the fact that the issue raised by the petitioner Corporation is covered by the judgment in <u>Indian Red Cross Society's case</u> (supra).</p> <p>In my considered view, once the Supreme Court in <u>Indian Red Cross Society's case</u> (supra) has considered the earlier judgment in <u>Children Book Trust's case</u> (supra), it is not open to the respondent counsel to plead otherwise.</p> <p>In view of the aforesaid, the impugned order of the appellate authority is quashed to the extent it grants exemption from payment of property tax to respondent No. 1 assessee in respect of the portion of the property, which has been rented out and to that extent, the order of the assessing authority is sustained.</p>

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		<p>The writ petition is allowed in the aforesaid terms leaving the parties to bear their own costs.</p> <p>August 13, 2003 am</p> <p><i>Sanjay Kishan Kaul</i> SANJAY KISHAN KAUL, J</p>