

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : April 4, 2007.
% Date of Decision : April 27, 2007
+ Writ petition (Civil) No. 10683 of 2005 & CM 7831/2005

MUNICIPAL CORPORATION OF DELHI Petitioner
! Through Ms. Geeta Mehrotra, Advocate.

versus

\$ VARIETY SERVICES (SAKET) LTD. Respondent
^ Through Mr. O.P. Sharma, Advocate.

CORAM :-
*** HON'BLE DR. JUSTICE S. MURALIDHAR**

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. The Municipal Corporation of Delhi (MCD) has filed this petition challenging an order dated 6.5.2003 passed by the learned Additional District Judge (ADJ) Delhi in HTA No. 463 of 2002. By the said impugned order the learned ADJ while allowing the appeal filed by the respondent set aside the assessment orders dated 9.9.2002 and 30.9.2002 passed in respect of property No. 30 Local Shopping Centre J-Block Saket New Delhi. The impugned order has allowed the appeal of the respondent assessee on the short question/ground that since the property in the present case was to be assessed for the first time, the notice under Section 124(3) Delhi Municipal Corporation Act, 1957 ['DMC Act'] was mandatory. The matter has been remanded to the assessing authority with a direction to pass a fresh order after serving notice under Section 124(3) of the DMC Act.

2. Appearng on behalf of the petitioner Ms. Geeta Mehrotra, learned Advocate submits that the impugned order is contrary to the judgment of this Hon'ble Court in ***Santosh Chandiok vs. Municipal*** WP(C) 10683 of 2005

Corporation 1972 RLR (N) 98 which has been subsequently followed in ***Ansal Hotels Ltd. vs. Municipal Corporation of Delhi*** 104 (2003) DLT 142. It was held in ***Ansal Hotels*** that whether a notice was issued under Section 124 or Section 126 would not make any difference. The real difference lay in the legal consequences. If a notice was issued under Section 124 the liability to pay the tax would arise from the beginning of the following financial year while in the case of a notice issued under Section 126, the liability to pay the tax would arise from the beginning of the current year. In the instant case, the facts show that the notices had already been issued under Section 126 and 131 and the orders dated 9.9.2002 and 30.9.2002 of the Assessing Officer (AO) were rectification assessment orders. Since they were not fresh assessments, notice under Section 124 was not required. Accordingly it is submitted that the impugned order ought to be set aside.

3. On behalf of the respondent, Mr. O.P. Sharma, learned Advocate submits that in respect a claim arising out of these very assessment orders, the MCD had earlier filed a civil revision petition in this court against an order of attachment passed by the learned ADJ. That order was made on an application filed by the assessee when the claim for refund, pursuant to the remand order, was not being entertained. By an order dated 22.6.2005 this court dismissed the civil revision petition on the ground of delay. It is contended that the filing of the above civil revision petition has been suppressed in this writ petition. Secondly, it is contended that the judgment of learned Single Judge of this court in ***K. S. Gupta vs. Municipal Corporation of Delhi*** 2000 II AD (Delhi) 769 covers the point against the MCD and makes it mandatory for a notice under Section 124 has to be issued.

4. The undisputed facts in the present case are that the two orders in question by which the rateable value was fixed are dated 9.9.2002 and 30.9.2002. These two orders are in fact rectification assessment orders. The corresponding earlier assessment orders in respect of which these orders came to be made were dated 22.9.1994, 18.3.1996 and 30.3.2002.

5. The respondent assessee was first issued a notice on 18.3.1992 under Section 126 of the DMC Act proposing to fix a rateable value a Rs. 17,91,200 with effect from 1.4.1991. A notice was also issued under Section 131 of the Act. The respondent filed objections to the notice dated 7.5.1992. Since a third floor was constructed, another notice dated 11.3.1993 under Section 126 was issued. To this also objections were filed. An assessment order was passed on 22.9.1994 fixing the rateable value as proposed with effect from 1.4.1991. That order was not challenged by the respondent.

6. By the subsequent assessment order dated 18.3.1996 rateable value was fixed as Rs. 20,69,530 with effect from 1.4.1992. Even this assessment order was not challenged. A third notice dated 17.3.1999 was issued under Section 126 of the Act proposing the rateable value of Rs. 32 lakhs with effect from 1.4.1998. The assessee responded to this notice by filing certain documents. A further notice under Section 126 was issued proposing to fix the rateable value at Rs. 37 lakhs with effect from 1.4.2001. Thereafter the assessment order dated 30.3.2002 was passed fixing the rateable value at Rs. 29,44,500 with effect from 13.8.1998, Rs. 30,97,500 with effect from 17.7.2000 and Rs. 31,01,300 with effect from 17.1.2001.

7. At the request of the assessee, the rateable value fixed earlier was rectified and a rectification assessment order dated 9.9.2002 was passed. Thereafter, again at the request of the assessee, the rateable value fixed by the order dated 9.9.2002 was bifurcated in respect of the portion of the respondent and separate rectification assessment order dated 30.9.2002 passed. Against these two rectification assessment orders dated 9.9.2002 and 30.9.2002, the respondent filed statutory appeals which came to be allowed by the impugned order dated 6.5.2003 passed by the learned ADJ.

8. As regards the first objection of the respondent about suppression of the fact concerning the dismissal of the civil revision petition filed by the MCD before this court, it requires to be noticed that at the very first hearing of this petition, this court was informed by the counsel for the MCD that although the said fact had not been mentioned in the writ petition, indeed this court had on 22.6.2005 dismissed the civil revision petition. In that view of the matter it cannot be said that this writ petition was sought to be moved by the MCD without bringing to the notice of this court the fact of the earlier revision petition having been dismissed. Further, even in the order dated 22.6.2005 this court while dismissing the revision petition has taken note of the fact that the present writ petition already stood filed and has observed that this writ petition was yet to be heard. Therefore, there is no merit in the objection that the non mention in the writ petition of the dismissal of the civil revision petition constitutes a bar to entertaining the present writ petition. Further, the subject matter of challenge in the revision petition was not the order impugned here but the attachment order passed by the learned

ADJ consequent upon a refund sought by the respondent.

9. The two orders challenged by the respondent before the learned ADJ were rectification assessment orders. They were not fresh assessment orders being made for the first time as noticed by the learned ADJ. Therefore, the learned ADJ was not right in holding that the notice under Section 124 (3) was mandatory. For the same reason the reliance placed by the respondent on the decision of this court in **K. S. Gupta** also is misplaced. As rightly pointed out by the learned counsel for the MCD the position in law appears settled now by virtue of the decision of this Court in the **Ansal Hotels Ltd.** As already noticed hereinabove, several notices were indeed issued to the respondent assessee and, therefore, no complaint can be made that the notice was not issued under Section 124. It is accordingly held that the learned ADJ was not right in allowing the appeal only on this point.

10. For all of the above reasons the impugned order dated 6.5.2003 is set aside. The writ petition is allowed. The House Tax Appeal No. 463 of 2002 is restored to the file of the learned ADJ with a direction to dispose it of on merits preferably within a period of six months from the date of receipt of a certified copy of this order. With the above directions the writ petition is allowed. The application is disposed of.

11. A certified copy of this order be sent by the Registry of the Court to the learned Additional District Judge concerned within seven days.

April 27, 2007
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Sd/-
(S. Muralidhar)
Judge