(2019) 12 DEL CK 0262

Delhi High Court

Case No: Civil Writ Petition No. 12440 Of 2018, Civil Miscellaneous Application No. 48313 Of 2018

South Delhi Municipal Corporation		APPELLANT
	Vs	
India Habitat Centre		RESPONDENT

Date of Decision: Dec. 23, 2019

Acts Referred:

- Delhi Municipal Corporation Act, 1957 - Section 109, 109(2), 169, 169(1), 177, 220, 220(6), 225, 246, 254, 254(1), 255, 255(5), 457
- Code Of Civil Procedure, 1908 - Section 144
- Delhi Municipal Corporation (Amendment) Act, 2003 - Section 32
- Motor Vehicles Act , 1988 - Section 22B, 64, 64(2)

Hon'ble Judges: C. Hari Shankar, J

Bench: Single Bench

Advocate: Madhu Tewatia, Adhirath Singh, Ravinder Seth, Mohinder Singh, Ankur Goel, Puneet Sharma

Judgement

,,

C. Hari Shankar, J",,

1. The South Delhi Municipal Corporation (SDMC) challenges, by means of this writ petition, orders, dated 5th March, 2018 and 8th June, 2018,",,

passed by the learned Municipal Taxation Tribunal (hereinafter referred to as â€œThe Tribunalâ€) in HTA 137/MTT/2016 and HTA 4- 14/MTT/2016,",,

the former being an appeal, preferred by the respondent India Habitat Centre (hereinafter referred to as â€œIHCâ€) under Section 169 of the Delhi",,

Municipal Corporation Act, 1957 (hereinafter referred to as â€œthe DMC Actâ€), and the latter an application, purportedly preferred by IHC under",,

Section 144 of the Code of Civil Procedure, 1908 (CPC).",,

Facts,,

2. A plot of land, admeasuring 9.604 acres, situated in the Bal Bharti Institutional Area near Lodhi Road, was allotted, by the Land and Development",,

Office (L & DO) to the IHC, vide allotment letter dated 2nd May, 1988, at a total cost of Rs. 17,69,82,548/-, to accommodate all institutions engaged",,

in the promotion of the â€œHabitatâ€ concept, and house the offices of such institutions, as well as for providing common areas and facilities, to be",,

shared by all such institutions. Consequent to the allotment of the land, construction was raised, thereon, from time to time.",,

3. IHC entered into a written agreement, dated 2nd August, 1997, with M/s Old World Hospitality (Pvt) Ltd (hereinafter referred to as â€œOWHâ€),",,

for management and operation of the hospitality and conference facilities in the IHC, such as Convention Centres, restaurants, guesthouses for",,

members, library, etc., on an arrangement of share of gross opening revenue on percentage basis.",,

4. The aforesaid property (hereinafter referred to as â€œthe propertyâ€) was assessed, to municipal tax, on 29th April, 2003. IHC appealed against",,

the said assessment. Vide order dated 17th April, 2004, the learned Additional District Judge (hereinafter referred to as â€œthe learned ADJâ€) â€"",,

before whom the appeal was filed, as per the statutory dispensation which existed at that point of time â€" allowed the appeal of IHC, and remanded",,

the matter to the assessing authority to assess the property to Municipal Tax de novo, in accordance with the findings contained in the said order.",,

5. Aggrieved by one of the directions, contained in the aforesaid order, dated 17th April, 2004, of the learned ADJ, to the effect that the portion of the",,

land in the possession of OWH, and the common facility area, were to be assessed to actual rent, rather than on the basis of cost of land and",,

construction, as applicable to self-occupied premises, IHC challenged the order, before this Court, by way of WP (C) 14478/2004.",,

6. Vide order dated 21st August, 2008, the aforesaid WP (C) 14478/2004 was disposed of, by this Court, recording the submission, advanced by",,

learned counsel for the SDMC, that she was agreeable to the matter being remanded back to the concerned Deputy Assessor and Collector, for the",,

determination of the rateable value of the property, and the fact that learned counsel appearing for the IHC had no objection thereto. This Court,",,

therefore, directed the Deputy Assessor and Collector to, after hearing IHC, pass a fresh order in accordance with law.",,

7. Vide subsequent order, dated 21st January, 2009, the aforesaid order, dated 21st August, 2008, was modified, to a limited extent, by directing the de",,

novo assessment to be carried out by the Assessor and Collector, rather than by the Deputy Assessor and Collector.",,

8. In compliance with the aforesaid directions, the Assessor and Collector passed an order, on 27th May, 2011, reassessing the property by fixing",,

different rateable values, for the property, for different years. While doing so, the assessor took the market value of the land as at the time of",,

construction, into consideration.",,

9. Aggrieved thereby, IHC filed 11 appeals, before the learned Tribunal, all of which were disposed of, by the Tribunal, vide order, dated 5th",,

November, 2014. The learned Tribunal held, inter alia, thus:",,

(i) According to the bye-laws of the MCD, in the case of land taken from the DDA, the L & DO, a local body, or other approved developer of the",,

land, the cost of land was to be the amount actually paid for the land. In the present case, as IHC had purchased the land from the L & DO, the cost",,

of the land had to be treated as the actual price paid thereof, and could not be reckoned as the institutional rate fixed by the L & DO.",,

(ii) The contention, of IHC, that OWH was not a tenant, but a licensee, was rejected. OWH was held to be a tenant, and the payment received from",,

OWH was liable to be treated as rent, and not as license fee, as IHC had sought to contend.",,

(iii) IHC was found entitled to 10% rebate on the amount spent by it in providing paraphernalia, etc., to OWH.",,

(iv) The prayers, of IHC, for rebate of the amount paid to Government agencies for obtaining licence, permit, quota, etc. for running of OWH, as well",,

as for rebate on expenses and reimbursement made to OWH on the gross operating costs, were rejected, as no material, justifying such rebates, had",,

been produced.,,

(v) The amount spent by IHC on consideration were directed to be added in the expenses for the year in which the amount was spent, reckoned",,

w.e.f. 31st December.,,

(vi) IHC had also prayed for being granted statutory rebate for prompt payment made by them. The learned Tribunal found that the learned ADJ had,",,

in para 7 of his order dated 17th April, 2004, already directed the assessing authority to consider grant of such rebate, as was allowable, to IHC, for",,

having made timely payments, keeping in view the policy announced by the SDMC from time to time. The submission, of the SDMC, that such timely",,

payment rebate would apply only if payment had been made within the time given in the original assessment order was rejected, on the ground that the",,

said assessment order, as well as subsequent orders, had been set aside from time to time, so that the demand would become final only when a fresh",,

bill was issued as per the directions contained in the order, dated 5th November, 2014, of the learned Tribunal. The specific observations and findings,",,

of the learned Tribunal, on this aspect, are significant and merit, therefore, reproduction, in extenso, thus:",,

â€œ19. The last submission of the appellant which remains is regarding statutorily rebate for prompt payment. The same has already been allowed by,,

the learned ADJ in para 7 of his order by observing that it was needless to say that the assessing authority should also consider grant of such rebate to,,

the appellant as it may be entitled in law for making timely payment as per its policy announced from time to time.,,

20. Ld Counsel for the respondent wanted to escape from the effect of said observations by submitting the appellant could claim rebate only if it had,,

made the payment of the tax within the time given in the original assessment order. We are unable to agree with the same. The reason being that,,

since the original assessment order and subsequent order have been set aside from time to time and since the demand would become final only after a,,

fresh bill is based in accordance with the directions given herein, the appellant should be entitled to rebate for timely payment if it makes the payment",,

S.No.,Period,Rateable Value

1.,01.03.1994 to 31.03.1994,"₹ 5,66,88,810

2.,01.04.1994 to 31.03.1995,"₹ 5,35,39,620

3.,01.04.1995 to 31.03.1996,"₹ 5,35,39,620

4.,01.04.1996 to 31.03.199,"₹ 5,35,39,620

5.,01.04.1997 to 31.03.1998,"₹ 5,35,39,620

6.,01.04.1998 to 31.03.1999,"₹ 5,35,39,620

7.,01.04.1999 to 31.03.2000,"₹ 5,71,47,430

8.,01.04.2000 to 31.05.2000,"₹ 7,90,96,570

9.,01.06.2000 to 31.03.2001,"₹ 8,01.90,220

10.,01.04.2001 to 18.04.2001,"₹ 8,80,92,676

11.,19.04.2001 to 28.02.2002,"₹ 8,82,33,200

12.,01.03.2002 to 31.03.2002,"₹ 8,83,18,650

13.,01.04.2002 to 31.03.2003,"₹ 9,87,36,1.10

14.,01.04.2003 to 31.03.2004,"₹ 10,94,64,640

Nature of Payment,Working/Calculation (₹),Amount (₹)

Tax due,"(as per letter dt 29th April, 2016)","21,20,50,139/-

Rebate @ 20% available thereon,,"42,411,228/â€

Net tax payable,"212,059,139/- â€" 4,24,11,228/","16,96,44,911/-

Amount paid by November 2012,"19,81,53,782/- + 3,48,38,030/-","23,29,91,812/-

Therefore, excess tax paid","23,29,91,812/- â€" 16,96,44,911/-","6,33,46,901/-

(iii) The figure of Rs. 1,39,02,358/â€", as worked out representing the years as on 1st April, 2004, in the notice dated 29th April, 2016 was, therefore,",,

without any basis whatsoever.,,

(iv) As there were, in fact, no arrears as on 1st April, 2004, there could be no question of charging any interest, on arrears due from IHC, for the",,

period 1st April 2004 to 27th November, 2012. As such, the demand for interest, as computed in the notice dated 29th April, 2016, of Rs.",,

1,27,90,169/â€", was also without basis.",,

(v) The statement, in the notice dated 29th April, 2016, that interest was due, from IHC, for delayed payment, between 1st April, 2004 and 27",,

November, 2012, was also belied by the fact that the same communication ultimately worked out an amount of Rs. 81,45,503/â€" as refundable, to the",,

IHC, by the SDMC.",,

(vi) Insofar as the entitlement, of IHC, to timely payment rebate, was concerned, it was held that, as IHC had deposited property tax, every year, in",,

accordance with law, it was entitled to timely payment rebate, despite the illegal demand raised by the SDMC. The objection, by the SDMC, to the",,

claim for rebate, as raised by the IHC was, therefore, rejected.",,

21. Resultantly, the learned Tribunal quashed and set aside the demand of Rs. 1,39,02,358/â€", as well as the interest of Rs. 1,27,90,169/â€", â€" as",,

computed in the communication dated 29th April, 2016, and directed the SDMC to refund, to IHC, the amount due to it, as worked out by IHC in its",,

appeal, and application, within 90 days.",,

22. In allowing MA 4-14/MTT/2016, the learned Tribunal relied on Sections 177 and 109(2) of the DMC Act. Section 177, which confers the",,

â€œgeneral power of exemptionâ€, reads thus:",,

â€œ177. General power of exemption. â€" A Corporation may, by resolution passed in this behalf, exempt either wholly or in part from the payment of",,

any tax levied under this Act, any class of persons or any class of property or goods.â€ Section 109 of the DMC Act deals with â€œAdoption of",,

budget estimatesâ€.,,

Sub- section (2), thereof, reads thus:",,

â€œ109. Adoption of budget estimates. â€",,

****,,

(2) On or before the 15th day of February of each year every Corporation shall determine the rates at which various municipal taxes, rates and cesses",,

shall be levied in the next following year and save as otherwise provided in this Act the rates are so fixed shall not be subsequently altered for the year,,

for which they have been fixed.â€,,

23. In exercise of the powers conferred by Section 109(2), the MCD had been issuing yearly resolutions, from 1994-1995 onwards, setting out the",,

rates of property tax, rebates and exemptions, on year-to-year basis. For each year, however, the Resolution made the availability of rebate dependent",,

on payment being made within the time specified in the Resolution and absence of any arrears of property taxes up to the 31st March of the previous,,

year or, if there were any such arrears, payment thereof being made along with the demand for that year. By way of example, the condition for",,

availability of rebate, for the year 1994-1995, read thus:",,

â€œA rebate as given below shall be allowed on all payments of property taxes for the year 1994-95 if the payment is made within the time specified,,

below and there are no arrears of property taxes and education cess up to the period ending 31st March, 1994 or the same are also paid before or",,

along with the demand for the year 1994-1995.â€,,

The learned Tribunal has held, in the impugned order, dated 8th June, 2018, that, â€œsince the applicant (i.e. IHC) had made a payment of the tax well",,

within time, it is entitled to the rebate at the rate announced by the Corporation for the concerned period.â€ The submission, advanced by the SDMC,",,

that IHC was not entitled to any rebate, as there were arrears, unpaid during each of the said years, was rejected, on the reasoning that, as per the",,

case of the SDMC itself, the assessment was finalised only in 2011 and, consequently, there could not have been any demand prior to the said",,

finalisation of assessment. Sans any demand, held the learned Tribunal, there could not have been any arrears of tax in any of the said years.",,

Resultantly, IHC would be entitled to rebate.",,

24. The learned Tribunal also awarded interest, to IHC, on the excess amount payable by it, and refundable to it, relying, for the purpose, on the",,

judgments of this Court in M.C.D. v. Ramesh Chand Aggarwal Judgment passed by the Court in LPA No.1750/2005, J. S. Furnishing Ltd v. M.C.D.",,

2011 (177) DLT 796 and Ritu Sengupta v. M.C.D. 2008 VIII AD (Delhi) 371.,,

25. Resultantly, the learned Tribunal has allowed MA 4-14/MTT/2016, and has directed the SDMC to recalculate the tax payable, allow rebate as per",,

the Resolutions passed by the SDMC for the relevant years and to refund the excess amount with interest @ 15% p.a.,,

26. After the passing of the impugned orders, on 22nd June, 2018, a fresh decision was taken, by the Director, purportedly by way of correction of",,

mistakes in the Assessment Order dated 30th September, 2015 supra. Consequent thereupon, the arrears due from IHC, as on 1st April, 2004, have",,

been re-computed to Rs. 5,87,18,394/â€" (as against the figure of Rs. 1,39,02,358/â€") worked out in the order dated 30th September, 2015. Payment",,

of Rs. 3,48,38,030/â€" having been made, by IHC on 27th November, 2012, and, consequent to the order dated 30th September, 2015, an amount of",,

Rs. 81,45,503/â€" having been refunded to IHC, the order, dated 22nd June, 2018 notes the amount, paid by IHC on 27th November, 2011, to be,",,

effectively, Rs. 2,66,92,527/â€". Subtracting the said amount from the newly computed arrears of Rs. 5,87,18,394/â€" (as on 1st April, 2004), the",,

demand, outstanding on 1st December, 2011, was computed as Rs. 3,20,25,867/â€". Interest, on the said amount, for the period 1st December, 2011 to",,

30th June, 2018, at the rate of 1% p.m., has been worked out to Rs. 2,56,20,693/â€", and interest from 1st April, 2004 to 30th June, 2018, has been",,

worked out is Rs. 7,96,23,615/â€". The total amount of Rs. 11,16,43,482/â€" has, accordingly, been worked out, as payable by IHC, and IHC has been",,

directed to pay the said amount by 20th July, 2018. This demand, notes the order, supersedes the communication dated 29th April, 2016.",,

27. The aforesaid decision, dated 22nd June, 2018 was, however, challenged, by IHC, in appeal, before the learned Tribunal, vide HTA 312/MTT/2018",,

and HTA 316-325/MTT/2018. Vide order, dated 24th January, 2019, the said appeals were allowed by the learned Tribunal and the order, dated 27th",,

June, 2018, as well as the demand confirmed against IHC therein, were quashed and set aside.",,

28. This writ petition, as already noted hereinabove, challenges the aforesaid orders, dated 5th March, 2018 and 8th June, 2018, passed by the learned",,

Tribunal in HTA 137/MTT/2016 and MA 4-14/MTT/2016, respectively. However, as the communication, dated 29th April, 2016, was superseded by",,

the order dated 22nd June, 2018, the SDMC has, in its written submissions dated 14th December, 2018, abandoned its challenge to the order, dated 5th",,

March, 2018 supra, passed by the learned Tribunal in HTA 137/MTT/2016, reserving its right to challenge the said order, in case HTA 312/MTT/2018",,

and HTA 316-325/MTT/2018 were decided against the SDMC. As it transpires, HTA 312/MTT/2018 and HTA 316-325/MTT/2018 were, in fact,",,

decided against the SDMC, by the order, dated 24th January, 2019 supra, passed by the learned Tribunal. Subsequent to reserving of judgement in this",,

case, the said order, dated 24th January, 2019, passed by the learned Tribunal has been placed, on record, by the IHC, vide CM 13089/2019. In any",,

event, as the SDMC is not pressing the writ petition, qua the challenge to the order, dated 5th March, 2018, passed by the learned Tribunal, nothing",,

further is required to be noted, in this regard.",,

29. The challenge, in this writ petition, therefore, stands restricted to the order, dated 8th June, 2018, passed by the learned Tribunal in MA 4-",,

14/MTT/2016.,,

Submissions and analysis,,

30. I have heard Ms. Madhu Tewatia, learned counsel appearing for the SDMC, and Mr. Ravinder Sethi learned Senior Counsel appearing for IHC,",,

at length. Written submissions have also been filed by both sides, sitting down their respective submissions, as well as the judicial pronouncements, on",,

which they seek to place reliance.,,

31. Consequent on the submission, of the SDMC, that it was not pressing, for the present, its challenge to the order, dated 5th March, 2018 supra, of",,

the learned Tribunal, and was restricting its challenge to the order dated 8th June, 2018, the IHC has, in its â€œcounter written submissionsâ€,",,

advanced an argument that the aforesaid two submissions, of the SDMC, were mutually contradictory in nature. It is sought to be contended, by the",,

IHC, that the orders dated 5th March, 2018 and 8th June, 2018 â€œcorrelated each otherâ€, and that it was not, therefore, possible to adjudicate on",,

the validity of the latter order alone, without examining the correctness of the former. What is impliedly being sought to be argued, thereby, is that, if",,

SDMC gives up its challenge to the order dated 5th March, 2018, the challenge, to the subsequent order, dated 8th June, 2018 can, also, not survive.",,

32. Before examining the submission, I may note that, as the dominus litis, the SDMC is perfectly within its rights in deciding to pursue, or not to",,

pursue, any of the challenges, or prayers, contained in its writ petition. The SDMC has taken an informed decision not to pursue, for the present, its",,

challenge to the order dated 5th March, 2018 supra, passed by the learned Tribunal. The scope of examination, in this judgment, is, therefore,",,

necessarily restricted to adjudication of the correctness and validity of the order dated 8th June, 2018.",,

33. Can the challenge, to the validity of the order dated 8th June, 2018, be maintained in vacuo, in the absence of a challenge to the order dated 5th",,

March, 2018? The IHC would submit that it cannot, but I am unable to accede to the said submission.",,

34. In the order, dated 5th March, 2018, the learned Tribunal, in allowing the Appeal No. HTA 137/MTT/2016 has proceeded, essentially, on the",,

premises that, sans any demand, there can be no arrears. The letter, dated 29th April, 2016, against which the appeal has been preferred, computed",,

the arrears by subtracting, from the figure of Rs. 21,20,50,139/â€", the figure of Rs. 19,81,53,782/â€". The first surviving demand, for any tax arrears,",,

for the period 1993-1994 till 2003-2004, was raised on 26th November, 2015, following on the de novo assessment order dated 30th September, 2015,",,

as the earlier assessment order, dated 27th May, 2011, stood set aside, by the learned Tribunal, vide its order dated 5th November, 2014. There could",,

not, therefore, have been any arrears, of Rs. 1,39,02,358/â€" in the opinion of the learned Tribunal, on 1st April, 2004. Consequently, no interest, on the",,

said amount, could be demanded, either. It was on the basis of this reasoning that the learned Tribunal allowed HTA 137/MTT/2016. In as much as",,

the SDMC is not pressing its challenge to the said order, dated 5th March, 2018, of the learned Tribunal, I am not required to adjudicate on the",,

correctness of the above reasoning.,,

35. Though, in the order dated 5th March, 2018, in HTA 137/MTT/2016, the learned Tribunal also opined on the entitlement, of IHC, to timely",,

payment rebate, the substantive order, in that regard, was the subsequent order, dated 8th June, 2018, passed in MA 4-14/MTT/2016. In the said",,

order, the learned Tribunal has held that, as payments had been made, on a timely basis, by IHC, during the period 1993-1994 to 2003-2004, it was",,

entitled to timely payment rebate thereon.,,

36. Before proceeding to examine the validity of the said claim, I deem it appropriate to deal with a preliminary objection, by the SDMC, to the",,

entertainment, by the learned Tribunal, of MA 4-14/MTT/2016. SDMC has sought to contend that, inasmuch as Section 144 of the CPC was",,

inapplicable to the learned Tribunal, MA 4-14/MTT/2016 was, ab initio, not maintainable.",,

37. I am not persuaded to agree. To my mind, the issue of whether Section 144 of the CPC did, or did not, apply, is really tangential to the controversy",,

at hand. What matters, it is well settled, is the existence, or non-existence, of the power, whereunder a judicial authority purports to act, and not the",,

provision that is sought to be invoked in that regard, whether by the applicant or by the judicial authority itself. If, in other words, the prayer, of IHC, as",,

contained in MA 4-14/MTT/2016, was otherwise open for ventilation before the learned Tribunal, the provision, that IHC may have sought to invoke,",,

in order to ventilate the grievance, pales into insignificance. In Vijaya Bank v. Shyamal Kumar Lodh (2010) 7 SCC 635, the Supreme Court observed",,

thus in (para 25) of the report:,,

â€œIncorrect label of the application and mentioning wrong provision neither confers jurisdiction no denude the court of its jurisdiction. Reliefs sought,,

for, if falls within the jurisdiction of the court, it cannot be thrown out on the ground of his erroneous label or wrong mentioning of provision.â€",,

In a similar vein, it was held, in Collector of Central Excise v. Pradyumna Steel Ltd (2003) 9 SCC 234, â€œthat mere mentioning of a wrong provision",,

of law when the power exercised is available even though under a different provision, is by itself is not sufficient to invalidate the exercise of that",,

power.â€,,

38. The communication, dated 29th April, 2016, held IHC not to be entitled to timely payment rebate. The correctness, of the said finding of the",,

SDMC could, therefore, have been impugned, by the IHC, even in its appeal, under Section 169 of the DMC Act. The entitlement, to payment, of the",,

said rebate, was but a consequence, which would inevitably follow the ascertainment, of IHC, thereto, as night must follow the day. The fact that the",,

IHC chose to file a separate application, under Section 144 of the CPC, cannot make any difference, therefore, to the right, of IHC, to press its claim",,

to timely payment rebate.,,

39. That apart, the finding, of the learned Tribunal, that its powers were co-extensive with the powers that vested in the learned District Judge, before",,

whom appeals, under Section 169 of the DMC Act lay, prior to the substitution, of the said Section, by Section 32 of the Delhi Municipal Corporation",,

(Amendment) Act, 2003 (hereinafter referred to as â€œthe DMC Amendment Actâ€), w.e.f. 1st August, 2003, is, in my view, unexceptionable.",,

Section 457 of the DMC Act deals with â€œGeneral powers and procedure of the court of the District Judgeâ€, and reads thus:",,

â€œ457. General powers and procedure of the court of the District Judge. â€" The procedure provided in the Code of Civil Procedure, 1908 (5 of",,

1908), in regard to suits shall be followed, as far as it can be made applicable, in the disposal of applications, appeals or references that may be made",,

to the court of the District Judge of Delhi under this Act or any bye-law made thereunder.â€,,

The position in law, as it existed prior to 1st August, 2003 was, therefore, that the provisions of the CPC, insofar as they covered not only appeals but",,

also applications and references, were applicable, mutatis mutandis, to the District Judge exercising jurisdiction under the DMC Act, as they were",,

applicable to a Civil Court. The second proviso to Section 169(1) of the DMC Act, as amended by the DMC Amendment Act, empowered the",,

learned Tribunal to, with the approval of the District Judge, take up any case for which an appeal was pending before the court of the said District",,

Judge, and the third proviso, to the said Sub-section transferred all appeals, pending before the court of the learned District Judge, to the learned",,

Tribunal, for disposal, if requested by the applicant for the settlement of the case, on the basis of annual value. These provisions, read in juxtaposition",,

with Section 457 of the DMC Act, serve to indicate that an application, under Section 144 of the CPC â€" which would, under the pre-substituted",,

Section 169 of the DMC Act, have been maintainable before the learned District Judge â€" would lie before the learned Tribunal.",,

40. The jurisdiction, of the learned Tribunal, to adjudicate on the prayer, of IHC, for disbursement of timely payment rebate, would also stand",,

vouchsafed by the principle, well entrenched in law, that the power to decide an appeal would also carry, with it, the power to pass incidental or",,

ancillary orders, as would aid and assist discharge of the power to decide the appeal. The following passages, from I.T.O. v. M. K. Mohd Kunhi AIR",,

1969 SC 430 clearly enunciate this legal position:,,

â€œ6. There can be no manner of doubt that by the provisions of the Act or the Income Tax Appellate Tribunal Rules, 1963 powers have not been",,

expressly conferred upon the Appellate Tribunal to stay proceedings relating to the recovery of penalty or tax due from an assessee. At the same time,,

it is significant that under Section 220(6) the power of stay by treating the assessee as not being in default during the pendency of an appeal has been,,

given to the Income Tax Officer only when an appeal has been presented under Section 246 which will be to the Appellate Assistant Commissioner,,

and not to the Appellate Tribunal. There is no provision in Section 220 under which the Income Tax Officer or any of his superior departmental,,

officers can be moved for granting stay in the recovery of penalty or tax. It may be that under Section 225 notwithstanding that a certificate has been,,

issued to the Tax Recovery Officer for the recovery of any tax (the position will be the same with regard to penalty) the Income Tax Officer may,,

grant time for the payment of the tax. In this manner he can probably keep on granting extensions until the disposal of the appeal by the Tribunal. It,,

may also be that as a matter of practice prevailing in the department the Commissioner or the Inspecting Assistant Commissioner in exercise of,,

administrative powers can give the necessary relief of staying recovery to the assessee but that can hardly be put at par with a statutory power as is,,

contained in Section 220(6) which is confined only to the stage of pendency of an appeal before the Appellate Assistant Commissioner. The argument,,

advanced on behalf of the appellant before us that in the absence of any express provisions in Sections 254 and 255 of the Act relating to stay of,,

recovery during the pendency of an appeal it must be held that no such power can be exercised by the Tribunal, suffers from a fundamental infirmity",,

inasmuch as it assumes and proceeds on the premise that the statute confers such a power on the Income Tax Officer who can give the necessary,,

relief to an assessee. The right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the Appellate,,

Tribunal. Indeed the Tribunal has been given very wide powers under Section 254(1) for it may pass such orders as it thinks fit after giving full hearing,,

to both the parties to the appeal. If the Income Tax Officer and the Appellate Assistant Commissioner have made assessments or imposed penalties,,

raising very large demands and if the Appellate Tribunal is entirely helpless in the matter of stay of recovery the entire purpose of the appeal can be,,

defeated if ultimately the orders of the departmental authorities are set aside. It is difficult to conceive that the legislature should have left the entire,,

matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion. The assessee, as has been",,

pointed out before, has no right to even move an application when an appeal is pending before the Appellate Tribunal under Section 220(6) and it is",,

only at the earlier stage of appeal before the Appellate Assistant Commissioner that the statute provides for such a matter being dealt with by the,,

Income Tax Officer. It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use,,

all reasonable means to make such grant effective (Sutherland Statutory Construction, 3rd Edn., Articles 5401 and 5402). The powers which have",,

been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and,,

duties incidental and necessary to make the exercise of those powers fully effective. In Domat's Civil Law Cushing's Edn., Vol. 1 at p. 88, it has been",,

stated:,,

â€œIt is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions, but to all the cases where a",,

just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it.â€",,

7. Maxwell on Interpretation of Statutes, 11th Edn., contains a statement at p. 350 that â€œwhere an Act confers a jurisdiction, it impliedly also grants",,

the power of doing all such acts, or employing such means, as are essentially necessary to its execution. Cui jurisdictio data est, ea quoqe concessa",,

esse videntur, sine quibus jurisdictio explicari non potuitâ€. An instance is given based on Ex parte Martin, (1879) 4 QBD 212, 491 that â€œwhere an",,

inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment,",,

for the power would be useless if it could not be enforcedâ€.,,

8. The High Court in the present case has referred to certain decisions under the Motor Vehicles Act in which the question arose whether an interim,,

order of stay could be passed although Section 64(2) of the Motor Vehicles Act as amended did not expressly confer a power on the authority to pass,,

such an order. It was held in those cases that the power to stay was a necessary corollary to the power to entertain an appeal or revision:,,

Swarnambiker Motor Service v. Wahita Motor Service, Shortnotes (1956) 2 MLJ 12;T hemmalpuram Bus Transport Ltd. v. Regional Transport",,

Officer, AIR 1957 Kerala 142. The Full bench decision in Dharmadas v. State Transport Appellate Tribunal, (1962) Kerala LJ 1133 related to the",,

question whether a remand could be ordered in exercise of appellate jurisdiction under Section 64 of the Motor Vehicles Act in the absence of any,,

express power to that effect existing in the statute. It was held that the power to remand was incidental to and implicit in the appellate jurisdiction,,

created by Section 64. According to the decision in the Burhanpur Tapti Mill Ltd. v. Board of Revenue, Madhya Pradesh, (1955) 6 STC 670. since the",,

Board of Revenue had the power to adjudge the correctness of an order passed by the Commissioner under Section 22-B reopening an assessment,,

the Board had also the power to stay the fresh assessment proceedings started by the Assistant Commissioner in pursuance of that order. It was said,,

that the general principle was that in a taxing statute there was no room for what could be called the equitable construction, but that principle applied",,

only to the taxing part of the statute and not to the procedural part. It has further been observed that â€œwhere the legislature invests an Appellate,,

Tribunal with powers to prevent an injustice, it impliedly empowers it to stay the proceedings which may result in causing further mischiefâ€.",,

9. It is well-known that an Income Tax Appellate Tribunal is not a court but it exercises judicial powers. The Tribunal's powers in dealing with appeals,,

are of the widest amplitude and have in some cases been held similar to and identical with the powers of an appellate court under the Civil Procedure,,

Code. See CIT v. Hazarimal Nagji, 46 ITR 1168 and New India Assurance Co. Ltd. v. CIT, Excess Profits, Bombay City, (1879) 12 Ch D 438. In",,

Polini v. Hazarimal Nagi and Co., 31 ITR 844 and New India Assurance Co. Ltd., (1879) 12 Ch D 438 appeal to grant stay at p. 443:",,

â€œIt appears to me on principle that the court ought to possess that jurisdiction, because the principle which underlies all orders for the preservation",,

of property pending litigation is this, that the successful party, is to reap the fruits of that litigation, and not obtain merely a barren success. That",,

principle, as it appears to me, applies as much to the court of first instance before the first trial, and to the court of appeal before the second trial, as to",,

the court of last instance before the hearing of the final appeal.â€,,

*****,,

13. Section 255(5) of the Act does empower the Appellate Tribunal to regulate its own procedure, but it is very doubtful if the power of stay can be",,

spelt out from that provision. In our opinion the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its,,

appellate jurisdiction. This is particularly so when Section 220(6) deals expressly with a situation when an appeal is pending before the Appellate,,

Assistant Commissioner, but the Act is silent in that behalf when an appeal is pending before the Appellate Tribunal. It could well be said that when",,

Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to",,

its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings as will prevent the,,

appeal if successful from being rendered nugatory.â€,,

Conferment, on the learned Tribunal, of the power to decide the appeal of IHC â€" by Section 169 of the DMC Act â€" would, therefore, carry, in its",,

wake, the power to pass incidental or ancillary orders in respect thereof. Viewed thus, too, the learned Tribunal was empowered to decide the",,

challenge, by the IHC, to the rejection, in the letter dated 29th April, 2016, of its prayer for prompt payment rebate. This would necessarily entail, with",,

it, the power to direct grant of such rebate, if found allowable. For this reason, too, the objection, of the SDMC, to the entertaining by the, learned",,

Tribunal, of the application, of IHC, under Section 144 of the CPC, in my view, merits rejection.",,

41. The submission, of the SDMC, that the learned Tribunal acted in excess of its jurisdiction, in entertaining the application, filed by IHC, under",,

Section 144 of the CPC is, therefore, devoid of substance.",,

42. On merits, however, I am unable to subscribe to the view, expressed in the order, dated 8th June, 2018, to the effect that IHC would be entitled to",,

prompt payment rebate.,,

43. As has already been noted, hereinabove, the learned Tribunal, in para 19 of its order dated 5th November, 2014 â€" which was never challenged",,

and which, accordingly, has attained finality between the SDMC and the IHC inter se â€" specifically held that, as the original assessment order, and",,

order passed subsequent thereto, was set aside from time to time, the demand would become final only after a fresh bill was raised in accordance with",,

the directions contained in the order dated 5th November, 2014, and that IHC would be entitled to rebate for timely payment if it made payment within",,

the time allowed in the said fresh bill. Consequent to, and purportedly in accordance with the directions contained in the order dated 5th November,",,

2014, a demand of Rs. 78,947,390/â€" was raised, against IHC, by the SDMC, vide letter dated 26th November, 2015. This letter was, however,",,

superseded, by the SDMC itself, vide communication dated 29th April, 2016. This latter communication, dated 29th April, 2016, did not contain any",,

demand against IHC. Resultantly, therefore, there being no demand, against IHC, issued consequent to, and in accordance with, the order, dated 5th",,

November, 2014 supra of the learned Tribunal, there could be no question of prompt payment, by IHC, of the said demand and consequently, there",,

could be no question of any entitlement, of IHC either, to prompt payment rebate.",,

44. The learned Tribunal has, in the impugned order dated 8th June, 2018, held IHC to be entitled to timely payment rebate on the ground that, during",,

the period of 1993-1994 to 2003-2004 , IHC had been making timely payment of the municipal tax due from it. This, according to the learned Tribunal,",,

entitled IHC to timely payment rebate. In my opinion, it was not open to the learned Tribunal to grant timely payment rebate, to IHC, on the premise",,

that it had made timely payments of municipal tax during the period 1993-1994 to 2003-2004, in view of the fact that, in the order dated 5th November,",,

2014, the learned Tribunal has itself held that, as the demand for tax was not final, the entitlement, of IHC, to timely payment rebate, would arise only",,

if it made timely payment of the demand to be raised consequent to, and in accordance with the said order dated 5th November, 2014. The specific",,

finding, of the learned Tribunal, as it figures in para 20 of the order dated 5th November, 2014, in this regard, is that â€œsince the original assessment",,

order and subsequent order have been set aside from time to time and since the demand would become final only after a fresh bill is based in,,

accordance with the directions given herein, the appellant should be entitled to rebate for timely payment if it makes the payment within the time",,

allowed nowâ€. In fact, interestingly, in para 16 of the impugned order dated 8th June, 2018, the learned Tribunal has accepted the submission, of the",,

SDMC, that the demand had been finalised only in 2011. This finding, of the learned Tribunal, directly contradicts its basic premise, that timely",,

payment, of the entire tax, due from it, had been made by IHC, during the period 1993-94 to 2003-2004. If the demand became final only in 2011,",,

there could be no question of IHC having liquidated its entire tax arrears, in a timely fashion, during the period 1993-1994 to 2003-2004.",,

45. As it transpires, however, after the demand thus â€œbecame finalâ€, the fresh bill that came to be raised, on 26th November, 2015, was",,

withdrawn on being superseded by the communication dated 29th April, 2016, which did not contain any demand against IHC. Had the said",,

communication, dated 29th April, 2016, raised the demand against IHC, and had IHC made payment of the said demand in a timely fashion, then, by",,

operation of para 20 of the order, dated 5th November, 2014 â€" which, by virtue of its never having been challenged, has attained finality â€" IHC",,

would have been entitled to timely payment rebate. No such demand having, however, been raised, the learned Tribunal, in my view, materially erred",,

in granting timely payment rebate to IHC on the basis of the payments made by IHC during the period 1993-1994 to 2003-2004 â€" which period had,,

already been held, vide the order dated 5th November, 2014 of the learned Tribunal, not to be relevant for the purpose of grant of timely payment",,

rebate. In effect, therefore, in granting timely payment rebate to IHC, on the basis of the payments made by it during the period 1993-1994 to 2003-",,

2004, the learned Tribunal has sat in review over its earlier decision dated 5th November, 2014, without any party having challenged the said decision.",,

This, in my view, was clearly impermissible.",,

46. Additionally, if the figures contained in the communication, dated 29 th April, 2016, of the SDMC, were to be accepted, IHC was in arrears, on 1st",,

April, 2004, to the tune of Rs. 1,39,02,358/-. This position, if accepted, would also defeat the proposition that IHC had made timely payment of its",,

taxes during the period 1993-1994 to 2003-2004. Inasmuch as SDMC has, however, chosen not to pursue its challenge to the appellate order, dated",,

5th March, 2018, of the learned Tribunal, I refrain from opining further on this score.",,

47. For the aforesaid reasons, I am of the view that the learned Tribunal erred, in fact as well as in law, in holding IHC to be entitled to timely",,

payment rebate, in the order dated 8th June, 2018.",,

48. In view of the fact that the SDMC has chosen not to press its challenge to the order, dated 5th March, 2018, passed by the learned Tribunal in",,

HTA 137/MTT/2016, no occasion arises, for me to pronounce any further on the aspect in controversy. Insofar as the direction for payment of",,

interest, in the order dated 8th June, 2018, is concerned, the said direction relates to the balance payable to IHC, after recalculation of the tax payable",,

by it, and allowing of rebate thereon. Inasmuch as the recalculation of tax is relatable to the order, dated 5th March, 2018, passed in HTA",,

137/MTT/2016, it would not be appropriate for me to pronounce, one way or the other, regarding the entitlement, of IHC, to interest. This issue is,",,

therefore, left open, to be decided in an appropriate case at the appropriate stage.",,

49. The present order is, therefore, limited to deciding the issue of the entitlement, of IHC, to timely payment rebate, which issues stands decided in",,

favour of the SDMC and against IHC, in the terms already set out hereinabove.",,

Conclusion,,

50. In view of the fact that the SDMC has chosen not to press its challenge to the order, dated 5th March, 2018, passed by the learned Tribunal in",,

HTA 137/MTT/2016, leaving the contentions, in that regard, open to challenge at a subsequent stage, the present writ petition is disposed of, by setting",,

aside the order, dated 8th June, 2018, passed by the learned Tribunal in HTA 4-14/MTT/2016, to the extent the said order holds IHC to be entitled to",,

timely payment rebate. All other issues, raised in this writ petition, are left open, to be decided at an appropriate stage, in appropriate proceedings.",,

51. There shall be no order as to costs.,,