Airports Authority of India Vs Delhi Cantonment Board

Writ Petition (C) 3615 of 2003

Court: Delhi High Court

Date of Decision: May 31, 2011

Acts Referred:
Cantonments Act, 1924 â€" Section 103, 64, 68(1), 69, 71#Constitution of India, 1950 â€" Article 226#Delhi Municipal Corporation Act, 1957 â€" Section 126, 169

Citation: (2011) 6 AD 79 : (2011) 124 DRJ 370 : (2011) 4 ILR Delhi 409

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: B.B. Jain and Anjana Gosain, for the Appellant; R. Nanavaty, for the Respondent

Final Decision: Allowed

Judgement

S. Muralidhar, J.
The challenge by the Petitioner, Airports Authority of India ("AAI"), is to an assessment order dated 24th February

2003 passed by the Respondent Delhi Cantonment Board ("DCB") finalizing the annual property tax assessments for the years 1998-99 at Rs.

12,10,40,791/-, for 1999-2000 at Rs. 13,87,01,935/- and for 2000-2001 at Rs. 16,64,71,391/-. The petition also challenges a bill dated 24th

February 2003 raised by the DCB calling upon AAI to pay Rs. 20,12,06,539/- as house tax under the Cantonments Act, 1924 ("CA, 1924") for

the period 1st April 1998 to 31st May 2002.

2. On 26th May 2003, this Court directed that subject to AAI depositing a sum of Rs. 51,00,000/-, the impugned demand for property tax would

remain stayed.

3. AAI states that in the year 1940, 718.85 acres of land within the jurisdiction of the DCB comprising Terminal I-B and the domestic arrival

buildings consisting of ground floor and mezzanine floor was purchased from the DCB for a sum of Rs. 4,61,95,600/-. This comprised capital cost

of the original Terminal I building at Rs. 2,86,54,506/-, electrical installations costing Rs. 1,73,16,144/- which included additions and alterations

and cost of land at Rs. 313/- per acre for 718.85 acres at Rs. 2,25,000/-. Terminal I-A was reconstructed in 1998 and the cost of reconstruction

as on 31st March 2001 was Rs. 14,32,12,000/-. Additions and alterations were periodically carried out to Terminal I-B which was originally

constructed in the year 1939-41. The cost of construction of Terminal I-B if reconstructed as on 31st March 2001 would, according to the

Valuation Report obtained by AAI, would be Rs. 13,96,94,000/-. In 2000-2001 a domestic arrival hall was reconstructed and as on 31st March

2001 the cost of reconstruction as per the said Valuation Report was Rs. 6,62,50,600/-. It is stated that the total cost of reconstruction of all three

terminals as on 31st March 2001 excluding the cost of machinery, air-conditioning and other equipments was Rs. 34,91,56,000/-. The area under

self-occupation of the AAI is stated to be 12136.65 sq. m., the common area 15178 sq. m and the area given to airlines etc. 7757.65 sq. m. thus

totaling 35072.30 sq. m. It is stated that the land appurtenant to the superstructure of 26388 sq. m. (comprising Terminals I-A and I-B and the

domestic arrival hall) has also to be valued at Rs. 313/- per acre which works out to Rs. 14,250. On the basis of the judgment in Municipal Board,

Saharanpur Vs. Shahdara (Delhi) Saharanpur Light Rail Co. Ltd., depreciation at 10% on the value of the land and terminal buildings is claimed as

it is used by lakhs of people.

4. AAI states that since the above property on which the airport stood belonged to the Government of India till 1994, only service charges were

payable. AAI was constituted as a separate entity by the Airport Authority of India Act, 1994 and became liable to pay property tax to the DCB.

It is stated that the AAI gave on licence to the various airlines spaces for counters in the centrally air-conditioned halls with watch and ward,

electricity, water and other facilities but without any rights therein.

5. It is stated that a notice dated 26th March 2001 was issued u/s 68(1) of the CA Act, 1924 by the DCB to AAI proposing to ''increase'' the

rateable value from Rs. 1,19,07,000/- per annum to Rs. 4,50,00,000/- per annum for the period from 1st April 1998 to 31st March 2001. By its

letter dated 27th March 2001 AAI requested DCB that the service charges paid till that date by the AAI should be adjusted against the ''revised

rateable value'' based on the cost of land. It was requested that a revised/payable statement be drawn up for adjustment of service charges paid up

to 31st March 1992 and property tax from 1st April 1992 onwards. The lump sum payment made by AAI amounting to Rs. 3 crores was also

requested to be reflected in the said statement. Further details were furnished to the DCB by AAI on 24th January 2002, 23rd/24th April 2002,

24th May 2002 and 26th July 2002.

6. AAI filed Writ Petition (Civil) No. 6799 of 2001 in this Court challenging the Notice dated 26th March 2001 The said writ petition was

disposed of by this Court by an order dated 27th November 2001 with a direction to the Assessment Committee ("AC") of the DCB to assess

the property tax payable by AAI in accordance with law. It is stated that thereafter a hearing was granted to the AAI. On 24th December 2001,

information was provided by the DCB to AAI with the details of the assessments year-wise from 1998-91 to 2000-01. The objections of AAI

were disposed of by the impugned assessment order dated 24th February 2003. It was held by the AC as under:

(i) As regards the cost of construction, the DCB had taken the actual cost of the buildings as provided by AAI by its letter dated 6th June 1983 in

response to the notice u/s 103 of the CA, 1924 and the valuation as on 1st April 1982 i.e. Rs. 4,61,95,650/-. Since the actual cost of the building

had been taken, there was no need to give 10% rebate as that was to be given for an old building in terms of the judgment of the Supreme Court in

Municipal Board, Saharanpur.

(ii) The value of the land had been taken as per the information provided by AAI by its letter dated 6th June 1983 and there was no reason to

adopt any different value.

(iii) The use of word "let" or "rent" in Section 64(b) of the CA, 1924 did not limit the scope of the DCB to levy tax only on those portions which

technically fell within the meaning of term "let out". The intention behind the provision to as that if an Assessee was making some money by

providing the space to someone else, then a certain percentage of that amount must be paid as tax to the municipal body.

(iv) Section 64(b) applied not only to the building but also to open land, and therefore, tax was leviable even for charges received for the use of

open area and such car parking.

7. By a separate communication dated 16th April 2003, the DCB informed AAI that the AC had finalized the assessment for the years 1998-2001

to 2000-2001 and for the annual amounts mentioned earlier in para 2 of the assessment order and that "the above mentioned assessment is

authenticated" u/s 69 of the CA, 1924.

8. Mr. B.B. Jain, learned Counsel appearing for the Petitioner, submitted that if one was to take the value of the land as on the date of purchase at

Rs. 2,25,000/- and the depreciated cost of construction, then the tax per annum worked out to Rs. 16,91,183/- and for the three years to Rs.

50,73,549/-. AAI had already deposited a sum of Rs. 3,53,89,051/- as admitted by Respondent and another sum of Rs. 51 lakhs in compliance

with the interim order dated 26th May 2003 passed by this Court. It is next submitted that whether the case of AAI fell u/s 64(a) or 64(b) of the

CA, 1924, the present cost of the building had to be considered and if it was a new building then the depreciated value of the building had to be

considered. Relying on the observations of the Supreme Court in Municipal Board, Saharanpur, it is submitted that in case of a railway station or

such like structures in terms of extensive use by large number of visitors, 10% depreciation should be allowed. It is further submitted that in terms

of Section 71 of the CA, 1924 which is identically worded with the amended Section 126 of the Delhi Municipal Corporation Act, 1957 ("DMC

Act"), the liability to pay tax would at best be for the year in which the assessment order was passed and not prior thereto. It is further submitted

that the giving of certain portions on licence to different airlines did not amount to parting with the rights in the property and the property had to be

assessed on self-occupation basis. It is submitted that a taxing statute has to be strictly construed and the benefit of doubt has to go to the

Assessee. Lastly, it is submitted that the land rates under the Cantonment Administration Rules, 1937 ("CA Rules") cannot be applied in view of

the provisions of Section 64(a) of the CA, 1924. Reliance is placed on the judgment of this Court in Municipal Corporation of Delhi v. K.P. Gupta

1990 (2) DL 337 to urge that annual sale transactions can alone be taken into account and pre-determined rates have to be discarded. It is

submitted that the Supreme Court, in Godhara Borough Municipality Vs. Godhara Electricity Co. Ltd., has held that balance-sheet values cannot

be used for purposes of property tax assessment. This has been followed by a learned Single Judge of this Court in Tata Engineering and

Locomotive Company Ltd. Vs. Municipal Corporation of Delhi, Lastly, it is submitted that in a notice to revise the assessment, grounds of revision

must be indicated and that an order revising the assessment must contain the reasons for the assessment. Reliance is placed on the judgment in

Prem Prashad Juneja Vs. Municipal Corporation of Delhi, . It is submitted that the impugned notice as well as the assessment order do not contain

any reasons for revising the assessment.

9. Appearing for the DCB, Mr. R. Nanavaty, learned Counsel submitted that AAI had not exhausted the alternative remedy of an appeal before

the learned District Judge u/s 84 of the CA, 1924. It is submitted that whether AAI is receiving licence fee or rent in respect of the spaces given by

it to other airlines and whether AAI is spending huge amounts to maintain the infrastructure and therefore, whether it should not be assessed u/s

64(b) of the CA, 1924, are all mixed questions of facts and law which cannot be examined by this Court in a writ petition under Article 226 of the

Constitution.

10. The first issue that arises is whether AAI ought to have exhausted an alternate remedy of an appeal u/s 84 of the CA, 1924. In terms of the

said provision, in order that the appeal is entertained the entire amount of tax in dispute has to be deposited in the office of the DCB. While

analyzing a similarly worded Section 169 DMC Act, the Supreme Court in Shyam Kishore v. Municipal Corporation of Delhi 48 (1992) DLT 277

(SC) held that "such an appeal can be admitted or entertained but only cannot be heard or disposed of without pre-deposit of the disputed tax."

Although it means that an appeal which was filed can be admitted, it cannot be heard till the entire amount of disputed tax is deposited. Apart from

the fact that Section 84 CA, 1924 is harsh and therefore, the alternate remedy of appeal will not be efficacious, there are two other reasons for

rejecting the preliminary objection as to non-exhaustion of the alternate remedy. One is that the earlier writ petition had been entertained by this

Court and the matter had been remanded to the AC for making a fresh assessment of the property tax in accordance with law. Secondly, even in

the present writ petition one of the grounds is that neither the show cause notice nor the impugned order gives the reasons for determining the

annual values which are proposed to be adopted for the purposes of property tax. This Court would, in the circumstances, be justified in exercising

its jurisdiction under Article 226 of the Constitution and entertaining the present writ petition.

11. The next issue is whether the impugned demand for period of three years from 1998-99 to 2000-2001 on the basis of "revision" is sustainable

in law. It is an admitted position that prior to the impugned demand there was no assessment of tax by the DCB. The order dated 24th February

2003 only refers to the previous correspondence with the AAI and to the letter dated 27th March 2001 whereby the AAI is supposed to have

given "its willingness for payment of property tax with effect from 1st April 1992". Irrespective of any such "willingness" by AAI, no levy of

property tax has been assessed in accordance with provisions of the CA, 1924. No legal basis for "revision" of the annual value and consequently,

the property tax for the period 1st April 1998 to 31st March 2001 has been shown by DCB. A perusal of the notice dated 26th March 2001

shows that the previous assessment is shown as Rs. 1,19,07,000/- and the proposed assessment at Rs. 4,50,00,000/-. The basis of such

assessment has not been indicated. This is contrary to the law explained in DCM Ltd. Vs. M.C.D. and Others, .

12. In terms of the proviso to Section 71 of the CA 1924 no person can be made liable to pay tax "in respect of any period prior to the

commencement of the year in which the assessment is made". In other words, tax cannot be claimed in the instant case for a period prior to 1st

April 2003. While interpreting a similar provision (Section 126 of the DMC Act) this Court in Lucky Star Estate (I) P. Ltd. v. MCD 144 (2007)

DLT, following an earlier decision in Tin Can Manufacturing Co. Vs. Municipal Corporation of Delhi, held that the disposal of objections against

notices of assessment u/s 126 DMC Act cannot be kept pending beyond the date of the assessment of the authentication list for the following year.

On this ground too, therefore, the impugned notice dated 26th March 2001 and the consequential assessment order dated 26th February 2003

cannot be sustained in law.

13. Although the Petition is entitled to succeed on the above grounds, the other points are also being considered on their merits. Section 64 of the

CA, 1924 reads as under:

64. Definition of "annual value" - For the purposes of this Chapter, "annual value" means -

(a) in the case of railway stations, hotels, colleges, schools, hospitals, factories and any other buildings which a Board decides to assess under this

clause, one twentieth of the sum obtained by adding the estimated present cost of erecting the building to the estimated value of the land

appurtenant thereto.

(b) In the case of building or land not assessed under the Clause (a), the gross annual rent for which such building (exclusive of furniture or

machinery therein) or such land is actually let or, where the building or land is not let or in the opinion of the Board is let for a sum less than its fair

letting value, might reasonably be expected to let from year to year.

Provided that there the annual value of any buildings is by reason of exceptional circumstances, in the opinion of the Board, excessive if calculated

in the aforesaid manner, the Board may fix the annual value at any less amount which appears to it to be just.

14. Section 64(a) defines "annual value" to be 1/20th of the sum obtained "by adding the estimated present cost of erecting the building to the

estimated value of the land appertaining thereto". Section 64(b) implies that the building in question is a self-occupied one. The expression "the

estimated present cost of erecting the building" is a notional value in relation to any old building. By the letter dated 6th June 1983 AAI indicated

the value of land at the time of purchase of the property in 1940 and the cost of the structures. AAI has also provided to the DCB cost of

additions/alterations/ restrictions of terminals I-A and I-B and the domestic arrival hall by enclosing the valuation report in relation thereto. The total

cost with regard to these three buildings worked out at Rs. 34,91,56,000/- and 10% depreciation works out to Rs. 23,60,29,727/- in respect of

the three buildings. However, neither in the notice dated 26th March 2001 or the letter dated 16th April 2003 has the DCB explained the basis for

the determination of the annual values.

15. The impugned order dated 24th February 2003 seeks to distinguish the decision in Municipal Board, Saharanpur on the ground that AAI"s

letter dated 6th June 1983 at best gives the cost of the building as of that date and not as of the dates of the assessment orders for the period i.e.

1998-1999 to 2000-01. Learned Counsel for the Respondent referred to para 9 of the decision in Municipal Board, Saharanpur (supra), the

relevant portion of which reads as under:

9. ... Consequently, it becomes obvious that while estimating the present cost of erecting the building concerned, the assessing authority has to

keep in view the life of the building and also the fact as to when it was earlier constructed and in what present state the building is and what will be

the cost of erecting a new building so as to result into erection of such an old building keeping in view its life and wear and tear from which it has

suffered since it was put up. It is obvious that if the building is an old one, the present cost of erecting such a building would necessarily require

further consideration to what would be the depreciated value of such buildings; if a new building is erected at the time of assessment. Such cost,

obviously, has to be sliced down by giving due weight to the depreciation so as to make estimation of present cost of the new building to ultimately

become equal to the erection cost of the building concerned in its depreciated state. Consequently, it cannot be said that 10 percent depreciation

allowed by the District Magistrate and as confirmed by the High Court on the total estimated cost of the building for bringing it within the

assessable tax net of house tax was an exercise which was ultra vires provisions of the Act or beyond the jurisdiction of the assessing authority. On

the facts governing the case, it is seen that the railway station belonging to the Respondent, was as old as 1905, there may be other buildings within

the complex which might have seen the light of the day years before the time of assessment. Naturally, they would not be new buildings which

could have said to have been put up only at the time of assessment proceedings. They were obviously old buildings. It is not the case of the

Appellant or any of them that these buildings were new buildings recently constructed when assessment proceedings were initiated. Consequently,

a flat rate of 10 percent depreciation as granted by the District Magistrate while computing the annual value for house tax purposes, in the present

case, cannot said to be an unauthorised exercise. The third point for determination, therefore, has to be answered in the affirmative against the

Appellant and in favour of the Respondent....

16. This Court fails to appreciate how the observations advance the case of the DCB. On the other hand they support the claim of AAI for 10%

depreciation on the cost of the building as calculated by it. The impugned orders do not deal with any of the contentions raised by AAI in response

to the notice dated 26th March 2001. There is merit in the contention of AAI that the impugned assessment by the AC and the determination of

the annual values is based on arbitrary figures.

17. The impugned order dated 24th February 2003 simply states that even if the spaces have been given to the airlines by the AAI on licence

basis, the charges collected thereby would be amenable to tax in terms of Section 64(b) CA, 1924. It overlooks the settled proposition that taxing

statutes have to be strictly construed. The wording in Section 64(b) applies only where "gross annual rent" received for such building or such land

is actually let or, where the building or land is not let or in the opinion of the Board is let for a sum less than its fair letting value. This provision does

not apply to a situation where spaces are given out on licence basis. In Hindustan Lever Ltd. Vs. Municipal Corporation of Greater Bombay and

Others, it was held in para 11 that "in any case as we are concerned with a taxing provision, an interpretation beneficial to the Assessee, in case

two interpretations be reasonably possible, has to be given. This is a well settled position in law."

18. For all the aforesaid reasons the writ petition is allowed and the impugned assessment order dated 24th February 2003 and the bill raised on

the same date are hereby quashed. The Respondent will pay to AAI costs of this petition which are quantified at Rs. 10,000/- within a period of

four weeks. The amounts already deposited by AAI with the DCB, including the amount deposited pursuant to the interim order dated 26th May

2003 of this Court, will be either refunded by the DCB within a period of eight weeks or adjusted against any future assessment in accordance

with law.