Before Mehinder Singh Sullar, J.

HARBANS SINGH,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 3084 of 2011

18th April, 2011

Constitution of India - 226/227 - Punjab Municipal Act, 1911 - S.3(1) & 85(2) - House Tax assessment - Appeals against assessment - Appeals accepted - Revision filed against one of the orders passed by Appellate Authority - Revision accepted in a very casual manner and on hyper technical ground of non-payment of pre-deposit - Condition of pre-deposit stipulated in section 85(2) of the Act - Applicable only to an appeal filed before Appellate Authority - No such statutory condition of payment of pre-deposit before filing revision petition - Impugned order set aside

Held, That it is not disputed here is that the revisional authority did not decide the matter on merits, but has just accepted the revision petitions in a very casual manner and on hyper technical ground of non-payment of pre-deposit amount of house tax before the appellate authority under section 85 of the Act. Here, to me, the revisional authority fell in deep legal error in this behalf. As is clear that Section 85(2) of the Act postulates that "no appeal shall be entertained unless the appellant has paid all municipal taxes due from him to the committee upto the date of such appeal". This provision is only applicable to the appellate authority and there is no such statutory condition of payment of pre-deposit amount of house tax before filing the revision petition.

(Paras 12 & 13)

Constitution of India - 226/227 - Punjab Municipal Act, 1911- S. 3(1) & 85(2) - House Tax assessment - Appeal against assessment - Appeal accepted and matter remanded to Executive Officer for assessment afresh - Instead of reassessment, notice issued again to assesses for depositing tax - Notice challenged by way of writ petition - Recovery of house tax stayed on depositing 50% of the assessed house tax within 15 days - Writ petition disposed off

with liberty to assessee to file statutory appeal against assessment order - 86 assesses filed appeals - Appeals accepted - Appellate Authority directed MC to re- assess house tax - Two appeals by other assesses also accepted by similar orders, which were not challenged by MC - Orders passed in the case of the petitioners impugned in Revision - Petitioner have already deposited 50% amount of the house tax, pursuant to the orders passed by the writ Court, which was also ordered to be adjusted against the payment of house tax - In view of the amended provisions of the Act, in such an eventuality, revisional authority did not have the power/jurisdiction to set aside the order passed by the Appellate Authority on the ground of non-payment of pre-deposit amount by the assessee - In absence of any statutory provision, such drastic condition cannot be made applicable to non-suit the petitioner-assesses - Order could not be set aside by revisional authority - Especially when similar orders had attained finality - Impugned order passed by revisional authority set aside - Order passed by Appellate Authority, remitting matter back to MC for re-assessment, restored.

Further held, That once the petitioner-assessees have already deposited the amount of house tax, the appellate authority has accepted their appeals and remanded back the matter to the MC for fresh assessment of house tax, in view of the amended provisions of the Act, by virtue of orders (Annexures P2, P5 and P6), in that eventuality, the revisional authority did not have the power/jurisdiction to set aside the order (Annexure P5) only on the ground of non-payment of pre-deposit amount by the petitioner-assessees in the appeals. In the absence of any statutory provision, such drastic condition cannot be made applicable to non-suit the petitioner-assessees and the order (Annexure P5) could not be set aside by the revisional authority, especially when the similar orders (Annexures P2 and P6) have already attained the finality in this relevant connection.

(Para 14)

Harsimran Singh Sethi, Advocate, *for the petitioners.*

Palwinder Singh, Senior Deputy Advocate General, Punjab for respondents No.1 and 3.

Harinder Aurora, Advocate for respondent No.2.

MEHINDER SINGH SULLAR , J. (ORAL)

As identical questions of law and facts are involved, therefore, I propose to decide the indicated writ petitions, arising out of single impugned order dated 7.1.2011 (Annexure P7), by virtue of this common judgment, in order to avoid the repetition. However, the facts, which need a necessary mention for the limited purpose of deciding the core controversy involved in the instant writ petitions, have been extracted from (1) **CWP No.3084 of 2011** titled as **"Harbans Singh Vs. State of Punjab and others"** in this respect.

(2) The contour of the facts, culminating in the commencement, relevant for disposal of the present writ petitions and emanating from the record, is that the petitioner-assessees are the owners of their respective properties in question. They claimed that the Nagar Panchayat, Khamano-respondent No.2 (for brevity "MC") was required to assess the house tax of their properties, which are in their possession as owners at the market value i.e. the Collector rate, for the assessment year 1999-2000, as per section 3(1) of the Punjab Municipal Act, 1911 (hereinafter to be referred as "the Act"). The Collector rate of the properties was stated to be ` 450/- per square yard at the relevant time, whereas the MC has illegally and arbitrarily assessed and levied the house tax at the rate of ' 450/- per square feet, by virtue of resolution No.357 dated 26.12.2000.

(3) The appeal filed by some of the owner-assessees against the assessment order was accepted and the case was remanded back to the Executive Officer of the MC to assess the house tax afresh, by the Deputy Commissioner-cum-appellate authority-respondent No.3 (for short "appellate authority"), by means of order dated 3.6.2003 (Annexure P2). Instead of re-assessing the house tax in accordance with this order, the MC again issued notice (Annexure IA) to the petitioner-assessees for depositing the amount of house tax, which necessitated them to file CWP No.5252 of 2008. The writ petition came up for hearing before a Division Bench of this Court on 31.3.2008 and the recovery of house tax was stayed on petitioners' depositing 50% of the assessed house tax within fifteen days, by way of order (Annexure P3). That writ petition ultimately came to be disposed of by this Court, with liberty to the petitioner-assessees to file a statutory appeal against the assessment order, through the medium of order dated 19.11.2008 (Annexure P4).

(4) Thereafter, the petitioner-assessees filed the appeal, which was accepted and the Additional Deputy Commissioner (appellate authority) directed the MC to re-assess the house tax on the basis of Collector rate, by virtue of order dated 12.2.2009 (Annexure P5). Two similar appeals bearing Nos.2 and 16 of 2009 filed by the other owner-assessees were accepted as well, by the appellate authority, by means of similar orders dated 11.1.2010 (Annexure P6).

(5) The respondent-MC did not challenge the orders (Annexure P6). However, dis-satisfied with the order (Annexure P5), it filed 15 revision petitions, which were accepted and the order (Annexure P5) was set aside by the Secretary, Department of Local Government, Punjab (respondent No.1), by way of impugned order dated 7.1.2011 (Annexure P7).

(6) The petitioner-assessees did not feel satisfied and preferred the instant writ petitions, challenging the impugned order (Annexure P7), invoking the provisions of Articles 226 and 227 of the Constitution of India, inter-alia pleading that once they (assessees) have already deposited 50% amount of assessed house tax before filing the appeal and the matter was remitted back by the appellate authority to re-assess the house tax on the basis of Collector rate, in view of the amended Section 3 of the Act, in that eventuality, the revisional authority did not have the jurisdiction to accept the revision petitions of the MC on account of nonpayment of pre-deposit amount, particularly when the similar orders (Annexures P2 and P6) attained the finality. On the basis of aforesaid allegations, the petitioner-assessees sought the quashment of impugned order (Annexure P7), being illegal and arbitrary in the manner indicated hereinabove.

(7) The respondent-MC contested the claim of the petitioner-assessees and filed its written statement, inter-alia pleading certain preliminary objections of, maintainability of the writ petition, cause of action and locus standi of the petitioner-assessees. The case set up by the MC, in brief in so far as relevant, was that since the petitioner-assessees did not pay the pre-deposit amount before filing the appeal before the appellate authority, so, the revisional authority has rightly accepted its revisions, by way of impugned order (Annexure P7). It will not be out of place to mention here that the MC has stoutly denied all other allegations contained in the writ petitions and prayed for their dismissal.

(8) Having heard the learned counsel for the parties, having gone through the record and legal provisions with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, the instant writ petitions deserve to be accepted in this context.

(9) As is evident from the record, that the MC has passed the resolution bearing No.357 dated 26.12.2000 and levied the house tax. According to the petitioner-assessees, the house tax was to be assessed and levied as per the amended Section 3 of the Act on the basis of Collector rate of ' 450/- per square yard, whereas the MC has arbitrarily and illegally assessed the house tax at the rate of ' 450/- per square feet and issued the impugned demand notices. It is not a matter of dispute that 86 assessees filed the appeal, which was accepted by the appellate authority, by means of order dated 3.6.2003 (Annexure P2), which, in substance, is as under:-

> *"That I, after considering the written arguments of the Ld. counsel of the parties and record of the lower Court and reached on the conclusion that the house tax so assessed by the Executive Officer Khamanon (respondent) is more excessive than that of the rate of property so assessed by the Distt. Collector Fatehgarh Sahib for the purchase of property. The members of Nagar Palika has passed the resolution No.357 dated 26.12.2000 against the assessed house tax in which it has been stated that the Executive Officer has assessed very high price of the land whereas the documents of purchase are being registered at the lower price. It is therefore this appeal has been accepted, this case has been remanded to the Executive Officer of Nagar Council Khanamon with the order that the house tax be assessed afresh in accordance with assessed rate of property by the collector Fatehgarh Sahib."*

(10) Not only that, instead of re-assessing the house tax in pursuance of order (Annexure P2), the MC again issued the recovery notices. The petitioner assessees challenged the impugned demand notices through the medium of CWP No.5252 of 2008, in which, recovery of house tax was stayed by this court, subject to petitioners' depositing 50% of the assessed house tax within fifteen days, by way of order (Annexure P3). Ultimately,

the writ petition came to be disposed of by this court, by virtue of order (Annexure P4). However, liberty was granted to the petitioner-assessees to file the statutory appeal. In pursuance thereof, they filed the appeal, which was again accepted by the appellate authority, vide order dated 12.2.2009 (Annexure P5), the operative part of which is as under:-

> *"Keeping in view the order passed by the Hon'ble Punjab and Haryana High Court vide order dated 19.11.2008 and the Hon'ble Lok Adalat Fatehgarh Sahib vide order dated 6.12.2008, after hearing the case, the appeal of the appellant is accepted because the Respondents have not implemented the orders of the Deputy Commissioner, Fatehgarh Sahib dated 3.6.2002 uptil now and the Respondents had done the assessment which was much more than the Collector rate assessed at the relevant time. Therefore, the Respondents are given directions that the fresh assessment should be done for the year 1999-2000 on the basis of the Collector rates assessed. The persons who had deposited 50% of the amount on the direction of Hon'ble Punjab and Haryana High Court, their amount should be adjusted while doing the new assessment. The orders are pronounced and the file is consigned to the records."*

(11) Two similar appeals filed by the other owner-assessees were also accepted by the appellate authority, by means of orders dated 11.1.2010 (Annexure P6), which have already attained the finality. Admittedly, the MC did not challenge the orders (Annexures P2 and P6), but has only filed the revision petitions against the single order (Annexure P5), which were accepted by the revisional authority, vide impugned order (Annexure P7).

(12) What is not disputed here is that the revisional authority did not decide the matter on merits, but has just accepted the revision petitions in a very casual manner and on hyper technical ground of non-payment of pre-deposit amount of house tax before the appellate authority under section 85 of the Act. Here, to me, the revisional authority fell in deep legal error in this behalf.

(13) As is clear that Section 85(2) of the Act postulates that "no appeal shall be entertained unless the appellant has paid all municipal taxes due from him to the committee upto the date of such appeal". This provision is only applicable to the appellate authority and there is no such statutory condition of payment of pre-deposit amount of house tax before filing the revision petition.

(14) Again it is not a matter of dispute that the petitioner-assessees have already deposited the 50% amount of house tax, in pursuance of order (Annexure P3), which was ordered to be adjusted by this Court against the payment of house tax. Once the petitioner-assessees have already deposited the amount of house tax, the appellate authority has accepted their appeals and remanded back the matter to the MC for fresh assessment of house tax, in view of the amended provisions of the Act, by virtue of orders (Annexures P2, P5 and P6), in that eventuality, the revisional authority did not have the power/jurisdiction to set aside the order (Annexure P5) only on the ground of non-payment of pre-deposit amount by the petitioner-assessees in the appeals. In the absence of any statutory provision, such drastic condition cannot be made applicable to non-suit the petitioner-assessees and the order (Annexure P5) could not be set aside by the revisional authority, especially when the similar orders (Annexures P2 and P6) have already attained the finality in this relevant connection.

(15) Moreover, the learned counsel for the parties are ad idem that the house tax on the properties of the petitioner-assessees has to be assessed on the basis of amended Section 3(1) of the Act, in view of law laid down by the Hon'ble Apex Court in case **Municipal Committee, Patiala *versus* Model Town Residents Association and others (1),** the operative part of which is as under:-

> "For the aforestated reasons, we set aside the impugned judgment. We declare the aforestated Section 3(1)(b) and Section 3(8aa) as valid. Accordingly, we uphold the validity of the said sections. Since we have upheld the validity of the aforestated impugned sections we make it clear that all pending disputed assessments and appeals therefrom shall be decided in accordance with the

(1) AIR 2007 SC 2844

provisions of Punjab Municipal Act, 1911, as amended. The civil appeals filed by Patiala Municipal Committee as well as the State Government are allowed with no order as to costs."

(16) Thus seen from any angle, the impugned order (Annexure P7) cannot legally be maintained, deserves to be and is hereby set aside in the obtaining circumstances of the case.

(17) In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side, during the course of re-assessment of the house tax by the MC, the instant writ petitions are allowed. Consequently, the impugned order (Annexure P7) is hereby set aside and the order (Annexure P5) is restored. Meaning thereby, the matter already stands remitted back to the MC for its fresh decision for imposition of house tax on the indicated properties of the petitioner-assessees, in view of the amended provisions of the Act and the law laid down in Municipal Committee, Patiala's case (supra) in this relevant direction.

K. SURI

Before Permod Kohli, J.

DAVINDER SINGH ASI,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. No. 21197 of 2008

27th September, 2010

Constitution of India - Art. 14 & 226/227 - Punjab Police Rules, 1934 - Rl.9.18(2) - Adverse remarks in ACR based on involvement in criminal case and departmental proceedings - In criminal case, petitioner not arrayed as accused and not put to trial, whereas the other two accused acquitted - In departmental proceedings, petitioner was exonerated - Very basis for adverse remarks thus extinguished - Adverse entry of honesty 'doubtful' and order passed in appeal set aside.