

## **Harbanslal Malhotra And Sons Pvt. Ltd. vs Kolkata Municipal Corpn.. on 5 September, 2017**

**Equivalent citations:** AIR 2018 SUPREME COURT 322, AIR 2018 SC (CIVIL) 740, (2017) 7 MAD LJ 263, (2018) 1 RENTLR 107, (2017) 5 CAL HN 169, 2017 (9) SCC 418, (2018) 1 ICC 380, (2017) 11 SCALE 104, (2017) 2 WLC(SC)CVL 633, 2018 (2) KCCR SN 135 (SC)

**Author:** Abhay Manohar Sapre

**Bench:** Abhay Manohar Sapre, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.3337 OF 2007

Harbanslal Malhotra & Sons  
Pvt.Ltd.

...Appellant(s)

VERSUS

Kolkata Municipal Corpn. & Anr.

...Respondent(s)

JUDGMENT

Abhay Manohar Sapre, J.

1) This appeal is filed against the final judgment and orders dated 28.06.2004 passed by the High Court of Kolkata in C.O. No.368 of 2004 whereby the Single Judge of the High Court allowed the revision filed by the respondents herein, set aside the judgment/order dated 18.11.2002 passed by Reason: referred to as “the Tribunal”), Kolkata in M.A.A. No.1701 of 1996 and remanded the case to the Tribunal to re-determine the annual value of the premises and also against an order dated 17.08.2005 passed in Review Application being Review Application No. 2963 of 2004 in C.O. No.368 of 2004 arising out of order dated 28.06.2004 passed in C.O. No.368 of 2004.

2) The issue involved in the appeal lies in narrow compass. However, in order to appreciate the short controversy, few relevant facts need mention infra.

3) The appellant is the owner of the premises bearing No. 226/2 situated at A.J.C. Bose Road, Kolkata- 700020. It consists of two-storey building and some land appurtenant thereto (hereinafter referred to as "the premises"). This premises is assessed to payment of tax under the provisions of the Calcutta Municipal Corporation Act, 1980 (hereinafter referred to as "the Act").

4) The question arose while making assessment of the premises for the Assessment Years 1988-89 (3rd quarter) and 1994-95 (3rd quarter) before the Assessing Authority (Hearing Officer), as to what is the proper annual value of the premises and secondly, how it should be determined under Section 174 of the Act for payment of tax on the premises.

5) By two orders dated 22.06.1996, the Assessing Officer (Hearing Officer) determined the valuation of the premises. So far as annual valuation for the Assessment Year (1988-89) (3rd quarter) is concerned, it was done at Rs.59,400/-, whereas so far as it was for the Assessment Year (1994-95) (3rd quarter) is concerned, the same was done at Rs.4,25,600/-.

6) The appellants (assessee), felt aggrieved of the orders of Assessing Officer, filed two appeals before the Tribunal. So far as the order pertaining to the period (1988-89), valuing the premises at Rs.59,400/- was concerned, the appellant filed appeal being M.A.A. No. 1702 of 1996 whereas so far as the order relating to period (1994-95), valuing the premises at Rs.4,25,600/- was concerned, the appellant filed appeal being M.A.A. 1701 of 1996.

7) Both the appeals were heard analogously by the Tribunal and were disposed of by common order dated 18.11.2002. So far as M.A.A. No. 1702/96 is concerned, it was dismissed by upholding the valuation whereas M.A.A. No. 1701/96, was allowed in part wherein the Tribunal reduced the annual valuation made by the Assessing Officer, from Rs.4,25,000/- to Rs.75,400/-. The Tribunal held that the annual valuation of the premises which was made at Rs.4,25,000/- by the Assessing Authority was wrong and should have been done at Rs.75,400/- in accordance with the procedure prescribed in Section 174 (1).

8) The Municipal Corporation, felt aggrieved of the order of the Tribunal, filed revision petition before the High Court. By impugned order, the High Court allowed the revision and remanded the case to the Tribunal to re-determine the annual value of the premises. The High Court held that the Tribunal was not right in making an assessment of the premises by clubbing land and building. According to the High Court, it should have been done separately, i.e., building and land should have been assessed separately for determining their respective annual value under Section 174(1) and (2) of the Act.

9) The owner (assessee), felt aggrieved of the order of the High Court, filed this appeal by way of special leave before this Court.

10) Heard Mr. Amit Sibal, learned senior counsel for the appellants and Mr. L.C. Agrawala, learned counsel for the respondents.

11) Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal, set aside the impugned order and restore that of the Tribunal.

12) Part-IV of the Act deals with the subject of "Taxation". Chapter-XII therein deals with the powers of Taxation and Consolidated Rates. Clause C provides the method as to how the determination of Annual Valuation of any land or/and building is done. Sections 174 and 178 of the Act are relevant for the disposal of the appeal. They need mention infra:

Section 174 "174. Determination of annual valuation - (1) Notwithstanding anything contained in the West Bengal premises Tenancy Act, 1956 (West Ben. Act XII of 1956) or in any other law for the time being in force, for the purpose of assessment to the consolidated rate, the annual value of any land or building shall be deemed to be the gross annual rent including service charges, if any, at which such land or building might at the time of assessment be reasonably expected to let from year to year, less an allowance of ten per cent, for the cost of repairs and other expenses necessary to maintain such land or building in a state to command such gross rent:

Provided that where there is a transfer, inter vivos, of ownership of any land or building since the last preceding periodical assessment under Section 179, the annual value of such land or building shall be fixed at seven and a half per cent of the amount stated in the deed of transfer as consideration for such transfer or, if no consideration is stated in such deed of transfer, at seven and a half per cent of the estimated market value thereof:

Provided further that while determining the annual value in the case of any land or building or portion thereof exclusively used by the owner for his residential purpose, the gross annual rent of such land or building or portion, as the case may be, shall be reduced,

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(a) where the gross annual rent does not exceed six hundred rupees, by thirty per cent;

(b) where the gross annual rent exceeds six hundred rupees but does not exceed eighteen thousand rupees, but such percentage of the gross annual rent as is worked out by dividing the gross annual rent by six hundred and subtracting the quotient from thirty-one, the difference being rounded off to the nearest place of decimal:

Provided also that no such reduction in gross annual rent shall be made--

(a) in case the total covered area in any land or building under occupation for residential purpose by the owner exceeds one hundred and fifty square metres, or

(b) where a person owns or occupies for residential purpose more than one plot of land or building or portions thereof within the municipal limit of Calcutta.

(2) The annual value of any land which is not built upon shall be fixed at seven per cent of the estimated market value of the land.

(3) If the gross annual rent of any class or classes of land or buildings used exclusively for hospital or educational purposes or for the purposes of sports or as a place of worship or as a place for disposal of the dead cannot be easily estimated, the gross annual rent of such building shall be deemed to be five per cent of the value of the building obtained by adding the estimated cost of erecting the building at the time of assessment less a reasonable amount to be deducted on account of depreciation, if any, to the estimated present market value of the land valued with the building as part of the same premises.

(4) In the case of any land or building or part thereof used for public cinema shows or theatrical performances or as a place of similar public recreation, amusement or entertainment, the gross annual rent of such land or building or part thereof, as the case may be, shall be deemed to be seven and a half per cent of the gross annual receipts in respect of such cinema shows or theatrical performances or place of public recreation, amusement or entertainment, including receipts from rent and advertisements and sale of admission tickets but excluding taxes on the same of such tickets:

Provided that the provisions of this sub-section shall not apply in the case of temporary fairs, circuses, and casual shows or performances.

(4A) If the gross annual rent of any land or building or part thereof cannot be easily estimated, the gross annual rent of such land or building for the purposes of sub-section (1) shall be deemed to be seven and half per cent of the value of the building obtained by adding the estimated present cost of erecting the building at the time of assessment less a reasonable amount to be deducted on account of depreciation, if any, to the estimated present market value of the land:

Provided that the estimated present cost shall not include the cost of any plant or machinery, excepting those enumerated in Schedule VIII, on the land or the building as aforesaid.

(5) The annual value as determined under this Chapter shall be rounded off to the nearest ten rupees."

## Section 178

178. Municipal Assessment Code-(1) The State Government may by rules provide for the detailed procedure for determination of the annual value of lands or buildings in Calcutta and for other matters connected therewith and such rules together with any regulations made under this Act shall constitute the Municipal Assessment Code. (2) Under the rules as aforesaid-

(i) every building together with the site and the land appurtenant thereto shall be assessed as a single unit:

Provided that where portions of any building together with the site and the land appurtenant thereto are vertically divisible and are separately owned so as to be entirely independent and capable of separate enjoyment notwithstanding the fact the access to such separate portions is made through a common passage or a common staircase, such separately owned portions may be assessed separately:

Provided further that the right of such access is protected by a registered deed of agreement:

(ii) all lands and buildings to the extent these are contiguous or are within the same cartilage or are on the same foundation and are owned by the same owner or co-owners as an undivided property, shall be treated as one unit for the purpose of assessment under this Act:

Provided that if such land or building is sub-divided into separate shares which are not entirely independent and capable of separate enjoyment, the Municipal Commissioner on application from the owners or co-owners may apportion the valuation and assessment among the co-owners according to the value of their respective shares treating the entire land or building as a single unit:

(iii) each residential unit with its percentage of the undivided interest in the common areas and facilities constructed or purchased and owned by or under the control of any housing co-operative society registered under the West Bengal Co-operative Societies Act, 1973 (West Ben. Act XXXVIII of 1973), shall be assessed separately:

(iv) each apartment and its percentage of the undivided interest in the common areas and the facilities in a building within the meaning of the West Bengal Apartment Ownership Act, 1972 (West Ben. Act XVI of 1972), a declaration in respect of which has been duly executed and registered under the provisions of that Act, shall be assessed separately:

(v) every land comprised in a thika tenancy with hut or building made thereon, either in a bustee or otherwise, shall be assessed separately as a single unit:

(vi) every land, which is not build upon, comprised in a thika tenancy, either in a bustee or otherwise shall be assessed separately as a single unit.

(3) Notwithstanding the assessment made before the commencement of this Act, the Municipal Commissioner on his own may amalgamate or separate or continue to assess as such, as the case may be, lands or buildings or portions thereof so as to ensure conformity with the provisions of this section.

(4) If the ownership of any land or building or a portion thereof is sub-divided into separate shares or if more than one land or building or portions thereof by amalgamation come under one ownership, the Municipal Commissioner may on an application from the owners or co-owners, separate or amalgamate, as the case may be, such lands or buildings or portions thereof so as to ensure conformity with the provisions of this section.

(5) A newly constructed building shall become assessable from the quarter following the date of issue of the occupancy certificate under the provisions of this Act:

Provided that if such building is occupied before the issue of the occupancy certificate in contravention of the provisions of this Act, such building shall be liable for assessment from the quarter following the date of its occupation and notwithstanding any other action that may be taken under this Act, such building shall not get the benefit of the rebate in the consolidated rate under sub-section(5) of section 171.

(6) The Municipal Commissioner shall, upon an application made in this behalf by an owner, lessee or sub-lessee or occupier of any land or building and upon payment of such fees as may be determined by the Corporation by regulations, furnish information to such person regarding the appointment of the consolidated rate of such land or building among the several occupiers within such land or building for the current period or the period immediately preceding:

Provided that nothing in this sub-section shall prevent the Corporation from recovering the dues from any such person.”

13) Reading of Section 174 shows that it deals with two types of assessment for determining the annual value of land or building. One is in relation to the “land on which the building is built” and the other is in relation to the “open land”, i.e., the “land on which no building is built”. So far as former is concerned, i.e., land on which building is built, it is governed by sub-section (1) of Section 174 whereas so far as the latter is concerned, i.e., open land on which no building is built, it is governed by sub-section (2) of Section 174.

14) In the case of former, the assessing authority is required to take land and building as “single unit” for determination of its gross annual rent which is reasonably expected to fetch at the time of assessment from year to year. To illustrate, if the building has some appurtenant land which is exclusively used by the owner for

garden or/and parking the vehicles, such building or/and land may fetch more rentals as compared to a building, which does not have these facilities or has very small land appurtenant to the building. In any case, such building and the land cannot be separated for determining their gross annual rent. Such case, therefore, would fall in sub-section (1) of Section

174. The annual value and gross annual rent of such premises have to be, therefore, determined as per the procedure prescribed in sub-section (1) of Section 174 of the Act.

15) The proviso to sub-section(1) of Section 174, deals with the cases of "transfer" of the building and land. In such case, the Assessing Officer is required to take the amount (sale consideration) mentioned in the transfer deed as the basis for determining its annual value and then to determine the gross annual rent of such premises as per the procedure prescribed in sub-section(1) of Section 174 of the Act.

16) However, in a case where no amount is mentioned in the transfer deed, the proviso says that the Assessing Officer is required to take the estimated market value of such premises as the basis and then to determine its gross annual rental as per the procedure prescribed in sub-section(1) of Section 174 of the Act.

17) In a situation, where the gross annual rent of any land or building or any part thereof cannot be easily estimated for the purpose of sub-section(1) of Section 174, then a procedure is prescribed in sub-section(4A) of Section 174 as to how gross annual rent of such land or building is to be determined.

18) In all the situations set out above, the land or the building or any part thereof would be taken as "single unit" and not separate for determining the gross annual rental value. It is also clear from Section 178(2)(i) and (ii), which provides that every building together with the site and the land appurtenant thereto shall be assessed as a "single unit".

19) However, the three provisos appended to clause(i) of Section 178 (2) also relates to building and the land but with different class of cases due to building's peculiar structure, its ownership and the manner in which such building or land is used by the owner.

20) If the factors set out in any of the three provisos were found present in any building or land, the assessment of such building and land has to be done as per the procedure prescribed in the provisos read with Section 174(1) of the Act.

21) Now coming to the later category of the cases, i.e., "open land" or "land on which no building is built", it falls in sub-section(2) of Section 174. It says that the annual market value of "open land" would be fixed at seven percent of the estimated market value of the open land.

22) We are, therefore, of the considered opinion that Section 174(1) and (2) operate in separate field. Both cannot be clubbed for determination of the gross annual rental value of land or building. In other words, both the Sections have to be applied independently depending upon the fact as to whether the premises is “building with land” or it is an “open land” and accordingly their gross annual rental value would be determined.

23) When the Legislature itself has carved out two categories of cases namely, (1) “land or building” (2) “open land with no building thereon” and has accordingly provided different rates and different methods of assessment, it does not appear logical to club both the categories of cases.

24) It is a settled rule of interpretation in relation to taxing laws that a machinery provision which enables the assessee to avail of a concession or benefit conferred by substantive provision in the Act, such provisions are required to be construed liberally. (See G.P Singh -Principles of Interpretation of Statutory Interpretation 13th Edition page 856). This rule applies to the case on hand and hence, benefit of the interpretation must go to the assessee rather than to the taxing man. It also serves the purpose for which Section 174 is enacted.

25) Coming now to the facts of the case, we find that the High Court while remanding the case directed the Tribunal to treat land and building of the premises as separate unit and then to determine the gross annual value of the premises by applying Section 174 (1) and (2) of the Act.

26) The view taken by the High Court does not command its acceptance to us in the light of what we have held above. We, however, find that the Tribunal followed proper procedure by applying Section 174(1) for determining the gross annual value. The Tribunal’s order, therefore, deserves to be restored.

27) In the result, the appeal succeeds and is allowed. The impugned orders dated 28.06.2004 in C.O. No.368 of 2004 and dated 17.08.2005 in Review Application No. 2963 of 2004 in C.O. No.368 of 2004 are set aside and the order of the Tribunal dated 18.11.2002 is restored.

.....J. [R.K. AGRAWAL] .....J. [ABHAY MANOHAR  
SAPRE] New Delhi;

September 05, 2017