CASE NO.:
Appeal (civil) 1990 of 1995

PETITIONER:
MATHURAM AGRAWAL

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 28/10/1999

BENCH:
S.P. BHARUCHA & B.N. KIRPAL & V.N. KHARE & S.S.M. QUADRI & D.P. MOHAPATRA

JUDGMENT:
JUDGMENT

1999 (4) Suppl. SCR 195

D.P. MOHAPATRA, J. This case calls in question the vires of proviso to clause (b) of sub-section (2) of Section 127-A of Madhya Pradesh Municipalities Act, 1961 (for short the 'Act') and the levy and collection of property tax in respect of the buildings owned by the appellant.

The relevant facts of the case, shorn of unnecessary details, may be stated as under:

The appellant and respondents 4 to 7 are joint owners of 13 separate items of house properties bearing No. 56/2(1) to 56(2)/13 situated in ward No. 15 of Raigarh Municipal area. The assessment proceeding for the purpose of levying property tax was initiated under the provisions of the Madhya Pradesh Municipalities Act, 1961 (M.P. Act No. 37 of 1961) (hereinafter referred to as 'the Act') by the Municipal Council, Raigarh, respondent no.2 herein. The Municipality purporting to invoke the proviso to the section 127-A(2) of the Act aggregated the annual letting value of all the buildings and levied property tax on the deemed annual letting value so aggregated. The assessment order was followed by the demand notice.

Feeling aggrieved by the levy and collection of property tax in the manner aforementioned, the appellant and respondents 4 to 7 preferred appeal under Section 139 of the Act before the Civil Judge Class-II, Raigarh. The appellate authority allowed the appeal and quashed the assessment order and the demand notice. On a revision petition being filed by the Municipality the District Judge, Raigarh allowed the revision, set aside the order of the appellate authority and confirmed the order of assessment made by the concerned authority.

The appellant and the respondents 4 to 7 filed the Writ Petition in the High Court of Madhya Pradesh challenging the order of assessment, inter alia, on the grounds that it was not in conformity with the provisions of the Act. They also challenged the constitutional validity of the proviso to sub-clause (b) of Section 127(A) (2) of the Act. By the impugned judgment a Division Bench of the High Court rejected the contentions raised by the petitioners including the challenge to the constitutional validity of the proviso to Section 127(A)(2) and confirmed the assessment order of the municipality and dismissed the writ petition. The High Court placed reliance mainly on the decision of this Court in Administrator Municipal Corporation, Bilaspur v. Dattatraya Dahankar, Advocate and Anr., [1992] 1 SCC 361 and its own decision in the case of Leelawati Mishra and Ors. v. President, Municipal Committee, Mungaoli, (1990) M.P.L.J. 28. Thereafter one of the petitioners in the Writ Petition, Mathuram Agrawal, filed this appeal challenging the judgment of the High Court.

When the case was taken up by a Bench of two learned Judges of this Court a

submission was made on behalf of the petitioner that in the light of the decision of this Court in the case of Administrator, Municipal Corporation, Bilaspur (Supra) decided by a Bench of three learned Judges of this Court construing Section 127(1)(2) of the Act the question as to the constitutional validity of that proviso arises for consideration. Taking note of the said submission the bench passed the order dated 13.2.95, relevant portion of which reads as follows:

"In view of the construction made by a Bench of three learned Judges in the above quoted decision, the question of considering the constitutional validity of the provision does arise. However, the question for consideration also is whether the alternative construction which would support the constitutional validity of the provision is to be preferred and is also available on the language of the statute. It is, therefore, appropriate that the matter is considered by a Bench of five learned Judges."

The question that arises for consideration is when several items of properties (houses, buildings or lands) within the municipality, the annual letting value of each of which dose not exceed Rs. 1,800 per annum, are owned by one person, then, is the owner liable to pay property tax for such properties.

Since determination of the question largely depends on interpretation of Section 127 (A) and its interaction with other relevant provisions of the Act it would be convenient to quote the relevant statutory provisions before proceeding to consider the merits of the case.

S.126 Definition of annual letting value - In this Chapter, the expression "annual letting value" shall mean:

(i) where any building or land is let out, the annual rent for which it is actually let out;

(ii) where the rent of any building has been determined under the Madhya Pradesh Accommodation Control Act, 1955 (23 of 1955), the annual rent as so determined; and

(iii) in any other case, the annual rent for which any building or land exclusive of furniture or machinery contained or situated therein or thereon, might reasonably be expected to let from year to year, and shall include any payment made or agreed to be made by a tenant to the owner of the building or land on account of occupation taxes, insurance or other charges incidental to the tenancy;

Provided that if it appears to the Council that the annual rent of any building or land is much lower than the annual rent for which it might reasonably be expected to let at the time of assessment, such letter rent shall be deemed to be the annual letting value in respect of such building or land."

Section 127 reads as follows:

"127 Taxes which may be imposed (1) A Council may, from time to time and subject to the provisions of this Chapter, and any general or Special order which the State Government may make in this behalf, impose in the whole or in any part of the Municipality any of the following taxes, for the purposes of the Act, namely:-

(0 a tax payable by the owner of houses, buildings or lands situated within the limits of Municipality with reference to annual letting value of the house, building or land called property tax:

127(A) Imposition of property tax (1) Notwithstanding anything contained in this Chapter, as and from the financial year 1976-77, there shall be

charged, levied and paid for each financial year a tax on the lands or buildings or both situate in a Municipality other than Class IV Municipality at the rate specified in the table below:

TABLE

(0 where the annual letting value exceeds Rs. 1800 but does not exceed Rs. 6000		6 per centum of the annual letting value
(ii) where the annual letting value exceeds Rs. 6000 but does not exceed Rs. 12000		8 1/3 per centum of the annual letting value
(iii) where the annual letting value exceeds Rs. 12000 but does not exceed Rs. 18000		10 per centum of the annual letting value
(iv) where the annual letting value exceeds Rs. 18000 but does not exceed Rs. 24000		15 per centum of the annual letting value
(v) where the annual letting value exceeds Rs. 24000		20 per centum of the annual letting value

(2) The property tax levied under sub-section (1) shall not be leviable in respect of the following properties, namely:-

(a) building and lands owned by or vesting in-(i) the Union Government

(ii) the State Government; (iii) the Council;

(b) buildings and lands the annual letting value of which does not exceed eighteen hundred rupees:

Provided that if any such building or land in the ownership of a person who owns any other building or land in the same Municipality, the annual letting value of such building or land shall for the purpose of this clause, be deemed to be the aggregate annual letting value of all buildings or lands owned by him in the Municipality.

(Emphasis supplied)

xxx xxx
xxx"

From the statutory provisions quoted above it is clear that the incidence of the tax is the house, building or land situated within the limits of the municipality. The tax is to be paid by the owner(s) of the house, building or land. The amount of tax to be paid by the owner(s) is to be determined with reference to the annual letting value of the house, building or land in question. The manner of determination of the annual letting value is prescribed in section 126 of the Act. The Table in Section 127, which provides for the rate at which the tax is to be levied, starts with property the annual letting value of which exceeds Rs. 1,800 per annum but does not exceed Rs. 6,000, and in such a case the tax is to be levied at 6 per centum of the annual letting value. As the annual letting value of the property escalates the rate of tax increases. The very fact that no rate of tax is prescribed in the Table for a property the annual letting value of which is less than Rs. 1800 clearly indicates the intention of the Legislature not to levy the tax on such properties. This position is further clarified in clause (b) of subsection (1) of Section 127 in which it is laid down that house, building and lands annual letting value of which does not exceed Rs. 1800 are exempt from property tax.

On a fair reading of the proviso to section 127 (A)(2)(b) it is clear that in respect of any building or land whose letting value is less than Rs. 1800 which is owned by a person who owns any other building or land in the same municipality, the annual letting value of such building or land shall be deemed to be the aggregate annual letting value of all building or lands owned by him in the municipality. The provision also makes it clear that this exception is meant for the purpose of this clause i.e., clause (b) of subsection (2). It follows, therefore, that the exemption to the levy under subsection (1) of section 127(A) will not be available in a situation to which the proviso applies.

Then the further question for determination is whether such a building or land, annual letting value of which does not exceed Rs. 1800, automatically becomes liable for payment of tax and if so what is the rate of tax in such a case. The provision in sub-section (1) of section 127(A), which is a charging section, makes no provision regarding the rate at which the tax is to be paid in case the building or land in question annual letting value of which is less than Rs. 1800 is to be taxed.

Another question that arises for consideration in this connection is whether sub-section (1) of Section 127-A and the proviso to sub-section 2 (b) should be construed together and the annual letting values of all the buildings owned by a person to be taken together for determining the amount to be paid as tax in respect of each building. In our considered view this position cannot be accepted. The intention of the Legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e., the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter.

In the case of Bank of Chettinad Ltd. v. Commissioner of Income-tax, Madras, the Privy Council quoted with approval the following passage from the opinion of Lord Russel of Killowen in Inland Revenue Commissioners v. Duke of Westminster, (1936) A.C. 1:

"I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a Court’s view of what it considers the substance of the transaction, the Court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case. As Lord Cairns said many years ago in (1869) 4 H L 100(2) at p. 122: "As 1 understand the principle of all fiscal legislation it is this" If the person sought to be taxed conies within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be."

In the case of RUSSEL (INSPECTOR OF TAXES) v. SCOTT. 1948 The All England Law Reports page 1, Lord Simonds in his opinion at page 5 observed:

"My Lords, there is a maxim of income tax law which, though it may

sometimes be over-stressed, yet ought not to be forgotten. It is that the subject is not to be taxed unless the words of the taxing statute (unambiguously impose the tax on him. It is necessary that this maxim should on occasion be reasserted and this is such an occasion."

In Administrator, Municipal Corporation, Bilaspur v.. Dattatraya Dahankar, Advocate and another (supra) this Court while accepting the position that each building is a unit for the purpose of taxation and that there I is no provision for taxation in respect of a building having annual letting value less than Rs. 1800 and that the deeming proviso to clause (b) of sub-section (2) as expressly stated is "for the purpose of this claluse", held that since the aggregation of annual letting value of all buildings or lands is permitted, then, all such buildings or lands have to be taken as one unit for the purpose of taxation. The Court was of the view that any other construction would render the proviso nugatory and defeat the object of the Act.

This construction, in our considered view, amounts to supplementing the charging section by including something which the provision does not state. The construction placed on the said provision does not flow from the plain language of the provision. The proviso requires the exempted property to be subjected to tax and for the purpose of valuing that property alone the value of the other properties is to be taken into consideration. But, if in doing so, the said property becomes taxable, the Act does not provide at what rate it would be taxable. One cannot determine the ratable value of the small property, by aggregating and adding the value of other properties, and arrive at a figure which is more than possibly the value of the property itself. Moreover, what rate of tax is to be applied to such a property is also not indicated.

Take, for instance, a case where a person owns 10 buildings, 8 of which are small ones fetching annual rental value of Rs. 1,500 each and the other 2 fetch annual rental value of Rs. 60, 000 each; then applying the ratio of Administrator Municipal Corporation, Bilaspur (supra) the annual rental value of each of the small buildings will come to Rs. 1, 32,000 and the owner will have to pay tax according to the highest slab for each building. Such an intention on the part of the legislature cannot be accepted, particularly in the absence of specific provision in the charging section.

In view of the discussions in the foregoing paragraphs the proviso to clause (b) of sub-section(2) of section 127-A of the Act being contrary to the charging section is struck-down as ultra vires.

The appeal is allowed and the judgment of the High Court under challenge is set aside. There will, however, be no order as to costs.

V.S.S.
Appeal allowed.