REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6718 OF 2004

M.C.D. & ANR. …APPELLANTS

VERSUS

M/S. MEHRASONS JEWELLERS (P) LTD. ...RESPONDENT

WITH

CIVIL APPEAL NO.8341 OF 2011

CIVIL APPEAL NO.8342 OF 2011

CIVIL APPEAL NO._____ OF 2015
(ARISING OUT OF SLP (CIVIL) NO.32342 OF 2011)

CIVIL APPEAL NO.632 OF 2013

CIVIL APPEAL NO.8340 OF 2011

J U D G M E N T

R.F. Nariman, J.

1. Leave granted.

2. In this batch of appeals there appear to be two distinct groups dealing with two separate questions that have been raised by counsel for the Municipal Corporation of Delhi. Civil Appeal No. 6718 of 2004 raises a question as to the correctness of the judgment of the Division Bench of the Delhi High Court in **Municipal Corporation of Delhi** v. **Dhunishaw Framroz Daruwala,** 100 DLT 679 (2002), decided on 23.7.2002, whereas the other appeals raise a question as to the correctness of the judgment of the Division Bench of the Delhi High Court dated 21.4.2010 in **Municipal Corporation of Delhi** v. **Major General Inderpal Singh Kahai & Anr.**, 169 DLT 352 (2010) (DB).

3. The first question raised by counsel for the MCD in the present appeals concerns itself with a post 1994 scenario – that is after the Delhi Municipal Corporation came out with the "Delhi Municipal Corporation (Determination of Rateable Value) Bye-Laws, 1994" published in the gazette on 24.10.1994. By these bye-laws, the Delhi Municipal Corporation has taken upon itself the determination of rateable value of lands and buildings according to principles laid down therein.

4. Under Section 116(1) of the Delhi Municipal Corporation Act, 1957, the Corporation is to determine the rateable value of any lands or buildings assessable to property taxes at the annual rent at which such land or building might reasonably be expected to let from year to year. The said provision reads as follows:

> "116. Determination of rateable value of lands and buildings assessable to property taxes.
>
> (1) The rateable value of any land or building assessable to property taxes shall be the annual rent at which such land or building might reasonably be expected to let from year to year less—
>
> (a) a sum equal to ten per cent of the said annual rent which shall be in lieu of all allowances for costs of repairs and insurance, and other expenses, if any, necessary to maintain the land or building in a state to command that rent, and
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> (b) the water tax or the scavenging tax or both, if the rent is inclusive of either or both of the said taxes:
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> Provided that if the rent is inclusive of charges for water supplied by measurement, then, for the purpose of this section the rent shall be treated as inclusive of water tax on rateable value and the deduction of the water tax shall be made as provided therein:
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> Provided further that in respect of any land or building the standard rent of which has been

fixed under the Delhi and Ajmer Rent Control Act, 1952 (38 of 1952), the rateable value thereof shall not exceed the annual amount of the standard rent so fixed.

Explanation.—The expression "water tax" and "scavenging tax" shall mean such taxes of that nature as may be levied by an appropriate authority."

5. The fleshing out of the skeleton contained in Section 116(1) is thereafter done by bye-law 3 of the 1994 bye-laws which provides as under:-

"3. Determination of rateable value of lands and buildings- (1) For the purposes of sub-section (1) of Section 116 of the Act, the annual rent shall be determined as under:

(a) where the premises are on rent, the rent actually realised or realisable, unless the same is collusive or concessional, shall be the annual rent. Where the tenancy commences on or after the 1st day of April, 1995 and where the commissioner has reason to believe that the declared rent does not represent the prevalent rent of the year of letting and the difference between declared rent and the prevalent rent is more than twenty five percent of the declared rent, the annual rent shall be the prevalent rent;

Explanation-For the purposes of this clause the prevalent rents shall be determined by a Panel of Assessors to be appointed by the Commissioner. Such Panel shall include a representative from the Government, a

representative of the Corporation, a representative of any Taxation Department (other than the Corporation) or a Valuer and a representative of the property owners of the zone of which the prevalent rents are to be determined.

(b) in the case of the premises which are sub-let, the rent paid or payable by the occupier shall be the annual rent.

Explanation-For the purposes of clause (a) and clause (b), it is immaterial whether the building and the fixtures and fittings affixed to the building and the land let for use and enjoyment therewith, are let by the same contract or by different contracts, and if by different contracts, whether made simultaneously or at different times;

(c) in case premises are used and occupied or are lying vacant for use and occupation by the owner himself:

(i) where the building has been erected or land which is on rent and no premium has been paid, the annual rent or the building or part thereof shall be the aggregate of the annual rent of the land paid or payable in the year or assessment and an amount calculated at ten percent of the cost of construction of the building, cost of fixtures and fittings and cost of additions, alterations and improvements;

ii) where the building or part thereof, is used or to be used as a banquet hall, cinema hall, club, guest house, hotel, nursing home or as house for marriages and such other functions, the annual rent shall be the amount calculated at ten percent of the market price of land in the year of assessment and the

cost of construction of the building, cost of fixtures and fittings and cost of additions, alterations and improvements, or the prevalent rent, whichever is higher;

iii) where the premises are not covered by sub-clause (i) and (ii) above, the annual rent shall be the amount calculated at ten percent of the cost of the premises upto the year of assessment or the prevalent rent, whichever is lower;

Provided that where the premises are used for residential purposes and cost of the premises is determined under Bye-law 2(l)(b)(iv), the annual rent of the portion of the building completed upto the year 1993-94 shall not be more than the annual rent determined for the year 1993-94;

(d) where the building or part thereof, is lying vacant for letting, the annual rent of such building or part thereof, shall be ten percent of the cost of the premises;

(e) in respect of the properties in the unauthorised colonies, regularised unauthorised colonies, on plot allotted under Economically Weaker Section and Low Income Group schemes and in respect of flats used for residential purposes upto a covered area of 75 sq. mts., where the Commissioner feels that determination of value of land, cost of construction or the prevalent rent is difficult, he may determine the annual rent by Unit Area Method.

Explanation I-Where the premises has an illuminated or non-illuminated advertisement on the walls, hoardings, posts or structures affixed to the premises, the annual rent of the

premises shall include the rent from such advertisement.

Explanation II-For the purposes of this bye-law, the annual rent of the premises includes the annual rent of the land and building thereon, and such other fixtures and fittings as are considered necessary for the use and enjoyment of the land and building for the purpose for which they are intended to be used and shall include lifts, elevators, storage tanks, pipelines, railways lines, runways, underground cables, air-conditioning plant in centrally air-conditioned buildings, swimming pools, chairs and screen in cinema halls, theatres and auditoria, cost of insulations and racks in cold storage buildings, but, save as aforesaid, no account shall be taken of the value of any fixtures and fittings contained or situated in or upon any land or building.

(2) Where the premises, as per prevalent practice, are let or transferred by charging pugree or through some other arrangement on nominal rents, the Commissioner may estimate the annual rent of the premises after taking into consideration the rents paid or payable by public undertakings or the government organisations or the premises let by such undertakings or organisations either in the same locality or in the nearby similar locality.

(3) In the case of premises to which rent restriction legislation is applicable, the annual rent determinable under sub-bye-law (1) above, shall not be more than the rent realised or realisable under the rent restriction legislation.

(4) Where the annual rent of the building is determinable under more than one clauses of sub-bye-law (1), the annual rent of the building shall be the aggregate of the annual rent determined under various clauses of that sub-bye-law.

(5) Where the premises have been provided with any fixtures and fittings, the deduction for the maintenance of such premises shall be fifteen per cent of the annual rent and not ten per cent of the annual rent as provided under sub-section (1) of Section 16 of the Act.

(6) When any land is purchased or new building is erected or any building is rebuilt or enlarged or where there is change in the ownership of the land or building, change in tenancy or increase in rents, after the 31st of December of the year the increase in the rateable value shall be effective from the commencement of the succeeding year."

6. In **Daruwala's case** (supra), a Division Bench of the Delhi High Court following **Dr. Balbir Singh & Ors. Etc. Etc.** v. **Municipal Corporation, Delhi & Others,** (1985) 1 SCC 167, and **Lt. Col. P.R. Chaudhary (Retd.)** v. **Municipal Corporation of Delhi,** (2000) 4 SCC 577 has held that notwithstanding the advent of the 1994 bye-laws, "annual value" has still to be determined on the principles laid down in these two judgments. The bone of contention is that, according to learned counsel for

the Municipal Corporation of Delhi, once the MCD lays down its own bye-laws, principles laid down in the two Supreme Court judgments referred to no longer apply, as they were applied in situations where the MCD did not itself lay down how annual value was to be determined. Secondly, these judgments were confined to fact situations in which the Delhi Rent Control Act, 1958 applied. Per contra, learned counsel for the assessees contended that the impugned judgment of the Delhi High Court was correct and that equitable principles had been laid down which are required to be followed even after the Municipal Corporation's own bye-laws have been framed by it.

7. It has been pointed out by learned counsel for the Municipal Corporation that in **Municipal Corporation of Delhi** v. **Delhi Urban House Owners' Welfare Association,** (1997) 8 SCC 335, the bye-laws as a whole have been upheld and that, therefore, it is important that once these are framed they are followed in letter and spirit.

8. We are of the view that the counsel for the MCD appears to be correct. Both **Balbir Singh's case** and **P.R. Chaudhary's case** were judgments dealing with a situation where the Delhi

Rent Control Act applied to premises governed by the said Act, and the context of both judgments was that the principle of parity evolved in **Balbir Singh's case** would apply only because annual rent in those cases had to be fixed regard being had to the maximum that could possibly be fixed in a situation where standard rent under the Delhi Rent Control Act would be the ceiling above which the amount fixed as per parameters under the Delhi Rent Control Act could not be exceeded. This becomes clear from the following paragraphs in **P.R. Chaudhary's case**:-

> "4. We are concerned in these appeals with the law as it existed prior to the amendment of the Rent Act in 1988. By the Act 57 of 1988 the Rent Act was not to apply to certain premises as provided in Section 3 of the Rent Act.
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> 5. In Dr. Balbir Singh's case this Court was concerned with the determination of rateable value in respect of properties situated in Delhi and governed by the provisions of the Delhi Municipal Corporation Act, 1957 and the Punjab Municipal Act, 1911. The Court considered four different categories of properties, namely (1) where the properties are self-occupied, that is, occupied by the owners; (2) where the properties are partly self-occupied and partly tenanted; (3) where the land on which the property is constructed is leasehold land with a restriction that the leasehold interest shall not be transferable without the approval of the lessor; and

(4) where the property has been constructed in stages. Under the provisions of the Delhi Municipal Corporation Act as well as the Punjab Municipal Act, the criterion for determining rateable value of the building is the annual rent at which such building be reasonably expected to let from year to year. The word “reasonably” in the definition is very important. What the owner might reasonably expect to get from a hypothetical tenant, if the building were let from year to year, affords the statutory yardstick for determining the rateable value. Now what is reasonable is a question of fact and it depends on the facts and circumstances of a given situation. The Court considered various provisions of the Delhi Municipal Corporation Act and the Punjab Municipal Act as well as that of the Delhi Rent Control Act, 1958. Delhi Rent Control Act was amended in 1988 when certain properties were taken out of the purview of that Act. The four categories have been considered at pages 461, 466, 468 and 473 of the Report. We quote the statement of law laid down by this Court after considering various statutory provisions made in respect of the first category: (SCC pp. 186-187 para 11).

“The rateable value of the premises, whether residential or non-residential, cannot exceed the standard rent, but, as already pointed out above, it may in a given case be less than the standard rent. The annual rent which the owner of the premises may reasonably expect to get if the premises are let out would depend on the size, situation, locality and condition of the premises and the amenities provided therein and all these and other relevant factors would have to be evaluated in determining the rateable value, keeping in mind the upper limit fixed by the standard rent. If this basic principle is borne in mind, it would avoid wide disparity between the rateable value of similar premises situate in the

same locality, where some premises are old premises constructed many years ago when the land prices were not high and the cost of construction had not escalated and others are recently-constructed premises when the prices of land have gone up almost 40 to 50 times and the cost of construction has gone up almost 3 to 5 times in the last 20 years. The standard rent of the former category of premises on the principles set out in sub-section (1)(A)(2)(*b*) or (1)(B)(2)(*b*) of Section 6 would be comparatively low, while in case of latter category of premises, the standard rent determinable on these principles would be unduly high. If the standard rent were to be the measure of rateable value, there would be huge disparity between the rateable value of old premises and recently-constructed premises, though they may be similar and situate in the same or adjoining locality. That would be wholly illogical and irrational. Therefore, what is required to be considered for determining rateable value in case of recently-constructed premises is as to what is the rent which the owner might reasonably expect to get if the premises are let out and that is bound to be influenced by the rent which is obtainable for similar premises constructed earlier and situate in the same or adjoining locality and which would necessarily be limited by the standard rent of such premises. The position in regard to the determination of rateable value of self-occupied residential and non-residential premises may thus be stated as follows: the standard rent determinable on the principles set out in sub-section (2)(*a*) or (2)(*b*) or (1)(A)(2)(*b*) or (1)(B)(2)(*b*) of Section 6, as may be applicable, would fix the upper limit of the rateable value of the premises and within such upper limit, the assessing authorities would have to determine as to what is the rent which the owner may reasonably expect to get if the premises are let to a hypothetical tenant and for the purpose of such

> determination, the assessing authorities would have to evaluate factors such as size, situation, locality and condition of the premises and the amenities therein provided. The assessing authorities would also have to take into account the rent, which the owner of similar premises constructed earlier and situate in the same or adjoining locality, might reasonably expect to receive from a hypothetical tenant and which would necessarily be within the upper limit of the standard rent of such premises, so that there is no wide disparity between the rate of rent per square foot or square yard which the owner might reasonably expect to get in case of the two premises. Some disparity is bound to be there on account of the size, situation, locality and condition of the premises and the amenities provided therein. Bigger size beyond a certain optimum would depress the rate of rent and so also would less favourable situation or locality or lower quality of construction or unsatisfactory condition of the premises or absence of necessary amenities and similar other factors. But after taking into account these varying factors, the disparity should not be disproportionately large." (Paras 4 & 5).

9. This Court has dealt with three different groups of cases that have come before it dealing with property tax legislation in the various States of this country. The first group is a group of cases where the Municipal Acts of the States define annual value to be the hypothetical rent that a landlord could reasonably be expected to receive if his property was let out to a hypothetical tenant. It is in this situation that this Court held

that such hypothetical rent could not exceed the standard rent fixed or fixable under the rent control statute which obtained in that State. This was laid down in **The Corporation of Calcutta** v. **Padma Debi & Others,** 1962 SCR (3) 49 and followed in a number of judgments, which include **Balbir Singh's case** and **P.R. Chaudhary's case**.

10. The second group of cases is where the language of the particular Municipal Corporation Act contains a *non obstante* clause owing to which the standard rent under the particular rent statute of that particular State could not be taken to be the maximum rent which could possibly be fetched by a hypothetical landlord from a hypothetical tenant. This class of cases is contained in **Municipal Corporation, Indore & Others** v. **Smt. Ratna Prabha & Others** (1996) 4 SCC 622 and the judgments that follow it.

11. Another group of cases is contained in the judgment of this Court in **Assistant General Manager, Central Bank of India & Others** v. **Commissioner, Municipal Corporation for the City of Ahmedabad & Others,** (1995) 4 SCC 696. This was a case where the Ahmedabad Municipal Act itself provided

the mode of determination of the annual value, so that it became unnecessary to go to the provisions of the Rent Act of that State. The law thus laid down by this Court is summarized in **East India Commercial Company Private Limited** v. **Corporation of Calcutta,** (1998) 4 SCC 368 as follows:-

> "17. From the aforesaid decisions, the principle which is deducible is that when the Municipal Act requires the determination of the annual value, that Act has to be read along with Rent Restriction Act which provides for the determination of fair rent or standard rent. Reading the two Acts together the ratable value cannot be more than the fair or standard rent which can be fixed under the Rent Control Act. The exception to this rule is that whenever any Municipal Act itself provides the mode of determination of the annual letting value like the Central Bank of India case relating to Ahmedabad or contains a non obstante clause as in *Ratnaprabha case* then the determination of the annual letting value has to be according to the terms of the Municipal Act." (at Para 17).

12. In **The Commissioner** v. **Griha Yajamanula Samkhya & Others,** (2001) 5 SCC 651, this Court disposed of a batch of writ petitions involving assessment of property tax of buildings located within the limits of different Municipal Corporations in the State of Andhra Pradesh. After referring to various judgments of this Court including the judgment in the **Central**

Bank case and **East India Commercial Company's** case, this Court held:-

> "From the statutory provisions noted above, it is clear that the Act provides that the tax shall be levied at such percentages of the rateable value as may be fixed by the Corporation. It further provides the method and manner of determination of the rateable value. The determination of the annual rental value which is the basis for calculation of the rateable value is also provided in the Act and the Rules. The Act mandates that the Commissioner shall determine the tax to be paid by the person concerned in the manner prescribed under the statute and the rules. It is our view that the Act and the Rules provide a complete code for assessment of the property tax to be levied for the buildings and lands within the municipal corporation. There is no provision in the statute that the fair rent determined under the Rent Control Act in respect of a property is binding on the Commissioner. The legislature has wisely not made such a provision because determination of annual rental value under the Act depends on several criteria. The criteria for such determination provided under the Act may not be similar to those prescribed under the Rent Control Act. Further the time when such determination was made is also a relevant factor. If in a particular case the Commissioner finds that there has been a recent determination of the fair rent of the property by the authority under the Rent Control Act he may be persuaded to accept the amount as the basis for determining the annual rental value of the property. But that is not to say that the Commissioner is mandatorily required to follow the fair rent fixed by the authority under the Rent Control Act. The High Court therefore did not commit any error in holding that the determination of fair rent under the Rent

> Control statute will not be binding on the Commissioner for the purpose of assessment of property tax under the Act." (at Para 35)

13. The present appeals before us refer to assessment years post 1994 and are said to be in a factual scenario where after the amendment of 1988 to the Delhi Rent Control Act, the Delhi Rent Control Act does not apply either for the reason that the rent fixed is more than Rs.3,500/- per month or that the property has been newly constructed and is exempt from its provisions for a period of 10 years. In situations such as the above, an instructive judgment of this Court is contained in **Government Servant Cooperative House Building Society Limited & Others** v. **Union of India & Others,** (1998) 6 SCC 381. In this judgment, this Court noticed the 1988 amendment to the Delhi Rent Control Act and various judgments referred to hereinabove and concluded as under:

> "8. Therefore, the annual rent actually received by the landlord, in the absence of any special circumstances, would be a good guide to decide the rent which the landlord might reasonably expect to receive from a hypothetical tenant. Since the premises in the present case are not controlled by any rent control legislation, the annual rent received by the landlord is what a willing lessee,

> uninfluenced by other circumstances, would pay to a willing lessor. Hence, actual annual rent, in these circumstances, can be taken as the annual rateable value of the property for the assessment of property tax. The municipal corporation is, therefore, entitled to revise the rateable value of the properties which have been freed from rent control on the basis of annual rent actually received unless the owner satisfies the municipal corporation that there are other considerations which have affected the quantum of rent." (at Para 8).

14. Having regard to the aforesaid statement of law, we are of the opinion that the Division Bench of the Delhi High Court in **Daruwala's case** (supra), is not correctly decided for the simple reason that this appeal falls within the exception created by the **Central Bank** judgment, namely, cases where the Municipal Corporation of a particular State itself lays down as to how annual value is to be determined. We, therefore, hold that for assessments made after the 1994 bye-laws came into existence, such assessments shall be governed by these bye-laws alone and the principles laid down in **Balbir Singh's case** and **P.R. Chaudhary's case**, would have no relevance in such a situation. We answer question number 1 accordingly.

15. In order to determine the answer to question number 2, it is necessary to first extract two Sections of the Delhi Municipal Corporation Act, both inserted with effect from 1.8.2003. Section 116G of the said Act reads as follows:

> "116G. Transitory provisions.-Notwithstanding anything contained in this Act, as amended by the Delhi Municipal Corporation (Amendment) Act, 2003, a tax on vacant land or covered space of building or both, levied under this Act immediately before the date of coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, shall, on the coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, be deemed to be the tax on such vacant land or covered space of building or both, levied under this Act as amended by the Delhi Municipal Corporation (Amendment) Act, 2003, and shall continue to be in force until such tax is revised in accordance with the provisions of this Act, as amended by the Delhi Municipal Corporation (Amendment) Act, 2003.
>
> (2) Notwithstanding anything contained in sub-section (1), where assessment has not been finalized in respect of a vacant land or covered space of a building or both, on the date of the commencement of the Delhi Municipal Corporation (Amendment) Act, 2003 the assessee may have such land or building or both, as the case may be, assessed on the basis of the annual value."

Section 169 after the amendment of 2003 reads as follows:

> "169. Appeal against assessment, etc.-(I) An appeal against the levy or assessment or revision of

assessment of any tax under this Act shall lie to the Municipal Taxation Tribunal constituted under this section:

Provided that the full amount of the property tax shall be paid before filing any appeal:

Provided further that the Municipal Taxation Tribunal may, with the approval of the District Judge of Delhi, also take up any case for which any appeal may be pending before the court of such District Judge:

Provided also that any appeal pending before the court of such District Judge shall be transferred to the Municipal Taxation Tribunal for disposal, if requested by the applicant for the settlement thereof on the basis of annual value.

(2) (a) The Government shall constitute a Municipal Taxation Tribunal consisting of a Chairperson and such other members as the Government may determine:

Provided that on the recommendation of the Government, the Chairperson may constitute one or more separate Benches, each Bench comprising two members, one of whom shall be a member of the Higher Judicial Service of a State or a Union territory and the other member from the higher administrative service, and may transfer to any such Bench any appeal for disposal or may withdraw from any Bench any appeal before it is finally disposed of.

(b) The Chairperson, and not less than half of the other members, of the Municipal Taxation Tribunal shall be persons who are or have been the member of the Higher Judicial Service of a State or a Union territory for a period of not less than five years, and the remaining members, if any, shall have such qualifications and experience as the Government may by rules determine.

(c) The Chairperson and the other members of the Municipal Taxation Tribunal shall be appointed by the Government for a period of five years or till they attain the age of sixty-five years, whichever is earlier.

(d) The other terms and conditions of service of the Chairperson and the other members of the Municipal Taxation Tribunal, including salaries and allowances, shall be such as may be determined by rules by the Government.

(e) The salaries and allowances of the Chairperson and the other members of the Municipal Taxation Tribunal shall be paid from the Municipal Fund.

(3) In every appeal, the costs shall be in the discretion of the Municipal Taxation Tribunal or the Bench thereof, if any.

(4) Costs awarded under this section to the Corporation shall be recoverable by the Corporation as an arrear of tax due from the appellant.

(5) If the Corporation fails to pay any costs awarded to an appellant within ten days from the date of the order for payment thereof, the Municipal Taxation Tribunal may order the Commissioner to pay the costs to the appellant."

16. Assailing the Division Bench judgment of the Delhi High Court in **Municipal Corporation of Delhi** v. **Major General Inderpal Singh Kahai & Anr.**, learned counsel for the Municipal Corporation referred us to these two Sections and argued that Section 116G is only a transitory provision which is

meant to tide over difficulties felt in enforcement of a new regime of property tax – what is called the unit area method. Learned counsel argued that earlier, under Section 124 of the Delhi Municipal Corporation Act, the Corporation could revise rateable value of any property after giving a notice and hearing objections to the same. Post August 2003, this tax regime has been replaced by Sections 123A and 123B by a self-assessment procedure based on what is called the unit area method laid down under Section 116E of the said Act. According to learned counsel, Section 116G being a transitory provision therefore seeks to deal only with assessments that have not been finalized in respect of property tax just before the 2003 amendment has come into force and would refer only to assessments not finalized at the initial stage before the assessing authority itself. This would become clear from a correct reading of the third proviso of Section 169 which states that applicants in appeal can only apply for "settlement" on the basis of annual value as defined in the 2003 amendment. Since such settlement does not refer to adjudication but is only consensual, it is obvious that all appeals pending at the date of

2003 amendments would have to be decided in accordance with the old substantive law and no option could be given to assessees to opt for the new procedure and levy of property tax post 2003 in respect of assessment years prior to 2003. Counsel, therefore, argued that the basis of the Division Bench judgment was wholly incorrect and therefore ought to be set aside. Per contra, learned counsel for the assessees has maintained that the impugned judgment is absolutely correct and that even where an assessment has been finalized at the initial stage but an appeal is pending, an assessee is entitled to ask for an appellate decision on the basis of "annual value" as newly defined by the 2003 amendment. Since counsel on both sides have referred us to provisions other than Sections 116G and 169 as well, we set them out in order to better understand their arguments.

17. By the 2003 Amendment Act to the Delhi Municipal Corporation Act, Section 2(1A) was added which reads as follows:

> "2 (1A) "Annual value" means the annual value of any vacant land or covered space of any building determined under section 116E;"

18. Section 116E says:

> “116E. Determination of annual value of covered space of building and of vacant land -(l) The annual value of any covered space of building in any ward shall be the amount arrived at by multiplying the total area of such covered space of building by the final base unit area value of such covered space and the relevant factors as referred to in clause (b) of sub-section (2) of section 116A.
>
> Explanation-"covered space", in relation to a building, shall mean the total floor area in all the floor thereof, including the thickness of walls, and shall include the spaces of covered verandah and courtyard, gangway, garrage, common service area, staircase, and balcony including any area projected beyond the plot boundary and such other space as may be prescribed.
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> (2) The Corporation may require the total area of the covered space of building as aforesaid to be certified by an architect registered under the Architects Act, 1972 (20 of, 1972), or any licensed architect, subject to such conditions as may be prescribed.
>
> (3) The annual value of any vacant land in any ward shall be the amount arrived at by multiplying the total area of such vacant land by the final base unit area value of such land and the relevant factors as referred to in clause (b) of sub-section (2) of section 116A.
>
> (4) If, in the case of any vacant land or covered space of building, any portion ,thereof is subject to different final base unit area values or is not self-occupied, the annual value of each such portion shall be computed separately, and the sum of such

annual values shall be the annual value for such vacant land or covered space of building, as the case may be."

19. Section 126(4)(b) as it obtained prior to 2003 read as follows:

> **"126. Amendment of assessment list – (**4) No amendment under sub-section (1) shall be made in the assessment list in relation to –
>
> (a) xxx
>
> (b) the year commencing on the 1st day of April 1988, or any other year thereafter, after the expiry of three years from the end of the year in which the notice is given under sub-section (2) or sub-section (3), as the case may be :
>
> Provided that nothing contained in this sub-section shall apply to a case where the Commissioner has to amend the Assessment list in consequence of or to give effect to any direction or order of any court."

20. Section 123A and Section 123B, post the amendment of 2003, read as follows:

> "123A. Submission of returns-(I) The Commissioner shall, with a view to determining the annual values of vacant land and covered space of building in any ward and the person primarily liable for the payment of property tax, by public notice, or by notice, in writing, require the owner and the occupier of such vacant land or covered space of building or any portion thereof, including such owner or the person

computing the tax due under the provisions of section 123B, to furnish a return in such form as may be prescribed by bye-laws and within such time, not being less than thirty days from the date of publication of such notice, as may be specified therein, containing the following particulars, namely:-

(a) the name of the owner and the occupier;

(b) the number of the ward, the name of the colony, and the number and the sub-number of the premises of such vacant land or covered space of building, as the case may be;

(c) whether the building is pucca, semi-pucca or katcha;

(d) year of completion of construction of the building, or year or years of part construction thereof, as the case may be;

(e) the use with reference to the provisions of clause (f) of sub-section (1) of section 116A to which such vacant land or covered space of building is put or intended to be put;

(f) the area of the vacant land and the covered space of the building with break-up of the area under various uses;

(g) whether wholly owner-occupied or wholly tenanted, or partly owner-occupied and partly tenanted, and the areas thereof; and

(h) such other particulars as may be prescribed by bye-laws.

(2) (a) Every owner and every occupier as aforesaid shall be bound to comply with such notice and to furnish a return with a declaration that the statement made therein is correct to the best of knowledge and belief of such owner and occupier.

(b) Whoever omits to comply with such requisition, shall in addition to any penalty to which he may be liable, be precluded from objecting to any assessment made by the Commissioner in respect of such land or building.

(3) The Commissioner or any person subordinate to him and duly authorized by him in this behalf, in writing, or any licensed architect, may, with or without giving any previous notice to the owner or the occupier of any land or building, enter upon, and make any inspection or survey, and take measurement of such land or building with a view to verifying the statement made in the return for such land or building or for collecting the particulars, referred to in sub-section (1) in respect of such land or building:

Provided that no such entry shall be made except between the hours of sunrise and sunset.

123B. Self-assessment and submission of return -(I) After the coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, any owner of any vacant land or covered space of building or any other person liable to pay the property tax or any occupier in the absence of such owner or person, shall file a return of self assessment within sixty days of the coming into force of the aforesaid Act.

(2) Such owner or other person or occupier, as the case may be, shall, thereafter, file the annual return only in those cases where there is a change in the position as compared to the previous return, within three months after the end of the financial year in which the change in position has occurred.

(3) Any owner of any covered space of building or vacant land or any other person liable to pay the property tax, or any occupier in the absence of such owner or person shall compute the tax due under section 114A or section 114C, as the case may be,

and pay the same in equated quarterly instalment by the 30th day of June, 30th day of September, 31st day of December and 31st day of March of the financial year for which tax is to be paid. In the event of tax being paid in one lump sum for the financial year by the 30th day of June of the financial year, rebate of such percentage not exceeding fifteen per cent as may be notified by the Corporation, of the total tax amount due shall be allowed.

(4) Any owner of any vacant land or covered space of building or any other person liable to pay the property tax or any occupier in the absence of such owner or person, who computes such property tax under this section, shall, on such computation, pay the property tax on such vacant land or covered space of building, as the case may be, together with interest, if any, payable under the provisions of this Act on-

(a) any new building or existing building which has not been assessed; or

(b) any existing building which has been redeveloped or substantially altered or improved after the last assessment, but has not been subjected to revision of assessment consequent upon such redevelopment or alteration or improvement, as the case may be.

(5) Such owner or person, as the case may be, shall furnish to the Commissioner a return of self-assessment in such form, and in such manner, as may be specified in the by-laws and every such return shall be accompanied by proof of payment of property tax and interest, if any.

(6) In the case of any new building for which an occupancy certificate has been granted, or which

has been occupied, after the coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, such payment shall be made, and such return shall be furnished, within thirty days of the expiry of the quarter in which such occupancy certificate is granted or such building is occupied, whichever is earlier.

Explanation.-For the removal of doubt, it is hereby declared that occupancy certificate may be provisional or final and may be for the whole or any part of the building and occupancy may be of the whole or any part of the building.

(7) After the determination of the annual value of vacant land or covered space of building under section 116E or section 116F or revision thereof under section 123C has been made, any amount paid on self-assessment under this section shall be deemed to have been paid on account of such determination under this Act as amended by the Delhi Municipal Corporation (Amendment) Act, 2003.

(8) If any owner or other person as aforesaid, liable to pay the property tax under this Act, fails to pay the same together with interest thereon, if any, in accordance with the provisions of this section, he shall, without prejudice to any other action to which he may be subject, be deemed to be a defaulter in respect of such property tax, or interest, or both, remaining unpaid, and all the provisions of this act applicable to such defaulter shall apply to him accordingly.

(9) If after the assessment of the annual value of any land or covered space of building finally made under this Act, the payment on self-assessment under this section is found to be less that than of the amount payable by the assessee, the assessee shall pay the difference within two months from the date of final assessment, failing which recovery

shall be made in accordance with the provisions of this Act, but, after the final assessment, if it is found that the assessee has paid excess amount, such excess amount shall be refunded:

Provided that in any case where the amount of tax determined in the final assessment is more than the amount of tax paid under self-assessment, and the difference in the amount of tax is, in the opinion of the Commissioner, the result of wilful suppression of facts as defined in the bye-laws, the Commissioner may levy a penalty not exceeding thirty per cent of such difference in the tax besides the interest thereon:

Provided further that the levy of such penalty shall be in addition to any other punishment provided for under this Act:

Provided also that the procedure for sending of notice, hearing of objection and determination of tax and penalties shall be such as may be specified in the bye-laws.

(10) Where no notice is sent by the Commissioner under section 123C within twelve months after the year to which such self-assessment relates, such self assessment shall be regarded as assessment made under this Act:

Provided that in any case, where there has been wilful suppression of facts, penalty up to thirty per cent of the tax due may be imposed:

Provided further that the procedure for sending of notice, hearing of objection and determination of tax and penalties shall be such as may be specified in the bye-laws."

21. Since what is being assailed is the correctness of the judgment in **Major General Inderpal Singh Kahai's case** (supra) passed by the Division Bench of the Delhi High Court, it is important to set out its reasoning. The Division Bench, after referring to Sections 116G and 169, then stated:

> "9. It is clear from the third proviso to Section 169(1) of the DMC Act that even where an assessment is finalized, but an appeal is pending, an assessee is entitled to ask for a decision in the appeal on the annual value basis. In other words, even at an appellate stage, an assessee is empowered to ask for a decision on the basis of the annual value of the property.
>
> 10. Therefore, three situations are postulated:
>
> Firstly, where an assessment has been finalized and no appeal is filed against it, then the assessment will continue to be operative until it is revised.
>
> Secondly, where an assessment has been finalized but an appeal has been filed against it, then as per the third proviso to Section 160(1) of the DMC Act, the assessee can ask for an assessment on the basis of the annual value of the property.
>
> Thirdly, where the assessment is not finalized, then as per Section 116-G(2) of the DMC Act, the assessee can ask for an assessment on the basis of the annual value of the property.
>
> 11. It appears to us that the intention of the Legislature was to commence the levy of property tax with effect from 1st April, 2004 on a clean slate – in respect of all pending assessments and in

respect of all appeals pending against finalized assessment orders. All assessments in such cases would be made after 1st April, 2004 on the option of the assessee, on the basis of the annual value of the property. If the statutory amendment is read and understood in this light, it is clear that Section 116-G(2) of the DMC Act not only entitles an assessee to seek an assessment on the annual value basis, in an assessment not yet finalized, but it also empowers the assessee in making such a demand as a matter of right.

12. Looked at from another point of view, if Section 116-G(2) of the DMC Act does not so empower an assessee, then not only would the purpose of that Section be lost, but a rather strange and anomalous situation would be created – namely, that in a pending appeal against a finalized assessment, an assessee can demand an assessment on the basis of the annual value of the property (third proviso to Section 169(1) of the DMC Act) but in a pending assessment, the assessee cannot demand an assessment on the basis of the annual value. Surely, such an odd situation is not postulated by the law or by the Legislature.

15. In our opinion, there is an error in the submission made by learned counsel for the Municipal Corporation. The error is in appreciating the term `finalized' assessment. An assessment in the context of Section 116-G(2) of the DMC Act means an assessment that has been accepted by the assessee and is not the subject matter of a statutory appeal. It does not include an assessment set aside in appeal nor does it include an assessment challenged by way of a statutory appeal. This being so, the assessment made by the Joint Assessor and Collector and set aside by the learned Additional District Judge by his order dated 1st April, 2002 is not a `finalized' assessment within the meaning of Section 116-G(2) of the DMC Act.

> The assessment in the case of the respondents having been set aside and remanded back for re-determination of the rateable value by the learned Additional District Judge clearly indicates that the assessment was wide open. In that sense, it was not 'finalised' in so far as the provisions of Section 116-G(2) of the DMC Act are concerned.
>
> 16. According to learned counsel for the Municipal Corporation, notwithstanding this, once the assessment is made by the Joint Assessor & Collector, it must be taken to be finalized for the purpose of Section 116-G(2) of the DMC Act. This submission would be correct if the assessment order is accepted by the assessee or is not challenged in appeal, but in the present case where the assessment order itself has been set aside with a direction by the learned Additional District Judge to re-determine the rateable value (and no fresh order has been passed by the Joint Assessor and Collector in terms of the directions given by the Additional District Judge) it cannot be said that the assessment has been finalized at least at the hands of Joint Assessor and Collector."

22. We are of the opinion that this is a correct view of the law. Under Section 169 3rd proviso, appeals that are pending before the Court of the District Judge are to be transferred to the Municipal Taxation Tribunal to be set up under the 2003 Amendment for disposal, if requested by the applicant, for the settlement thereof on the basis of annual value. This proviso means that an appeal pending before a District Judge is to be

transferred compulsorily to the Taxation Tribunal (after it is set up) if an applicant requests for disposal of the appeal on the basis of annual value. Obviously, the word "settlement" would not in this context means a consensual arrangement between both parties but would only mean a determination to be made by the Tribunal on the basis of annual value. Once this position becomes clear, the impugned judgment cannot be faulted. It is clear then that even at the appellate stage an applicant can opt to apply for the new unit area method provided for in Section 116E so that his property tax assessment may be decided in accordance with the said method even though it pertains to an assessment year prior to 2003.

23. The second proviso to Section 169 would apply in cases where, after the Taxation Tribunal is set up, there is no request by any applicant to determine his case on the basis of annual value. In such cases also, the Tribunal once set up may take up the appeal of such person with the approval of the earlier appellate authority, namely, the District Judge. Thus understood, it is clear that the logic of the Division Bench of the High Court cannot be faulted.

24. This being the position in law, an assessment that has not been finalized in all cases where an appeal is pending before the District Judge as also in all cases which have not become "final" in the sense that the appellate authority or the High Court or Supreme Court (after 2003), in respect of an assessment of property tax prior to 2003, remands the matter for fresh determination, would all be covered by the language of Section 116G(2). We are, therefore, of the view that the High Court is correct and this group of appeals, therefore, consequently stands dismissed.

25. We have been informed that in the appeal which dealt with the first question decided by us, various other points were raised in the writ petition filed before the Delhi High Court which were not adjudicated upon as **Daruwala's case** was followed. Having set aside **Daruwala's case**, such other points that have been raised by the petitioners in the writ petition filed before the Delhi High Court may now be agitated by them before the High Court and a remand is made of this case for determination of such questions by the High Court. As this is an old writ petition,

we request the High Court to take up this writ petition at an early date.

…….J.
(A.K. Sikri)

…….J.
(R.F. Nariman)

New Delhi;
August 11, 2015