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Services rendered by advocates are 'professional activities'; these services are not 'commercial activities' within the meaning of the Delhi Municipal Corporation Act, 1957, and thus not subject to tax

A Division Bench of the Delhi High Court (“Delhi HC”), in *South Delhi Municipal Corporation Versus B N Magon*¹, has held that under the Delhi Municipal Corporation Act, 1957 (“DMC Act”), ‘professional activity’ of lawyers is not included as a ‘commercial activity’ and as such, applying the rule of strict interpretation of taxation statutes, such activity is not subject to tax. The Delhi HC has further held that (a) ‘professional activity’ of lawyers does not fall within the category of either ‘commercial establishment’ or a ‘business activity’; and (b) there is no power to tax ‘professional activities’ carried out from residential buildings under the DMC Act.

Brief Facts

1. The Municipal Corporation of Delhi (“MCD”) issued an assessment order under Section 123D of the DMC Act to the respondent and levied property tax for carrying out professional activity in his residential building.
2. The respondent challenged the order before the Delhi HC. A Ld. Single Judge of the Delhi HC set aside the assessment order on the ground that services rendered by advocates are professional activities and cannot be classified/categorised or be subject to tax under the category of business establishment or professional establishment.
3. Aggrieved by the decision of the Ld. Single Judge, the South Delhi Municipal Corporation filed an appeal before the Division Bench of the Delhi HC. It was contended that the MCD has power to levy property tax on all lands and buildings under its jurisdiction and unless consciously excluded, there cannot be any building, property or activity which cannot be put to tax.

Issue

Whether ‘professional activity’ carried out by lawyers at their residential buildings/dwelling units is subject to levy of property tax (within the meaning of the DMC Act, bye-laws framed thereunder or the Master Plan of Delhi, 2021).

¹ LPA 564/2015

Findings:

While dismissing the appeal and affirming the decision of the Ld. Single Judge, the Division Bench held that:

1. MCD's powers to levy property tax are contained in Sections 115 and 115-A of the DMC Act. DMC (Property Tax) Bye-laws, 2004 (framed under Sections 481 and 483 of the DMC Act) prescribes the categories of buildings in relation to which property tax can be levied. These provisions empower MCD to levy taxes, but this can only be in terms of and to the extent specified in the statute. The DMC Act has not included 'professional activity' of lawyers as a 'commercial activity', and as such, it cannot be put to tax.
2. The Master Plan of Delhi, 2021 ("**MPD 2021**") permits professional activity in residential buildings, subject to certain conditions. However, MPD 2021 does not empower MCD to levy tax for professional activity being carried out from residential buildings.
3. Under the DMC Act, there is no power to tax 'professional activities' carried out from residential buildings. Relying on the decisions of the Supreme Court in *State of West Bengal v. Kesoram Industries Ltd & Ors.*² and *Commissioner of Customs and Others vs. Dilip Kumar and Company and others*³, the Delhi HC held that (a) "power to tax must be express, else no power to tax"; (b) every taxing statute should be interpreted strictly; and (c) courts must not give a contextual or purposive interpretation to taxation statutes.
4. No tax can be levied in the absence of a statutory empowerment. For taxation to extend to a class of activity, such activity must be specified, defined and included in that class/category. Relying on the decisions of the Supreme Court and the Bombay High Court in *V. Sasidharan v. M/s. Peter and Karunakar and others*⁴ and *Sakharam Narayan Kherdekar v. City of Nagpur Corporation & Ors.*⁵ respectively, the Delhi HC reiterated that 'professional activity' of lawyers does not fall within the category of 'commercial establishment' or 'business activity'.
5. Since DMC Act has not included 'professional activity' of lawyers as a 'commercial activity', it cannot be subject to tax.

JSA Comment

This is a welcome decision and puts to rest the uncertainty arising on account of certain provisions contained in the DMC (Property Tax) Bye-laws, 2004. The Delhi HC has unequivocally clarified that these bye-laws cannot seek to overreach the statute itself i.e. the DMC Act. This decision highlights that a subordinate legislation cannot be used to provide for a consequence not contemplated in the parent statute itself. More so, when the statute in question is a tax legislation, which ought to be interpreted strictly.

² (2004) 10 SCC 201

³ (2018) 9 SCC 1

⁴ AIR 1984 SC 1700

⁵ AIR 1964 Bombay 200

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