

Before S.J. Vazifdar, CJ. & Deepak Sibal, J.

M/S AVON STEEL INDUSTRIES (P) LIMITED — *Petitioner*

versus

STATE OF PUNJAB AND OTHERS — *Respondents*

CWP No. 16836 of 2016

October 03, 2016

Constitution of India, 1950 — Art.226/227 — Punjab Municipal Corporation Act, 1976 — S.90(3), 90(1)(a), 90(3-A), 97(1), 100, 112-A(1), (3), (4), (5) 138 & 147 — Whether corporation can entertain the appeal of petitioner filed against order dated 22.3.2016 on deposit of only due tax without insistence on payment of imposed penalty as payment of tax would be the only requirement to entertain appeal — ‘Tax’ and ‘penalty’ are distinct and penalty cannot be read into S. 112-c(2) — Appeal to be considered with payment of tax alone.

Held, that it can thus be seen that the Act does not define tax or penalty but makes a clear distinction between both. In Sections 138 and 147 (b) of the Act, wherever the legislature intended to give a wider meaning to the Amount due or payable, it has done so. If in a particular Section, the meaning of tax was to include penalty, an explanation to that effect has been given in the Section itself, as has been done in Section 100.

(Para 15)

Further held, that a plain reading of Section 112-C(2) provides that no appeal shall be entertained unless the amount of tax is paid. It does not say unless tax and penalty is paid or total amount due is paid or any amount on account of tax is paid. The section also does not contain an explanation which provides that tax would include penalty. If the plea raised on behalf of the respondent Corporation is to be accepted, then we would have to necessarily add to Section 112-C(2) either of the afore-referred phrases. The plain meaning of Section 112-C(2) being unambiguous, leading to no absurdity, we are not inclined to do so.

(Para 16)

T. S. Ratta, Advocate, *for the petitioner.*

Ashwani Talwar, Addl. A. G., Punjab with Sunil Kumar Vashisht, Punjab for respondents no.1 and 5.

Ashok Kumar Bazaz, Advocate, for respondents no. 2 to 4.

DEEPAK SIBAL, J.

(1) The petitioner Company is engaged in the business of manufacturing iron and steel in its industrial unit in Industrial Focal Point, Phase VIII, Village Mangli Nichi, District Ludhiana. The manufacturing unit is over an area measuring 96,800 sq. yds., with a covered area of 3,44,800 sq. feet. The petitioner, on 10.12.2013, for the property referred to above, filed its property tax return for the year 2013-14 on a self-assessment basis. The petitioner calculated the property tax on the basis of rates specified by the Collector. The respondent Municipal Corporation, Ludhiana (for short – the Corporation) found the return to be under-valued, and therefore, served upon the petitioner a notice to that effect. The value, on which, the property tax, according to the respondent Corporation, should have been paid by the petitioner, was also mentioned in the notice. The petitioner responded to the said notice through a detailed representation, in which the valuation of the property, on the basis of which, the petitioner had filed its return on 10.12.2013, was reiterated. Opportunity of hearing was granted by the respondent Corporation to the petitioner, which was availed. However, through an order dated 22.03.2016, the plea of the petitioner was rejected and accordingly, a demand of Rs.56,54,790/- was raised. A perusal of this order shows that out of the raised demand, Rs. 28,27,395/- were payable towards tax and Rs. 28,27,395/- towards penalty.

(2) Aggrieved by the above demand, the petitioner challenged the same by way of an appeal before the Commissioner of the respondent Corporation. Since along with the appeal, no part of the disputed demand had been deposited, the appeal was not entertained as according to the Commissioner, filing of the due demand along with the appeal was a pre-requisite. The dismissal of the petitioner's appeal led to the passing of the order dated 06.07.2016, through which the petitioner was asked to deposit his dues, as demanded through order dated 22.03.2016 within seven days, or else, the property of the petitioner would be sealed and then auctioned. Aggrieved by the above action, the petitioner had earlier approached this Court through **C.W.P.No. 13964 of 2016**, which, through order dated 05.08.2016, was ordered to be dismissed as withdrawn, with liberty to the petitioner to

file a fresh petition on the same cause, with better particulars. As per the liberty granted, the petitioner has preferred the present petition.

(3) Though in the present petition, quashing of the afore-referred orders dated 22.03.2016, 30.05.2016 and 06.07.2016 is prayed for, at the time of hearing, learned counsel for the petitioner limited his prayer for seeking quashing of the order dated 30.05.2016 and 06.07.2016 and for issuance of a direction to the respondent Corporation to entertain the appeal of the petitioner filed against the order dated 22.03.2016, on deposit of only the due tax and without insistence on the payment of the imposed penalty, as according to him, payment of tax was the only requirement for entertaining the appeal.

(4) Section 90(1)(a) of the Punjab Municipal Corporation Act, 1976 (for short – the Act), Act enables the Corporation to levy taxes on lands and buildings. Section 90(3) provides that the taxes shall be levied at such rates as may, from time to time, be specified by the Government. Under Section 90(3-A) that subject to any general or special orders, which may be passed by the Government and to the rules, a Corporation may, from time to time, impose in the whole or any part of the City, a tax payable by the owner on building and land, to be calculated under Section 97.

(5) Section 90(1)(a), Section 90(3) and Section 90(3-A) of the Act (without its proviso as the same is not relevant) read as under :-

“90. Taxes to be imposed by Corporation under this Act and arrangement of certain taxes collected by Government – (1) The Corporation shall, for the purposes of this Act, levy the following taxes :-

(a) taxes on lands and buildings;

(b) **xx xx xx xx**

(3) The taxes specified in sub-section (1) and sub-section (2) shall be levied at such rates as may, from time to time, be specified by the Government by notification and shall be assessed and collected in accordance with the provisions of this Act and the bye-laws made thereunder.

(3-A) Notwithstanding anything contained in this Act and subject to any general or special orders which the Government may make in this behalf, and to the rules, a Corporation may, from time to time for the purposes of this Act, and in the manner directed by this Act, impose in the

whole or any part of the City a tax payable by the owner on building and land to be calculated as per the provisions of section 97:”

(6) Section 97(1) of the Act contains the rates of tax payable on lands and buildings. The same reads as under :-

“97. Incidence of taxes on land and buildings –

(1) The tax payable on land and buildings shall be leviable as under :-

Sr. No.	Category of building	Rate of tax
1.	Self occupied residential building	(i) Fifty rupees in case land area is fifty square yards or below, having covered area not more than 450 square feet; (ii) One hundred and fifty rupees in case, land area is one hundred square yards or below having covered area not more than 900 square feet; (iii) Half per cent of the rateable value in case the land area is fifty square yards or below, but covered area exceeds the stipulation indicated in (i) and(ii) above ; (iv) Half per cent of the rateable value in case the land area is five hundred square yards or below; and (v) One percent of the rateable value, in case the land area is more than five hundred square yards;
2.	Residential building under the occupation of the tenant(s)	Seven and half percent of the rateable value;

3.	Self occupied non-residential building	Three per cent of the rateable value;
4.	Self occupied industrial building	One and half per cent of the rateable value;and
5.	Non-residential building under occupation of tenant(s)	Ten per cent of the rateable value:

Explanation – It is hereby clarified that if a portion of a building and/or land is used for more purposes, -

(i) the self occupied residential building for non-residential purpose or on rent for residential purpose or on rent for non-residential purpose; or

(ii) the self occupied non-residential building for residential purpose or on rent for residential purpose or on rent for non-residential purpose, the rate of tax for that portion of the building and /or land shall be the rate specified in the table above according to its use:

Provided that if the land is vacant or the building is unproductive, the rate of tax shall be 0.20 per cent of the rateable value:

Provided further that the owner or the occupier, as the case may be, shall be at liberty to pay the tax on building and/or land for the financial year 2013-14 as per the calculations to be made in accordance with the provisions of either the principal Act as amended by the Punjab Municipal Corporation (Second Amendment) Act, 2012 (Punjab Act No.7 of 2013) or the Punjab Municipal Corporation (Second Amendment) Act, 2013, as he may deem fit.”

(7) As per **Section 112-A(1)**, every owner or occupier is required to calculate the tax on land and building himself in accordance with the provisions of sub-section (3-A) of Section 90 and accordingly file his return by 31st December of the relevant Financial Year. **Sub-section (3)** of Section 112-A provides that where the tax calculated under sub-section (1) is not fully paid by 31st December of that

Financial Year, a penalty of 25% of the remaining amount of tax so calculated by him is payable. **Sub-section (4)** is to the effect that if wrong particulars are given in the return filed under sub-section (1), then the assessee is liable to pay as penalty an amount equivalent to the difference of amount between the sum of tax actually paid, if any, and the sum of tax assessed on consideration of the right particulars, which would be in addition to the payment of amount of tax so assessed. Under **Sub-section (5)**, if no return is filed by 31st March of a Financial Year, then the owner or occupier is liable to pay an amount equivalent to the sum of tax for that Financial Year as penalty, in addition to the payment of tax.

Section 112-A (1), (3), (4) and (5) of the Act read as under:-
“112-A. Self assessment of tax on land and building –

(1) Notwithstanding anything contained in this Act, every owner or occupier, as the case may be, shall calculate the tax on land and building himself in accordance with the provisions of sub-section (3-A) of section 90 in the Form, as may be specified by the Government (hereinafter referred to as the return), and shall file the same to the Corporation by the 31st December of the relevant year.

xx xx xx xx

(3) Where the tax calculated under sub-section (1) is not fully paid by the 31st December of the relevant financial year as aforesaid and is paid on or before the 31st March of that financial year, a penalty of twenty five per cent of the remaining amount of tax so calculated by him shall be payable.

(4) Notwithstanding any action contemplated under the provisions of this Act, if wrong particulars are given in the return filed under sub-section (1), the owner or the occupier, as the case may be, shall be liable to pay, as penalty, an amount equivalent to the difference of amount between the sum of tax actually paid, if any, and the sum of tax assessed on consideration of the right particulars, in addition to the payment of amount of tax so assessed.

(5) If no return is filed for a financial year by the 31st March of that financial year, under sub-section (1), the owner of the occupier, as the case may be, shall be liable to pay an amount equivalent to the sum of tax for that financial year

as penalty, in addition to the payment of the tax, and the whole of the amount shall become recoverable under the provisions of section 138 immediately after the expiry of the financial year for which no return has been filed.”

(8) Remedy of appeal against the orders to be passed under Section 112-A (4) is provided under Section 112-C of the Act. Sub-section (2) of Section 112-C provides that the appeal to be filed under Section 112-C would not be entertained unless the amount of tax is paid. Sections 112-C (1) and (2) are reproduced for ready reference:-

112-C. Appeal in respect of tax on land and building.

(1) Any person, aggrieved with the decision(s), made under subsection (4) of section 112-A, or section 112-B may file an appeal within a period of thirty days before the Commissioner, who, after affording an opportunity of hearing to the parties, shall pass an order, in writing, within a period of thirty days.

(2) No appeal shall be entertained under sub-section (1), unless the amount of tax is paid.

(9) Neither 'tax' nor 'penalty' is defined under Section 2 of the Act, which defines several words and phrases used in the Act. An appeal under Section 112-C is against the order passed under Section 112-A (4) or Section 112-B of the Act. Section 112-A (4) makes a clear distinction between tax and penalty. The same is the position on reading of Section 112-A (3) and Section 112-A (5). In all the above referred sub-sections of Section 112-A, the words tax and penalty are used distinctly, giving them different meanings. The tax amount is payable as per the provisions of Section 90 read with the rate of tax as specified in Section 97 of the Act. When either the tax is wrongly calculated by the assessee by giving wrong particulars, not paid by the prescribed date or not paid at all, then in those eventualities, in addition to the amount of tax, an additional amount becomes payable towards penalty.

Sections 146 and 147 of the Act read as under :-**“146. Appeal against assessment, etc. –**

(1) An appeal against the levy or assessment of any tax, other than tax on building and land under this Act shall lie to the Divisional Commissioner who shall decide the same

after giving to the appellant an opportunity of being heard either within the local area of the City or his head-quarters.

(2) If, before or on the hearing of an appeal under this section, any question of law or usage having the force of law or construction of a document arises, the Divisional Commissioner on his own motion may, or on the application of any party to the appeal, shall, draw up a statement of the facts of the case, and the question so arising and refer the statement with his opinion on the question for the decision of the High Court.

(3) On a reference being made under sub-section (2), the subsequent proceedings in the case shall be, as nearly as may be, in conformity with the rules relating to references to the High Court contained in Order XLVI of the First Schedule to the Code of Civil Procedure, 1908.

(4) In every appeal, the costs shall be in the discretion of the appellate authority.

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

(6) If the Corporation fails to pay any costs awarded to an appellant within ten days after the date of the order for payment thereof, the appellate authority may order the Commissioner to pay the amount to the appellant. **Section 147. Conditions of right to appeal.** - No appeal shall be entertained under Section 146, unless –

(a) the appeal is, in the case of tax on lands and buildings, brought within thirty days next after the date of authentication of the assessment list under Section 101 (exclusive of the time requisite for obtaining a copy of the relevant entries therein), or, as the case may be, within thirty days of the date on which an amendment is finally made under Section 103, and in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days after the date of service of the first notice of demand in respect thereof :

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period;

(b) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Corporation.
[Emphasis supplied]

(10) Section 146 provides for appeals to the Divisional Commissioner against the levy or assessment of any tax other than tax of building and land. As per Section 147(b), no appeal filed under Section 146 to the Divisional Commissioner be entertained unless “the amount, if any, in dispute” has been deposited by the appellant. No such words find mention in Section 112-C (2) as in the same, the only requirement for entertaining the appeal to the Commissioner is the deposit of tax.

(11) Section 138 of the Act provides the manner of recovery of tax. The same reads as under :-

“138. Manner of recovering tax – Any sum due on account of tax payable under this Act may be recovered, together with costs of recovery, through the following processes by the Competent Authority –

- (a) by service of writ of demand on the defaulter;
- (b) by distraint and sale of a defaulter's movable property;
- (c) by the attachment and sale of defaulter's immovable property;
- (d) in the case of octroi and toll, by the seizure and sale of goods and vehicles; and
- (e) in the case of taxes on land and buildings, by the attachment of rent due in respect of the property or any other property owned by the defaulter.

[Emphasis supplied]

(12) The opening of the afore-quoted Section provides that “any sum due on account of tax payable under this Act” may be recovered, together with costs of recovery, through the prescribed processes. The words “any sum due on account of tax payable under this Act” would

necessarily include penalty, if any. However, the above phrase is clearly found missing in Section 112-C(2).

(13) Now we may refer to Section 100 of the Act, wherein in the explanation, for the word “taxes” along with the other charges under Section 95, penalty is deemed to be included. Section 100 is reproduced below :-

“100. Taxes on lands and buildings a first charge on premises on which they are assessed. –

Taxes due under this Act in respect of any land or building shall, subject to the prior payment of the land revenue, if any, due to the Government thereon, be a first charge –

(a) in the case of any land or building held immediately from the Government, upon the interest in such land or building of the person liable for such taxes and upon the goods and other movable properties, if any, found within or upon such land or building and belonging to such person; and

(b) in the case of any other land or building, upon such land or building and upon the goods and other movable properties, if any, found within or upon such land or building and belonging to the person liable for such taxes.

Explanation. - The term “taxes” in this section shall be deemed to include –

(i) charges payable under section 95; and

(ii) the costs of recovery thereof and the penalty, if any, payable as specified in the bye-laws. [**Emphasis supplied**]”

(14) No such explanation or deeming provision, which would include penalty or other charges within 'tax' is found in Section 112-C of the Act. Even otherwise, it is clearly stipulated that the explanation to Section 100 is only applicable to that Section.

(15) It can thus be seen that the Act does not define tax or penalty but makes a clear distinction between both. In Sections 138 and 147 (b) of the Act, wherever the legislature intended to give a wider meaning to the amount due or payable, it has done so. If in a particular Section, the meaning of tax was to include penalty, an explanation to that effect has been given in the Section itself, as has been done in Section 100.

(16) A plain reading of Section 112-C(2) provides that no appeal shall be entertained unless the amount of tax is paid. It does not say unless tax and penalty is paid or total amount due is paid or any amount on account of tax is paid. The section also does not contain an explanation which provides that tax would include penalty. If the plea raised on behalf of the respondent Corporation is to be accepted, then we would have to necessarily add to Section 112-C(2) either of the afore-referred phrases. The plain meaning of Section 112-C(2) being unambiguous, leading to no absurdity, we are not inclined to do so.

(17) It is clarified that entertaining of an appeal and maintainability thereof are two different concepts. The appeal, after the same is entertained, can be held either to be maintainable or not.

(18) It is not disputed that during the pendency of the present petition, the due tax amount has been deposited by the petitioner in the respondent Corporation.

(19) In view of the above, the orders dated 30.05.2016 (Annexure P-11) and 16.02.2016 (Annexure P-14) are set aside and respondent no. 3 is directed to entertain the appeal filed by the petitioner against the order dated 22.03.2016 (Annexure P-9) and decide the same in accordance with law.

S. Sandhu