* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 7th September 2026***
Judgment pronounced on: 19th November 2026

CNR No. DLHC010166732019

\+ **W.P.(C) 3320/2019 & CM APPL. 15283/2019**

SOUTH DELHI MUNICIPAL CORPORATION .....Petitioner
Through: Ms. Madhu Tewatia and Mr. Adhirath Singh, Advocates.

versus

HOUSING AND URBAN DEVELOPMENT CORPORATION LTD. .....Respondent
Through: Mr. Pawanjit Singh Bindra, Senior Advocate with Mr. Abhishek Aggarwal and Ms. Neha Narang, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present writ petition has been filed seeking the following reliefs:

> *"I. A writ of Certiorari or any other appropriate writ, order or direction in the nature thereof setting aside the Order dated 10.08.2018 passed by the Hon'ble Municipal Taxation Tribunal in House Tax Appeals bearing Nos HTA NO. 188/ MTT/ 2013 & HTA NO. 49 - 57/ MTT/ 2015, the same being illegal and contrary to the provisions of the DMC Act 1957 AND the Statutory Bye Laws 2004 AND*
>
> *II. Any other appropriate writ, order or direction, as this Hon'ble Court may deem fit and proper in the facts of the present case AND Orders calling for the records pertaining to the present case."*

2. Brief facts necessary for deciding the present petition are as follows:

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2.1. The respondent/HUDCO is the owner of Flat Nos.205-216 and 241-246 situated at *Asian Games Village, Siri Fort Road, New Delhi* (hereinafter 'subject flats').

2.2. Flat Nos.241 to 246 were being used for residential accommodation of senior officers of HUDCO and officials of the Ministry of Urban Development, while Flat Nos.205 to 216 were being used as transit hostel accommodation for trainees, officials of municipal bodies, borrowing agencies, training institutes, researchers, consultants and participants in training programmes.

2.3. Whilst filing the self-assessment property tax returns (hereinafter 'PTRs') from the assessment year 2004-05 onwards, the respondent/HUDCO classified the subject flats under Bye-Law 9(a) of the Delhi Municipal Corporation (Property Taxes) Bye-Laws, 2004 (hereinafter '2004 Bye-Laws') pertaining to "residential buildings", and accordingly applied Use Factor-1 ("UF-1") as per Annexure-H to the Self Assessment Property Tax Form, applicable to self-occupied residences, and deposited property tax at the rate of 25%.

2.4. On 19th November, 2012, the petitioner/MCD issued a show cause notice to the respondent/HUDCO alleging that the property tax was not calculated by applying Use Factor-4 ("UF-4") and called upon HUDCO to furnish revised PTRs taking into account the UF-4 instead of UF-1 and to submit the difference of tax along with interest @ 1% per month from 2004-05, till the date of issuance of the letter.

2.5. The respondent/HUDCO responded to the aforesaid notice on 14th December 2012, informing that the UF-1 has been applied while computing the property tax since the flats bearing no.241 to 246 are exclusively

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residential flats and other flats bearing no.205 to 216 are used as a transit hostel for the officials of the HUDCO coming from different regional offices located throughout the country.

2.6. Thereafter, the petitioner/MCD issued a notice dated 2nd July, 2013 under Section 123D of the Delhi Municipal Corporation Act, 1957 (hereinafter 'DMC Act') alleging that the self-assessment PTRs for the period 2004-05 to 2012-13 had been filed by applying UF-1 instead of UF-4 and proposing reassessment with effect from 1st April, 2004.

2.7. Pursuant thereto, the respondent/HUDCO appeared before the Assessing Authority. The Assessing Authority passed the Assessment Order dated 2nd September, 2013, holding that the flats were being allotted at differential rates and consequently treated their use as commercial, applying UF-4 and determining the annual value at Rs.52,97,443/- with effect from 1st April, 2004.

2.8. A demand of Rs.71,98,231/- was thereafter raised by the petitioner/MCD on 16th September, 2013 for the differential property tax.

2.9. The Assessment Order dated 2nd September 2013 as well as the consequential demand dated 16th September 2013 was challenged by the respondent/HUDCO before the Municipal Tax Tribunal (hereinafter 'MTT') in ten (10) appeals, bearing HTA No.188/MTT/2013 and HTA No.49-57/MTT/2015, under Section 169 of the DMC Act.

2.10. *Vide* order dated 10th August 2018, MTT allowed the appeals and quashed the Assessment Order and demands by holding that UF-1 was applicable.

3. Aggrieved by the aforesaid, the present writ petition has been filed.

4. Notice in the present petition was issued *vide* order dated 2nd April

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2019, on which date the operation of the impugned order was stayed.

5. In the counter affidavit filed on behalf of the respondent/HUDCO, it is stated as under:

5.1. The Assessment Order dated 2nd September 2013 and demand notice dated 16th September 2013 issued by the petitioner are wrong and arbitrary as not being in accordance with the usage of property in question. The petitioner wrongly applied the UF-4 (being business purpose) as the basis of assessment instead of UF-1 (being public purpose).

5.2. The respondent/HUDCO got the taxable covered area calculated and certified on 12th July 2004 from an architect registered and empanelled with the petitioner/MCD. Further, the respondent/HUDCO has been regularly filing the property tax returns, which were duly accepted by the petitioner/MCD since 2004 without any objection or demur.

5.3. The petitioner/MCD is not justified in reopening the assessment after a lapse of almost 8 years. Under Section 123B (10) of the DMC Act, MCD is not vested with the power to make a demand or change the rateable value beyond 12 months of the year to which the self-assessment relates. The action, if any, has to be taken by the authorities within a reasonable period of time.

5.4. The demand notice dated 16th September 2013 was received by the respondent/HUDCO on 19th September 2013. The petitioner/MCD first issued a notice under Section 154 of the DMC Act on 7th October 2013 and, after a span of only a week, issued a warrant of distress dated 14th October 2013 for the differential amount of Rs.71,98,231. In terms of Section 156 of the DMC Act, the petitioner/MCD could have initiated the action only after the expiry of the statutory period of 30 days from the service of notice,

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which expired on 19th October 2013.

6. The matter was heard on 11th August 2026 and on 7th September 2026, after which the judgment was reserved.

SUBMISSIONS ON BEHALF OF THE PETITIONER

7. The respondent/HUDCO concealed the correct facts in the self-assessment PTRs for the assessment years 2004-2005 onwards, thereby leading to wrong application of Use Factor by the assessee. The subject flats were being used as guest houses/boarding and lodging houses by the respondent/HUDCO, *i.e.* for commercial use. The flats clearly fall under the ambit of "business buildings" as defined under Bye-Law 9(b) of the 2004 Bye-Laws and therefore UF-4 is applicable. A lodging house has been held to be a commercial/non-residential building by the Supreme Court in ***NDMC* v. *Sohanlal***[1].

8. MTT misread Bye-Law 9 of the 2004 Bye-Laws. A "residential building" specifically excludes premises used for lodging, guest house, hotel or similar purposes, whereas "business building" specifically includes lodges and guest houses.

9. MTT could not have introduced a requirement of commercial or profit-making activity into the statutory definition.

10. The charging of different amounts from occupants, including persons not in Government service, clearly demonstrated the nature of the use and justified UF-4. The taxing provisions are required to be construed strictly and equitable considerations cannot be employed to alter the statutory classification.

[1] 2000 (2) SCC 494.

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11. Whether the use of a guest house is commercial does not depend upon whether the activity is undertaken with an intention to earn profit. The use of the subject flats as guest houses/transit accommodation would attract UF-4 and it is immaterial that HUDCO may have charged only nominal amounts from the occupants or may not have earned any profit. Reliance is placed on ***Municipal Corporation of Greater Bombay*** **v.** ***Mafatlal Industries.***[2]

SUBMISSIONS ON BEHALF OF THE RESPONDENT

12. The subject flats are exclusively used for residential purposes, and the nominal fee charged does not even cover the maintenance. Where a small fee is charged which is insufficient for the upkeep will not be an essential factor for determining the purpose of building. Reliance is placed on ***Hamabai Framjee Petit*** **v.** ***Secretary of State for India in Council***[3].

13. The Assessment Order dated 2nd September 2013 is barred by limitation under Section 123B (10) of the DMC Act. The petitioner could not have reopened the self-assessments dating back to 2004 after an unexplained lapse of several years. Reliance is placed on the judgment of a Division Bench of this Court in ***Springdales School*** **v.** ***North Delhi Municipal Corporation***[4], and the subsequent decision in ***Seth Pokharmal Educational Society*** **v.** ***MCD***.[5]

14. The notice dated 2nd July, 2013 merely alleged that UF-1 had been wrongly applied instead of UF-4 and proposed reassessment with effect from 1st April, 2004. It did not allege any wilful suppression of information by HUDCO, much less disclose the material or circumstances constituting

[2] (1996) 8 SCC 27.
[3] AIR 1914 PC 20.
[4] 238 (2017) DLT 487 (DB).
[5] 2018 SCC OnLine Del 7958.

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such suppression.

15. The respondent/HUDCO had been filing returns since 2004 on the basis of the certificate issued by an architect registered with the petitioner itself and had, throughout, disclosed the nature of the property and paid property tax on the basis of UF-1. Consequently, there was neither concealment nor wilful suppression.

16. The petitioner/MCD issued the warrant of distress on 14th October 2013, before expiry of the statutory 30-day period as given in Section 156 of the DMC Act.

ANALYSIS

17. I have heard the submissions made by counsel for the parties and carefully perused the record.

18. On the basis of the submissions made by the parties, the following two (2) issues arise for consideration in the present writ petition:

(i) Whether the petitioner/MCD is justified in applying Use Factor-4 (for business purpose) in respect of the subject flats in terms of the Assessment Order passed on 2nd September, 2023. Consequently, whether the demand notice issued by MCD dated 16th September, 2013 is legally tenable.

(ii) Whether the petitioner/MCD was justified in reopening the assessment after 8 years in terms of Section 123D of the DMC Act.

ISSUE (i)

19. It is an undisputed position that the respondent, HUDCO, is a public sector undertaking (PSU), fully owned by the Government of India. The respondent owns 18 Flats bearing nos.205 to 216 and 241 to 246 at *Asian Games Village, Siri Fort Road, New Delhi* (subject flats).

20. As per the respondent/HUDCO, Flat Nos. 241 to 246 are being used

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exclusively for residential purposes of senior officers of the respondent, whereas Flat Nos.205 to 216 are being used as a 'transit hostel for officials of the respondent and other government officers.' It is contended on behalf of the respondent that none of these flats is being used for any commercial purpose or to derive any profit.

21. *Per contra*, it is the stand of the petitioner/MCD that the subject flats are being let out to individuals not in service with any government agency and accordingly, differential charges are being levied from such persons. Therefore, all the aforesaid flats are to be subjected to property tax by applying UF-4.

22. To appreciate the rival contentions, it may be useful to refer to the relevant provisions with regard to categorisation of the use factor under the 2004 Bye-Laws.

> "***9. Definitions of use-wise categories of buildings.***
>
> *-For the purposes of clause (f) of sub-section (1) of section 116 A, the use-wise*
>
> *(a) "residential building" shall mean any building used for dwelling purposes by a family/families/individual* ***but excludes any premises for commercial use including lodging, guest house,*** *hotel or similar purposes:*
>
> *(b) "business building" shall mean any building or part thereof used for transaction of business or for keeping of accounts and records or for similar other purposes, and such buildings shall include*
>
> *(i) …*
>
> *(ii) …*
>
> *(iii) one and two star hotels, restaurants,* ***lodges and guest houses****"*
>
> [Emphasis supplied.]

23. The definition of "business building", as defined above in Bye-Law 9, came up for consideration before a Division Bench of this Court in ***Bar***

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***Council of India* v. *South Delhi Municipal Corporation*[6]**. The Division Bench held that non-profit entities and statutory bodies which perform public duty and statutory functions must be assessed as a public utility attracting UF-1. Accordingly, it was held that the Bar Council of India, which is a statutory professional body constituted under the Advocates Act and performs statutory functions, cannot have its office building taken as a commercial building and levied with UF-4.

24. A Coordinate Bench of this Court in ***South Delhi Municipal Corporation* v. *Indian Council of Forestry Research and Education*[7]** was also seized of a similar issue in respect of property owned by the respondent therein, which was categorised under UF-4. Aggrieved by the assessment, the respondent filed an appeal before the MTT, which was allowed by the impugned order. The aforesaid order of the MTT was challenged by MCD before this Court. The Court, while dismissing the writ petition, held that a building which is primarily used for residential purposes and is not involved in any commercial activity would be covered under the definition of "residential building" under Bye-Law 9 and therefore, UF-1 would be applicable. The relevant findings from the said judgment are set out below:

> "***13.*** *A perusal of the definition of a residential building under the applicable bye-laws reveals that it encompasses any structure used for dwelling purposes by families or individuals, while explicitly excluding premises utilized for commercial purposes, such as lodges, guest houses, or hotels.*
>
> ***14.*** *The essence of the exclusion is based on commercial activity. It falls within the domain of reasonable classification to demarcate residential use and commercial use separately for the purpose of assessment. However, the identification of use, residential or commercial, must be*

[6] 2018 SCC OnLine Del 13616.
[7] 2024 SCC OnLine Del 5835.

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based on a sound criterion. In the present case, ***the transit accommodation cannot be deemed to serve a commercial purpose solely due to the nominal charges of Rs. 75 to Rs. 250 per day for accommodation. The character of the usage is not altered merely by the imposition of these minimal tariffs.*** *It is evident that the ICFRE does not generate any revenue from the transit accommodation. The bye-laws explicitly delineate that use factor-1 applies to a range of property uses, including residential purposes, government or government-aided schools and colleges, public religious institutions, educational institutions recognized by government bodies, medical institutions, and similar entities. Conversely, use factor-4 is designated for properties associated with business activities, such as self-occupied commercial spaces, hazardous buildings, restaurants, hotels up to 2 stars, lodges, guest houses, banquet halls, and mercantile shops. For the sake of clarity, the table illustrating the nature of usage of property along with the corresponding use factors as reflected in the Self Assessment Property Tax form is reproduced hereunder as:—*

"H. USE FACTOR

Factor ID	*Use of Property*	*Use Factor*
1.	***Residential***	***1***
2.	***Business – Self Occupied/Tenanted***	***4***
3.	*Industrial – Self Occupied/Tenanted*	*3*
4.	*Govt/Govt aided Schools/Colleges*	*1*
5.	*Hotels – 3 Stars and above.*	*10*
6.	*Towers*	*10*
7.	*Hoardings*	*10*
8.	*Public Purpose*	*1*
9.	*Public Utility*	*2*
10.	*Religious Institution*	*1*
11.	*Telecommunication Tower*	*2*
12.	*Business – Vacant*	*2*
13.	*Industrial – Vacant*	*2*
14.	*Hazardous Building*	*4*

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Factor ID	Use of Property	Use Factor
15.	Workshops and Auto Repair Garages	3
16.	Restaurant	4
17.	Hotels – upto 2 stars	4
18.	Lodges	4
19.	Guest Houses	4
20.	Banquet Halls	4
21.	Recreation purpose - Theatres, Movie Halls, Assembly Halls, Baratghars, Museums, Exhibition Halls, Auditorium, Swimming Pool etc.	3
22.	Mercantile – Shops, Warehouses, STD Booths, Wholesale Traders, Transporters, Cold Storage, etc.	4
23.	Sports Purpose - Gymnasium, Dance Halls, Club Rooms, Health and Sports Club, Bowling Alleys, Stadium, Recreation Piers etc.	3
24.	Colleges – Govt	1
25.	Colleges – UGC Recognised	1
26.	Colleges – Trust	2
27.	Educational Institutions – Fees upto Rs. 600 per month	1

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Factor ID	Use of Property	Use Factor
28.	Educational Institutions – Fees upto Rs. 601 to Rs. 1200 per month	2
29.	Educational Institutions – Fees above Rs. 1200 per month	3
30.	Educational Institutions – Govt.	1
31.	University	1
32.		
33.	Medical Institution - Govt.	1
34.	Medical Institution - Others (including nursing homes)	2
35.	Medical Education Institution – Govt.	1
36.	Medical Education Institution – 1	1
37.	Medical Education Institution – 2 (approved by tech. body)	2
38.	Medical Education Institution – 3	3
39.	Schools – Govt./Govt Aided.	1
40.	Schools – Fees upto Rs. 600 per month	1
41.	Schools – Fees upto Rs. 601 to Rs. 1200 per month	2
42.	Schools – Fees above Rs. 1200 per month	3

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Factor ID	*Use of Property*	*Use Factor*
43.	*Vacant Land – In Use*	*Relevant use factor*
44.	*Vacant Land – No Use*	*1*

> ***15.*** *The juxtaposition of the sweep of use factor-1 and use factor-4 indicates a distinct demarcation. On one hand,* ***use factor-1 is applied to the premises which do not generate income and are solely established either for public purposes, such as residential buildings, government institutions, charitable organizations etc. On the other hand, use factor-4 is applicable to premises intended for profit generation and commercial purposes, including businesses, hotels, lodges, guest houses, and similar commercial entities.*** *This clear distinction indicates the unique and non-overlapping purposes sought to be served by each use factor.*
>
> [Emphasis supplied.]

25. Accordingly, it was held that the respondent in the said case cannot be said to be engaged in any commercial activity, merely on account of levying nominal fees for providing residential accommodation to officials who are staying in the subject flats in the course of their official duties.

26. In the present case, the respondent/HUDCO was asked by the petitioner/MCD to place an affidavit with regard to use of the subject flats. Accordingly, an affidavit was filed on behalf of the respondent/HUDCO on 26th April, 2013. The relevant extracts from the said affidavit are set out below:

> "3. *It is further affirmed that the Corporation has fixed different slabs for accommodation in the transit/hostel accommodation taking following into account.*
> *(ii) Guests of officials, both of HUDCO and Ministry are treated at par.*
> *(iii) Lastly, guests other than the above categories, also avail transit facilities and placed in a different slab.*"

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27. Yet another affidavit was filed on behalf of the respondent/HUDCO on 25th July 2013 clarifying the stand taken by the respondent in its earlier affidavit.

> "*In order to explain the correct situation, a team of Senior Officers of HUDCO visited the office of Joint Assessor & Collector(GRP), SDMC in which it was suggested that an Additional Affidavit may be submitted depicting the position regarding Para-3(iii) of Affidavit (i.e. guests/officials other than I & ii) submitted on 26.4.13.*
>
> *Accordingly, it is clarified that guests/officials other than I & ii in Para-3 (iii) of said Affidavit includes official from Municipal Corporations/Bodies of States, HUDCO's Borrowing Agencies like Housing Boards & Development Authorities, Faculties of Training Institutes, Researchers, Consultants and participants of different Training Programmes organized by HUDCO.* ***Outsiders are not allowed in the Hostel/transit accommodation.***
>
> *It is also clarified that* ***Flat No.241 to 246 are being used for the residence of HUDCO's Senior Officers/Ministry's officials and Flat No.205 to 246 are being used for Hostel/transit accommodation***."
>
> [Emphasis supplied.]

28. In the aforesaid additional affidavit, a categorical statement has been made on behalf of the respondent/HUDCO that outsiders are not allowed in the hostel/ transit accommodation. The subject flats are only meant for the stay of personnel for official purposes.

29. Despite the stand taken in the aforesaid affidavits, the impugned Assessment Order held that the subject flats would be subject to UF-4. To arrive at this conclusion, reliance is placed on the office orders issued by the respondent/HUDCO providing for differential room rates for different categories of officials.

30. MTT carefully analysed the contents of the aforesaid affidavits and held that the subject flats have been used as transit hostel accommodation

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for employees who visit Delhi from different places on official work. The findings of the Tribunal in this regard are set out below:

> *"13. The material on record makes it abundantly clear that the 'subject property' is being used by the appellant towards achieving /realizing its objectives. Six flats bearing No. 241 to 246 are being exclusively used for residential purposes of the senior officers of the appellant and/or officials of the Ministry of Urban Development. The flats bearing No. 205 to 216 are being used for hostel 'for training' and include officers officials from Municipal Corporations/ Bodies of states, appellant's borrowing agencies like Housing Board and Development Authorities, faculties of Training Institutes, Researchers, Consultants and participants of different training programmes organized by HUDCO.* ***The fee charged is nominal and the same is evident from the documents placed on record by the appellant.***
>
> *14. The Assessing Authority ignored the facts that the 'sub property' is being used by the officers/ officials of the government bodies, training institutes, etc.*
> ***The participants, generally, are the government employees/. Officials but include persons from private companies and other bodies also. The faculties include experts from different fields and such experts need not be government officials only.*** *It is for this reason that there is a slab for persons/ occupants who are not from Ministries/ government bodies. But, admittedly, such persons who come from other than government sector are very few. The Assessing Authority failed to appreciate the true import of the usage of the 'subject property'.* ***Merely because there are different slabs for the persons visiting the property from non-government bodies, does not imply that any 'commercial activity' is being carried on at the 'subject property'.*** *The conclusion drawn by the Assessing Authority goes to the extent of absurdity. It is not that the Assessing Authority would be unaware of the true nature of the usage of the 'subject property'. It appears that an incorrect conclusion has been drawn just to raise revenue for the respondent.* ***On the face of it, the conclusion that the 'subject property' is being put to 'commercial use' by the Appellant for making profit, is patently erroneous and does not survive in the eyes of law.***
>
> *15. The record reveals that the appellant charge Rs.100/- per day per room (single occupancy) and Rs.200/- per day per room (double*

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occupancy) from HUDCO officials, Ministry officials of HUPA and other shareholding Ministries. The appellant charge R.400/- per day per room (single occupancy) and Rs.600/- per day per room (double occupancy) for guests of Ministry of HUPA and HUDCO (in connection with business development/ office work-ex-employees of HUDCO) and for other categories Rs.1000/- per day per room (single occupancy), Rs.1500/- per day per room (double occupancy). ***Other non-government/ private guests houses in the same locality charge much higher tariff than the tariff being charged by the appellant.***

The said affidavits reveal that each of the flats (flats bearing No. 241 to 246) is being used exclusively for residential purpose. The Assessing Authority has failed to explain/ assign any reason as to how it drew the inference that the 'subject property' is being used for 'business'. It is evident that the Assessing Authority has not passed a speaking order. There has been a total non-application of mind and it is also apparent that while rejecting the plea of the Appellant, the Assessing Authority has not considered the purpose for which the property in question has been constructed and put to use. The appellant's case is squarely covered under the term 'public purpose' as defined under Bye Law (9) of the DMC (Property-Taxes) Bye Laws, 2004.*"*

[Emphasis supplied.]

31. MTT has correctly recorded that the occupants of the subject flats would generally be government employees and in some cases, could be experts who need not be government officials. Therefore, there is a separate tariff rate for such occupants who are not government officials. MTT also records that the tariff charges are nominal and much less than other properties in the neighbourhood. MTT has correctly held that merely because there are different slab rates for the persons visiting the subject flats does not imply that the subject flats are being used for commercial purposes or for making profit.

32. Pertinently, the assessment proceeds only on the basis of the 'office order' issued by the respondent/HUDCO providing differential tariff rates,

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without any data with regard to the actual occupants of the subject flats. There was no independent material with the petitioner/MCD to show that the subject flats were rented out for commercial purposes. There is no analysis also to the fact whether the tariffs mentioned in the office order are commercial rates when compared to other comparable accommodation available in the area.

33. The reliance placed by the petitioner/MCD on ***Mafatlal Industries*** (supra) is misplaced. In the said case, Mafatlal Industries maintained guest houses in Bombay for temporary occupation by their employees and the controversy before the Supreme Court arose from the classification of such premises under the tariff prescribed under the Bombay Electricity Duty Act, 1958. The question before the Supreme Court was whether such guest houses would fall within Category 'R', which was specifically applicable to premises "exclusively used as a private residential premises", or whether they would fall under the residuary Category 'C'. The Supreme Court, on an interpretation of the expression occurring in the said tariff, held that a company-maintained guest house, used for transient occupation, could not be regarded as a private residential premises and that the test of profit-making was irrelevant.

34. The said judgment arose in the context of the classification of premises under the tariff provisions of the Bombay Electricity Duty Act, 1958, where the Supreme Court was considering the meaning of the expression "exclusively used as a private residential premises". The question was thus one of statutory classification under an entirely different statutory scheme.

35. In light of the discussion above, this Court does not find any infirmity

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in the impugned order of the Tribunal setting aside the Assessment Order and holding that the UF-1 would be applicable to the subject flats.

ISSUE (ii)

36. To adjudicate the said issue, it may be relevant to refer to relevant provisions of the DMC Act, *i.e.* Sections 123B (10) and 123D, which are set out below:

> "***123B. Self-assessment and submission of return***
>
> *(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 upto 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.*
> ….
> ***123D: Power of Commissioner regarding assessment***
> …
> *(c)* ***reopen any assessment even after the period of one year*** *in any case where it has been detected that* ***there is wilful suppression of information****; and*
> *(d) in The Delhi Municipal Corporation Act, 1957 (d) impose a penalty not exceeding thirty per cent. of the difference in tax arising from non-filing of a return in time, giving wrong information or wilful suppression of facts.*"
>
> [Emphasis supplied]

37. A perusal of the aforesaid provisions demonstrates that in the normal course MCD can reopen assessments for a period of 12 months from the year to which the self-assessment relates. It is only when there is wilful suppression of information that the MCD can reopen assessments beyond the period of 12 months.

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38. A Division Bench of this Court in ***Springdales School*** (supra) quashed the show-cause notice seeking to reopen assessment on the ground that the notice did not provide the basic or essential ingredients provided under Section 123D of the DMC Act to reopen the assessment. The relevant observations of the Division Bench are set out below:

> *"**15. In the present case, not only is the impugned notice (dated 23.01.2013) silent as to which period it relates to or for which assessment year the Commissioner proposes to revisit completed assessments [i.e. completed in respect of 123B(10)] but also is utterly vague as to how there was any "wilful suppression" practiced by the assessee.** This Court, in K.L. Rathee v. Municipal Corporation of Delhi AIR 1995 Del 226 and Savitri Devi v. MCD 1994 (55) DLT 391, while considering the pre-amended proviso to Section 126 which contained an obligation on the part of the Commissioner to indicate reasons for proposing change in the rateable value, has held that the notice should be effective.*
>
> *16. **The expression "willful suppression" of information has to necessarily relate to rateable or conscious omission on the part of the assessee. In case where the Commissioner proposes to proceed under Section 123D(b) and (c), as a precondition the notice has to necessarily specify what is the incorrect information provided as well as the barest reasons for such opinion and specific grounds for stating "willful suppression" of information The use of the expression "willful suppression", in our opinion, raises the bar and discloses a primary intention to give effective notice as to what is to be answered by the assessee. It is not mere omission or mistake that attracts issuance of a notice under Section 123D which confers exceptional and even draconian powers. The lack of any particulars of the kind enshrined in either 123D(b) or 1230(c) in the facts itself vitiates the notice.** On similar lines, while interpreting the words "wilful" and "suppression" in Section 11A of the Central Excise Act, 1994, the Supreme Court in Continental Foundation Joint Venture Holding v. Commissioner of Central Excise, Chandigarh-I (2007) 10 SCC 337, held:*
>
> *"10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or*

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> *'collusion' and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct."*"
>
> [Emphasis supplied.]

39. The aforesaid judgment was followed by a Division Bench of this Court in ***Seth Pokharmal Educational Society*** (supra) wherein it was held that MCD could not have revised the rateable value retrospectively with effect from 2004 in the year 2011.

40. Applying the ratio of the aforesaid judgments to the facts of the present case, it is an undisputed fact that the respondent/HUDCO has been filing PTRs from the assessment year 2004-05 onwards, claiming UF-1 and paying property tax in a timely manner. Clearly, there was no suppression of information by the assessee, *i.e.* the respondent/HUDCO.

41. The show cause notice seeking to reopen the assessment was issued by the petitioner/MCD only on 2nd July 2013. MCD did not question or raise doubts about the property tax returns for a period of more than eight (8) years. It is noteworthy that the said show cause notice does not allege any wilful suppression.

42. Accordingly, it is held that the action of the petitioner/MCD in reopening assessment for the period 2004-05 to 2011-12 is manifestly arbitrary and illegal.

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43. Resultantly, both the issues are decided in favour of the respondent/HUDCO and against the petitioner/MCD.

44. In light of the aforesaid discussion, no grounds for interference with the order passed by the Tribunal are made out in exercise of jurisdiction under Article 226 of the Constitution of India.

45. Accordingly, the petition is dismissed.

46. Pending application stands disposed of.

AMIT BANSAL
(JUDGE)

NOVEMBER 19, 2026
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