

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. **L.P.A. No.424 of 2011**
Reserved on : July 08, 2019
Date of decision: August 09, 2019
- Municipal Corporation UT, Chandigarh ...Appellant
- Versus
- Shri Guru Gobind Singh College of Pharmacy
and others ...Respondents
2. **L.P.A. No.425 of 2011**
- Municipal Corporation UT, Chandigarh ...Appellant
- Versus
- DAV College Trust Management Society and
and others ...Respondents
3. **L.P.A. No.426 of 2011**
- Municipal Corporation UT, Chandigarh ...Appellant
- Versus
- Shri Guru Gobind Singh Collegiate Public School ...Respondents
4. **L.P.A. No.427 of 2011**
- Municipal Corporation UT, Chandigarh and others ...Appellant
- Versus
- D.A.V.College Trust Management Society ...Respondents
5. **L.P.A. No.428 of 2011**
- Municipal Corporation UT, Chandigarh and others ...Appellants

Versus

D.A.V.College Trust Management Society ...Respondents

6. **L.P.A. No.147 of 2011**

Municipal Corporation UT, Chandigarh ...Appellant

Versus

St. Xaviers Senior Secondary School and others ...Respondents

7. **L.P.A. No.429 of 2011(O&M)**

Municipal Corporation UT, Chandigarh and others ...Appellants

Versus

I.S.Dev Samaj Public School ...Respondents

8. **L.P.A. No.430 of 2011(O&M)**

Municipal Corporation UT, Chandigarh ...Appellant

Versus

DAV College Trust Management Society ...Respondents

9. **L.P.A. No.431 of 2011(O&M)**

Municipal Corporation UT, Chandigarh ...Appellant

Versus

Vishesh Educational Society ...Respondents

10. **L.P.A. No.432 of 2011(O&M)**

Municipal Corporation UT, Chandigarh ...Appellant

Versus

Guru Gobind Singh Sr.Secondary School ...Respondents

11. **L.P.A. No.433 of 2011(O&M)**

Municipal Corporation UT, Chandigarh ...Appellant

Versus

DAV College Trust and Management Society ...Respondents

12. **L.P.A. No.434 of 2011(O&M)**

Municipal Corporation UT, Chandigarh and others ...Appellants

Versus

DAV College Trust Management Society ...Respondents

13. **L.P.A. No.435 of 2011(O&M)**

Municipal Corporation UT, Chandigarh ...Appellant

Versus

Dev Samaj College for Women ...Respondents

14. **L.P.A. No.436 of 2011(O&M)**

Municipal Corporation UT, Chandigarh ...Appellant

Versus

St.Joseph Educational and Charitable Trust ...Respondents

15. **L.P.A. No.437 of 2011(O&M)**

Municipal Corporation UT, Chandigarh and others ...Appellants

Versus

Vivek High School ...Respondents

16. **L.P.A. No.438 of 2011(O&M)**

Municipal Corporation UT, Chandigarh and others ...Appellants

Versus

Gyandeep Public School ...Respondents

17. **L.P.A. No.439 of 2011(O&M)**

Municipal Corporation UT, Chandigarh and others ...Appellants

Versus

Divya Educational Society and others ...Respondents

18. **L.P.A. No.440 of 2011(O&M)**

Municipal Corporation UT, Chandigarh ...Appellant

Versus

S.D.High School ...Respondents

19. **L.P.A. No.441 of 2011(O&M)**

Municipal Corporation UT, Chandigarh ...Appellant

Versus

Shri Guru Gobind Singh College ...Respondents

20. **L.P.A. No.442 of 2011(O&M)**

Municipal Corporation UT, Chandigarh ...Appellant

Versus

Gurudwara Asthapan Committee ...Respondents

21. **L.P.A. No.443 of 2011(O&M)**

Municipal Corporation UT, Chandigarh ...Appellant

Versus

Shri Guru Gobind Singh College for Women ...Respondents

22. **L.P.A. No.452 of 2011(O&M)**

Municipal Corporation UT, Chandigarh ...Appellant

Versus

St. Johns High School ...Respondents

23. **L.P.A. No.453 of 2011(O&M)**

Municipal Corporation UT, Chandigarh and others ...Appellants

Versus

Kids R Kids International Educational Trust ...Respondents

24. **C.W.P. No.13473 of 2010(O&M)**

S.D.Saini Public School ...Petitioner

Versus

M.C. through its Commissioner ...Respondents

25. **C.W.P. No.1366 of 2008(O&M)**

Guru Gobind Singh Foundation ...Petitioner

Versus

M.C.and others ...Respondents

AND

26. **C.W.P. No.20225 of 2013(O&M)**

Medicos Legal Action Group and another ...Petitioners

Versus

Chandigarh Administration and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Pankaj Jain, Advocate with
Ms.Deepali Puri, Advocate for the appellants
in LPA Nos.425 to 443, 147, 452 & 453 of 2011 and
for respondents in CWP Nos.13473 of 2010;
1366 of 2008 and 20225 of 2013.

Mr.Dinesh Ghai, Advocate with
Mr.Hitesh Ghai and Mr.Nikhil Ghai, Advocates
for petitioners in CWP Nos.13473 of 2010; 1366 of 2008
and 20225 of 2013.

Mr.Surmeet S.Sandhu, Advocate for
Mr.Gagneshwar Walia, Advocate for GGS College,
Sector-26 in LPA Nos.424, 426, 441 and 443 of 2011.

Ms.Alka Sarin, Advocate with
Mr.Shikhar Sarin, Advocate for the respondents
in LPA No.452 of 2011.

Mr.Inderjit Kaushal, Advocate for
Vivek High School in LPA No.437 of 2011.

Mr.Puneet Bali, Senior Advocate with
Ms.Rubi J.Singh, Advocate for respondent No.4.

Mr.Rupinder Khosla, Senior Advocate with
Mr.Raj Partap Singh Brar, Advocate for
respondent No.7 in LPA No.147 of 2011;
for respondents No.1, 2 and 4 in LPA No.436 of 2011;
for respondents No.2 and 3 in LPA No.439 of 2011;
for respondent No.1 in LPA No.453 of 2011.

HARINDER SINGH SIDHU, J.

1. This order shall dispose of Letter Patent Appeal Nos.424 to
443, 147, 452, 453 of 2011 and Civil Writ Petition Nos.13473 of 2010,

1366 of 2008 and 20225 of 2013.

2. The Letters Patent Appeals have been filed by the Municipal Corporation UT Chandigarh challenging the judgment dated 24.09.2010 of the Ld. Single Judge. Vide that judgment the Ld. Single Judge had disposed of a bunch of writ petitions filed by various un-aided private schools challenging the imposition of property tax on them. The writ petitions were allowed. The notification dated 22.11.2004 issued under Section 90(3) of the Punjab Municipal Corporation Act, 1976 which was extended to Chandigarh by the Punjab Municipal Corporation (Extension to Chandigarh) Act 1994 (hereinafter referred to as "the Act") specifying the rate of property tax on 'institutional lands and buildings' was quashed. The Bye-laws and Self-Assessment Scheme as framed were also quashed.

3. The three writ petitions had been ordered to be heard with this bunch of LPAs. Accordingly they are also being disposed of vide this common judgment.

4. For facility of reference the facts are being taken from LPA No.147 of 2011 in CWP No.6651 of 2007.

5. CWP No.6651 of 2007 was filed by seven private un-aided schools. They challenged the notification dated 22.11.2004 issued by the Chandigarh Administration specifying the tax on Commercial, Industrial and Institutional Lands and Buildings in Chandigarh. They also challenged the bye laws and the self assessment scheme notified on 3.6.2003.

6. It was the case of the petitioners that the petitioner schools were managed by Societies registered under the Societies Registration Act,

1860. The land of the schools was owned by the Central Government. It was allotted to them on lease hold basis as per the '**Chandigarh Lease Hold of Sites and Building Rules, 1973**'. It was their case that the petitioners survive financially solely on the fee collected from the students. They have no other source of income as they receive no funds or aid from the Government. The schools serve an essential public purpose. As per the decision of the Hon'ble Supreme Court in **TMA Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481** educational institution is a recognized head of charity. It is not a profit making business.

7. The challenge was on a number of grounds. Only two grounds found favour with the Ld. Single Judge :

- (i) As per Section 399 of the Act the power to frame the bye-laws was conferred on the Municipal Corporation, Chandigarh. But a reading of the notification dated 3.6.2003 showed that it had been framed by the Administrator. Hence the same were illegal.
- (ii) As per the resolution dated 29.1.2003 of the General House of the Municipal Corporation, Chandigarh tax was imposed on 'commercial lands and buildings including industrial units, residential houses used for commercial purposes' etc. No tax had been levied on 'Institutional lands and buildings' in that resolution. The word 'institutional' was introduced in the bye-laws by the Administrator of the Union Territory on his own. The Administrator could not in exercise of the power under section 90(3) of the Act while fixing the rates of tax introduce 'institutional lands' for the purpose of taxation.

8. To appreciate the issues it would be necessary to briefly go into the background of the levy which has been detailed in the written statement filed on behalf of the Municipal Corporation.

9. After the coming into being of the Municipal Corporation, Chandigarh, the Secretary, Local Government vide letter dated 26.09.1996 requested the Commissioner, Municipal Corporation to pass a resolution for imposing taxes and buildings under Section 90 (1) of the Act. The Corporation in its meeting held on 22.10.1996 decided that house tax on lands and buildings on all commercial/industrial units will be charged @ 20% of the rateable value.

10. As at the time of passing of resolution dated 22.10.1996 the Municipal Corporation, Chandigarh did not have its elected body the Secretary, Local Government, Chandigarh Administration vide letter dated 24.12.1996 requested the Commissioner, Municipal Corporation to place the item for imposition of taxes on lands and buildings before the elected body of the Corporation.

11. The issue of levy of property tax was considered by the Municipal Corporation, Chandigarh vide Agenda 'Item No.10 in its XIth meeting held on 18.09.1997 and the following resolution was passed:-

“In partial modification of resolution passed vide item No.6.4 by the Corporation in its meeting held on 22.10.1996, it is hereby considered and resolved that all commercial lands and buildings including Industrial units, residential houses used for commercial purposes and that of

Central Govt., Chandigarh Administration State Govts. Semi Govt. and Autonomous Bodies used for commercial purposes shall be levied the property tax @ 10% of the rateable value without any exemption for the self-occupied buildings/portion used for commercial purposes.

Further resolved that service charges @ 10% of the rateable value in respect of Govt. buildings of Union Govt. Chandigarh Administration and State Governments and not used for commercial purposes will also be levied..

Further resolved that the levy of house tax on residential lands and buildings used for commercial purpose is hereby dropped.”

12. The resolution dated 18.09.1997 was again considered in the meeting of the Municipal Corporation held on 29.01.1998 and it was resolved that the words “in partial modification” be substituted by the word “supersession”.

13. In pursuance to the resolution the Administrator, U.T., Chandigarh exercising powers under Section 90(3) of the Act issued notification dated 24.02.1998 specifying that the tax on lands and buildings (Commercial including industrial units) shall be assessed and collected @ 10% of the rateable value on such lands and buildings within the city of Chandigarh.

14, A corrigendum to the notification dated 24.02.1998 was issued on 30.03.1998 to correct some inadvertent clerical errors.

15. As the notifications dated 24.02.1998 and 30.03.1998 issued in pursuance to resolution dated 18.09.1997 were not being given effect to, the Chandigarh Administration vide letter dated 18.04.2000 asked the

Commissioner, Municipal Corporation to take steps to levy property tax on commercial/industrial lands and buildings. The Administrator U.T. Chandigarh issued various letters dated 11.09.2003, 16.10.2000 and 24.01.2001 to the Commissioner, Municipal Corporation seeking report under Section 403 and issuing directions and 405 of the Act to take immediate steps to implement the decision of the Corporation contained in its resolution dated 18.07.1997. The Ministry of Home Affairs, Government of India through its Joint Secretary vide letter dated 24.1.2011 requested the Chandigarh Administration to follow up with the Municipal Corporation the implementation of its decision relating to imposition of the property tax so that the Corporation could raise its own resources at the earliest.

16. The Municipal Corporation, Chandigarh in its 61st meeting held on 29.01.2003 vide Agenda Item No.4.1 passed the following resolution:-

“In supersession of resolution passed by the Municipal Corporation, Chandigarh in its 11th meeting held on 18.09.1997 vide agenda item No.10, it is hereby considered and resolved that all commercial lands and buildings including industrial units, residential house used for commercial purposes and that of Central Govt. Chandigarh Admn., State Govt., Semi Govt. and autonomous body used for commercial purposes shall be levied the property tax @ 2% of the rateable value without any exemption for the self occupied buildings/portion used for commercial purposes.”

Further resolved that service charges @ 1.5% of the rateable value in respect of Govt. Buildings of Union Govt. Chandigarh Admn. And State Governments and not used for

commercial purposes will also be levied.

Further resolved that the levy of house tax on residential lands and buildings used for residential purpose is hereby dropped.”

17. Vide this resolution the Corporation also approved the draft Bye Laws namely the Chandigarh Municipal Corporation (Tax on Commercial & Industrial Lands and Buildings) Bye-Laws and the Self Assessment Scheme-2002 (hereinafter referred to as “draft Bye-laws”) with the amendment/additions mentioned in the said resolution.

18. It is around this resolution and the draft Bye-laws as approved and those notified that the entire controversy hinges. These will be referred to in detail later.

19. The issue with regard to levy of property tax in view of the resolution dated 29.1.2003 and the draft bye-laws as approved by the Municipal Corporation in that meeting was discussed by the Advisor to the Administrator with the Secretary Local Government and the Legal Remembrancer along with Commissioner, Municipal Corporation. It was decided that the draft Bye-Laws may be considered by a Committee consisting of Secretary Local Government, Commissioner Municipal Corporation, Chandigarh and the Legal Remembrancer. In the meeting of the aforesaid officers with the Advisor to the Administrator on 27.03.2003 it was decided that the heading of the draft Bye-laws may be modified to cover tax on commercial, industrial and institutional lands and buildings. Further necessary amendments be made to bring within its ambit not only commercial and Industrial Lands & Building but also Institutional Lands &

Building. The Commissioner, Municipal Corporation was asked to rectify the Bye-Laws .

20. The Commissioner, Municipal Corporation vide letter dated 01.05.2003 submitted the modified Bye-Laws and the Self Assessment Scheme for consideration and approval of the Sub- committee. It was decided that property tax be imposed on commercial/ industrial and institutional land and buildings.

21. The Chandigarh Administration issued notification No.774-FII(8)-2003/2779 dated 7.5.2003 specifying that the tax on commercial, industrial and institutional lands and buildings shall be assessed and collected @ 5% of the rateable value of such lands and buildings within the limits of Municipal Corporation, Chandigarh. Service charges @ 7.5% of the tax were specified in respect of government buildings of the Union Government, Chandigarh Administration and State Government not being used for commercial purposes.

22. This notification is reproduced below:

“No.7474(8)-2003/2779- In suppression of the Chandigarh Administration, Local Government Department's notification bearing No. 6842-UTFI(2)-LF-98/2095, dated the 24th February, 1998 and in exercise of the powers conferred by sub-section(3) of Section 90 of the Punjab Municipal Corporation Act, 1976 as extended to the Union Territory, Chandigarh by the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994, the Administrator, Union Territory, Chandigarh is pleased to specify that the tax on Commercial, Industrial and institutional Lands and Buildings in Chandigarh to be levied by the Municipal Corporation,

Chandigarh, under Clause (a) of sub-Section(1) of Section 90 of the Act, shall be assessed and collected at the rate of 5% of the rateable value of such lands and buildings within the limits of the Municipal Corporation of Chandigarh. The Administrator, Union Territory, Chandigarh is further pleased to specify that the service charges at the rate of 75% of the tax calculated on the building as per the rate of Zone 'C' of respective group in which building is situated as per Annexure-I of the Self Assessment Scheme, shall be levied in respect of government buildings of the Union Government, Chandigarh Administration and State Governments not being used for commercial purposes.”

23. Another notification No.774-FII(8)-2003/2774 dated 7.5.2003 was issued whereby the amended draft Bye-Laws called the Chandigarh Municipal Corporation (Tax on Commercial, Industrial and Institutional Lands and Buildings) Bye-Laws, 2003 alongwith Self Assessment Scheme approved by the Administrator were published. This was done in fulfilment of the condition of pre-publication as required by sub section (1) of Section 401 of the Act,

24. Vide notification No.774-FII(8)-2003/3470 dated 3.6.2003, The Chandigarh Municipal Corporation (Tax on Commercial, Industrial and Institutional Lands and Buildings) Bye-Laws, 2003 (hereinafter referred to as the “notified Bye-Laws”) were notified

25. The General House of the Corporation in its meeting held on 31.07.2003, vide Agenda item No.16 passed a resolution that the Chandigarh Administration may be requested to issue fresh notification for

the levy of property tax @ 2% instead of 5% of the rateable value of commercial, industrial and institutional lands and buildings. The Administrator, U.T., Chandigarh suspended the execution of the said resolution and issued a notice dated 20.10.2003 under Section 423 of the Act to the Municipal Corporation to show cause as to why the said resolution should not be annulled.

26. The Municipal Corporation in its 68th meeting held on 12.11.2003 passed the following resolution:-

“Considered and resolved that the resolution of the House passed at its 61st meeting held on 29.01.2003 levying property tax @ 2% of rateable value and its resolution passed at its 11th meeting on 18.09.1997 levying tax @ 10% be and are hereby withdrawn.”

27. The General House of the Municipal Corporation in its 78th meeting held on 13.08.2004 passed resolution withdrawing the resolution dated 12.11.2003 and further resolved that the resolution passed in 61st meeting held on 29.01.2003 vide Agenda item No.4 relating to imposition of property tax will be taken to be approved with the modification that the rate of tax shall be 3% in place of 2% and rate of service charges will be 2.25% in place of 1.5%. The resolution dated 13.8.2004 is as under:

“Considered and resolved that the resolution passed by the Municipal Corporation, Chandigarh in its Special (68th) meeting held on 12.11.2003 vide agenda item No.1 be and is hereby withdrawn with immediate effect.

Further resolved that the resolution passed by the Municipal Corporation, Chandigarh in its 61st meeting held on

29.01.2003 vide agenda item No.4 relating to imposition of property tax, will be taken to be approved with the modification that the rate of taxation shall be 3 % in place of 2 % and the rate of service charges shall be 2.25% in place of 1.5%.”

28. Thereafter vide notification dated 22.11.2004 the Administrator U.T., Chandigarh notified that tax on commercial industrial and institutional lands and buildings to be levied by Municipal Corporation, Chandigarh under Section 90(1) of the Act shall be assessed and collected @ 3% of the rateable value of such lands and buildings within the limits of the Municipal Corporation of Chandigarh. Vide the said notification service charges were specified @ 2.25% of the tax collected on the building to be levied in respect of the Govt. Buildings of the Union Government, Chandigarh Administration and State Governments not being used for commercial purposes.

29. The notification dated 22.11.2004 is reproduced below:

“No.2257-FII(8)-2004/7228 In supersession of the Chandigarh Administration, Local Government Department's notification bearing No.774-FII(8)-2003/2779, Dated the 7th May, 2003 and in exercise of the powers conferred by sub-section (3) of Section 90 of the Punjab Municipal Corporation Act, 1976 as extended to the Union Territory, Chandigarh by the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 the Administrator, Union Territory, Chandigarh is pleased to specify that tax on Commercial, Industrial and Institutional lands and Buildings in Chandigarh to be levied by the Municipal Corporation, Chandigarh, under Clause (a) of sub-section (1) of Section 90 of the Act, shall be

assessed and collected at the rate of 3% of the rateable value of such lands and buildings within the limits of the Municipal corporation of Chandigarh. The Administrator Union Territory, Chandigarh, is further pleased to specify that service charges at the rate of 2.25% of the tax calculated on the building as per the rate of Zone 'C' of respective group in which building is situated as per Annexure-I of the Self Assessment Scheme shall be levied in respect of Government Buildings of the Union Government Chandigarh Administration and State Governments, not being used for commercial purpose.

2. This notification comes into force with immediate effect.”

Questions for consideration :

30. The first question for consideration is whether in terms of the resolution dated 29.1.2003 tax was levied only on Commercial including industrial land and buildings etc. as held by the Ld. Single Judge and therefore the notification dated 22.11.2004 specifying the tax for 'institutional lands and buildings' which includes private schools as per the notified Bye-laws and Self Assessment Scheme is to that extent illegal.

31. The second question which is intimately connected with the first is whether the notified Bye-laws and the Self Assessment Scheme can be said to have been framed by the Corporation as is required under Section 399 and as such is legal or have they been framed by the Administrator and are hence illegal being not authorised by the Act.

Relevant Provisions of the Act :

32.

Section 90

“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 the Act, levy the following taxes :-

(a) taxes on lands and buildings;

(b) and (c) Omitted.

(d) a tax on advertisements other than advertisements published in newspapers;

(e) a tax on buildings payable along with the application for sanction of the building plan; and

(f) a development tax on the increase in urban land values caused by the execution of any development or improvement work.

(2) Subject to the prior approval of the Government the Corporation may, for the purposes of this Act, in addition to the taxes specified in sub-section (1), levy,-

(a) a tax on professions, trades, callings and employments; and

(b) any other tax which the State Legislature has power to impose under the Constitution :

Provided that no tax shall be imposed under this sub-section unless an opportunity has been given in the prescribed manner to the residents of the City to file objections and the objections, if any, thus received have been considered.

(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.

(4) The Government may, by special or general order, direct a Corporation to impose any tax falling under sub-section (1) or sub-section (2) not already imposed, within such period as may be specified and the Corporation shall thereupon act accordingly.

(5) If the Corporation fails to carry out any order passed under sub-section (4), the Government may by a suitable order notified in the Official Gazette impose the tax and the order so passed shall operate as if the tax had been duly imposed by the Corporation under sub-section (1) or sub-section (2), as the case may be.

(6) After the close of each year the Government may pay to the Corporation the whole or such part as it may determine of the Tax collected by it -

(a) under the Indian Stamp Act, 1899 on account of stamp duty on transfer of property situated within the local area of the City ;

(b) under the Punjab Motor Vehicles Taxation Act, 1924, from every person keeping a motor vehicle within the local area of the City;

(c) under the Punjab Electricity (Duty) Act, 1958, on the energy supplied within the local area of the City;

(d) under the Punjab Entertainment Duty Act, 1955 from every person admitted to an entertainment within the local area of the City;

(e) under the Punjab Entertainments Tax (Cinematograph Shows) Act, 1954, from the proprietor of the premises where a public cinematograph exhibition is held within the local area of the City”

Section 91:

“91. Components and rates of taxes on lands and buildings. -

(1) Save as otherwise provided in this Act, taxes on lands and buildings in the City shall consist of the following, namely :-

(a) a water tax of such percentage of the rateable value of lands and buildings as the Governments may deem reasonable for providing water- supply in the City;

(b) a fire tax on such percentage of the rateable value of lands and buildings as the Government may deem reasonable for the expense necessary for the conduct and management of the Fire Service and for the protection of life and property in the case of the fire;

(c) a general tax of not more than fifteen per cent of the rateable value of lands and buildings within the City :

Provided that the general tax may be levied on a graduated scale, if the Government determines.

(2) The Government shall exempt from the general tax lands and buildings of which the rateable value does not exceed the prescribed limit.”

Section 399:

“399. Powers to made bye-laws. - (1) Subject to the provisions of this Act the Corporation may in addition to any bye-laws which it is empowered to make by any other provision of this Act, make bye-laws to provide for all or any of the following matters, namely :-

A. Bye-laws relating to taxation. -

- (1) *the maintenance of tax books and registers by the Commissioner and the particulars which such books and registers should contain ;*
- (2) *the inspection of and the obtaining of copies and extracts from such books and registers and fees, if any, to be charged for the same ;*
- (3) *the publication of rates of taxes as determined by the Government from time to time;*
- (4) *the requisition by the Commissioner of information and returns from persons liable to pay taxes ;*
- (5) *the notice to be given to the Commissioner by any person who becomes the owner or possessor of a vehicle or animal in respect of which any tax is payable under this Act ;*
- (6) *the wearing of badge by the driver of any such vehicle and the display of number plate on such vehicle ;*
- (7) *the submission of returns by the persons liable to pay any tax under this Act;*
- (8) *any other matter relating to the levy, assessment, collection, refund or remission of taxes under this Act.”*

Section 401:

“401. Supplemental provisions respecting bye-law. -

- (1) *Any power to make bye-laws conferred by this Act is conferred subject to the conditions of the byelaws being made after previous publication and in the case of such bye- laws being made by the Corporation of their not taking effect until they have been approved by the Government and published in the Official Gazette.*
- (2) *The Government in approving a bye-law may make any change therein which appears to it to be necessary.*
- (3) *The Government may, after previous publication of its intention cancel any bye-law which it has approved, and thereupon the bye-law shall cease to have effect.”*

33. As per Section 90(1) the power to levy tax on land and buildings is of the Corporation. As per Section 90(3) the rates of the taxes are to be specified by the Government by means of a notification. The tax shall be assessed and collected in accordance with the provisions of the Act and the bye-laws made thereunder.

34. As per Section 399, subject to the provisions of the Act, the Corporation may make bye-laws on different matters. Clause A of Section 399 (1) deals with 'Bye-laws relating to taxation'. As per sub-clause (8) the Bye-laws may be in relation to 'any other matter relating to levy, assessment, collection, refund or, remission of taxes under this Act'. As per Section 401 the power to frame bye-laws is conferred subject to the condition of previous publication and approval of the Government. The Government in approving the bye-laws framed by the Corporation may make any change therein which appears to it to be necessary.

35. Thus Sections 90 (1), 90(3) and 399 of the Act read together provide for the complete machinery for levy, assessment and collection which is the essential requirement of any taxation statute. The tax has to be levied by the Corporation, the rate thereof is to be specified by the Government (Administrator) and the Bye-laws for its assessment and collection have to be framed by the Corporation in the manner as contemplated in Section 401.

Discussion :

36. To answer the questions that arise for consideration apart from the resolution passed by the General House of the Corporation on 29.1.2003 it would be also essential to refer to the relevant Agenda Item No. 4 and the draft Bye-Laws which includes the Self Assessment Scheme as approved at that meeting.

37. The resolution read in isolation and independent of draft Bye-

laws and the Self Assessment Scheme approved at the meeting may not fully convey its intent and import. This is particularly so considering that it was at the same meeting of the General House of the Corporation and under the same Agenda item that the resolution imposing the tax and the draft bye-laws and the Self Assessment Scheme which elaborates the mode of assessment and collection were approved. That they were intended to be read together as a whole and as part of one indivisible taxation scheme would be further fortified from the recitals in the Agenda No. 4 that the resolution for imposition of the tax had been deferred on earlier occasions only because the Bye-Laws had not been finalized by the House Assessment Committee.

38. It is well settled that while interpreting a taxing statute the charging and the computation provisions have to be read together homogeneously and both are to be given effect. The computing provision cannot be treated as mere surplusage or of no significance. What necessarily flows therefrom also has to be given effect to.

39. Hon'ble Supreme Court in ***National Mineral Development Corpn. Ltd. v. State of M.P., (2004) 6 SCC 281*** held as under:

“23. Section 9 is not the beginning and end of the levy of royalty. The royalty has to be quantified for purpose of levy and that cannot be done unless the provisions of the Second Schedule are taken into consideration. For the purpose of levying any charge, not only has the charge to be authorised by law, it has also to be computed. The charging provision and the computation provision may be found at one place or at two different places depending on the draftsman’s art of drafting

and methodology employed. In the latter case, the charging provision and the computation provision, though placed in two parts of the enactment, shall have to be read together as constituting one integrated provision. The charging provision and the computation provision do differ qualitatively. In case of conflict, the computation provision shall give way to the charging provision. In case of doubt or ambiguity the computing provision shall be so interpreted as to act in aid of charging provision. If the two can be read together homogeneously then both shall be given effect to, more so, when it is clear from the computation provision that it is meant to supplement the charging provision and is, on its own, a substantive provision in the sense that but for the computation provision the charging provision alone would not work. The computing provision cannot be treated as mere surplusage or of no significance; what necessarily flows therefrom shall also have to be given effect to.”

40. What holds good for a taxing statute would also hold good when the Corporation exercising delegated powers imposes a tax and frames bye laws and scheme for its assessment and collection.

41. In the aforesaid background we now refer to the Agenda and the Self Assessment Scheme which is a part of the draft Bye-Laws approved on 29.1.2003.

42. The Agenda item No.4 for consideration of the General House of the Corporation was as under:

“Agenda Item No. 4

Subject: Self Assessment Scheme - Draft byelaws namely Chandigarh Municipal Corporation (Tax on

***Commercial & Industrial Lands and Buildings)
Byelaws, 2002.***

Agenda

4.1: As per provisions contained in sub section (1) clause (a) of Section 90 of the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994, the Municipal Corporation Chandigarh in its 11th meeting held on 18.9.97 passed the following resolution for the purpose of levy of tax on lands and buildings (Commercial and Industrial Units):

“In supersession of resolution passed vide item no. 6.4 by the corporation in its meeting held on 22.10.96, it is hereby considered and resolved that all commercial lands and buildings including industrial units, residential houses used for commercial purposes and that of Central Govt., Chandigarh Admn. State Govt., Semi Govt. and autonomous body used for commercial purposes shall be levied the property tax @ 10% of the rateable value without any exemption for the sale occupied buildings/portion used for commercial purposes. Further resolved that service charge @10% of the rateable value in respect of Govt. building of Union Govt., Chandigarh Admn. and State Governments and not used for commercial purposes will also not be levied.

Further resolved that the levy of house tax on residential lands and buildings used for residential purpose is hereby dropped”.

However, the Local Govt. Department, Chandigarh Administration issued the notification bearing No.6842-UTFI (2)-LG-98/2095, dated 24.2.98 of the said Act, which is reproduced below:

“In exercise of the powers conferred by sub section (3) of Section 90 of the Punjab Municipal

Corporation Act, 1976 as extended to Union Territory, Chandigarh, the Administrator, Union Territory, Chandigarh is pleased to specify that the tax on lands and buildings (Commercial including Industrial Units) to be levied by Municipal Corporation, Chandigarh under clause (a) of sub section (1) of Section 90 of the Act shall be assessed and collected at the rate of ten percent of the rateable value on such lands and buildings within the limits of the Municipal Corporation of Chandigarh.”

However, the said tax could not be levied as the draft byelaws namely Chandigarh Municipal Corporation (Tax on Commercial & Industrial Lands and Buildings) Bye-laws, 1998 approved by the Finance and Contract Committee in its special meeting held on 8.12.99 were not placed before the General House of the Corporation for approval by the then Mayors.

During discussion on the budget estimates for the year 2002-2003, the General House of the Corporation in its 50th meeting held on 28.2.2002 at 10.00 a.m. took the following decision:

- 1. The Corporation shall levy Property Tax on all lands and buildings (Commercial including industrial units) at the rate of 2% of the rateable value with exemption to certain categories (to be decided after conducting survey), for which a resolution shall be passed by the Corporation in its subsequent meeting. The draft byelaws on the subject as already recommended by the Finance and Contract Committee will also be suitably amended.*
- 2. The Chandigarh Administration shall be requested to issue notification to levy Service Charge on Government buildings of Union Government,*

Chandigarh Administration and State Governments as already approved by the Corporation in its meeting held on 18.9.1997.”

Accordingly, the said decision taken by the General House of the Corporation in its meeting held on 28.2.2002 was placed before the House in its 53rd meeting held on 29.5.2002 vide agenda item No.7 to accord its approval for superceding the resolution passed by the Corporation in its 11th meeting held on 18.9.97 for the levy of property tax @ 2% instead of 10% as already notified by the Chandigarh Administration, so that the Administration may be requested to notify the same thereby rescinding the notification already issued by it vide No.6842-UTFI(2)-LG-98/2095, dated 24.2.98. The record of minutes in the said item is reproduced below:

The agenda item was put up by the Secretary on behalf of the Mayor (who is also ex-officio Chairperson of the Finance and Contract Committee) Maj. Gen.(Retd.) A.S.Kahlon, Member, House Tax Assessment Committee proposed that although it is a suitable proposal, but it should be taken up along with draft bye-laws to be framed by the Corporation for the levy of property tax. The said draft byelaws require certain amendments which are under consideration of the House Tax Assessment Committee. He, therefore, proposed that this item should be deferred for the present. Sh.Pawan Kumar Bansal, Member of Parliament seconded the proposal.

Thereafter, it was unanimously decided to defer the agenda item which will be placed before the House along with draft byelaws on the subject.

Therefore, the matter is again placed before the General House of the Corporation for superceding the earlier

resolution in the following manner:

“In supersession of resolution passed by the Municipal Corporation, Chandigarh in its 11th meeting held on 18.9.97 vide agenda item No.10, it is hereby considered and resolved that all commercial lands and buildings including industrial units, residential houses used for commercial purposes and that of Central Govt., Chandigarh Admn., State Govt., Semi Govt. and autonomous body used for commercial purposes shall be levied the property tax @ 2% of the rateable value without any exemption for the self occupied buildings/portion used for commercial purposes.

Further resolved that service charges @ 1.5% of the rateable value in respect of Govt. buildings of union Govt., Chandigarh Admn. and State Governments and not used for commercial purposes will also be levied.

Further resolved that the levy of house tax on residential lands and buildings used for residential purpose is hereby dropped.”

4.2: *The matter relating to drafting of byelaws on the levy of property tax was thoroughly discussed by the House Tax Assessment Committee. The said Committee thought it proper to introduce a self-assessment scheme of property on the pattern of Bangalore Municipal Corporation. Accordingly, agenda containing self assessment scheme & fresh byelaws on tax on Commercial and Industrial lands and Buildings were prepared by the office, which have been considered and recommended to the General House of the Corporation by the House Tax Assessment Committee for consideration and approval. Accordingly, the fresh byelaws namely Chandigarh Municipal Corporation (Tax on*

Commercial & Industrial Lands and Buildings) Byelaws, 2002 (copy enclosed) are placed before the General House of the Corporation for consideration and approval.”

43. From this agenda item/agenda note it is clear that despite the resolution dated 18.9.97 of the Corporation levying tax on commercial lands and buildings including industrial units, residential houses used for commercial purposes etc. and the notification of the Administration dated 24.2.1998 specifying the tax, the tax could not be levied as the draft bye-laws namely the Chandigarh Municipal Corporation (Tax on Commercial & Industrial Lands and Buildings) Bye-laws 1998 had not been placed before the General House of the Corporation for approval.

44. The General House of the Corporation on 28.2.2002 decided to levy property tax on all lands and buildings (Commercial including industrial units) with exemption for certain categories which was to be decided after conducting survey. It was also decided the draft bye-laws on the subject as recommended by the Finance and Contract Committee would be suitably amended. The said decision was considered in the 53rd meeting of the General House held on 29.5.2002 but was decided that it should be taken up with the draft bye-laws to be framed by the Corporation for the levy of property tax, certain amendments to which were then under consideration of the House Tax Assessment Committee.

45. It was thereafter that the matter was taken up by the House on 29.1.2003 when besides the resolution for levying the tax, the draft bye-laws including the self assessment scheme as approved by the House Tax Assessment Committee were placed before the House for its consideration

and approval.

46. At that meeting the following resolution was passed:

“In suppression of resolution passed by the Municipal Corporation, Chandigarh in its 11th meeting held on 18.09.1997 vide agenda item No.10, it is hereby considered and resolved that all commercial lands and buildings including industrial units, residential houses used for commercial purposes and that of Central Govt., Chandigarh Admn., State Govt., Semi Govt., and autonomous body used for commercial purposes shall be levied the property tax @ 2% of the rateable value without any exemption for the self occupied buildings/portion used for commercial purposes.

Further resolved that service charges @ 1.5% of the rateable value in respect of Govt. buildings of Union Govt., Chandigarh Admn. and State Governments and not used for commercial purposes will also be levied.

Further resolved that the levy of house tax on residential lands and buildings used for residential purpose is hereby dropped.”

Further resolved that the draft bye-laws namely the Chandigarh Municipal Corporation (Tax on Commercial & Industrial Lands and Buildings) Byelaws and the Self Assessment Scheme-2002 are hereby approved with the following amendments/additions:-

1. War widows, war heroes, freedom fighter or any other persons, who have sacrificed their lives for the nation shall be exempted from the payment of property tax.

2. Booths which have been allotted by the Chandigarh Administration under rehabilitated schemes shall be charged Rs.20/- per month as property

tax instead of Rs.50/- per month contained in the proposal.

3. *The persons, who are doing business in colonies shall be given exemption from payment of property tax for 5 years.*

4. *Rateable value for building in the Industrial Area shall be reduced by 30%*

5. *If any portion of residential building is used for shop or any other commercial activity the expected let out rate for the portion so used shall be at par with the properties situated in group 5 of the proposal.*

6. *All government lands and buildings shall be brought under Zone 'B' instead of Zone 'C'.*

7. *Clause No.6 shall be read as 'the declaration filed by assessee shall be accepted as final. Nevertheless the Commissioner shall order such offers to scrutiny at random 5% of the self assessment made by the assessee and after scrutinizing , it it is found that the declaration made by the assessee is less than amount of tax paid/payable by him for that year, such officer after giving such persons a reasonable opportunity of being heard shall direct the assessee, in writing to pay a penalty, in addition to the tax payable, which shall be double the amount of such difference of tax payable.'*

8. *The area of Petrol Pump in respect of which property tax is to levied shall be clearly demarcated."*

Thus at this meeting apart from passing the resolution regarding levying of tax the draft Chandigarh Municipal Corporation (Tax on Commercial & Industrial Lands and Buildings) Byelaws and the Self Assessment Scheme-2002 was approved with certain amendments.

47. The Self Assessment Scheme as approved by the House on 29.01.2003 contains detailed instructions on the mode of Self Assessment. The relevant parts thereof are as under:-

“HOW TO USE THIS SELF-ASSESSMENT BOOK?”

In order to be more transparent, less official discretions and citizen friendly, entire commercial property of all the Sectors has been divided into four zones namely ‘ABCD’. The citizen has to identify the category in which his property is located and then apply the specific rate applicable as indicated for that category in the table for average rate per Sq. feet/ per month of the property expected to be let. The basis of classification of zoning is based on the expected rent, which a property can fetch solely on the basis of its location. In this type of Annual Rateable Value no significance has been paid to the classification of construction or buildings, use of buildings etc.

This book contains annexure, notes and a set of general conditions and a few examples: -

Annexure - 1 This contains various **concessionary** rates per Sq. foot per month that the property owner has to adopt for arriving at the rateable value if he chooses to opt for **Self Assessment Scheme** and also if he does not opt for Self assessment.

Annexure-2 It contains useful information, general conditions, definitions and methods of calculating the property tax.

Annexure-3 This contains the sector-wise details of property falling under different Zones namely A, B, C and D depending on its expected let out value based on the locality in which the property is located. The properties that can expect highest rent in the sector have been classified under Zone A. The properties that can be expected to let at comparative less rent are classified under Zone B. The properties that have still lower rental value will be classified under zone C. The petty Shops, Rehries, Mini Booths, STD booths, Kiosk, Milk booths etc. have been classified into Zone D.

Annexure – 4 : This contains the details of those commercial buildings, which are other than SCOs, SCFs or Booths but have been constructed on the sites earmarked for a specific purpose e.g.

Cinema Houses, Private Schools/Colleges, Theatres, Barat Ghars, Marriage palaces, Conventional Halls, Party/ Meeting Halls, Farm houses, Clinics, diagnostic Centers, Laboratories, Health Care Systems, Gyms, Hospitals, Nursing homes, Petrol pumps, Clubs, Godowns or any other type of building which is being used for any type of commercial activity. The expected let out rate for this Category will be @ Rs 14/-per Sq. foot per month for calculating the rateable value.

Note 1: *If any portion of a residential building is used for a shop or any other commercial activity, the expected let out rate, for the portion so used, shall be charged at the rate fixed for the properties in Group V of Annexure I.*

Note 2: *Religious Institutions are exempted but tax @ Rs.14/- per Sq. foot per month for calculating the rateable value will be charged on the portion being used for running any commercial activities.*

Note 3: *If for any reasons the tax calculated comes to less than Rs.50 per month, **the minimum tax @ Rs 50 per month will be charged.***

Note 4 : *Booths allotted under the Rehabilitation Scheme, tax at the rate of Rs.20 per month shall be charged.*

Note 5 : *Shops in colonies will be exempted from payment of tax for five years.*

Note 6: *Commercial property pertaining to War widows, War heroes, freedom fighters or any other persons, who have sacrificed their lives for the nation shall be exempted from the payment of property tax. (Certificate from competent authority is required to be produced.)*

Note 7 : *Rateable value for building in the Industrial Area shall be reduced by 30%.*

REBATE: If a person deposit the tax due for the full year on or before the due date a rebate of 10 per cent shall be allowed and if half yearly tax is deposited on or before the due date a rebate of 5 percent shall be allowed to him.

Annexure 5: *This contains few examples as how to arrive at rateable value of a property and computation of tax.*

ANNEXTURE -I

RATES IF SELF-ASSESSMENT IS OPTED.**Concessionary Rates for arriving at the Annual Rateable Values for self Assessment of Commercial Properties in Chandigarh City.**

The Table below gives various rates per sq. foot per month that the property owner has to adopt for arriving at Annual Rateable Value (ARV) of the Commercial Properties in Chandigarh. The table has four Zones: 'A', to 'D' according to concessionary rental values. The rates per sq.ft. per month prevalent in respective Zones have been inquired into and have been found to be quite high. But for the purpose of Self Assessment Scheme the Rates have been fixed much lower than the prevailing market rates.

The Annual Rateable Value of a property is to be worked out by multiplying the Average Sq. ft. rate x Area of the floor of building x 12. After allowing a deduction of 10% on account of repair, the net taxable Annual Rateable Value will be ascertained.

UNIT: RENT PER SQ. FOOT/PER MONTH

1	2	3	4	5	6
Group	Sector	Zone A	Zone B	Zone C	Zone D
I	17	20	15	13	Min.Tax at Flat rate Rs. 50/- p.m.
II	22,34 & 35	16	13	12	Min.Tax at Flat rate Rs. 50/- p.m.
III	7,8,9,15,19 & 26	14	12	9	Min.Tax at Flat rate Rs. 50/- p.m.
IV	Other-Sectors Industrial Area Ph-I & II	10	8	6	Min.Tax at Flat rate Rs. 50/- p.m.
V	Sites earmarked for specific purpose e.g., Clubs, Petrol pumps etc. as in Annexure4	Rs. 14 per sq. ft.			

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On vacant land forming part of a plot on which building has been constructed or to be constructed, rate applicable per Sq. ft. per month will be Rs.4/- per sq.ft. Irrespective of the Zone.

Government buildings are exempted from payment of property Tax on their land and buildings but they are to pay the service charges on account of services being provided to them. Therefore, Service Charges payable are @ 75% (i.e. 1.5%) of the tax calculated on the buildings as per the rate of Zone B of respective group in which the building is situated as per Annexure 1 and on vacant land Rs.3/- per sq.ft. will be charged as service charges.

*There are five groups of sectors and each group has four Zones, namely A, B, C and D. The citizen is advised to identify the Zone in which his property is located and then apply the specific rate applicable according to the floor area. **Please note that in an event if the property has been left out in any of the Zones, rate of the adjoining property shall be taken for arriving at the Annual Rateable Value.***

xxx xxx xxx”

48. The salient feature of this Self Assessment Scheme is that it contains four Annexures.

49. **Annexure-3** contains the sector-wise details of property falling under different Zones namely A, B, C and D depending on its expected let out value based on the locality in which the property is located. The properties that could expect highest rent in the sector had been classified under Zone A. The properties that could be expected to be let at comparative less rent are classified under Zone B. The properties that have still lower rental value were classified under Zone C. The petty Shops, Rehries, Mini Booths, STD booths, Kiosk, Milk booths etc. were classified

under Zone D.

50. **Annexure-4** contained the details of those commercial buildings, which were other than SCOs, SCFs or Booths but had been constructed on the sites earmarked for a specific purpose e.g. Cinema Houses, Private Schools/Colleges, Theatres, Barat Ghars, Marriage palaces, Conventional Halls, Party/ Meeting Halls, Farm houses, Clinics, diagnostic Centers, Laboratories, Health Care Systems, Gyms, Hospitals, Nursing homes, Petrol pumps, Clubs, Godowns or any other type of building which is being used for any type of commercial activity. The expected let out rate for this Category was fixed @ Rs.14/-per Sq. foot per month for calculating the rateable value.

51. **Annexure-1** specified the various concessionary rates per Sq. foot per month that the property owner has to adopt for arriving at the rateable value if he chooses to opt for Self Assessment Scheme and also if he does not opt for Self assessment. These rates were specified for five Groups. Group-V was in respect of sites earmarked for specific purpose e.g., Clubs, Petrol Pumps etc. as in Annexure 4. Rates in respect of this group were also specified.

52. From this it is clear that the properties which formed part of Annexure 4 were intended to be taxed. This group specifically included commercial buildings constructed on sites earmarked for Private Schools/ colleges.

53. The House approved the Bye-Laws with as many as eight amendments namely:

“1. War widows, war heroes, freedom fighter or any other persons, who have sacrificed their lives for the nation shall be exempted from the payment of property tax.

2. Booths which have been allotted by the Chandigarh Administration under rehabilitated schemes shall be charged Rs.20/- per month as property tax instead of Rs.50/- per month contained in the proposal.

3. The persons, who are doing business in colonies shall be given exemption from payment of property tax for 5 years.

4. Rateable value for building in the Industrial Area shall be reduced by 30%

5. If any portion of residential building is used for shop or any other commercial activity the expected let out rate for the portion so used shall be at par with the properties situated in group 5 of the proposal.

6. All government lands and buildings shall be brought under Zone 'B' instead of Zone 'C'.

7. Clause No.6 shall be read as 'the declaration filed by assessee shall be accepted as final. Nevertheless the Commissioner shall order such offers to scrutiny at random 5% of the self assessment made by the assessee and after scrutinizing , it it is found that the declaration made by the assessee is less than amount of tax paid/payable by him for that year, such officer after giving such persons a reasonable opportunity of being heard shall direct the assessee, in writing to pay a penalty, in addition to the tax payable, which shall be double the amount of such difference of tax payable.'

8. The area of Petrol Pump in respect of which property tax is to levied shall be clearly demarcated.”

54. It is thus evident that the properties which were within the

ambit of the draft Bye-laws and the Self Assessment Scheme for taxation and which the General House of the Corporation desired to exempt were specifically exempted by making specific amendment to the Bye-Laws and the Self Assessment Scheme. No such exemption was made in respect of the properties constructed on sites earmarked for Private Schools/ colleges though they were clearly mentioned in Annexure 4 and rates for them were specified in Group V of Annexure I.

55. The inescapable conclusion thus can only be that tax was levied/ imposed by the Corporation on buildings constructed on the sites earmarked for Private Schools/ Colleges when it passed the resolution levying the tax and approved the draft Bye-laws including the Self Assessment Scheme in its meeting on 29.1.2003.

56. It is true that in the notification dated 22.11.2004 and the notified Bye-Laws the term 'institutional land and buildings' have been used which was not there in the resolution and the draft Bye-laws and self Assessment Scheme.

57. The relevant extracts from the Self Assessment Scheme as notified on 3.6.2003 is as under:

“HOW TO USE THIS SELF-ASSESSMENT BOOK?”

In order to be more transparent, less official discretions and citizen friendly, entire commercial property of all the Sectors has been divided into four zones namely ‘A’, ‘B’, ‘C’, ‘D’. The citizen has to identify the category in which his property is located and then apply the specific rate applicable as indicated for that category in the table for average rate per Sq. feet/ per month of the property

expected to be let. The basis of classification of zoning is based on the expected rent, which a property can fetch solely on the basis of its location. In this type of Annual Rateable Value no significance has been given to the classification of construction or buildings, use of buildings etc.

This book contains annexure, notes and a set of general conditions and a few examples: -

***Annexure - 1** This contains various **concessionary** rates per Sq. foot per month that the property owner has to adopt for arriving at the rateable value if he chooses to opt for **Self Assessment Scheme** and also if he does not opt for Self assessment.*

***Annexure-2** It contains useful information, general conditions, definitions and methods of calculating the property tax.*

***Annexure-3** This contains the sector-wise details of property falling under different Zones namely A, B, C and D depending on its expected let out value based on the locality in which the property is located. The properties that can expect highest rent in the sector have been classified under Zone A. The properties that can be expected to let at comparative less rent are classified under Zone B. The properties that have still lower rental value will be classified under zone C. The petty Shops, Rehries, Mini Booths, STD booths, Kiosk, Milk booths etc. have been classified into Zone D.*

***Institutional Buildings:** Commercial and Institutional buildings, which are other than SCOs, SCFs or Booths but have been constructed on the sites earmarked for a specific purpose e.g. Cinema Houses, Private Schools/Colleges, Theatres, Barat Ghars, Marriage palaces, Conventional Halls, Party/ Meeting Halls, Farm houses, Clinics, diagnostic Centers, Laboratories, Health Care Systems, Gyms, Hospitals, Nursing homes, Petrol pumps, Clubs, Godowns or any other type of building which is being used for any type of commercial/ institutional activity. The expected let out rate for this Category will be @ Rs.10/- per Sq. foot per month for*

calculating the rateable value.

Note 1: *If any portion of a residential building is used for a shop or any other commercial activity, the expected let out rate, for the portion so used, shall be charged at the rate fixed for the properties in Group V of Annexure I*

Note 2: *Religious Institutions are exempted but tax @ Rs 10 /- per Sq. foot per month for calculating the rateable value will be charged on the portion being used for running any commercial activities.*

Note 3: *If for any reasons the tax calculated comes to less than Rs 50 per month, **the minimum tax @ Rs 50 per month will be charged.***

Note 4: *Commercial property pertaining to War widows, War heroes, freedom fighters or any other persons, who have sacrificed their lives for the nation shall be exempted from the payment of property tax. (Certificate from competent authority is required to be produced.)*

REBATE: If a person deposit the tax due for the full year on or before the due date a rebate of 10 per cent shall be allowed and if half yearly tax is deposited on or before the due date a rebate of 5 percent shall be allowed to him. *Annexure 4: This contains few examples as how to arrive at rateable value of a property and computation of tax.*

ANNEXTURE -I

RATES IF SELF-ASSESSMENT IS OPTED.

Concessionary Rates for arriving at the Annual Rateable Values for self Assessment of Commercial Properties in Chandigarh City.

The Table below gives various rates per sq. foot per month that the property owner has to adopt for arriving at Annual Rateable Value (ARV) of the Commercial Properties in Chandigarh. The table has four Zones: 'A', to 'D' according to concessionary rental values. The rates per sq.ft. per month prevalent in respective Zones have been inquired into and have been found to be quite high. But for the

purpose of Self Assessment Scheme the Rates have been fixed much lower than the prevailing market rates.

The Annual Rateable Value of a property is to be worked out by multiplying the Average Sq. ft. rate x Area of the floor of building x 12. After allowing a deduction of 10% on account of repair, the net taxable Annual Rateable Value will be ascertained.

UNIT:RENT PER SQ.FOOT/ PER MONTH

1	2	3	4	5	6
<i>Group</i>	<i>Sector</i>	<i>Zone A</i>	<i>Zone B</i>	<i>Zone C</i>	<i>Zone D</i>
<i>I</i>	<i>17</i>	<i>20</i>	<i>15</i>	<i>13</i>	<i>Min.Tax at Flat rate Rs. 50/- p.m.</i>
<i>II</i>	<i>22,34 & 35</i>	<i>16</i>	<i>13</i>	<i>12</i>	<i>Min.Tax at Flat rate Rs. 50/- p.m.</i>
<i>III</i>	<i>7,8,9,15,19 & 26</i>	<i>14</i>	<i>12</i>	<i>9</i>	<i>Min.Tax at Flat rate Rs. 50/- p.m.</i>
<i>IV</i>	<i>Other-Sectors Industrial Area Ph-I & II</i>	<i>10</i>	<i>8</i>	<i>6</i>	<i>Min.Tax at Flat rate Rs. 50/- p.m.</i>
<i>V</i>	<i>Sites earmarked for specific purpose e.g., Clubs, Petrol pumps etc.</i>	<i>Rs. 10 per sq. ft.</i>			

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On vacant land forming part of a plot on which building has not yet been constructed, rate applicable per Sq. ft. per month will be Rupee 1/- per Sq. ft. irrespective of the zone.

Service Charges.

Government buildings are exempted from payment of property Tax on their land and buildings but the departments are liable to pay the service charges on account of services being provided to them.

Service Charges payable are @ 75% of the tax calculated on the buildings as per the rate of Zone C of respective group in which the building is situated as per Annexure 1.

*There are five groups of sectors and each group has four Zone, namely A, B, C and D. The citizen is advised to identify the Zone in which his property is located and then apply the specific rate applicable according to the floor area. **Please note that if the property has been left out in any of the Zones, rate of the adjoining property shall be taken for arriving at the Annual Rateable Value.***

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58. Comparing the Self Assessment Scheme which is a component of the Draft Bye-laws as approved by the General House of the Corporation on 29.1.2003 with the Scheme as notified on 3.6.2003, it is clear that the buildings which were listed in Annexure 4 in the draft Bye-laws and Self Assessment Scheme approved on 29.1.2003 have been termed/defined as 'institutional buildings' in the notified Bye-laws and Self Assessment Scheme. Thus it is the same set of buildings and not any new class of property which was not taxed in the approved draft Bye-laws and Self Assessment Scheme which has been taxed by the impugned notification.

59. Ld. Counsel for the respondents have also not been able to point out any provision in the Act where under they are entitled to exemption from the said tax being an educational institution.

60. The first question is thus answered in favour of the appellants. It is held that the levy of tax on institutional land and buildings is duly authorised by the Corporation and is legal and valid.

Question No.2 :

61. It is clear that in the meeting held on 29.01.2003 the General House of the Corporation had approved the draft bye-laws namely the Chandigarh Municipal Corporation (Tax on Commercial & Industrial Lands and Buildings) Byelaws and the Self Assessment Scheme-2002 with certain amendments/ additions The resolution was forwarded to the Secretary Local Government, Chandigarh with a request from the General House to de-notify the previous notification dated 24.2.1998 and to issue a fresh notification for levy of tax @ 2% along with amended draft bye-laws.

62. The issue was discussed by the Advisor to the Administrator with the Secretary Local Government and the Legal Remembrancer along with Commissioner, Municipal Corporation. It was decided that the draft Bye-Laws may be considered by a Committee consisting of Secretary Local Government, Commissioner Municipal Corporation, Chandigarh and the Legal Remembrancer. In the meeting of the aforesaid officers with the Advisor to the Administrator on 27.03.2003 it was decided to make certain changes including in the title of the Bye-laws. The Commissioner, Municipal Corporation was asked to rectify the Bye-Laws. The Commissioner, Municipal Corporation vide letter dated 01.05.2003 submitted the modified Bye-Laws and the scheme for consideration and approval of the sub- committee. Thereafter notification No.774-FII(8)-2003/2774 dated 7.5.2003 was issued whereby the draft Bye-Laws called the Chandigarh Municipal Corporation (Tax on Commercial, Industrial and Institutional Lands and Buildings) Bye-Laws, 2003 alongwith Self

Assessment Scheme as approved by the Administrator were published. as required by sub section (1) of Section 401 of the Act.

63. The recital in the opening part of notification is as as under:

“No.774-FII(8)-2003/274 The following draft of byelaws, which the Municipal Corporation, Chandigarh, proposed to make, in exercise of the powers conferred by sub-section (1) of Section 399 of the Punjab Municipal Corporation Act, 1976 as extended to Union Territory, Chandigarh by the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 (Act No.45 of 1994) having been approved by the Administrator, Union Territory, Chandigarh as required by sub-section (1) of Section 401 of the Act ibid are hereby published for information of the persons likely to be effected thereby.

Notice is hereby given that the draft of the Bye-laws will be taken into consideration by the Administrator, Union Territory, Chandigarh on after the expiry of period of 15 days from the date of publication of this notification in the Chandigarh Administration Gazette together with any objection or suggestion which may be received by the Secretary, Local Government, Chandigarh Administration, from any person before the expiry of the period so specified with respect to the draft, namely:-

xxx xxx xxx”

64. From this recital (as also from the facts as discussed above) it is clear that draft byelaws had been made/proposed by Municipal Corporation, Chandigarh, in exercise of its powers under sub-section (1) of Section 399 of the Act. After their approval by the Administrator, Union Territory, Chandigarh as required by sub-section (1) of Section 401 of the Act they

were being published for information of the persons likely to be effected thereby and inviting their objections or suggestions.

65. The Bye-Laws along with self assessment scheme were notified vide notification No.774-FII(8)-2003/3470 dated 3.6.2003.

The recital in the opening part of this notification is as under:

“No.774-FII(8)-2003/3470 With reference to Chandigarh Administration, Local Government Department's notification bearing No.774-FII(8)-2003/2774, dated the 7th May, 2003 and in exercise of the powers conferred by subsection(1) of Section 399 of the Punjab Municipal Corporation Act, 1976, as extended to the Union Territory, Chandigarh by the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 (Act No.45 of 1994), the Administrator, Union Territory, Chandigarh, hereby makes the following Bye-laws, namely:- xxx xxx xxx”

66. As per this recital the bye-laws were made by the Administrator Union Territory, Chandigarh in exercise of the powers under Section 399(1) of the Act.

67. The Ld. Single Judge relied on this recital to hold that the bye-laws had been made by the Administrator. The Ld. Single Judge acknowledged that a perusal of the record produced before the Court showed that in fact the bye-laws were framed by the Municipal Corporation and were approved and thereafter sent to the Administrator for publication and notification in the Official Gazette. But as in the notification dated 3.6.2003 these had been stated to be framed by the Administrator, U.T. Chandigarh they have to be taken to be so framed. It was held that in order

to interpret a notification, the necessity to look into the proceedings etc. arises only to clarify the doubt. Otherwise simple interpretation is to be given to the notification. As in terms of the Act the Bye-laws could only be framed by the Corporation and not by the Administrator the same were declared to have been framed without jurisdiction and quashed.

68. With respect we are unable to agree with the Ld. Single Judge.

69. We find that there is no infirmity in the framing and notification of the Bye-laws. The draft bye-laws were framed by the House Tax Assessment Committee of the Corporation. In fact the process of framing had being under way since long. These were approved by the General House of the Corporation in the meeting held on 29.1.2003. Thereafter, they were sent to the Government for approval and notification. The Government/Administrator approved it with amendments. Before final notification the draft bye-laws as approved by the Administrator were published inviting objections. Later they were notified.

70. Section 401 of the Act contemplated making of the bye-laws subject to the condition of previous publication. The bye-laws made by the Corporation were also not to take effect until they had been approved by the Government and published in the Official Gazette. As per Section 401(2) the Government in approving a bye-law could make any change therein as appeared to it to be necessary. Clearly the procedure as contemplated under Section 399 and 401 was complied with.

71. A mere wrong recital in the notification dated 3.6.2003 that the bye-laws had been made by the Administrator would not invalidate the bye-

laws which as clear from the above narration had been framed by the Corporation, published for information of the public after being approved by the Administrator with changes, and thereafter notified.

72. It is held that the Chandigarh Municipal Corporation (Tax on Commercial, Industrial and Institutional Lands and Buildings) Bye-Laws, 2003 alongwith Self Assessment Scheme are legal and valid. The second question is answered accordingly.

73. Thus the appeals are allowed. The judgment of the Ld. Single Judge quashing the notification dated 22.11.2004 fixing property tax on institutional lands and buildings and the notified bye-laws and Self Assessment Scheme is set aside. The writ petitions are dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

August 09, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No