Copy of G.O.Ms.No. 864, dated 9th May 1969 of the Rural Development and Local Administration Department, Madras.

ABSTRACT.

Tax - Propertyn- Amendment of assessment - books under Rule 4 of Schedule IV to the Madras District Municipalities Act 1920 -(Madras Act V of 1920) - Instructions - Issued.

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READ:-

1. G.O.Ms.No. 687, Local Administration,dated 3.4.1952.
2. From the Commissioner, Virudhunagar Municipality, Roc.No. A1/8037/58, dated 5.3.1962.
3. Memo.No. 87663/F-1/62-8, Rural Development and Local Administration Department, dated 12.3.1963.
4. From the Examiner of Local Fund Accounts, Madras L.F. (Sur) No.4149, dated 6.7.66.
5. From the Inspector of Municipalities, No.3153/67B-5 dated 9-10-1968.

ORDER:-

Rule 4 of Schedule IV to the Madras District Municipalities Act 1920 lays down that if at any time it appears to the Municipal Council that any person or property has been inadequately assessed or inadvertently or improperly omitted from assessment books relating to any tax, it may direct the executive authority to amend the said books in such manner as it deems just or necessary. It has been represented that action has hitherto been taken under the above rule to bring under assessment, cases of inadvertent omissions after getting directions from the council. This has come in for adverse criticism in the law courts and they have held limiting the applicability of rule 4 of Schedule IV to the Madras District Municipalities Act, 1920, to cases of clerical or arithmetical errors only. A copy of the judgement of the High Court, Madras in second appeals No.963/58 and 166/59 dated 29-9-1961 defining the scope and applicability of Rule 4 of the Schedule IV to the Madras District Municipalities Act 1920, in regard to amendment of assessment books, is communicated to all Executive Authorities of Municipal Councils and Municipal Township Committees for information and guidance.

2. They are also informed that the question of amending the Madras District Municipalities Act 1920, to provide for retrospective assessment in case of escaped assessments is under considered of Government in connection with the comprehensive amendments to the said Act and the decision when taken in regard to this matter will be incorporated in the revised Madras District Municipalities Bill, to be prepared.

(BY ORDER OF THE GOVERNOR)

E.C.P.PRABHAKAR,
Secretary to Government.

/True Copy/

(p.t.o.)

Copy of the Judgement of the High Court, Madras in Second Appeals No. 963/58 and 166/59 dated 29-9-1961 in present of the Hon'ble Mr. Justice Ramakrishnan.

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1. V.N.P.Ramaswami Nadar.
2. V.N.P.R.Palanivel Nadar.
3. V.N.P.R. Manickavel Nadar.
4. Rajasekaran (Minor)
5. Boja Raja (Minor)
6. Selvarajan (Minor)

(Minors 4 to 6 by mother and next friend Poor Anathamma) - Appellants in S.A.No. 963 of 1958 and Respondents in S.A.No. 166 of 1959 (Plaintiffs)

The Virudhunagar Municipal Councils represented by the Commissioner, Virudhunagar Municipality, Respondent in S.A.No. 963 of 1958 and Appellant in S.A. 166 of 1959 (Defendant)

Appeal against the decree of the Court of the Subordinate Judge of Ramanathapuram at Madurai in Appeal suit No. 130 of 1955 preferred against the Decree of the Court of the District Munsiff of Sattur in Original Suit No. 220 of 1953.

JUDGEMENT: These second appeals coming on for hearing on Monday the11th day of September 1961 and having stood over for consideration till this day the court delivered the following.

JUDGEMENT.

RAMAKRISHNAN, J.

These two second appeals arise under the following circumstances. Plaintiffs in O.S.No. 220 of 1953 on the file of the District Munsiff's Court, Sattur are the owners of Door No. 67-A, in ward No. 5 of Virudhunagar Municipality. The property tax payable for that property was Rs.14/- odd per half year upto 31.3.1952 when a quinquennial revision took place. At that revision, the property tax was proposed to be increased to Rs.56 and odd per half year. Against this proposed enhancement the plaintiffs filed a revision to the Executive Officer. The revision petition was dismissed and the revised assessment as proposed was confirmed on 7-7-53 by the Executive Officer. The plaintiffs had a right to appeal to the Municipal Council, which under rule 26 of Schedule IV of the District Municipalities Act had to be filed within 15 days from the date of service of the order of revision. The appeal of the plaintiffs was filed beyond the prescribed time limit and therefore the council dismissed the appeal as time barred. The result was that the enhancement to Rs.56/- and odd made at the quinquennial revision became final. The plaintiffs contended in the above mentioned suit before the District Munsiff that it was wrong to hold that their appeal was time barred and therefore they were entitled to dispute the enhancement of the property tax.

In the aforesaid premises certain new constructions namely on oil mill and a godown were added. It is common ground that these constructions were completed on 25.5.52. Because of this addition to the property the annual value of the property as well as the property tax

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had necessarily to be increased. The proposal to make this increase was initiated by a notice (Exhibit B-15) given to the plaintiffs under rule 4 (1) of schedule IV of the District Municipalities Act. This notice was by the Taxation and Finance Committee of the Municipal Council which passed a resolution on 24.12.1952 for the enhancement of the property tax of the suit property to Rs.355.10-9 every half year. Against this fixation two appeals for two half year were filed by the plaintiffs to the council. They were dismissed by an order dated 28.3.53 which stated that no appeal lay to the Council because the taxation committee which fixed the tax exercised its powers only by delegation from the council. The plaintiffs also seek for a declaration that this enhancement was illegal. The contention of the defendant, the District Municipality of Virudhunagar was that the enhancement at the quinquennial revision, cannot be disputed because the appeal to the Council was validly held as time barred. In regard to the enhancement made subsequently, the contention of the Municipality was that it was made in compliance with the rules.

The trail court found that the enhancement made at the quinquennial revision had become final because the appeal to the Municipality was filed after the prescribed time limit and that the matter could not be re-examined in the suit. Regarding the subsequent enhancement o the trial court upheld the enhancement and dismissed the suit of the plaintiffs. In the appeal the learned subordinate judge of Madurai upheld the enhancement made at the quinquennial revision, holding that the appeal from that revision to the Municipal Council was time barred and therefore the enhancement become final. Regarding the further enhancement the Subordinate judge held that the order of the Municipal Council making the enhancement under rule 4 (1) of Sch. IV and directing the amendment of the assessment book as a result was without jurisdiction and ultre vires the council. This should have led to a decision in favour of the plaintiffs so far as the subsequent enhancement is concerned for both the two half years namely, the halfyear ending 30-9-52 and the half year ending 31.3.1953. But the learned Subordinate Judge adopted a curious line of reasoning. Though rule 4 (1) of Schedule IV of the District Municipalities Act was resorted to for making the enhancement by the Taxation Committee of the Municipal Council the enhancement should be deemed to have been made under rule 8 (2) of the aforesaid schedule. The result according to the lower appellate court was that the plaintiffs were not liable to pay the enhanced tax for the half year ending 30-9-52 and therefore they would be entitled to a refund of the amount of enhanced tax of Rs.298-12-3 for that half year. It did not say anything about the refund of the enhanced tax for the half year ending 31.3.1953 but it directed to the defendant to issue a notice under rule 10 of Sch.IV of the District Municipalities Act calling for the revision ~~of~~ in respect of the half years commencing from 1-10-52. This may imply that the lower appellate court was also not satisfied with the property of the assessment made for the second half year commencing on 1.10.52 and ending with 31.3.53. In that event the plaintiffs shoud have been given a refund of the enhanced tax paid for the half year ending 31.3.53 but the decree of the lower appellate court does not given that refund. S.A. No. 963 of 1953 is filled by the plaintiffs from the above said decision in so far as the enhancement made at the quinquennial revision has been confirmed and in so far as the refund of the excess tax

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paid for the half year ending 31.3.1953 had also been disallowed. The Municipality has filed S.A.No. 166 of 1959 against the allowance of refund by the lower appellate court of the excess tax paid for the first half year, that is, the half year ending 30-9-52. Since common questions arise these appeals were heard together.

The facts leading to the present appeals are set out above and do not require recapitulation. So far as the enhancement at the quinquennial revision is concerned. I have perused the dates and I find that the appeal filed by the plaintiffs to the council bears the date 8-9-1952 which shows that the appeal was filed beyond the prescribed time limit. The learned counsel for the plaintiffs does not seriously dispute the correctness of this finding by the Courts below:

The main attack was directed against the enhancement made of property tax in pursuance of the notice issued under rule 4 (1) of Schedule IV of the District Municipalities Act. In this connection it will be useful to briefly refer to the relevant principles of the scheme of taxation by a Municipality. The authority to levy property tax is provided in section 81 and for profession tax in section 93 of the Act, after adopting the formalities prescribed in these sections. The property tax has to be levied at such percentage of the annual value as may be fixed by the Municipal Council. Rule 6 of Schedule IV provides that in regard to the actual assessment of property tax the value of land or buildings for that purpose shall be determined by the Executive Authority. Under rule 7 the Executive Authority is required to enter the annual value of lands and buildings in the assessment book. This assessment book has to be completely revised once in every five years at what is called the quinquennial revision. Under rule 8 (2) o the Executive Authority is given power to amend the assessment book at any time between one general revision and another by altering the valuation of any property or by substituting the name of the owner of any property etc. Such amendment takes effect on the first day of the half year in which it is made. Rule 10 joins thatif between one general revision and another the Executive Authority proposes to increase the assessment of any property or assess any property for the first time he has to give a special notice to the owner or occupier of the property giving has a chance to prefer a revision against the proposed assessment by a petition filed within a certain time limit. Rule 12 requires the Executive Authority togive a reasonable opportunity to the person effected to appear in person or by agent to represent his case. Rule 13 required the Executive Authority to inform the petitioner of the decision. Rule 23 gives the person aggrived by such decision a right of appeal to the council against the order of the Executive Authority in a revision petition filed under rule 13. The above is the normal procedure for the assessment of property tax then for the quinquennial revision of such assessment, and also for making a fresh assessment or altering assessments already made between one quinquennial revision and another.

Now we come to rule 4 of Sch. IV which is the provision subject to contraversy in these appeals. Rule 4 reads:-

"4 (1) If at any time it appears to the council that any person or property has been inadequately

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assessed or inadvertically or improperly omitted from the assessment books relating to any tax or that there is any clerical or arthmetical error in the said books, it may direct the (Executive Authority) to amend the said books in such manner as it deems fit or necessary. Provided that no such direction shall given where it involves on increase in the assessment, unless the person concerned shall have been afforded a reasonable opportunity to show cause to the council why the assessment books should not be amended as proposed.

2. Such amendment shall be deemed to have taken effect on the earliest date either in the current half year or in the two half years amendment proceedings it on which the circumstances justifying the amendment existed.

In the present case a substantial addition to the plaintiffs, property was made on 25-5-1952, so far as this addition is concerned it was an item of new property not assessed to tax before, and therefore it required a fresh valuation, fixing of annual value and the correction of the entry in the assessment book. In exhibit B. 16 o the Bill Collector prepared on 15.11.1952 a list of properties which require revision of tax. In this list against the plaintiff's name the new constructions are mentioned . The Commissioner saw this list on 18-12-1952, but the Commissioner was not the person who took up further action under Rule 8 (2) but the Municipality issued notice on 20-12-1952 under rule 4 (1). Rule 8 (2) ~~is~~ gives power to the Executive Authority to make the necessary alterations to the property tax. Actually it is the Executive Authority who will be normally expected to attend to it. That duty is specifically enjoined on him. But in the present case the council represented by its Taxation and Finance Committee took on itself this responsibility of making the addition to the plaintiffs' property tax purporting to act under rule 4 (1). It is well known principle that all taxation statutes should be constructed strictly. Rule 4 (1) refers to property ~~tax~~ which was inadequentely assessed. The words 'Inadequate assessment' pre suppose on earlier assessment in regard to a specific property which on a subsequent consideration is found to be inadequate. Now this additional property came into existence only on 25.5.52. So far as tax on this addition to the property is concerned it is not a case of an inadequate assessment book" should imply also an occasion to consider the assessment of a ~~inadvertence~~ specific item of property and an omission through inadvertence occuring in that content. Similarly the word "Improper" also connects the idea of some authority which had applied its mind to the question of including a specific item of property but for improper reasons declined to include it in the assessment. The words * inadvertent omission from the assessment of a specific item of property and an omission through inadvertence occuring in that content. Similarly the word "Improper" also connects the idea of some authority which had applied its mind to the question of including a specific item of property but for improper reasons "~~Adv~~ inadvertent" and "Improper" the adverns "inadvertently" and "Improperly qualifying the word "Omitted" all imply that the authority changed with the preparation of assessment book had occasion to consider a question effecting the property to be included in the assessment book but through inadvertence or through an improper decision, the property came to be

included. But admittedly the question in this case related to an additional property which came into existence only on 25.5.1952 and the Executive Authority who is the person primarily concerned with the task of bringing it into the assessment book did not take up the task because the notice on 24-12-1952 for that purpose. In thetrial court reference was made to G.O. 687 Local Administration dated 3-4-1952. It is conceded before me that this is not an order of the Government issued under its statutory powers. It is only an administrative order and therefore it can have no relevancy when the question of the valied exercise of the powers under the Act has come under scrutiny.

The learned counsel for the plaintiffs -appellants urged that even if the Municipal Council acting under rule 4 (1) finds that there has been an omission inadvertant or improper to assess a protincular item of property to take the utmost that it could do is to direct the Executive Authority to amend the as statement book in such manner as the Municipal council deems it just or necessary. It does not empower the Municipal Council to take upon itself the power to value the land or building, for the purpose of fixing property tax which under rule 6 is execlusively within the jurisdiction of the Executive Authority. Therefore the Municipal Council could at best give a direction to the Executive Officer who should thereafter proceed under rule 8 (2) for making the assessment book encounciated in rule 4 (1) do not include an alteration of the present kind which involves the estimating the annual value of a new building not hitherto assessed to property tax and fixing the property tax thereon both of which have to be done after following the formalities in rule 8 (2) and rule 10 and in regard to which there is a valuable right of appeal given to the aggrieved party under rule 23 above mentioned. The Municipality cannot circumvent these provisions and deprive the assesses of the valuable right of appeal by resorting to rule 4 (1) in such cases. A decision of the Andhra High Court in Municipal Council V.Bandi Butchayya (1) 1959 (1) Andhara W.R. 66 dealt with an anglagous state of affairs where a Municipality enhanced the assessment on a certain property which was originally made on the basis that it was agricultural land by holding that it should be assessed as a building site. The Municipality apparently contended that the original assessment was a case of inadequate assess under rule 1 (1) and therefore it had jurisdiction. Bhimasankaran J. who gave the decision observed:-

> The words 'inadequately assessed' may of-course strictly, speaking cover cases of under assessment due to wrong valuation of the land to be taxed as well as of such assessment due to a wrong amount of tax being fixed on the basis of a correct valuation. If it is the latter the Municipal council can direct the amendment of the books under rule 4. If it is the former it is only the Executive Authority that has the right to do so. It is true that rule 4 as well as rule 8 aim in one sense to correct wrong assessments. But where the assessment is incorrect on the ground that the property was wrongly valued either because it was valued as agricultural land when it should have been valued as a building site or because the figure at which it was valued was lower than

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it should have been then it is the Executive Authority who can alter the value of the land and impose an assessment corresponding to the altered valuation. Interpreting the words 'Inadequately assessed ' in accordance with the maximum moscitur a sociis entertain no double whatsoever that the power vested in the Municipality is merely to direct amendment of the assessment books but not to revise taxation as such".

One can also refer to the observation of Byers J. in Municipal Council Kumbakonam V.Kumbakonam Bank limited (2) 1944 (1) M.L.J. 451 that when an assessment was revised by the Appeal committee instead of by the Exedutive Authority in accordance with the statutory rules the plaintiff was to all intends and propses derived of its statutory right of appeal apart from the fact that the assessment was made by a body which did not possess the necessary powers.

It does not stand to reason that two sets of authorities will have indertical powers, the Executive Authority under rule 8 (2) and the Municipal Council under rule 4 (1) to be exercised by one or the other authority just as they thought fit in regard to the same subject matter -Imparently if the Executive Authority had exercised its power under rule 8 (2) the assessment could be brought into force only from the half year ending 31-3-1963 but if the Municipality had exercised its powers under rule 4 (1) it will valied from the earliest date within two half years immediately proceeding the amendment when the circumstances justifying the amendment existed. Because rule 4 (1) will give an opportunity to the council to bring the property to assessment for the half year ending 30-9-52 whereas if rule 8 (2) has been applied, the assessment will take effect only from the succeeding half year, will not be a valid ground for the Municipality to go against the rules and deprive the plaintiffs of the valuable privilege of appeal. I am satisfied that the addition to the property tax of the kind dealt within this case falls within the scope of rule 8 (2) and should have been made by the Executive Officer, it was not a matter which fell within the jurisdiction of the Municipal Council under rule 4 (1). Therefore the enhancement of the assessment over the assessment period at the quinquennial revision for both the half years ~~xk~~ is set aside. Therefore S.A. 963 of 1958 is allowed in part in so far as the enhancement for the two half years over the tax fixed at the quinquennial revision is concerned, S.A. 166 of 1959 is dismissed. There will be no order as to costs in S.A. 166 of 1959 but the Respondent will pay the costs of the appellant in S.A. 963 of 1958 alone . Leave granted.

(sd) B.Somanatha Rao
27.11.61
Deputy Registrar, A.S.

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