

NEW DELHI MUNICIPAL COUNCIL
OFFICE OF THE CHAIRMAN, NDMC
PALIKA KENDRA; NEW DELHI

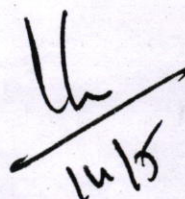
e-145765/Dir-tax

No. NDMC/Chairman/PS/2018-19/D-24/Dir-tax

Date:14/05/2018

**Decision of the Chairperson, NDMC under Bye Law -5 (2) of NDMC
(Determination of Annual Rent) Bye Laws, 2009, regarding recommendations
of the Valuation Committee for the year 2018-19**

1. The NDMC (Determination of Annual Rent) Bye Laws, 2009 (the Bye Laws 2009) which became effective from 1st April, 2009 were challenged by some of the tax-payers in NDMC area before the Hon'ble Delhi High Court, who by its judgment dated 10.08.2017 held that the Bye-Laws 2009 are ultra virus of the NDMC Act. Against the judgment of the Hon'ble High Court, NDMC preferred SLP before the Hon'ble Supreme Court. The SLP No(s) 23186-23213/2017 is pending decision in the Supreme Court. During the hearing of the SLP, NDMC informed the Hon'ble Supreme Court that the grievances of the Respondents can be looked into by the Valuation Committee constituted as per Bye-Law 5(1) of the Bye Laws 2009. The Hon'ble Supreme Court permitted the representations of the Respondents to be considered by the Valuation Committee. Accordingly, the respondents who submitted their representations were considered by the Valuation Committee.
2. The Valuation Committee examined the representations in great detail and on 27/02/2018, made recommendations on the following :-
 - I. Rateable Value (RV) of open land appurtenant to a building
 - II. Residential premises owned by Company / Firm /Trust etc.
 - III. Uniform criteria in Bye-Laws, 2009 to determine RV of premises falling in different localities of NDMC area
 - IV. Vacancy remission on use and occupancy of the property
 - V. Classification of properties under Bye-Law 2009
3. During proceedings held on 06/04/2018, the Hon'ble Supreme Court allowed tax-payers to file objections to the recommendation of the Valuation Committee for the year 2018-19.
4. Objections / suggestions have been received from following 13 objectors / tax-payers:
 1. Petitioner in SLP No. D-35928/2017, filed by Sh. Subhash Chand Gupta
 2. Raghunandan Saran, Ashok Saran (HUF), filed by Sh. Ashok Saran, Karta
 3. Clubs in NDMC Area, filed by Sh. Praveen Kumar Vats, FCA
 4. Sh. Naren Bhiku Ram Jain
 5. Associations of concerned citizens of New Delhi, filed by Sh. Jaiwant Daulat Singh, General Secretary
 6. Objections on behalf of Schokhi Industrial Pvt. Ltd., filed by Sh. S.K. Jain, Advocate
 7. Objections of Sh. R.M. Mathani
 8. Objections on behalf of Modern School, New Delhi and Imperial Hotel, filed by Sh. Bharat Bhushan Jain, Advocate (Two separate objections)


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9. Objections of Indian Newspaper Society filed by Sh. Lav Saksena, Secretary General
10. Objections of Babar Road Colony Leaseholders Association filed by Sh. Y.K. Anand, President
11. Objections of New Delhi Traders Association filed by Sh. Sanjiv Gupta, Sr. Vice President.
12. Objections of Hotel Queen Road Pvt. Ltd.

5. Having perused the recommendations of the valuation committee as well as the objections/suggestions submitted by the abovementioned tax payers now my decision for the year 2018-19 is as follows:

S. No.	Objection/Suggestion of Assessee/ Tax Payer	Decision
1	No Tax should be imposed on the vacant land appurtenant to a building because the same cannot be used for construction. The taxation of vacant land is made under Section 63(2) of NDMC Act. Whereas, in the MCD area, the vacant land tax is assessed only if the covered area on ground floor is less than 25% of the plot area and in that case also the unit area value for vacant land is 30% of the base unit area value.	<p>Only the vacant land which is capable of being built upon or on which a building is in the process of construction, is assessed U/s 63(2) of NDMC Act.</p> <p>Whereas, the land appurtenant to a building which is not capable of being built upon due to restrictions of Building Bye Laws etc. is assessed u/s 63(1) of the Act. The unconstructed portion of a property is beneficially enjoyed by the owners and occupiers. Therefore in terms of Section 63(1), it is permissible to levy tax on such land. Even in MCD, the vacant land tax is imposed under Unit Area Method (UAM).</p> <p>In the NDMC (Determination of Annual Rent) Bye Laws 2009 (the Bye Law 2009), the vacant land appurtenant to a building, built up in the plot area of up to 1000 sq.mtrs, is exempt from property tax.</p> <p>The Valuation Committee has already considered this aspect and recommended to reduce the Unit Area Value by 50% in respect of unconstructed portion of land of the plots of more than 1000 sq.mtrs, if the property is located in Lutyen / Restricted Zone.</p> <p>The above recommendation gives</p>

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		substantial relief to the affected property owners. However, in my view the benefit should not be restricted to the properties located only in Lutyen/Restricted Zone but should be extended to all residential plots of more than 1000 sq. mts. With the above modification the recommendation is accepted.
2	The open plot under construction is assessed on the basis of market value of the land and the RV is fixed @ of 5% of such market land value, as per provisions of Section 63(2) of NDMC Act, which results in heavy burden of property tax. The open plot under construction should be assessed as per provisions of Bye Law 4(ii) by multiplying the total area of such land by base unit area value.	<p>The Bye Laws 2009 are applicable in respect of Section 63(1) of NDMC Act only. There is no Bye Law framed by NDMC in respect of Section 63(2) of the NDMC Act. Section 63(2) is applicable only in respect of land which is not built upon but is capable of being built upon or any land on which building is in the process of erection. For such land, the Act itself provides the calculation of Rateable value to be fixed at the rate of 5% of the estimated capital value of such land. The Act does not permit NDMC to calculate Rateable Value of such land with any other methodology.</p> <p>In view of the above, the objection/suggestion of the Assessee / Tax Payer in this regard would go contrary to the provisions of the Act and cannot be accepted.</p>
3	The committee has failed to appreciate that they have to assess the "Rent" of a particular property and not the value / unit area value of the property, as the Rateable Value is based on rent only.	<p>Section 77(1) of the NDMC Act enables the Chairman to determine the rateable value on the basis of various factors that are linked with the determination of annual rent. The actual cost or the value of land or building is also one of such factors that is provided under Section 77 (1) of the Act.</p> <p>There is no specific method provided in section 63(1) for determination of annual rent and NDMC can, for the purpose of determining the rateable value, consider any factor or details that enable the NDMC to determine the rateable value.</p> <p>The heading of the Bye-laws 2009,</p>

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		<p>itself makes it clear that the bye-laws are for determination of annual rent. Bye-law 2 bifurcate the land and building into special category of land and buildings that are to be assessed under Bye Law 3 and other land and buildings that are to be assessed under bye-law 4. The special category properties are those that are not normally let and the annual rent in such cases is determined on the basis of the value of the land and construction, which NDMC can determine in terms of section 77 (1) (b) and (c) of the Act.</p> <p>As far as Bye-law 4 is concerned, annual rent is to be determined on the basis of <i>bonafide</i> annual value of land or building for which relevant permissible factors are taken into consideration.</p> <p>The committee, therefore in my view has not erred in appreciating that the rateable value is to be determined on the basis of annual rent.</p>
4	<p>The properties which are covered under DRC Act cannot be treated at par with the properties which are not covered under DRC Act, for the purpose of fixation of rateable value because such buildings are not under control of owners and have remained without maintenance or renewal rendering them unfit for uses, un-rentable and without economic value. Such class of buildings, covered under the Rent Control statutes are wholly of archaic design. They may be adjacent to the buildings of modern design but this proximity does not make them comparable in any way.</p> <p>The class of the buildings covered under the Rent Control Statutes and kept in 1930 design and physical structure, requires to be classified separately and treated in accordance</p>	<p>The proviso of Section 63(1) regarding standard rent fixed under the DRC Act, has lost its relevance after the judgement dated 18/01/2002 of the Hon'ble High Court of Delhi in the case of "Raghunandan Saran Ashok Saran(HUF) Vs. Union of India & Others" vide which Section 4,6 & 9 of the DRC Act, governing the fixation of standard rent, were declared as <i>ultra vires</i> of the Constitution of India. The said position was further affirmed by the Hon'ble Supreme Court vide its latest judgment dated 03/02/2016 in the case of STC vs NDMC in CA No.2772/2009. As such the fixation of rateable value of any property is dependant only on the annual expected reasonable rent irrespective of the fact whether a property is covered under DRC Act or not.</p> <p>The provisions of the Bye Laws are</p>

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	<p>with real historical statutes.</p>	<p>non discriminatory and do not influence economic behavior. There is no disincentive on improving the property or any incentive to keep the property in a dilapidated condition. The NDMC is providing uniform civic amenities to all the properties without considering the fact as to whether the property is covered under DRC Act or not. As such, separate yard sticks cannot be adopted for the properties covered under DRC Act.</p> <p>Section 67 of the NDMC Act enables the owner/assessee of a property to recover the difference in the amount of property tax from the tenants, if the rateable value exceeds the amount of rent payable in respect of such property.</p> <p>In my view the above provision adequately takes care of the concerns of the objectors.</p>
5	<p>All area under NDMC are considered in one category irrespective of locations of the properties.</p> <p>There is a wide gap in the rental value of the properties in different localities within the NDMC Area therefore, uniform criteria adopted in the Bye Laws 2009, is not justified.</p> <p>No distinction had been made for the diverse uses of the properties like Showrooms, Garages, Stores and offices</p>	<p>In my considered view, any method that introduces potential of exercise of greater amount of discretion, will annihilate the primary objectives of the Bye Laws of 2009, which are to promote transparency and objectivity and eliminate human element to the greatest extent possible. The way the Bye Laws have been made, check and balance is inherently ingrained.</p> <p>In the context of the objections made, the attention may be drawn to the Bye Laws of 2009 which already take care of diverse usage of land and buildings by virtue of recognizing use factors i.e. residential and non-residential. In this regard the observations contained at page 8 of the valuation committee recommendations may be referred to.</p> <p>I am of the considered view that introduction of any additional factors will not only complicate the entire exercise and deviate from the purpose</p>

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		of bringing transparency and objectivity by reducing the discretion at the hands of the Assessing Officer. At present the rates are bare minimum and if the distinction is made as suggested, the same will only go up and would not sub serve the interest of a large number of assesses.
6	<p>The assessment of property tax under unit area method in the NDMC, as per provisions of Bye Law, 2009 is far more excess than the property tax assessed under UAM of MCD area.</p> <p>Occupancy factor for all the rented properties has been taken at 3 in NDMC whereas in MCD, residential tenancy factor is 2. The use factor for all commercial properties has been taken as '6' in NDMC area (now '4' from 2010-11 onwards), whereas in MCD, the same is '4'.</p> <p>Unit rate in NDMC is Rs.1000/- per sq.mtr., (Now Rs.1200/- per sq.mtr.) whereas the highest unit rate in MCD is Rs.630/- per sq.mtr.</p> <p>Maximum property tax in NDMC is 30% whereas the same is 10% in MCD.</p> <p>The accumulative impact of above is imposition of 20 times more tax in NDMC as compared with MCD area.</p>	<p>It must not be lost sight of that there is no intelligible basis for comparing properties in NDMC area with those falling in the areas of other municipalities in Delhi, particularly in view of the uniqueness of NDMC area where 80% of properties are government owned. Further the area of NDMC is frozen and there is no scope of any expansion. On the other hand the situation in other municipal areas is different in as much as the same keep growing.</p> <p>NDMC is not bound to adopt the use factor yardsticks followed by other municipalities and the factors adopted it are completely justified inasmuch as they completely commensurate with the nature of properties comprised in NDMC area.</p>
7	<p>While giving recommendations regarding residential premises owned by Company/Firm/Trust etc., the Valuation Committee failed to appreciate that the Company/Firm/Trust, being an artificial person, can never hold, use, occupy a property like a natural person and would always need a natural person such as it's Director/Shareholders who physically enjoy the property. Simply because a property is owned by an artificial</p>	<p>The Valuation Committee has recommended that residential premises owned by the Company, Trust, Firm etc. which are not used and remain vacant, should be given vacancy remission as per provisions of NDMC Act, since the assessee is otherwise allowed to use occupancy factor applicable for vacant residential properties.</p> <p>After going through the recommendations of the Valuation</p>

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person, it cannot be subjected to higher tax. Any entity / owning holding a property has no impact on its rental value. As per Section 66(1) of the NDMC Act, the classification of unlet land or building has been done in a single category suggesting that such properties owned by Companies/firms are in same class as self occupied properties.

Section 66(1)(c) of NDMC mandates that if there is no lease or sub lease, the unlet land and building, whether owned by a Company or a Firm or owned by a senior citizen or a woman should be in the same class as self occupied properties. The application of occupancy factor '3' for calculating annual rent of a flat owned by a Company for it's use by the Directors of the Company is illegal and arbitrary.

Explanation(1) to sub Bye Law (6) of bye laws '4' does not carve out any special categories of premises. Thus the application of occupancy factor '3' for assessing annual value of a premises which are self occupied by the Company is illegal.

In the case reported as AIR 1967 Supreme Court 389, the Hon'ble Supreme court has held that explanation to a main section is added to clear up any ambiguity in the main Section. The explanation clause cannot be construed to widen the scope and ambit of the main Section. The said explanation permits the NDMC not to allow self occupancy rebate of 25% if the residential premises is owned by Company/Trust but does not authorize to treat such residential flats on rent by applying factor '3', which is applicable for rented properties only

Committee, I notice that the Valuation Committee has not agreed to treat the property owned by a Company, Trust or Firm, if used by its Directors, employees, principal officers, as self occupied.

Prima facie, this recommendation needs further deliberation and the suggestions of the Tax Payers need to be considered realistically and objectively. Any interpretation that may lead to unjustified denial of benefit is to be eschewed. However, the Bye Laws as they stand today, unless amended by the approval of the Council would not permit the use and occupation of Directors, employees, principal officers, etc., to be treated as self occupied in relation to the properties owned by companies, trusts, firms etc.


I am therefore, of the view that the suggestion to apply the deeming fiction of self occupation on such properties, if occupied by the Directors, employees, principal officers, etc., for residential use should be considered by the Council and an agenda to this effect should be placed before, to examine if the explanation of sub Bye Law 6 of the Bye Law - 4. In terms of the NDMC Act it is the Council alone that is empowered to amend the Bye-Laws and take any decision in this regard.

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8	<p>In the Bye Laws, if the actual rent is higher than the Rateable Value calculated under the Bye Laws in respect of commercial rented properties, such actual rent is to be taken as Rateable Value. This concept is against the very premise of adopting the UAM.</p>	<p>Such a situation arises only in respect of non-residential properties, that too only in those cases where the actual rent is found to be higher than the bonafide annual value of the land and building as per the Bye Law, 2009.</p> <p>I am therefore of the view this does not violate the integrity of the method of assessment adopted by NDMC under the Bye Law 2009.</p>
9	<p>As per provisions of Sub Bye Law 1(v) of Bye Law 5, the Valuation Committee was required to specify <u>the area of land to be included in the case of Schools, Colleges, Clubs etc.</u> for assessment under Bye Law 3.</p> <p>The Valuation Committee for the 2009-10 considered only the area of land in respect of Schools and Colleges and did not take any view in respect of other categories under Bye Law 3 i.e. Clubs etc. being assessed under Bye Law 3. Therefore, all the assessments made under Bye Law 2009 in respect of Clubs become void ab initio.</p> <p>"Almost all the clubs in NDMC area have huge portion of land as vacant land which is meant for promotion of sports activities or to be kept as green area.</p> <p>In the case of Delhi Golf Club, 98% of total area is either used for promotion of the sports activities or kept green area. Similarly, in the case of Gymkhana Club 75% of total area is used as open ground and green area.</p>	<p>I have gone through the recommendations of the Valuation Committee and I am of the view that existing position does not warrant any change. There is justification for exempting play ground of schools and colleges from levy of property tax. The entitlement of schools and colleges cannot be compared to other categories like Clubs and Hotels. Open areas, used as play grounds need to be promoted in educational institutions.</p> <p>The same degree of public interest cannot be found or contended in relation to Clubs, Hotels etc., which are visited primarily for entertainment purposes. It cannot be the case that mere existence of public interest, if any, would invariably justify similar treatment. The public interest meriting such treatment should be of very high degree in the context of needs of the society and the requirements to fulfill the constitutional goals. Therefore, categories suggested in the objections/suggestions need not be given the benefit, that is available to schools and colleges.</p>

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	Clubs are not the commercial entities like Hotels and are serving specifically to their Members only. The play ground area and green area of Clubs may be exempted keeping in mind the larger interest of society.	
10	<p>The Valuation Committee for the year 2009-10 has only exempted the play ground area of the Schools. However, other lands which are not capable of being built upon like roads and parking space has not been exempted and it requires to be done in the same manner as done in the case of play ground.</p> <p>The lands of the Hotels which are not capable of being built up like roads and parking space, etc. should be exempted, on the line of pay ground of schools.</p>	<p>This aspect has already been considered above. In my view the present arrangement does not call for any change. Hotels do not require any exemption in public interest.</p> <p>Play grounds of Schools and colleges are already exempted and they also get handsome rebates and as such the suggestions/objections for extending the same benefit in respect of parking spaces and roads within the school does not seem to be justified.</p>
11	The institutions which have been allowed land by the L&DO, DDA or other land Owned Agencies at subsidized land rates and are exempt under Income Tax Act, may be continued to be assessed under public purpose category, under Bye Law '3', as recommended by the Valuation Committee for 2017-18.	<p>The earlier Valuation Committee for the year 2017-18 had recommended/clarified the same in this regard.</p> <p>However, for clarification sake, it is clarified that recommendations of earlier Valuation Committees, as already implemented by the NDMC, shall continue to be applicable, unless the same is changed/modified subsequently.</p>

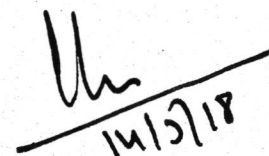

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12	<p>The recommendations of the Valuation Committee are silent about not granting any hearing to the affected parties while finalizing the lands and buildings which are to be categorized as special category for the purpose of Bye Law'3'.</p>	<p>This aspect has already been considered by the Valuation Committee for the year 2018-2019 which has recommended that in future, before convening the annual Meeting of the Valuation Committee, the NDMC should ask all the tax payers through a Public Notice of not less than 30 days, to submit their objections, if any, so that the Valuation Committee may consider such objections and deal with them in its recommendations.</p>
13	<p>Hotel Queen Road Pvt. Ltd. has stated that in the case of their hotel property, the land is lease hold land and belongs to Govt. of India which is exempt U/s 65 of the NDMC Act.</p> <p>Further, the hotel property was built up prior to 1988, thus provisions of DRC Act continues to apply. Any amendment / repeal etc. of the DRC Act does not affect its applicability to the NDMC Act wherein it is incorporated by legislation.</p>	<p>The question as to whether the Hotel Queen Road Pvt. Ltd. is or is not a Union property or whether or not it is exempt from property tax is neither a subject matter for the recommendation of the valuation committee nor for chairman of NDMC to give its decision.</p> <p>As far as the other objection of Hotel Queen Road Pvt. Ltd claiming to be exempt from property tax is not the subject matter of NDMC Bye Law 2009. As far as the other objection of the hotel regarding assessment under DRC Act, is concerned, this issue has already been dealt in point no.4 above.</p>
14	<p>The Valuation Committee has not clarified as to how the RV of Government Buildings are being calculated.</p>	<p>In order to assess and levy the service charges in respect of the Govt. Properties, the rateable value is calculated as per provisions of Bye Law 3 of Bye Laws, 2009. Thereafter, the Service Charge is calculated at the percentage as fixed vide OM dated 15/12/2009 issued by the Govt. of India, in pursuance of the orders dated 19/11/2009 of the Hon'ble Supreme Court in the case of Rajkot Municipal Corporation & Others Vs. Union of India & Others.</p> <p>In my considered opinion no clarification is required to be given on this aspect.</p>

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In terms of the provisions of Bye Law 5 (2) of the Bye Laws, 2009, I accept the recommendations of the Valuation Committee for 2018-19 with such modifications as mentioned above, for implementation during the year 2018-19 subject to final orders / judgement of the Hon'ble Supreme Court in the pending SLP.

A copy of this decision may be uploaded on the NDMC website for information of tax payers.


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(Naresh Kumar)
Chairman, NDMC
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