

(2012) 08 KL CK 0001
In the High Court Of Kerala
Case No : W.A. No. 1544 of 2012

Ayshakunji

APPELLANT

Vs

Tahsildar

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Kerala Building Tax Act, 1975 — Section 5A

Citation : (2012) 4 KLJ 217 : (2012) 4 KLT 193

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : V.C. James and Sebastian Joseph Kurisummottil, for the Appellant;
S. Sudheesh kumar Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The question raised is whether use of part of the residential building for commercial purpose justifies exclusion of so much of the plinth area rented out from the residential house for the purpose of determining luxury tax liability under S. 5A of the Kerala Building Tax Act. We have heard learned counsel for the appellant and also Government Pleader for respondents.

2. The building in this case is second floor of a massive building wherein the residential apartment comprises of 291 sq. mts. There is no dispute that the building is a residential building. The appellant's family was in fact staying there. However, 58 sq. mts of the said building was let put for running an I.T. Academy under the name Jayaram Talent Media. Appellant's case is that once this area let out for commercial purpose is excluded, balance plinth area of the building will be less than 278.7 sq. mtrs and therefore the building does not attract luxury tax. Government Pleader supported the orders of the appellate authority by contending that letting out of a portion of the residential building does not justify exclusion of that portion from the plinth area of the residential building for considering liability under S. 5A. After hearing both sides and on going through the orders, we do not find any justification in the contention of the appellant that

part of the residential building has to be excluded while considering the liability for luxury tax under S. 5A merely because the let out portion is used for commercial purpose. Liability under S. 5A is only on residential building and it is essentially the nature of the structure that determines whether the building is residential or not. Ever so many residential buildings are used partly or fully and even temporarily for non residential purpose. In fact, every professional like doctor, lawyer, chartered accountant, architect etc., retains office in their own residential building. There may also be cases of partial letting of residential house for non residential purpose. However, non residential use of a portion of a residential building does not affect its identity or character as a residential building. So long as plinth area of a residential building is above the limit that attracts luxury tax under S. 5A, such liability cannot exclude by letting out part of the building for non residential purpose. We, therefore, do not find any merit in this Writ Appeal and the same is accordingly dismissed.