(2014) 11 KL CK 0163

In the High Court Of Kerala

Case No : WP (C). No. 12961 of 2010 (U)

C.K. Mohanan — APPELLANT

Vs

Tahsildar — RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Kerala Building Tax Act, 1975 — Section 5A

Citation : (2014) 11 KL CK 0163

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : K.A. Sreejith, Advocate for the Appellant; Bobby John Pulikkaparambil, Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner states that he constructed a building in the year 1982. The said building was subjected to a property tax assessment and Ext. P1 is produced to show that there was a property tax assessment in respect of the said building in the year 1983-1984. It is the case of the petitioner that in 2002, he made some additional constructions to the said building to an extent of 139.66 sq.metres. Thereafter, steps were taken to levy building tax as well as luxury tax on the petitioner pursuant to the additional construction effected by him in 2002. For the purposes of building tax assessment, the total plinth area of the building after the additional construction was taken into consideration, and after levying the building tax on the total extent covered by the building, a reduction was given in respect of the tax that was paid in respect of the old building. When it came to the luxury tax assessment of the petitioner, the additional plinth area of 159.51 sq.metres was added to the plinth area covered by the earlier construction (184.25 sq.metres) to arrive at the total plinth area of 343.76 sq.metres, which was taken for the purposes of levy of luxury tax. Accordingly, apart from the building tax that was levied on the building, luxury tax was also levied for the period from 2002-2003 to 2008-2009. While the entire amount of building tax and luxury tax have been paid by the petitioner, he preferred an appeal before the Appellate Authority, against the levy of luxury tax, by contending that the earlier construction was effected prior to 1999, the year in which luxury tax was first introduced, and hence that portion could not be reckoned for the purposes of computation of plinth area of the building for the purposes of levy of luxury tax. The said plea of the petitioner was rejected by the authority and it is against the said orders of the authorities that the petitioner has preferred this writ petition.

2. A counter affidavit has been filed on behalf of the 1st respondent wherein it is pointed out that the petitioner''s contention with regard to the existence of an earlier building was taken into account and a reduction of the tax paid by the petitioner in respect of the earlier construction was given, while demanding the differential tax based on the new construction effected by the petitioner in 2002. As far as the levy of luxury tax was concerned, it is pointed out that since, by the additional construction effected in 2002, the plinth area of the building had increased to 343.76 sq.metres, luxury tax under Section 5A of the Kerala Building Tax Act also stood attracted to the building from that date. It was under those circumstances that the levy of luxury tax was confirmed by the petitioner. Reliance is also placed on the decision of the Full Bench of this Court in State of Kerala and Others Vs. Moilakariyath Abdulla, , which indicates that for the purposes of levy of luxury tax, the plinth area of the building as a whole has to be considered with additions or extensions that were made after 01.04.1999.

3. I have heard Sri. K.A. Sreejith, the learned counsel for the petitioner as also Sri. Bobby John Pulickaparambil, the learned Government Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that the ground agitated by the petitioner in the writ petition, with regard to the plinth area to be reckoned for the purposes of levy of luxury tax, is squarely covered against him by a decision of the Full Bench of this Court in State of Kerala v. Abdulla 2012 (1) KLT 178 (F.B). For the purposes of levy of luxury tax, the total plinth area of the building, which would take in the earlier construction as also the additional constructions effected after 01.04.1999, would have to be taken into account to determine whether the total plinth area exceeds the limit prescribed under Section 5A for the levy of luxury tax. Since in the instant case, the plinth area of the building was in excess of 278.7 sq.metres, the levy of luxury tax stood attracted to the building with effect from 2002-03 and the demand made on the petitioner cannot be found fault with. Under the said circumstances, I do not see any merit in the writ petition and the same is accordingly dismissed.

