(2012) 07 KL CK 0298

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 22893 of 2005 (A)

Dr. N. Venugopal — APPELLANT

Vs

District Collector, Thrissur and Others — RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:
Kerala Building Tax Act, 1975 — Section 5A

Citation : (2012) 07 KL CK 0298

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : T. Krishnanunni, for the Appellant; Viju Thomas, Govt. Pleader for R1 to R5, for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner challenges the imposition of luxury tax u/s 5A of the Kerala Building Tax Act, 1975 (hereinafter referred to as "the Act"). The petitioner''s building was assessed to tax u/s 5, which is a one time tax, on a plinth area of 301.77 square meters. Subsequently, Exhibit P4 order was passed levying tax u/s 5A of the Act. An appeal filed by the petitioner was also dismissed by Exhibit P5. So was the fate of the revision, which was also rejected by Exhibit P6.

2. When writ petition was filed before this Court, a learned Single Judge by order dated 28.08.2008 found that re-measurement of the area in question is necessary. A direction was issued to the Tahsildar, Thalappilly to inspect the property and file a report, after measurement of the plinth area of the building in question. In pursuance of the order, the concerned officer inspected the premises with notice to the petitioner and filed a report before this Court dated 25.09.2008.

3. Referring to the report of the Tahsildar, the learned counsel for the petitioner would submit that the Tahsildar on the said inspection and measurement has excluded only the car porch and sit out; but has included a sheeted portion on the first floor. True that the assessment u/s 5 was not challenged by the

petitioner. But the same, it is contended, does not disable the petitioner from contesting the liability to pay luxury tax which is a recurring one, as opposed to the tax u/s 5, which is one time.

4. Having gone through the records, I am of the opinion that the challenge made against luxury tax cannot be faulted on the ground that the petitioner had not challenged the initial one time levy u/s 5 of the Act. This Court has also held that luxury tax being a recurring levy, even remittance of the same in the previous years does not preclude an assessee from challenging the same in the subsequent year, since every year raises a fresh cause of action.

5. On a perusal of the report, it is true that the car porch and the open sit out have been deducted, which, in fact, resulted in the reduction of the plinth area from that assessed u/s 5. The only contention raised by the petitioner with respect to the 1st floor in which a portion marked as "(7)" having an area of 11.36 square meters is indicated as "sheeted portion" in the report itself. If the said portion has not been enclosed and put to use for residential purposes, then the plinth area of the said portion, being 11.36 square meters as revealed from page 2 of the report, if deducted from the total plinth area of 288.62 square meters; the assessable portion comes only to 277.27 square meters, which is lesser than the limit prescribed u/s 5A of the Act. The learned counsel for the petitioner has also placed two decisions of this Court reported in Padmanabhan K. Vs. The State of Kerala and Others, and State of Kerala Vs. Southern Fisheries Corporation, , wherein this Court has held that truss work over a building for the purpose of protecting the building from heat and rain and not being enclosed cannot be included in the plinth area for the purpose of assessing building tax. If the said area cannot be added to the plinth area of the building, then the building cannot be assessed for the purpose of luxury tax. However, this would require another inspection by the Tahsildar, Thalappilly. In my opinion, this writ petition need not be kept pending for that reason alone. In the light of the aforesaid discussion, there shall be a direction to the Tahsildar, Thalappilly to inspect the property with due notice to the petitioner and consider whether going by the above decisions the space marked as "(7)" in the report can be considered to be put in use for residential purposes or other purposes other than for protection of the building. The flooring effected in the said portion also would give an indication as to whether it has been put to use for the purpose of residence. In the circumstance, the assessment order is set aside and the matter is remanded to the assessing officer for de novo consideration and to pass orders either confirming or modifying the assessment order with reasons stated. The exercise shall be done with notice to the petitioner and after affording an opportunity for hearing. Such order shall be communicated to the petitioner within a period of two months from the date of receipt of a certified copy of this judgment. The petitioner shall produce a certified copy of this judgment within two weeks of receipt of the same and in the event of failure to do so, the assessment order now set aside shall revive and the respondents will be entitled to recover the amount.

The writ petition is disposed of as above.