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(2014) 12 KL CK 0092

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 5597 of 2010 (Y)

M.K. Prathap Pillai APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:
Kerala Building Tax Act, 1975 — Section 5(3)

Citation : (2014) 12 KL CK 0092

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

Bench : Single Bench

Advocate : Nagaraj Narayanan, Rajan Velloth, Saijo Hassan, S.J. Shaj Mohan, A.S. Sabu, Benoj C. Augustin and Rafeek V.K, Advocate for the Appellant; Lilly K.T., Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner owns a commercial-cum-residential building that was constructed in two phases. In the first phase, the Cellar, ground floor and the first floor were constructed and the said construction was assessed to building tax on the basis of the capital value method that was in vogue under the erstwhile provisions of the Kerala Building Tax Act. Ext. P1 assessment order was passed by the 4th respondent on 18-2-1991. It is the case of the petitioner that in 2002, he constructed the second floor to the existing building. The said floor was also assessed to building tax by Ext. P3 assessment order dated 29-12-2006. While completing the assessment, however, the respondent while excluding the area that was covered by the earlier assessment for the purposes of bringing to tax only the plinth area that pertained to the additional constructions effected in 2002, omitted to include the plinth area of the cellar which was already taken into consideration in the earlier assessment order. According to the petitioner, this resulted in the 4th respondent adopting the plinth area of the new construction as 998.83 Sq. mtrs. in lieu of 656.99 Sq. mtrs. Although the petitioner filed an appeal against Ext. P3 assessment order before the 3rd respondent, the said appeal was dismissed by Ext. P7 order dated 29-03-2008. A subsequent revision filed before the 2nd respondent also did not meet with any success and it was dismissed by Ext. P9 order dated 10-09-2009. Thereafter, the petitioner was served with Ext. P10 demand notice. In the Writ Petition, Exts. P3, P7 and P9 orders as well as P10 demand notices are impugned.

2. A counter affidavit as well as an additional affidavit have been filed on behalf of the 4th respondent wherein the stand taken by the 4th respondent is that the building was initially assessed to tax by taking into account the plinth area pertaining to the ground floor and the first floor and hence, while giving a deduction in respect of the tax paid pursuant to the earlier assessment order while finalising the assessment in respect of the second floor, only the plinth area covered by the ground floor and the first floor were excluded from the total plinth area of the building measured for the purposes of determining the extent of additional construction that was to be brought to tax in 2002 after the completion of the 2nd floor. It is pointed out that this finding of the 4th respondent was upheld by the 3rd respondent in appeal and also by the 2nd respondent in the further revision preferred by the petitioner. In the additional affidavit filed by the 4th respondent, pursuant to the directions from this Court, the table shown at page 5 of the affidavit indicates the plinth area of the various floors of the building in question. This also includes the plinth area of an auditorium with stage that is attached to the cellar level with which we are not concerned in the present Writ Petition, as it was a later construction. The affidavit also states that there is a difference in the plinth area measurements between those taken by the Taluk Surveyor and the Assistant Engineer, P.W.D. The affidavit, therefore, shows that there is still an uncertainty with regard to the exact area of the additional construction on which tax has to be levied by the respondent.

3. I heard Sri Nagaraj Narayanan, the learned counsel on behalf of the petitioner and Smt. Lilly, the learned Government Pleader on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that the essential question to be decided in this matter is whether the plinth area of the cellar of the building was taken into consideration while passing Ext. P1 assessment order in respect of the construction effected up to the first floor of the building. In my view, if the area occupied by the cellar portion of the building was also taken into consideration, while completing the assessment in 1991 of the building up to the first floor, then in the absence of any additional construction effected in that area, the same cannot be reckoned for the purpose of the assessment to be done in respect of the additional construction pertaining to the 2nd floor of the building. Although the 4th respondent, while reckoning the area pertaining to the additional construction effected in 2002, took into account the total plinth area of the building and then reduced therefrom the plinth area of the ground floor and first floor, which was taken into consideration for passing Ext. P1 assessment order, there is no deduction seen in respect of the area that was covered by the cellar of the building. There is no reason forthcoming in the counter affidavit as to why

the area occupied by the Cellar was not excluded while reckoning the total area of the additional construction effected in 2002. This is a matter that requires verification in so far as, if the petitioner had actually effected constructions in the cellar portion, then obviously that would be an additional construction for the purposes of levy of building tax in accordance with Sec. 5(3) of the Building Tax Act. As already noted, these aspects require verification by reference to the building plans, the building permit granted to the petitioner and the original records pertaining to the assessment done in 1991, so as to ascertain whether the area covered by the cellar had been considered for exclusion from the plinth area of the building in the course of the first assessment to Building Tax in respect of the construction effected up to the first floor. Hence, I am of the view that the 2nd respondent must go into these factual aspects and, if necessary, call for the records from the 4th respondent as also the Assistant Engineer, Public Works Department, so as to determine the plinth area that pertains to any additional constructions that were effected to the building after 1992. To enable the 2nd respondent to do this, I quash Exts. P3, P7 and P9 orders as also Ext. P10 demand notice and direct him to consider the matter afresh and pass orders thereon, after hearing the petitioner and referring to the documents and other materials relied upon by him to substantiate his contentions, within a period of three months from the date of receipt of a copy of this judgment. I also make it clear that the enquiry by the second respondent shall be primarily as to whether any additional construction was effected to the cellar portion of the building subsequent to Ext. P1 assessment order dated 8-2-1991. It is only in the event of any additional construction being found to have been made to the Cellar portion subsequent to the said date, that the question of including any portion of the cellar, along with the area covered by the 2nd floor of the building, for the purposes of assessment, can arise for consideration. The 2nd respondent will also take into account the nature of the building for the purposes of determining whether the tax is to be assessed as applicable to residential building or for other purposes.

This Writ Petition is disposed of as above.

