(2008) 07 KL CK 0042

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8177 of 2005

Ouseph T.L. APPELLANT

Vs

The District Collector and Others RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Kerala Building Tax Act, 1975 — Section 5(4)

Citation : (2008) 3 KLJ 10

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : Elvin Peter P.J., S. Ramesh, P.N. Santhosh, Naveen T., T.G. Sunil and C.X. Antony Benedict, for the Appellant; Tekchand, GP, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Petitioner is challenging assessment and demand of building tax in respect of a three storied building constructed by petitioner in stages. The ground floor was constructed in 1993 and the first and second floors were constructed only in the year 2003. When the ground floor was assessed to building tax, petitioner contested the same in appeal on the ground that the plinth area of a shed was also added to the building. Learned Government Pleader submitted that in appeal, the RDO remanded the matter and thereafter the Tahsildar reduced the plinth area by 75 sq.m. i.e. by excluding the plinth area of the shed, which was originally constructed for storage of building materials like cement, steel, etc. When petitioner constructed first and second floors in 2003, the Tahsildar assessed the plinth area of the entire building gave rebate of tax paid for the ground floor and demanded balance tax. It is against this order petitioner has filed this writ petition on the ground that rate of tax applied for the plinth area of the ground floor is not correct, in as much as the rate of tax applied is not applicable and the plinth area now assessed is also more than the actual plinth area of the building.

I have heard learned Counsel for petitioner and learned Government Pleader.

2. The petitioner''s challenge against the application of same rate of tax on the

entire, plinth area of the building on the ground that ground floor was constructed and assessed in 1993 is not tenable because assessment is u/s 5(4) of the Building Tax Act, which authorises new assessment as and when the plinth area of an old building in extended. The scheme of the Act is to make only one assessment for a building irrespective of the stages of completion of construction of the building. Petitioner has not disputed the fact that building completed by the petitioner is a single unit and therefore there cannot be separate assessment for each portion. Section 5(4) authorises assessment of entire plinth area of the building as and when construction is completed and the provision is to grant rebate of tax paid for any portion constructed and assessed earlier. In this case, since petitioner constructed ground floor of the building in 1993 and construction of first and second floors are completed in 2003, the entire plinth area was rightly assessed in 2003 in terms of Section 5(4) of the Act and petitioner was given rebate of tax paid based on the original assessment of the ground floor. Therefore, petitioner''s challenge against the assessment on this ground is not tenable.

3. So far as the dispute of plinth area is concerned, it is seen that the plinth area assessed is after excluding the plinth area of the shed. However, if petitioner still maintains that the plinth area assessed is incorrect, it is for the petitioner to get the plinth area of the building measured by an Engineer or any person familiar with the matter and file a report before the Tahsildar. If petitioner''s claim based on his measurement report varies with the assessment, then there will be direction to the Tahsildar to get the plinth area measured by Assistant Executive Engineer, PWD. However, if the Asst. Executive Engineer on measurement finds that petitioner''s claim is bogus and the original assessment is for the correct plinth area, then the Tahsildar will, in addition to the demand of tax, recover Rs. 5,000/- towards cost from the petitioner.

4. Petitioner will produce copy of the judgment and measurement report before the Tahsildar for follow up action, if required. In case, if measurement by Asst. Executive Engineer, PWD, is required, then Tahsildar will get it done within two months from the date of application along with a copy of the judgment.

The writ petition is disposed of as above.