
(2005) 08 KL CK 0025
In the High Court Of Kerala
Case No : O.P. No. 8850 of 1997

Roy M. Mathew

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-08-2005

Acts Referred:

Kerala Building Tax Act, 1975 — Section 15(1)

Citation : (2005) 3 KLT 802

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : S. Sreekumar, for the Appellant; Raju Joseph, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Kurian Joseph, J.—Once an assessment under the Kerala Building Tax Act is subjected to appeal or revision and consequential assessment made, can the revised assessment be rectified in respect of an error committed by the appellate or revisional authority?

2. Exts.P6 and P9 proceedings and order respectively are under challenge. As per Ext.P9 the revision filed by the petitioner was returned on the ground that 50% of the tax demanded had not been paid. In the nature of the view I propose to take it is unnecessary to consider that issue. Ext.P6 is an order passed u/s 15(1) of the Kerala Building Tax Act, 1975. To the extent relevant Section 15(1) reads as follows:-

"15. Rectification of mistake:--

(1) The appellate authority or the revisional authority may, at any time within three years from the date of an order passed by it on appeal or revision, as the case may be, and the assessing authority may, at any time within three years from the date of any assessment or order passed by it, of its own motion, rectify any mistake apparent from the record of the appeal, revision, assessment or

order, as the case may be, and shall, within the like period, rectify any such mistake which has been brought to its notice by an assessee."

It is clear from the provision of Section 15(1) that it is open to the assessing authority, the appellate authority or the revisional authority to rectify any mistake apparent from the record of the appeal, revision, assessment or order as the case may be, within a period of three years of the respective order. In the case of the petitioner, there was originally an assessment order dated 5.4.1993. The petitioner pursued the matter in appeal and revision. The appellate order is dated 23.8.1993 of the Sub Collector, Fort Kochi. These are reference items 1 and 2 in Ext.P1. The revisional order is Ext.P1 dated 19.6.1994. The factual dispute is on the mode of assessment. In the initial assessment order leading to Ext.P1 revisional order the building owned by the petitioner is assessed as a single unit. The revisional authority set aside that order with a direction that the commercial part of the building is to be separated and the residential part is to be separately assessed in the names of serial Nos. 1 to 12. It is seen from Ext.P2 that the assessing authority had implemented Ext.P1 order as per Ext.P2 dated 30.11.1994.

3. While so, steps were taken for reopening the issue invoking power u/s 15(1) of the Act, by reopening Ext.P2 assessment order. That order is Ext.P6 dated 7.2.1997. Among other contentions, the main contention is that once the order of the assessing authority has been pursued in appeal and revision leading to Ext.P1 order of the revisional authority, unless that order is reopened u/s 15(1) of the Act, the respondents cannot reopen the order of the assessing authority passed pursuant to the revisional order, invoking the power u/s 15(1), since Ext.P2 assessment order is only in implementation of the directions made in Ext.P1 revisional order. Once an original assessment is subjected to appeal or revision and consequential fresh assessment if made, rectification u/s 15(1) of the Act of the revised assessment in respect of an error in the appellate "or revisional order cannot be made without reopening and rectifying the appellate or revisional order as the case may be. But if there is an independent or new error in the revised assessment order, of course the same can be rectified as provided u/s 15(1) of the Act. May be the instant case required to be rectified u/s 15(1). But such rectification could only be after reopening the revisional order, since the assessment order is only in implementation of the revision order. Having not done that, Ext.P6 is clearly illegal. I quash Ext.P6.

The Writ Petition is allowed as above.