

(2011) 11 KL CK 0021
In the High Court Of Kerala
Case No : W.A. No. 910 of 2009

State of Kerala and Others

APPELLANT

Vs

Moilakariyath Abdulla

RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Kerala Building Tax Act, 1975 — Section 5, 5(3), 5(4), 5A

Citation : AIR 2012 Ker 96 : (2012) 1 KLJ 258

Hon'ble Judges : V.K.Mohanani, J;Harun - Ul - Rashid, J;C.N. Ramachandran Nair, J

Bench : Full Bench

Advocate : Sojan James GP, Bobby John GP and Sobha Annamma Eapen GP, for the Appellant; P.K. Priya, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The common question referred to the Full Bench by the Division Bench in all these cases is whether residential building to which additional plinth area constructed after 01/04/1999 attracts liability for luxury tax u/s 5A of the Kerala Building Tax Act, 1975 (hereinafter referred to as the Act for short), if the plinth area with the addition made is 278.7 sq.ms. or more. Reference to Full Bench was made because the Division Bench during hearing the matter doubted the correctness of a Division Bench judgment in Joy Joseph Vs. The District Collector, Kottayam and Others, , wherein the Division Bench held that luxury tax will be attracted for extension made to residential building after 01/04/1999 only if such extension by itself is above the plinth area of 278.7 sq.ms. In other words, according to the said decision, even if the total plinth area including the additions made after 01/04/1999 happens to be 278.7 sq.ms. or more, such residential building will not attract luxury tax at Rs. 2,000/- annually as provided u/s 5A of the Act. We have heard learned Government Pleader for the appellants, learned counsel for the petitioner in the Writ Petition and also learned counsel appearing for the respondents in the Writ Appeals.

2. Learned Government Pleader for the State supported the observations in the

reference order and contended that under the charging Sections, i.e. Sections 5 & 5A, incidence of building tax and luxury tax keep on changing depending on modifications or additional constructions made to a building. Learned counsel appearing for the respondents, on the other hand, contended that Section 5A has to be treated as an independent provision and the same applies only to buildings constructed with the plinth area stated therein after 01/04/1999. Alternately, it is contended by the respondents' counsel that even if the additional plinth area constructed to the residential building by itself is treated as "residential building" attracting luxury tax, then liability u/s 5A will be attracted only if such additional construction made after 01/04/1999 by itself is 278.7 sq.ms. or more.

3. In order to consider the rival contentions, we have to necessarily go by the relevant statutory provisions, namely Sections 5 and 5A of the Act. Since modification or additional construction to the building is visualised under the Act, we feel Section 5A has to be understood with reference to other provisions of the Act, particularly the charging Section, namely Section 5. For easy reference we extract hereunder Sections 5 & 5A of the Act.

5. Charge of building tax.-- (1) Subject to the other provisions contained in this Act, there shall be charged a tax (hereinafter referred to as "building tax") based on the plinth area at the rate specified in the Schedule on every building the construction of which is completed on or after the appointed day.

(2) In the case of any building, the construction of which is completed prior to the appointed day but the assessment of which has not been initiated or completed or against which appeal or revision has been filed, building tax shall be assessed on the basis of the plinth area at the rate specified in the Schedule.)

(3) Where any major repair or improvement is made on or after the appointed day to a building constructed before the said date building tax shall be payable at the rate referred to in sub-section (1) on the additional plinth area of the building resulting from such repair or improvement.

(4) Where the plinth area of the building, the construction of which is completed after the appointed day is subsequently increased by new extensions or major repair or improvement, building tax shall be computed on the total plinth area of the building including that of the new extension or repair or improvement and credit shall be given to the tax already levied and collected, if any, in respect of the building before such extension, or repair or improvement.

(5) where there are out-houses, garages or other structures appurtenant to the building for the more convenient enjoyment of the building, the plinth area of such structure shall be added on the plinth area of the main building and the building tax assessed accordingly:

(Provided that the plinth area of a garage or any other erection or structure appurtenant to a residential building used for the purpose of storage of firewood or for any non-residential purpose shall not be added on the plinth area of that

building.)

(6) The building tax shall be payable by the owner of the building.

Explanation.- For the purposes of this Act, the construction of a building shall be deemed to have been completed when it is ready for occupation or has been actually occupied, whichever is earlier.)

5A. Charge of luxury tax.-- (1) Notwithstanding anything contained in this Act, there shall be charged a luxury tax of two thousand rupees annually on all residential buildings having a plinth area of 278.7 square metres or more and completed on or after the 1st day of April, 1999.

(2) The luxury tax assessed under this Act shall be paid in advance on or before the 31st day of March, every year.)

4. Sections 5(3) & 5(4) make it clear that as and when improvement or addition is made to existing building, assessment needs to be modified. So far as the building construction of which was completed prior to the appointed day i.e. 10/02/1992 is subject to any improvement or modification, building tax at the applicable rate is payable u/s 5(3) of the Act only on the additional plinth area. However, u/s 5(4), if the building to which modification or extension of plinth area is made, was originally constructed after the appointed day stated above, then assessment for building tax has to be made as if it is a new building on completion of construction of the building with the improvement or extension, and what is provided therein is that the building owner is entitled to rebate of tax paid on the original construction. We notice that completion of construction of the building is significant because it is only on completion of the building, tax is to be assessed. Under the explanation to Section 5, construction of a building shall be deemed to have been completed when it is ready for occupation or has been actually occupied. However, this does not mean that construction of a building once completed cannot be modified, reconstructed or extended thereafter involving completion of construction each time such extension or modification is made. So much so, under the statutory scheme, we feel completion of construction in respect of an existing building happens periodically if the building is subjected to major improvements or extensions as and when made.

5. Going by the above scheme of levy of tax on constructed buildings and periodical revision of building tax as and when additions or modifications of the existing building are made, we feel the same scheme applies to luxury tax as well. The liability for luxury tax is on residential buildings with plinth area of 278.7 sq.ms. or more, the construction of which are completed after 01/04/1999. So much so, if any modification is made to an existing residential building after 01/04/1999 leading to increase in plinth area reaching 278.7 sq.ms. or more, the building will attract luxury tax u/s 5A of the Act. Section 5A does not authorise independent assessment of additional plinth area constructed to a residential building after 01/04/1999 for the purpose of luxury tax alone. So

much so, in our view, the judgment of the Division Bench above referred declaring the liability for luxury tax for extensions made to residential buildings after 01/04/1999 only if such additions exceed the limit of plinth area provided u/s 5A is against the statutory scheme of levy of luxury tax. In fact, the statute does not visualise separate treatment of existing or already completed constructions and additions made to such buildings. A residential building remains the same and should be treated only as one building, no matter modifications or additions are made periodically leading to extension of plinth area. Since the assessment is only on building constructed, reconstructed or modified with extension, luxury tax has to be considered with reference to the total plinth area of the building with the additions. So much so, there is no scope for considering liability for luxury tax with reference to the additional plinth area constructed after 01/04/1999 as held by the Division Bench. We, therefore, hold that Section 5A applies to residential buildings, the plinth area of which after extensions or additions made after 01/04/1999 reach or exceed 278.7 sq.ms. In other words, for the purpose of levy of luxury tax plinth area of the building as a whole has to be considered with the additions or extensions made after 01/04/1999. We, therefore, hold that the view expressed by the Division Bench in the above judgment is not correct and accordingly, we overrule the above referred Division Bench judgment.

6. So far as WP(C) No.34723/2004 is concerned, the additional construction made in the year 2000 has to be subjected to building tax assessment u/s 5(3) of the Act. However, since with the additional construction the plinth area exceeds the limit provided u/s 5A, the petitioner's building attracts luxury tax from the year in which the additional construction was made. So much so, levy of luxury tax is confirmed and if any modification is required with regard to the assessment of building tax u/s 5(3), there will be direction to the Tahsildar to do the same. If old building is retained and only extension is made, only the addition calls for assessment u/s 5(3) of the Act. The Tahsildar is directed to inspect the building, make physical verification and assess the additional structure, if the building is not reconstructed in full.

7. In so far as W.A.No.910/09 filed by the State is concerned, learned Government Pleader submitted that besides liability for luxury tax u/s 5A the respondent is liable to pay building tax u/s 5(4) as well. The learned Single Judge however following the above referred Division Bench judgment vacated the revised assessment which in our view is not sustainable. We, accordingly, allow the said Writ Appeal by vacating the judgment of the learned Single Judge and by upholding the assessment of building tax u/s 5(4) of the Act.

8. So far as luxury tax is concerned, in view of the reversal of the earlier Division Bench judgment, we allow both the Writ Appeals by vacating the impugned judgments and by upholding the assessments u/s 5A as the building with the additions made after 01/04/1999 has the plinth area over the limit prescribed u/s 5A attracting liability for luxury tax. Since we have reversed the Division Bench

judgment, we feel the delay in payment of luxury tax by the respondents/ building owners should not lead to any interest liability on them. We, accordingly, direct the Tahsildar concerned to collect arrears of tax and luxury tax from the building owners in these cases without any interest, if the entire arrears are paid before 15/01/2012.

W.ANos.910 & 1759 of 2009 are allowed and WP(C) No.34723 of 2004 is disposed of as above.