(2008) 01 KL CK 0010

In the High Court Of Kerala

Case No : O.P. No. 25948 of 2002

Thomas, P.S. and Others — APPELLANT

Vs

Tahsildar and Another — RESPONDENT

Date of Decision : 09-01-2008

Acts Referred:

Kerala Building Tax Act, 1975 — Section 2

Citation : (2008) 01 KL CK 0010

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

Bench : Single Bench

Advocate : V.V. Asokan, K.I. Mayankutty Mather, S. Amina, Sunil Shanker and Paul Abraham Vakkanal, for the Appellant; K.P. Pradeep, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Petitioners are challenging single assessment of a commercial building constructed by them together. The building is a multi-storied building consisting of several rooms. Petitioners'' case is that in the course of construction they have partitioned the building and separate rooms are allotted to each of the Petitioners. Petitioners have produced ground floor sketch of the building as Ext.P-1. This sketch shows that the building consists of only shop rooms, each of which cannot be said to be an independent flat or apartment justifying separate assessments under Explanation II to Section 2(e) of the Building Tax Act. It is seen that common facilities are provided for all the rooms and in fact rooms do not have separate toilet, access, passage, etc. This obviously means that facilities in the building are shared by all the owners and each room is not capable of independent use by any person. Even though Petitioner has relied on the decision of this Court in Lissy v. Tahsildar (2000) 3 KLT 497, I do not think Petitioners'' building can be divided and assessed separately as it is only a shopping complex consisting of separate rooms and not separate apartments or flats. Even though Explanation II to Section 2(e) applies to commercial buildings also, unless the building is divided in such a manner to treat different portions as separate flat or apartment, it cannot be assessed separately. Since each portion of the building is owned by each Petitioner, it is for them to share the liability of tax on proportionate basis. However, this does not mean that each portion of the building can be separately assessed as commercial flat or apartment. In the circumstances, the contention of the Petitioners that each portion of the building should be assessed in proportion to the holding of each of the Petitioners is not tenable and is rejected.

2. Counsel for the Petitioners raised a contention that construction of the building was prior to 29-7-1996 by relying on lease deed towards proof of completion of construction of the building. Leasing out the building to a tenant is not evidence towards proof of completion of construction of the building. If the Petitioners produce other evidence such as date of taking electric connection, water connection, the date of commencement of payment of property tax to local authority, etc., before the first Respondent, he will reconsider the matter and apply the rate applicable as on the date of completion of construction of the building. O.P. is disposed of upholding single assessment, but subject to variation by the first Respondent in regard to rate of tax, if Petitioners produce proof for completion of construction of building on any date prior to 29-7-1996.