

Jayakumar Vs. State of Kerala

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Court : Kerala

Decided On : Mar-01-2006

Reported in : 2006(2)KLT34

Judge : K.S. Radhakrishnan and; K.T. Sankaran, JJ.

Acts : Kerala Building Tax Act, 1975 - Sections 5A, 5A(1), 5(5) and 13; Kerala General Sales Tax Act, 1963

Appeal No. : W.A. No. 173 of 2006

Appellant : Jayakumar

Respondent : State of Kerala

Advocate for Def. : Georgekutty Mathew, Spl. Government Pleader (Taxes)

Advocate for Pet/Ap. : T.K. Venugopalan,; Thomas M. Jacob and; G. Rajagopal

Disposition : Appeal dismissed

Judgement :

K.S. Radhakrishnan, J.

1. Tahsildar, Kanayannur Taluk based on the report No. 256/01 dated 29.08.2001 of the Village Officer, Elamkulam assessed Building Tax of the petitioner's residential building having plinth area of 402.35 M2 in survey number 473/3 of

Elamkulam Village as per order assessment order dated 12.10.2002.

2. Government of Kerala has introduced luxury tax with effect from 1.4.1999 as per Section 5A of the Kerala Building Tax Act, 1975. The rate of tax is Rs. 2,000/- per annum. Accordingly petitioner was served with order dated 11.3.2004 by the Tahsildar, Kanayannur assessing luxury tax of Rs. 2,000/- per annum. Aggrieved by the said order of assessment, assessee filed revision before the District Collector under Section 13 of the Act. Assessee on receipt of the order dated 11.3.2004 submitted representation before the Tahsildar on 27.3.2004 stating that since there was no space for car shed basement floor for car parking and car porch be excluded from assessing building tax. However, at the time of hearing on 9.3.2005 before the District Collector petitioner submitted a certificate of registration under the Kerala General Sales Tax Act, 1963 which would reveal that the place ear marked for car porch is being used as godown of M/s. Mahavir Fine pack Systems Private Limited with effect from 16.6.2001.

3. Counsel appearing for the petitioner submitted that the ground floor of the building is being used as godown for the business purpose which will fall under the proviso to Sub-section (5) of Section 5 and therefore the same shall not be added to the plinth area of the building demanding luxury tax. Counsel submitted that plinth area of the petitioner's building being a residential building is only 271.37 square metres and if the godown portion is excluded he need not pay luxury tax. We find it difficult to accept the contention of the petitioner. Section 5A(1) states that notwithstanding anything contained in the 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. Petitioner himself has admitted in his return that the building is a residential building and the plinth area of the building is 402.35 square metres and the building has been constructed and occupied before the appointed day. Learned single Judge relying on the decision in Chandramohan v. Revenue Divisional Officer : 2005(1)KLT593 took the view that even car porch forming part of ground floor of the building has to be reckoned for the purpose of plinth area. The aforesaid decision has been reversed by this Court in W.A. No. 439 of 2005 and connected cases. Therefore plinth area of garage cannot be taken into

account while determining the plinth area of the residential building under the Act. So also building constructed for residence used for the purpose of storage of firewood or for any non residential purpose shall not be taken into account while determining the plinth of the residential building. Facts would evidently show that the area occupied by the petitioner is for a commercial purpose. Plinth area of any other room used for storage of firewood or for any non residential purpose will be excluded from determining the plinth area of the residential building. Admittedly petitioner is not using the premises for storage of firewood. The expression 'non residential purpose' used in Sub-section(5) of Section 5 cannot be equated to commercial purpose or industrial purpose.

4. We therefore hold assessing authority is justified in reckoning the ground floor of the building used as godown as part of the residential building and for assessing luxury tax. Appeal therefore lacks merits and the same would stand dismissed.

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