IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

WA.No. 281 of 2015 () IN WP(C).19290/2005
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AGAINST THE ORDER/JUDGMENT IN WP(C) 19290/2005 of HIGH COURT OF KERALA DATED 25-11-2014

APPELLANT(S)/PETITIONER:
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C.R.PRAKASH,
DHAWANTHARAI BHAVAN, MUNDAKKAYAM.P.O.,
KOTTAYAM DISTRICT.

BY ADVS.SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH
SRI.V.S.SHIRAZ BAVA

RESPONDENT(S)/RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY ITS SECRETARY TO TAX DEPARTMENT,
   GOVT.SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2. **THE TAHSILDAR,**
   KANJIRAPALLY TALUK, KANJIRAPPALLY.P.O.,
   KOTTAYAM DISTRICT-695 101.

R BY SRI.P.M.SANEER, GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 16-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DG

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

W.A.No.281 of 2015 & C.M.Appl.No.172 of 2015

Dated this the 16th day of February, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

C.M.Appl.No.172 of 2015

Perused affidavit. Heard.

We are satisfied that sufficient cause has been shown to condone the delay. Hence, the delay is condoned.

W.A

1. We have heard the learned counsel for the appellant quite in extenso. We have also heard the learned Senior Government Pleader.

2. After completion of assessment under the provisions of Kerala

Building Tax Act, 1975, the petitioner faced a proceeding, which was initiated as if it is for rectification. Issues were generated as to the total plinth area and also the user of the building. The assessing authority proceeded as if the building is put to commercial use and has to be treated as a commercial building, while the assessee contended that the building is only residential in nature and, therefore, he is entitled to exemption of the car park area and other slots. The learned single judge rightly noted that the issues raised relate to the nature of construction, way back in 1994 and the purpose for which this construction was made. On the totality of facts and circumstances, the learned single Judge came to the conclusion that this is not a fit case, where issues could be decided as pure questions of law or matters touching the legal effect of statutory provisions qua the constitutional situs. Under such circumstances, the learned single Judge relegated the party, without deciding any issue, to carry the matters in statutory appeal within the format of Kerala Building Tax Act. We do not see any legal infirmity or jurisdictional error in the approach adopted by the learned single Judge. This writ appeal, hence, fails.

3. In the result, this appeal is dismissed.

Time granted by the learned single Judge for making remittance of tax without interest component is extended as a last opportunity, till 25.02.2015.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(K.HARILAL, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG