IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WP(C).No. 13242 of 2012 (E)

PETITIONER :

THE FEDERAL BANK LTD. ,
ALUVA, REPRESENTED BY THE DEPUTY GENERAL MANAGER (LEGAL).

BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL)

RESPONDENT(S) :

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1. THE STATE OF KERALA
   REPRESENTED BY THE CHIEF SECRETARY TO
   THE GOVERNMENT OF KERALA
   THIRUVANANTHAPURAM - 695 001

2. THE TAHASILDAR, ALUVA
   (ASSESSING AUTHORITY UNDER THE
   KERALA BUILDING TAX ACT). PIN – 687 006.

3. THE REVENUE DIVISIONAL OFFICER,
   FORT KOCHI.
   (APPELLATE AUTHORITY UNDER THE
   KERALA BUILDING TAX ACT)
   PIN - 682001.

4. THE DISTRICT COLLECTOR
   ERNAKULAM
   (THE REVISIONAL AUTHORITY UNDER
   KERALA BUILDING TAX ACT) PIN - 682 030

R1 TO R4 BY GOVT. PLEADER SRI. R. SUDHISH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 13242 of 2012 (E)

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P-1	TRUE COPY OF ASSESSMENT ORDER DATED 30.6.1988 PASSED BY R2.
EXT.P-2	TRUE COPY OF JUDGEMENT DATED 24.05.1994 IN OP 4391/90.
EXT.P-3	TRUE COPY OF ORDER DATED 28.08.2000 PASSED BY R2.
EXT.P-4	TRUE COPY OF ORDER DATED 29.03.2001 PASSED BY R3.
EXT.P-5	TRUE COPY OF ORDER DATED 15.09.2001 PASSED BY R4.
EXT.P-6	TRUE COPY OF JUDGEMENT IN O.P.NO.36328/2001 DATED 31.05.2006.
EXT.P-7	TRUE COPY OF ASSESSMENT ORDER DATED 24.04.2012 PASSED BY R2.
EXT.P-8	TRUE COPY OF DEMAND NOTICE DATED 24.04.2012.
EXT. P9	COPY OF RETURN OF COMPLETION OF NEW BUILDING.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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ANU SIVARAMAN, J.

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W.P.(C).No.13242 of 2012

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Dated this the 23rd day of September, 2015

JUDGMENT

This writ petition is filed by a scheduled bank challenging Ext.P7 order of assessment to building tax made by the 2nd respondent assessing authority. The petitioner had constructed a building for use as its head quarters and the construction was completed on 13.09.1987. It is submitted that the annual value of the building was fixed by the local authority, that is, Aluva Municipality at Rs.10,75,632/-. The capital value of the building as defined under the Kerala Building Tax Act as it stood prior to the amendment with effect from 10.02.1992, was the value arrived at by multiplying the annual value of the building by ten. However, in its return filed under the Building Tax Act the petitioner had mistakenly shown the cost of the construction of the building incurred by the bank as the capital value. The amount thus shown in the return was Rs.2,08,10,330/- as against an amount of Rs.1,07,56,320/-. On the basis of the capital value shown in the return Ext.P1 assessment order was issued on 30.06.1988. This assessment was challenged by the petitioner in appeal and in revision, but the same was confirmed. The petitioner thereupon challenged the orders of assessment before this Court filing O.P.No.4391 of 1990. By Ext.P2 judgment dated 24.06.1994, this Court held that it was open to the petitioner to establish that the mention of the amount of Rs.2,08,10,330/- as the capital value was a mistake and that the capital value of the building was to be fixed as provided in Section 6 of the Act as it stood then. The orders of assessment as well as the appellate and revisional orders were therefore set aside and the 2nd respondent assessing authority was directed to make an assessment afresh in accordance with law with opportunity to the petitioner to be heard. Thereafter, by Ext.P3, the assessing authority assessed the building to tax afresh. However, when such assessment was made, the Building Tax Act had already been amended and the assessment was made on the basis of the plinth area of the building. After calculating the plinth area as 8087.86m^2, the assessing authority assessed it to building tax at Rs.14,27,400/-, taking the rates applicable when the fresh assessment was made. In the above circumstances, an appeal was again preferred by the bank which resulted in Ext.P4 order of rejection. In revision also, Ext.P5 was passed by the District Collector rejecting the revision petition preferred by the petitioner. The orders were again challenged before this Court by filing O.P.No.36328 of 2001. By Ext.P6 judgment, the order in revision, Ext.P4, was set aside and the matter was remanded to the 4th respondent, District Collector for a fresh consideration in the light of a bench decision in O.P.No.12580 of 1993. In view of the finding in the said judgment, the assessment had to be completed on the basis of the law prevailing as on the date of completion of the construction of the building.

2.However, it appears that the matter was remitted by the District Collector for consideration by the assessing authority. By Ext.P7 order dated 24.04.2012 the assessing authority has now issued a fresh order of assessment. The assessing authority found that the assessment of building tax on the basis of plinth area was not justified since the building was completed on 13.05.1987 and provisions regarding assessment on the basis of plinth area was introduced only w.e.f.10.02.1992. In the above circumstances, the assessing authority proceeded to hold that the assessment made in 1998 on the basis of the capital value of building shown in the return was correct and therefore, the assessment of tax by Ext.P1 was upheld. On the basis of Ext.P7 order of assessment, Ext.P8 demand notice was issued to the petitioner. These are under challenge herein.

3. A counter affidavit has been filed by the 2nd respondent stating that the assessment in Ext.P1 was made on the basis of admitted capital value and the assessment was made strictly in

accordance with law. It is further stated that the assessing authority is vested with power under Section 6(2) of the Kerala Building Tax Act to fix the annual value of the building at a higher rate, if it is of the opinion that the annual value fixed by the local authority is too low. Therefore, the orders issued by the assessing authority are sought to be supported.

4. Heard Sri.George Varghese, learned counsel appearing for the petitioner and Sri.R.Sudhish Kumar, learned Government Pleader appearing on behalf of the respondents. It is contended by the learned counsel appearing for the petitioner that the assessment of building tax by treating the capital value of the building as Rs.2,08,10,330/- as mentioned in the return was found to be bad in Ext.P2 judgment. The contention of the petitioner that what was shown in the return was actually the cost of construction of the building was accepted in Ext.P2. Thereafter, the matter was remanded for fresh assessment in terms of the provisions of law existing at the time of the completion of the building. In the above circumstances, the contention of the petitioner that the building should have been assessed to tax on the basis of the capital value as provided under Section 6(1) of the Act should have been considered by the authority. However, when the matter was considered by the

assessing authority, after the first remand pursuant to Ext.P2 judgment, the assessment was made on the basis of plinth area. In that assessment also, tax was demanded at the rate applicable at the time when the fresh assessment was made. The assessment was completed apparently on the basis of the provisions of Rule 5(2) of the Kerala Building Tax Act as it stood then. Section 5(2) as inserted by the Finance Act of 1993 was later struck down by this Court. The assessment was taken in appeal and revision by the petitioner and ultimately resulted in Ext.P6 judgment. The order passed by the revisional authority was set aside and the matter was remitted to the District Collector to consider afresh the question of assessment in the light of the decision rendered in O.P.No.12580 of 1993. Where Section 5(2) was held to be bad and assessment was directed to be made in the light of law prevailing as on the date of completion of the building. However, though the direction was specifically to the revisional authority to consider the question of assessment to tax as on the date of Ext.P1, it appears that the matter was delegated by the revisional authority to the assessing authority. Thereafter, Ext.P7 order dated 24.02.2012 has been rendered by the assessing authority. Ext.P7 makes a mention of the contentions raised by the petitioner with regard to the mistake showing the construction cost of the building as the capital value in the return. However, it is also noticed that the amounts demanded by Ext.P3 order had been paid by the petitioner. Thereafter, on the ground that the petitioner failed to produce documents to prove that the capital value shown in the return was a mistake and that the same is liable to be corrected. The assessing authority went on to restore the assessment which was made in Ext.P1 order. This order of the assessing authority as well as demand notice issued pursuant thereto is challenged in the writ petition on the ground that it is vitiated by absolute want of application of mind.

5. Ext.P1 assessment was challenged on the ground that the return which led to such assessment contained a mistake as regards the capital value of the building. It was the specific case of the petitioner that the municipality had fixed the annual value of the building at Rs.10,75,640/-. In the above circumstances, going by Section 6(1) of the Act, the capital value of the building can only be ten times the annual value fixed by the local authority. Only in case the assessing authority had reason to deviate from the fixation of the annual value by the local authority, an exercise of determination of capital value by the assessing authority had to be undertaken. In the instant case the circumstances enumerated under Section 6(4) would

then have to be taken into account to arrive at the capital value of the building. These provisions contained in the Building Tax Act were amended with effect from 10.02.1992. In the above circumstances, provisions of Section 6 of the Act as it stood before the amendment is extracted below:-

> "**6. Determination of capital value.-**(1) For determining the capital value for the purposes of this Act, the annual value of a building shall be the annual value fixed for that building in the assessment books of the local authority within whose area the building is situate.
>
> (2) Notwithstanding anything contained in sub-section(1), if the assessing authority is of opinion that the annual value fixed for a building in the assessment books of the local authority is too low, it may, after giving the person or persons affected thereby an opportunity of being heard, fix the annual value of the building.
>
> (3) Where the local authority ha not fixed the annual value of a building in any case falling under sub-section (2) or sub-section (3) or sub-section (4) of Section 5 within a period of six months after the completion of the repair of improvement or the construction or addition or combination, as the case may be, the assessing authority may, after giving the person or persons affected thereby an opportunity of being heard and after informing the local authority concerned, assess the annual value of the building.
>
> (4) In determining the annual value under sub-section (2) or sub-section (3), the assessing authority shall have regard to the following factors, namely;-
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> (a) the location of the building;
> (b) the nature and quality of the structure of the building;

(c) the capability of the building for profitable use;
(d) amenities provided in the building;
(e) access to the building from public roads or water ways;
(f) the value of the land on which the building is constructed;
(g) the estimated cost of construction of the building;
(h) such other factors as may be prescribed."

6. By Ext.P2 judgment this Court had found that the contention of the petitioner at the cost of construction of the building had been mistakenly shown as the capital value of the building in the return submitted by it appeared to be tenable. On a anxious consideration of the facts and circumstances of the case this Court had held as follows:-

> "17. I therefore held that it was open to the petitioner to establish that the mention of the amount of Rs.20810330/- as the capital value in its return was by mistake. I am also satisfied that this amount represented the cost of civil constructions as explained in the letter Ext.P5. The District Collector's conclusion in Ext.P6 that this amount did not really reflect the cost of construction, though correct to a limited extent, is not sufficient to overrrule the plea of mistake made by the petitioner.
>
> 18. If the return was mistaken and I have mentioned that even otherwise the assessment has to follow the patter prescribed by section 6(2) it was incumbent on the authorities to determine the capital value of the building in accordance with the provisions of the Act and having regard to the factors mentioned in section 6(4) if the annual value fixed by the Aluva Municipality was considered too low.

> Neither the appellate or the revisional authorities applied their mind to his aspect. Nor the assessing authority whose order of assessment, as already mentioned does not disclose the basis of the assessment, or comply with rule 8(3)."

7. It was on this basis that the impugned orders were quashed and a re-assessment was ordered. The re-assessment directed by this Court could only have been on the basis of the capital value of the building as available at the time of the initial assessment. However, by Ext.P3 it appears that there was on agreement by officers of the petitioner, the building tax was assessed on the basis of the plinth area. However, the rate of tax was assessed on the basis of the rates existing as on the date of Ext.P3 order which was again taken in appeal by the petitioner. Though by Ext.P6 judgment, the revisional order was set aside and the matter was remitted to the District Collector to decide the question of the assessment of the building applying the law which existed on the date of its completion. Such an exercise was not undertaken by the District Collector. It appears that the matter was again delegated to the assessing authority who by Ext.P7 order has confirmed the initial order of assessment Ext.P1. In the facts and circumstances of this case such an action by the assessing authority was completely unjustified and untenable. The initial order of assessment having been set aside by this Court in

Ext.P2 and the question of capital value having been directed to the decided, it was not open to the assessing authority to contend that the capital value as fixed in Ext.P1 is to be relied upon for assessment of the building. The contention of the petitioner is that the capital value is to be fixed on the basis of the annual value fixed by the local authority in the instant case. What had to be considered by the authority after remand by Ext.P6 judgment was the fixing of the capital value of the building as on the date of its completion and the assessment to tax on that basis at the rates available at that time. This was directed to be done by the District Collector. It is clear from Ext.P7 that no such exercise has been attempted either by the revisional authority or the assessing authority.

8. Ext.P7 order is therefore bad in law and the same is set aside. The revisional authority who is the 4th respondent herein is therefore directed to consider the entire matter afresh with regard to the assessment of the tax of the petitioner's building as on the date of its completion. It is made clear that Ext.P1 order stands set aside in Ext.P2 judgment and therefore, a return to the amount of capital value as assessed in Ext.P1 is not what is contemplated in the instant case. On the basis of the materials produced by the petitioner, the 4th respondent shall consider whether the annual value fixed by the local

authority at the relevant time can be relied on to arrive at the capital value of the building. In case the 4th respondent is of the opinion that the annual value fixed is too low, the 4th respondent shall undertake the exercise of fixing the capital with specific reference to the conditions contained in section 6(4) of the Act as it stood before the amendment.

9. The 4th respondent shall pass orders of assessment afresh as directed above, taking into account the capital value and the rate of tax as available on the date of completion of the building,i.e. 13.09.1987. The orders, as directed above, shall be passed within a period of three months from the date of receipt of a copy of the judgment. The authorised representatives of the petitioner shall also be heard before such orders are passed.

The petitioner shall produce copy of the judgment along with a copy of any material which he relies on and a copy of the writ petition, complete in all respects, before the 4th respondent for compliance.

Anu Sivaraman, Judge

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