IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 15288 of 2014 (I)

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PETITIONER(S) :
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1. **K.M. LATHEEF, AGED 58 YEARS,**
   S/O.LATE K.B.MOHAMMED, C.C 33/1563C, HARITHA ROAD,
   KOCHI-28.

2. **AMINA LATHEEF, AGED 52 YEARS,**
   W/O.K.M.LATHEEF, CC 33/1563C, HARITHA ROAD,
   KOCHI-28.

   BY ADVS.SRI.P.M.MOHAMMED SHIRAZ
   SMT.G.R.MANJU

RESPONDENT(S) :
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1. **THE TAHASILDAR,**
   KANAYANNOOR TALUK, TALUK OFFICE,
   PARK AVENUE, KOCHI-682 011.

2. **THE REVENUE DIVISIONAL OFFICER,**
   REVENUE DIVISIONAL OFFICE, FORTKOCHI-682 001.

3. **THE DISTRICT COLLECTOR,**
   CIVIL STATION, KAKKANAD P.O., KOCHI-682 031.

4. **THE STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   REVENUE (SMC) DEPARTMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM-695 001.

   BY GOVERNMENT PLEADER SRI.R.RENJITH

   THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 15288 of 2014 (I)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1: TRUE PHOTOCOPY OF THE ORDER OF ASSESSMENT NO.B5-6643/05 DATED 18/02/2011 OF THE 1ST RESPONDENT.

EXT.P2: TRUE PHOTOCOPY OF THE ORDER NO.B5-6643/05 DATED 18/02/2011 OF THE 1ST RESPONDENT.

EXT.P3: TRUE PHOTOCOPY OF THE COMMUNICATION NO.G-535/13/K.DIS DATED 02/04/2013 OF SUB COLLECTOR.

EXT.P4: TRUE PHOTOCOPY OF THE ORDER NO.B10-30351/13 DATED 15/07/2013 OF 3RD RESPONDENT.

EXT.P5: TRUE PHOTOCOPY OF THE TAX RECEIPT DATED 06/05/2013 ISSUED BY VILLAGE OFFICER, VENNALA.

EXT.P6: TRUE PHOTOCOPY OF TAX RECEIPT DATED 22/03/2014 ISSUED BY VILLAGE OFFIVER, VENNALA.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A. MUHAMED MUSTAQUE, J

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W.P.(C).No. 15288 of 2014

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Dated this the 06th day of August, 2015

JUDGMENT

The petitioners have approached this Court challenging assessment under the Kerala Tax on Luxuries Act, 1976.

2. The main grievance of the petitioners is with regard to the denial of the benefit of exclusion of garage (Car porch) for the purpose of luxury tax. It is seen from the impugned order if car porch is excluded the petitioners' plinth area would only be 254.36 square meters. However, the petitioners have been denied exclusion, for the reason that the benefit would be availed to the owner of the property only after Circular No.8871/SC1/06/RD dated 21.03.2006 issued by the Government.

3. The petitioners point out to proviso to Section 5(5) as well as the proviso to Section 6 of the Kerala Building Tax Act, 1975 and submits that statutory provision is explicitly clear as to the manner in which the plinth area has to be reckoned. Therefore, by the above Circular, statutory provision cannot be diluted, with effect from 21.03.2006, the date of Circular.

4. As seen from the proviso itself, the determination of the plinth area is by excluding the garage/ car porch etc and therefore the Statutory Authority is erred in finding that as per the Circular the benefit would only be applicable after 21.03.2006. In that view of the matter, the writ petition is allowed and the impugned order is set aside. However, the payment already made by the petitioners need not be refunded.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE

bpr