IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WP(C).No. 32215 of 2015 (B)

PETITIONER(S) :

M.P.CHERIAN, AGED 56 YEARS,
MALIAKKAL HOUSE,
AZHAKATHUPPAY, MADAPPALLY, CHANGANACHERRY, KOTTAYAM.

BY ADV. SRI.RAJEEV V.KURUP

RESPONDENT(S) :
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1. THE STATE OF KERALA,
REP.BY DISTRICT COLLECTOR, KOTTAYAM - 686 002.

2. THE REVENUE DIVISIONAL OFFICER, KOTTAYAM - 686 002.

3. THE TAHSILDAR, CHANGANACHERRY TALUK,
CHANGANACHERRY - 686 101.

BY SMT.K.T.LILLY, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMV

WP(C).No. 32215 of 2015 (B)

APPENDIX

PETITIONER(S) EXHIBITS :

EXT.P1: COPY OF THE NOTICE 7.9.2015 ISSUED BY THE VILLAGE OFFICER, MADAPPALY.

EXT.P2: COPY OF THE REPRESENTATION DATED 18.9.2015 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P3: COPY OF THE ORDER DATED 19.9.2015 PASSED BY THE 2ND RESPONDENT.

EXT.P4: COPY OF THE COMPLAINT DATED 22.9.2015 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P5: COPY OF THE POSTAL RECEIPT DATED 22.9.2015.

RESPONDENTS EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

AMV

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 32215 of 2015
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Dated this the 26th day of October, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P3 order passed by the 2nd respondent, whereby the 2nd respondent has rejected an appeal preferred by the petitioner against Ext.P1 order of assessment to luxury tax under the Kerala Building Tax Act, on the ground that the petitioner had not challenged the levy of luxury tax for the earlier assessment years. In the writ petition, the petitioner's contention is that the plinth area of the building in question is not such, as would attract the levy of luxury tax and it was this aspect that he had put forward in the appeal preferred before the 2nd respondent.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that in Ext.P3 order, the 2nd respondent has rejected the appeal preferred by the petitioner, against Ext.P1 order, only on the ground that the petitioner had not preferred an appeal against the assessment of luxury tax for the assessment year 2013-14 and 2014-15. The levy on luxury tax is a yearly levy and hence, the mere non-filing of an appeal by the petitioner for an earlier assessment year cannot be held against the petitioner, when an appeal is preferred against an assessment for the subsequent assessment year. Accordingly, I quash Ext.P3 order to the extent it confirms the demand of luxury tax for the assessment year 2015-16 and direct the 2nd respondent to consider the appeal preferred by the petitioner afresh, after treating it as an appeal filed against the assessment for the assessment year 2015-16 under the Kerala Building Tax Act. The challenge in the writ petition against Ext.P3, to the extent it pertains to the assessment years 2013-14 and 2014-15, is rejected. The 2nd respondent shall pass fresh orders on merits in the appeal preferred by the petitioner for the assessment year 2015-16, after causing a measurement of the building in question to be done in the presence of the representatives of the petitioner. The future liability of the petitioner to luxury tax under the Kerala Building Tax Act, will depend upon the results of the measurement so directed to be conducted by the 2nd respondent. The petitioner shall also be afforded an opportunity of hearing, before passing final orders in the appeal. The 2nd respondent shall pass orders as directed within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /26.10.15