

A STATE OF KERALA & ORS.

v.

A. P. MAMMIKUTTY

(Civil Appeal No. 1640 of 2015)

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JULY 01, 2015

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

C *Kerala Building Tax Act, 1975 – ss.2(e) Explanation II, 2(k) and 5A – Imposition of ‘luxury tax’ – On a residential buildings, consisting of 13 residential apartments – Whether Revenue entitled to levy tax, by clubbing the plinth area of the 13 apartments, or plinth area of individual apartment should have been taken into consideration – Held: Each*
D *residential building owned by single owner could be subjected to luxury tax, if it has plinth area which exceeds 278.7 sq. mts. – However, Explanation to s.2(e) has to be read harmoniously with proviso to s.2(k) and s.5A – Purposive interpretation has to be given to Explanation II to s.2(e) –*
E *Thus, when the owner parts with the apartments of the building, each apartment will be segregable for the purpose of luxury tax – Taxation – Luxury tax.*

F *Words and Phrases: ‘Building’, ‘Residential Building’ and ‘Plinth Area’ – Meaning of, in the context of Kerala Building Tax Act, 1975.*

Allowing the appeal, the Court

G **HELD: 1. Explanation II to s.2(e) of Kerala Building Tax Act, 1975, would apply when there is a building; that the building must consist of different flats or apartments; that each apartment or flat must be owned by different persons and cost of construction of the building must**
H **have been met jointly, and in such cases plinth area**

cannot be clubbed. Thus, Explanation II to Section 2(e) takes care of a situation where the building is constructed and there are different owners who have paid the purchase price for their respective apartments. The Explanation should not be read as a negative provision, detrimental and fatal to cases where there are separate owners of the apartments, for that is not the basic object and purpose behind the Explanation II to Section 2(e) of the Act. It is a benevolent and beneficial provision which has not been enacted to curtail and nullify what is logical and apparent to reason. [Para 13] [774-F-H; 775-A-B]

2. The expression "residential building" cannot be interpreted without reference to the term "building" and Explanation II to Section 2(e) of the Act. Therefore, each residential building owned by single owner would be subjected to luxury tax, if it has the plinth area which exceeds 278.7 sq.mts. It makes no difference whether the residential building consists of one floor or it is two-storied or three-storied or consists of multiple flats or apartments. The entire plinth area in the residential building owned by a singular owner is required to be aggregated. Section 5A does not refer to aggregate plinth area of all the floors. The intention of the legislature is apparent that if a person is the owner of the plinth area of 278.7 sq.mts or more in one building, even if it consists of separate or distinct apartments, he would be liable to pay the luxury tax under Section 5A of the Act. Section 2(k) clearly postulates that "plinth area" means the area included in the floor of the building and where building has more than one floor aggregate area included in all the floors are taken together. The proviso to the said definition lays down that in case of a building referred to in the Explanation II to clause (e), the "plinth area" shall

A be calculated separately. Thus, Section 2(k) has an
 insegragable nexus with the definition of “building”.
 [Para 14] [775-D-H; 776-A-B]

3. The definitions have to be given a proper
 B construction. The Explanation II to Section 2(e) has to
 be read harmoniously with proviso to Section 2(k) and
 Section 5A of the Act. The intention of the legislature is
 that ownership of different flats and the cost of
 construction of building are met by all such persons.
 C The meeting of the cost jointly is not to be narrowly
 construed to mean that there has to be an investment
 before the commencement of the construction of the
 building. The persons who purchase afterwards they
 really share the value of the construction cost apart from
 D the profit margin due to the builder or the seller. Unless
 such an interpretation is placed, the original owner of
 flats when he ceases to be the owner of the building or
 the purchaser of a small apartment less then 278.7 square
 meters would still be liable to pay luxury tax. Such an
 E interpretation would lead to absurdity. The principle of
 purposive interpretation of the provision has to be
 adopted and when such a construction is placed, it
 serves the legislative intent. [Paras 14, 15] [777-E-H; 778-
 F A]

State of T.N. v. Kodaikanal Motor Union (P) Ltd. (1989)
 3 SCC 91; *K.P. Varghese v. ITO (1981)* 4 SCC 172;
 1981 SCC (Tax) 293; *Luke v. IRC (1964)* 54 ITR 692;
 1963 AC 557 (HL); *Keshavji Ravji and Co. v. CIT 1990*
 G (1) SCR 243; (1990) 2 SCC 231 – relied on.

4. Purposive interpretation has been given to
 Explanation II to s.2(e), as it has to be read with Section
 5A of the Act. When the owner parts with the building
 H each apartment will be segregable for the purpose of

luxury tax. If he remains the owner for the whole or part, then he will be liable to pay for the plinth area in respect of the flats or apartments that is retained by him subject to the cap as envisaged under Section 5A of the Act. If he sells away the entire building, then it has to be flat/apartment-wise calculation/computation, for every apartment owner is different than the others. Thus, the plinth area would be different. The matter is remanded to revenue authority to compute the luxury tax in the manner which has been clarified by the judgment. [Paras 17 and 18] [779-D-F, G]

Case Law Reference

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|--------------------------|------------------|----------------|----------|
| (1989) 3 SCC 91 | Relied on | Para 15 | |
| (1981) 4 SCC 172 | Relied on | Para 15 | D |
| (1964) 54 ITR 692 | Relied on | Para 15 | |
| 1990 (1) SCR 243 | Relied on | Para 16 | |

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1640 of 2015

From the Judgment and Order dated 06.11.2013 in WA No. 2150/2008 of the High Court of Kerala at Ernakulam.

M. F. Philip, Liz Mathew for the Appellant.

M. Gireesh Kumar, Ankur S. Kulkarni, Sriram P. for the Respondent.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. The respondent invoked the jurisdiction of the High Court of Kerala at Ernakulam under Article 226 of the Constitution assailing the demand of luxury tax imposed on a building that consists of 13 residential

A apartments. The Tahasildar who is the competent statutory
authority under the Kerala Building Tax Act, 1975 (for brevity
"the Act") imposed luxury tax on the building on the base of
Section 5A of the Act vide order dated 1.10.2003 in Ref B4-
6435/03 whereby he had measured the plinth area of all the
B residential apartments and computed the tax treating the same
as a singular building.

2. The learned Single Judge opined that the levy of luxury
tax of the entire building on the owner was not permissible
C under the Act, for the scheme is to levy luxury tax for each
residential apartment, plinth area of which is in excess of the
limit provided under Section 5A of the Act. It has been further
ruled by the learned Single Judge that if the plinth area of each
D residential apartment was below 278.7 sq. mts., there was no
scope of levying luxury tax. And if the concerned Tahsildar had
found that the plinth area of the residential apartments in toto
was above 278.7 sq. metres, the luxury tax for such apartments
could be demanded, the writ petition was disposed of with the
direction that Tahsildar would verify the plinth area of each
E residential apartment and levy luxury tax only for such of the
residential apartment plinth area of which was in excess of the
limit provided under Section 5A of the Act. The relevant part
of the opinion expressed by the learned Single Judge is
F reproduced below:-

"Even though petitioner is the owner of the entire building,
luxury tax is leviable only if the plinth area of each
residential apartment is in excess of the limit provided
under Section 5A of the Kerala Building Tax Act. Tahsildar
G has demanded luxury tax by clubbing the plinth area of
various residential apartments. This is not permissible
under the Act and the scheme is to levy luxury tax for each
residential apartment, plinth area of which is in excess
H of the limit provided under Section 5A of the Act. If plinth

area of each residential apartment is below 278.7 sq. meters then there is no scope for levying luxury tax. However, if Tahsildar on inspection finds that the plinth area of any residential apartment is above 278.7 sq. metres, then he can demand luxury tax for such of the apartment or apartments.”

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3. Being aggrieved by the aforesaid judgment and order passed by the learned Single Judge dated 12.06.2008 the State of Kerala and its functionaries preferred writ appeal No. 2150 of 2008. The Division Bench referred to Section 5A of the Act, dictionary clause contained in Section 2, especially, Section 2 (k) and the Explanation II to Clause (e) of Section 2 and came to hold that if there is one building having more than one floor and they are inter-connected with each other and if one floor is of no use without the existence of another floor, then it has to be considered as one building. The Division Bench further proceeded to state that as there were 13 independent flats or apartments and each of the building could be used on its own without reference to the other apartment, the question of taking the measurement of another building to calculate the plinth area would not arise. The conclusion recorded by the Division Bench reads as follows:-

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“For the purpose of calculating the plinth area, if the intention of the legislature was to adopt the entire Explanation (2) to clause (e) even with reference to proviso to 2(k) there was no need to mention the aggregate area where a building has more than one floor. The very reference to more than one floor of a building would explicitly mean, if read along with the proviso that whether the building is a single unit so far as functional use is concerned, or separate units, so far as functional utility of the building. If there is one building having more than one floor and they are interconnected with each

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A other, in other words, if one floor is of no use without the
existence of another floor, then it has to be considered
as one building. Therefore, if there are 13 independent
flats or apartments and if each of the building could be
used on its own without reference to the other apartment,
B the question of taking the measurement of another
building to calculate the plinth area would not arise.”

4. The singular question that emanates for
consideration is whether under the provisions of the Act, the
C revenue authorities are entitled to levy the demand of luxury
tax from the respondent by clubbing the plinth area of the
apartments which are 13 in number or the plinth area of the
individual apartment should be taken into consideration for levy
of the said impost.

D 5. Relying on Section 2(e) of the Act, it is contended by
the learned counsel for the State that on a plain reading of
Explanation II, it is vivid that a building consisting of different
apartments or flats can be deemed to be a separate building,
E if two conditions, namely, that the apartments or flats are owned
by different persons; and the cost of construction of the building
has been met by all such owners jointly, are satisfied. The
submission of the learned counsel for the appellants is that
the ownership of all the 13 apartments rests with the respondent
F himself and the cost of construction having been singularly
borne by him, the twin conditions enshrined under the
Explanation II are not satisfied, and, therefore, it is
impermissible to treat the individual apartments of the building
as different buildings. Learned counsel would emphasise that
G the situation envisaged under Explanation II to Section 2(e)
would arise in a situation where the apartments are pre-
booked by the buyers and whole consideration is paid in
advance to the builder thereby satisfying the condition of
separate ownership and joint meeting of costs. Reliance has
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been placed on Section 5A of the Act and other definitions under Section 2 and on that basis, it is urged that the plinth area as prescribed is far excess of the same inasmuch as the residential portion of the building is 590.4 sq.mts. A

6. The submission of the learned counsel for the respondent is that the Explanation II to Section 2(e) has no application for the levy of luxury tax, for it is only applicable for the purpose of levy of building tax. It is argued by him that levy of luxury tax is only for a residential building and the reference to building in Explanation II in Section 2(e) does not apply to a residential building. Learned counsel has drawn distinction between "residential building" and a "building" by drawing our attention to Section 2(l) of the Act. It is propounded by him that none of the 13 apartments individually have the plinth area of more than 278.7 sq. mts. and hence, the proviso to Section 5A of the Act is not applicable to the present case. It is contended that demand has to be made for the residential apartments and not for the owner who is holding the whole unit. Elaborating the said stand, it is submitted that there cannot be clubbing of the residential apartments together for the purpose of imposition of luxury tax. B
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7. To appreciate the rival submissions, it is necessary to extract the relevant part of Section 2(e), which defines "building". It is as under:- F

"Building" means a house, out-house, garage or any other structure, or part thereof, whether of masonry, bricks, wood, metal or other material but does not include any portable shelter or any shed constructed principally of mud, bamboos, leaves, grass, thatch or a latrine which is not attached to the main structure. G

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A Explanation II: Where a building consists of different apartments or flats owned by different persons and the cost of construction of the building was met by all such persons jointly, each such apartment or flat shall be deemed to be a separate building."

B [Emphasis supplied]

8. Section 2(k) of the Act, which defines the "plinth area", reads as follows:-

C "plinth area" means the area included in the floor of a building and where a building has more than one floor the aggregate area included in all the floors together:

[Emphasis supplied]

D Provided that in case of a building referred to in the Explanation (2) to clause (e), the plinth area shall be calculated separately."

E 9. Section 2(l) of the Act that defines "residential building", is as follows:-

F "residential building' means a building or any other structure or part thereof built exclusively for residential purpose including out-houses or garages appurtenant to the building for the more beneficial enjoyment of the main building but does not include hotels, boarding places, lodges and the like."

G 10. Section 5A stipulates charge of luxury tax. The said provision, being of significance, to deal with the controversy in hand, is reproduced below:-

H "5A. Charge of luxury tax.- (1) Notwithstanding anything contained in this 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. A

11. As is evident, the aforesaid provision commences with a non-obstante clause, and, therefore, has to be given primacy over the other provisions of the Act. It clearly provides that luxury tax of Rs.2,000/- is payable by the owners of all residential buildings constructed on or after 1.4.1999 having plinth area of 278.7 sq.mts. or more. In the instant case, there is no cavil over the fact that the building in question consists of three storeys and has 13 apartments/ flats. There is no dispute over the fact that the aggregate area is more than 278.7 sq.mts. The controversy that has emerged is what is meant by the term "residential building" and whether each of the 13 apartments constitute a separate building or is a singular building for the purpose of levy of luxury tax. There is no quarrel over the fact and it is also manifest that each of the residential apartments has the plinth area of less than 278.7 sq.mts., but when the entire plinth area of 13 apartments is taken by applying the method of clubbing or when the plinth area is aggregated, it exceeds 278.7 sq.mts. It is the admitted position that the building has been constructed after 1.4.1999, that is, the date provided in Section 5A of the Act. B
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12. Section 2(k) of the Act defines the term "plinth area" and Section 2(l) of the Act defines the term "residential building". We have already quoted the aforesaid provisions. As we notice, the term "plinth area" means the area included in the floor of a building and where a building consists of more than one floor, aggregate area of all the floors and hence, the plinth area can include the entire construction, that is, the floor area of a multi-storied building. The question would still arise whether different apartments owned by separate persons can be clubbed and aggregated in a multi-storied building. The proviso thereto states that the plinth area of an entire building F
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A can be separated. It is postulated therein that in case of a building when Explanation II to Section 2(e) is attracted, the plinth area should be calculated separately. The issue which requires examination and apposite answer is whether the Explanation II to Section 2 (e) as an ameliorative and beneficial provision, restricts and debars calculation and computations of plinth area of each independent apartment by different owners in a multi-storied building.

13, Having dealt with the concept of plinth area and its applicability in the backdrop of the provision, we are required to scan the definition of "building". As noted earlier, "building" has been defined in Section 2(e) of the Act to mean a house, out-house, garage or any other structure, or part thereof. The construction can be masonry, bricks, wood, metal or other material. It does not include portable shelter or sheds including a latrine which is not attached to the main structure. Explanation II is the fulcrum that would determine the question that has emanated for consideration in this case. The said Explanation lays the stipulation that when a building consists of different apartments or flats owned by different persons and cost of the building has to be met by all such persons, each apartment or flat is deemed to be a separate building. On a dissection of the said provision, it appears that said Explanation would apply when there is a building; that the building must consist of different flats or apartments; that each apartment or flat must be owned by different persons and cost of construction of the building must have been met jointly, and in such cases plinth area cannot be clubbed. Learned counsel for the appellant-State has submitted that as there has been no contribution of funds at the time of construction. The Explanation II to Section 2(e) would not be applicable and the respondent has to be treated as the sole owner. As we perceive, Explanation II to Section 2(e) takes care of a situation where the building is constructed and there are different owners who have paid the

purchase price for their respective apartments. The Explanation should not be read as a negative provision, detrimental and fatal to cases where there are separate owners of the apartments, for that is not the basic object and purpose behind the Explanation II to Section 2(e) of the Act. It is a benevolent and beneficial provision which has not been enacted to curtail and nullify what is logical and apparent to reason.

14. In this context, it is imperative to analyse what is meant by "residential building". The definition in clause 2(l), means a building or any other structure or part thereof used for residential purpose and house or out-house or garage appurtenant to a building for more beneficial enjoyment. It excludes hotels, boarding places, lodges and the like. Thus, the expression "residential building" cannot be interpreted without reference to the term "building" and Explanation II to Section 2(e) of the Act. Therefore, each residential building owned by single owner would be subjected to luxury tax, if it has the plinth area which exceeds 278.7 sq.mts. It makes no difference whether the residential building consists of one floor or it is two-storied or three-storied or consists of multiple flats or apartments. The entire plinth area in the residential building owned by a singular owner is required to be aggregated. It is noticeable that Section 5A does not refer to aggregate plinth area of all the floors. The intention of the legislature is apparent that if a person is the owner of the plinth area of 278.7 sq.mts or more in one building, even if it consists of separate or distinct apartments, he would be liable to pay the luxury tax under Section 5A of the Act. It also becomes further clear when the definition of "plinth area" in Section 2 (k) is properly appreciated. It clearly postulates that "plinth area" means the area included in the floor of the building and where building has more than one floor aggregate area included in all the floors are taken together. The proviso to the said definition

A lays down that in case of a building referred to in the Explanation II to clause (e), the “plinth area” shall be calculated separately. Thus, Section 2(k) has an inseparable nexus with the definition of “building”. Explanation II to Section 2(e) which defines “residential building” only conveys about the building meant for residential purpose and what it includes. Section 5A is the charging Section and as has been stated earlier, it commences with a non-obstante clause. It determines the annual luxury tax on all residential buildings having a plinth area of 278.7 sq. mts. or more. It provides a date for completion that is 1st April 1999. Though, it does not provide for aggregate it refers to residential building definition of which refers to a building. Section 2(k) defines “plinth area” of the building. Section 5A also includes “plinth area”. Though the term “aggregate” is not mentioned but the words therein are buildings having plinth area and in that context one is required to scan and analyse the meaning of the term “building” and the “plinth area” as defined under Section 2(e) and 2(k) respectively. “Plinth area” as defined clearly provides that when one building has more than one floor, the aggregate area includes all the floors. To give an example, a building consisting of four storeys belongs to a single owner, the aggregate of all the floors are to be included for calculation of the plinth area and thereby the computation of the luxury tax has to be determined as provided under Section 5A. Be it noted, the proviso to Section 2(k) clearly stipulates that if a building as referred falls under Explanation II to Section 2(e), the plinth area shall be calculated separately. The Explanation II refers to different apartments or flats owned by different persons. It also states that the cost of the construction of the building is to be met by all such persons jointly. This Explanation, as noted before, is required to be oppositely understood. The learned counsel for the state would submit that if there is initial booking and the persons have contributed for the construction definitely there shall be separate computation. The Explanation II has to

be read with Section 5A which starts with a non-obstante A
clause. Section 5A as has been mentioned before refers to
“residential building” having plinth area 278.7 sq. mts. or more
and, therefore, the said provision also takes note of this
definition. In view of the above, the contention advanced by B
the learned counsel for the State is difficult to accept. The
definitions have to be given a proper construction. There can
be a case where the owner erects a multi-storied building
consisting 10 floors. He builds it at his own cost and thereafter
he sells the apartments or flats to 10 persons and in that event C
he ceases to be the owner of the building. The 10 purchasers
become the owners of flats and in such a situation it will lead
to an absurdity because one single person who once owned
the entire building or several apartments, though has ceased
to be the owner in law yet is asked to pay the luxury tax solely D
on the ground that at the time of construction there was no
contribution by the purchasers or to put it differently there had
been no prior booking. This is not the intention. The Explanation
II to Section 2(e) has to be read harmoniously with proviso to
Section 2(k) and Section 5A of the Act. The intention of the E
legislature as gatherable is that ownership of different flats and
the cost of construction of building are met by all such persons.
The meeting of the cost jointly is not to be narrowly construed
to mean that there has to be an investment before the
commencement of the construction of the building. The F
persons who purchase afterwards they really share the value
of the construction cost apart from the profit margin due to the
builder or the seller. Unless such an interpretation is placed,
the original owner of flats when he ceases to be the owner of G
the building or the purchaser of a small apartment less than
278.7 square meters would still be liable to pay luxury tax. Such
an interpretation would lead to absurdity.

15. In our considered opinion, the principle of purposive H
interpretation of the provision has to be adopted and when

A such a construction is placed, it serves the legislative intent. To elaborate, a person may have a three-storied building and he owns it, then there has to be different computation as per the main part of Section 2(k) and for that it has to be calculated as is done by the revenue authority. Once he ceases to be the

B owner, he will not be liable to pay the luxury tax. But as long as he continues to be the owner, as per Section 5A, he will be liable to pay the luxury tax for all floors/apartments subject to the cap provided under Section 5A of the Act. In this context we may refer to the decision in **State of T.N. v. Kodaikanal Motor Union (P) Ltd.**¹ wherein this Court, after referring to **K.P. Varghese b. ITO**² and **Luke v. IRC**³, observed thus:-

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D “The courts must always seek to find out the intention of the legislature. Though the courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As

E Judge Learned Hand said, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an

F unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye ‘some’ violence to language is permissible.”

G 16. In **Keshavji Ravji and Co. v. CIT**⁴ it has been held by this court that when in a taxation statute where literal interpretation leads to a result that does not sub-serve the

¹ (1989) 3 SCC 91

² (1981) 4 SCC 172 : 1981 SCC (Tax) 293

³ (1964) 54 ITR 692 : 1963 AC 557 (HL)

⁴ (1990) 2 SCC 231

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object of the legislation another construction in consonance with the object can be adopted. A

17. In the case at hand, as is noticeable, the learned Single Judge had remanded the matter to the revenue authority and the Division Bench has declined to interfere. The Division Bench has applied the functional unit test. We do not accept the same. The learned Single Judge, as we have reproduced a paragraph hereinbefore, has opined that when the plinth area of any residential apartment is above 278.7 sq. mts., then the authority can demand luxury tax for such apartment or flat. Be it noted, the learned Single Judge has held that even if the person is the owner of the entire building the computation would be apartment-wise. The said analysis is also incorrect. We have given purposive interpretation to Explanation II as it has to be read with Section 5A of the Act. When the owner parts with the building each apartment will be segregable for the purpose of luxury tax. If he remains the owner for the whole or part then he will be liable to pay for the plinth area in respect of the flats or apartments that is retained by him subject to the cap as envisaged under Section 5A of the Act. If he sells away the entire building then it has to be flat/apartment-wise calculation/computation, for every apartment owner is different than the others. Thus, the plinth area would be different. To clarify further, if a singular person purchases three flats, he will be liable on the basis of aggregate plinth area subject to the cap envisaged under Section 5A of the Act. B
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18. In view of the aforesaid, we allow the appeal and set aside the order of the revenue authority and that of the High Court in writ petition and the writ appeal, and remand the matter to the revenue authority to compute the luxury tax in the manner which we have clarified hereinabove. There shall be no order as to costs. G