



2024:KER:8710

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 5TH DAY OF FEBRUARY 2024 / 16TH MAGHA, 1945

OP (TAX) NO. 14 OF 2023

AGAINST THE ORDER DATED 22.03.2023 TA(LT) NOS.41/2019 AND 8/2022 OF
KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER:

BETHSAIDA HERMITAGE & TOURISM (P) LTD,
PULINKUDY, MULLOOR P O, THIRUVANANTHAPURAM REPRESENTED BY
MG. DIRECTOR, FREDERIC THOMAS, PIN - 695521

BY ADVS.
SRI.SANTHOSH P.ABRAHAM
SRI.V.V.GEORGEKUTTY

RESPONDENTS:

- 1 STATE TAX OFFICER (LT),
OFFICE OF THE DEPUTY COMMISSIONER STATE GST DEPARTMENT,
KARAMANA, THIRUVANANTHAPURAM, PIN - 695002
- 2 JOINT COMMISSIONER (APPEALS),
STATE GST DEPARTMENT, TAX TOWER,
KARAMANA, THIRUVANANTHAPURAM, PIN - 695002
- 3 KERALA SALES TAX APPELLATE TRIBUNAL,
ADDITIONAL BENCH, SASTHAMANGALOM, THIRUVANANTHAPURAM, PIN -
695010

BY SR GOVT. PLEADER SRI.V.K.SHAMSUDHEEN

THIS OP TAX HAVING COME UP FOR ADMISSION ON 05.02.2024, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

This OP (TAX) is filed impugning Ext.P10 order of the Kerala Value Added Tax Appellate Tribunal, Thiruvananthapuram in TA(LT) Nos.41/2019 and 8/2022 as also Ext.P11(a) order of the said Tribunal in Review Petition No.1 of 2023 that was preferred by the petitioner against Ext.P10 order of the Tribunal. The impugned orders of the Tribunal were passed in the context of the Kerala Tax on Luxuries Act for the assessment year 2014-2015.

2. The petitioner assessee was assessed to tax under the Kerala Tax on Luxuries Act for the assessment year 2014-2015 on the room rent and ayurveda treatment charges as also the miscellaneous income, transportation charges and yoga and meditation charges for the said year. The case of the petitioner before the authorities below was that it had been subjected to tax at a higher rate on the aforesaid income by treating it as a hotel and not as a hospital. It was also the case of the petitioner that the yoga and meditation charges, the ayurveda treatment charges, and the miscellaneous income could not



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have been included in the taxable turnover for the purposes of the Kerala Tax on Luxuries Act. The assessing authority however rejected the claims of the petitioner and confirmed the demand against the petitioner assessee.

3. The First Appellate Authority before whom the petitioner had preferred an appeal against the order of assessment, excluded the entire turnover representing the cost of medicines and professional charges, and the balance amount alone was subjected to assessment under the head ayurvedic treatment income. However, the yoga and meditation charges and miscellaneous income of Rs.3,18,691/- were included in the taxable turnover even by the First Appellate Authority on finding that there was no challenge against the inclusion of yoga and meditation charges by the petitioner and the miscellaneous income represented the taxable turnover of the hospital run by the assessee.

4. In the further appeal before the Tribunal, the Tribunal, in Ext.P10 order, found that it was the petitioner assessee himself who had specified the excluded turnover in terms of Section 4(2)(e) of the Kerala Tax on Luxuries Act and under the said circumstances whatever was declared as not excluded was correctly subjected to tax under the Act by the lower authority. Similarly, when it came to the inclusion of yoga



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and meditation charges, it was found that there was no challenge to the inclusion of the said charges in the taxable turnover, and hence, the said inclusion had to be sustained. As regards the addition of the miscellaneous income of Rs.3,18,691/- it was found that the assessee's case was that the said income was generated from the sale of agricultural and waste products and if that was in fact the case, the said income would merit exclusion from the taxable turnover for the purposes of luxury tax. The matter was, therefore, remanded to the assessing authority for the limited purposes of reconsidering the matter of addition of miscellaneous income of Rs.3,18,691/- after verifying the accounts of the assessee.

5. During the pendency of this OP(TAX), the assessing authority passed a consequential order dated 16.01.2024, purportedly in compliance with the directions of the Tribunal in Ext.P10 order.

6. We have heard Sri. Santhosh P.Abraham, the learned counsel for the petitioner, and Sri.V.K. Shamsudheen, the learned Government Pleader for the respondents.

7. On a consideration of the facts and circumstances of the case and the submissions made across the bar, we find that the contention of



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the petitioner with regard to the inclusion of an amount of Rs.3,12,13,293/- towards ayurveda income after giving all deductions as per law cannot be legally countenanced. The finding of the Tribunal in respect of this income is clearly spelt out in paragraph 11 of Ext.P10 order, which reads as under:

“11. In the original assessment order, the entire claim made by the appellant towards cost of medicines and professional charges in the reply to the pre assessment notice was given credit by the assessing authority and the balance amount alone was subjected to assessment from the head 'Ayurvedic treatment income'. Sri. V.V. Georgekutty, the learned counsel for the appellant submitted before us that the statement in the reply that they paid Rs. 2,67,49,092/- as salaries and allowances to their staff and out of it 40% goes to Ayurveda doctors and therapists, may not be taken as an admission of the fact that the balance 60% is the subject matter of turnover exigible to luxury tax. It is true that the appellant challenged assessment in respect of the entire ayurveda income throughout the proceedings, a claim which we have already found against. Given the case of the appellant that 60% of the expenses under the salary head would constitute salaries and allowances of other staff of the institution and establishment cost, such expenses cannot be given exemption from ayurveda income since those expenses are not specifically excluded under the charging provision S.4(2)(e). At the stage of hearing of these



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appeals, a fresh plea was also raised by the appellant that the assessing authority did not consider the cost of preparation of medicines from herbs and country drugs purchased while granting exemption. Such a contention cannot be considered at this stage since the appellant specifically claimed the cost of medicines and professional charges in the pre assessment reply and any new plea deviating from the reply is devoid of any merit. Therefore we are satisfied that the sum of Rs.3,12,13,293/- taken for assessment towards ayurveda income after giving all deductions as per law under the original assessment order need not be interfered in any manner.”

8. It will be seen from the above that it is based on the submissions of the assessee himself and the figures declared by the assessee that the said turnover was subjected to tax under the Kerala Tax on Luxuries Act. In the absence of any figures substantiated by the accounts maintained by the assessee, produced at any stage before the authorities below, we see no reason to doubt the correctness of the decision of the Tribunal confirming the demand of tax under the said head.

9. As regards the addition of miscellaneous income of Rs.3,18,691/-, the finding of the Tribunal in Ext.P10 order is contained



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in paragraph 12 therein, which reads as follows:

“12. The revised assessment order deleting the exemptions granted above and treating the entire ayurveda income Rs.7,43,02,856/- as turnover assessable to luxury tax is against the statutory mandate under the charging provision S.4(2)(e) and therefore the said order and appellate order thereof are found unsustainable to that extent. As stated earlier, there is no challenge against inclusion of 'yoga and meditation charges' in the revised assessment and hence it survives. As regards addition of miscellaneous income Rs.3,18,691/-in both assessment orders, we find some force in the case of the appellant that the said income being generated from sale of agricultural and waste products, is outside the purview of luxury tax. Hence we direct the assessing authority to reconsider the matter in the light of the accounts to be produced by the appellant to prove the claim on notice of demand for production of the same. If the case of the appellant stands proved on verification of the accounts, assessment to that effect shall be deleted.”

As already noticed above, during the pendency of this OP(TAX), the assessing authority passed the consequential order (Ext.P12) purportedly in compliance with the aforementioned direction issued by



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the Tribunal in Ext.P10 order. We are of the view that if the petitioner has any grievance regarding the correctness of the said order of the assessing authority, to the extent it does not adhere to the directions of the Tribunal in Ext.P10 order, it is for him to agitate the same before the appellate authority, on merits. Thus, without prejudice to the last-mentioned liberty reserved to the petitioner, we dismiss this OP(TAX) as devoid of merit.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

DR. KAUSER EDAPPAGATH
JUDGE

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APPENDIX OF OP (TAX) 14/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE ANNUAL RETURN FOR THE 2014-15 DATED 4-7-2015 FILED BY THE PETITIONER
- Exhibit P2 A TRUE COPY OF THE PRE- ASSESSMENT NOTICE FOR 2014-15 DATED 26-05-2017 ISSUED BY THE 1 ST RESPONDENT
- Exhibit P3 TRUE COPY OF THE REPLY DATED 15-06-2017 FILED BY THE PETITIONER BEFORE THE 1 ST RESPONDENT
- Exhibit P4 TRUE COPY OF THE ASSESSMENT ORDER NO.LT-32015223707/14-15 DATED 17-07-2017 ISSUED BY THE 1 ST RESPONDENT
- Exhibit P5 TRUE COPY OF THE APPEAL ORDER LTA NO.83/17 DATED 14-01-2019 ISSUED BY THE 2 ND RESPONDENT
- Exhibit P6 TRUE COPY OF THE REPLY DATED 21-11-2019 SUBMITTED BY THE PETITIONER
- Exhibit P6(a) A COPY OF THE LETTER DATED 24-01-2020
- Exhibit P7 TRUE COPY OF THE ASSESSMENT ORDER LT.32015223707/2014-15 ISSUED BY THE 1 ST RESPONDENT DATED 17-02-2020
- Exhibit P8 TRUE COPY OF THE APPEAL ORDER IN LT NO.06/2020 DATED 26/10/2021 ISSUED BY THE 2 ND RESPONDENT
- Exhibit P9 TRUE COPY OF THE HEARING NOTE DATED 20-02-2023 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT
- Exhibit P9(a) TRUE COPY OF THE HEARING NOTE DATED 13-03-2023 SUBMITTED BY THE PETITIONER BEFORE THE 3



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RD RESPONDENT

Exhibit P10

TRUE COPY OF THE TRIBUNAL ORDER TA(LT)
NOS.41/19 & 08/22 DATED 22-03-2023 ISSUED BY
THE 3 RD RESPONDENT

Exhibit P11

TRUE COPY OF THE REVIEW PETITION DATED 20-4-
2023 FILED BY THE PETITIONER BEFORE THE 3 RD
RESPONDENT

Exhibit P11(a)

THE COPY OF THE ORDER IN REVIEW PETITION
NO.01/2023 DATED 04-09-2023 ISSUED BY THE 3
RD RESPONDENT

Exhibit P12

TRUE COPY OF THE ASSESSMENT ORDER
NO.32015223707/2014-15 DATED 16-1-2024