



W.A. Nos.585 of 2018
& 709 of 2018

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2025:KER:22193

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 11TH DAY OF MARCH 2025 / 20TH PHALGUNA, 1946

WA NO. 709 OF 2018

AGAINST THE JUDGMENT DATED 20.7.2017 IN W.P.(C) NO.36384 OF
2010 OF HIGH COURT OF KERALA

APPELLANT/S:

KERALEEYAM AYURVEDIC RESORT
A UNIT OF SD PHARMACY PVT. LTD.,
HAVING ITS REGISTERED OFFICE AT DHANWANTHARI BHAVAN,
ALAPPUZHA-688011, REPRESENTED BY ITS MANAGING DIRECTOR,
MR. K. RAMESH.

BY ADVS.
SRI.ANIL D. NAIR
SRI.ASISH MOHAN
SRI.P.JINISH PAUL
SRI.G.KRISHNAKUMAR MALLYA
KUM.MEKHALA M.BENNY
SMT.MARY JOSSY
SRI.R.SREEJITH

RESPONDENT/S:

1 THE COMMERCIAL TAX OFFICER(LUXURY TAX)
COMMERCIAL TAX OFFICE, ALAPPUZHA-688001.

2 STATE OF KERALA
REPRESENTED BY ITS SECRETARY (TAXES),
SECRETARIAT, THIRUVANANTHAPURAM-695001.

SRI. V.K. SHAMSUDHEEN, SR.GP

THIS WRIT APPEAL HAVING COME UP FOR HEARING ON 11.03.2025,
ALONG WITH WA NO.585/2018, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



W.A. Nos.585 of 2018
& 709 of 2018

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2025:KER:22193

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 11TH DAY OF MARCH 2025 / 20TH PHALGUNA, 1946

WA NO. 585 OF 2018

AGAINST THE JUDGMENT DATED 20.7.2017 IN W.P.(C) NO.10008 OF
2011 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER :

KERALEEYAM AYURVEDIC RESORT
A UNIT OF SD PHARMACY PVT.LTD.,
HAVING ITS REGISTERED OFFICE AT DHANWANTHARAI BHAVAN,
ALAPPUZHA-688011, REPRESENTED BY ITS MANAGING DIRECTOR,
MR.K.RAMESH.

BY ADV SRI.ANIL D. NAIR

RESPONDENTS/RESPONDENTS :

- 1 THE COMMERCIAL TAX OFFICER
(LUXURY TAX), COMMERCIAL TAX OFFICE,
ALAPPUZHA-688001.
- 2 STATE OF KERALA
REPRESENTED BY ITS SECRETARY (TAXES),
SECRETARIAT, THIRUVANANTHAPURAM-695001.

THIS WRIT APPEAL HAVING COME UP FOR HEARING ON 11.03.2025,
ALONG WITH WA NO.709/2018, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



JUDGMENT

Easwaran S., J.

These intra-court appeals are preferred by the petitioner being aggrieved by the judgment in W.P.(C) Nos.36384 of 2010 and 10008 of 2011.

2. The brief facts necessary for the disposal of the appeals are as follows:

The appellant/petitioner claims that they are running an Ayurvedic hospital, a part of S.D. Pharmacy Private Limited and also a manufacturer of Ayurvedic medicines. The assessments were made prior to the amendment brought to the Luxury Tax Act through the Kerala Finance Act, 2008, incorporating "hospital" within the ambit of Luxury Tax Act. The definition of "hospital" after the amendment includes a nursing home, therapy centre, rejuvenation or recuperation centre, nature care or cure centre, Ayurvedic cure or care centre and other treatment. However, for levy of Luxury Tax prior to the amendment, it must be shown that the appellant was running a hotel in terms of Section 2(e) of the Luxury Tax Act. The assessing authority found that the nature of the activity of the appellant is to provide accommodation to the



tourists and also providing Ayurvedic treatment to sick and non-sick persons, and their main income is derived from providing accommodation to the tourists. Therefore, the assessing authority was of the opinion that the wellness treatment provided by the appellant, along with accommodation, is liable to be taxed. The appellant was thus assessed by an order dated 30.9.2009 for the tax. Immediately after the order of assessment, the appellant was also visited with an order of penalty. Aggrieved by the order of assessment and penalty, the appellant preferred statutory appeals before the Deputy Commissioner (Appeals) and the same was dismissed. As against the said order, the appellant filed statutory appeals before the appellate tribunal. The appellate tribunal, by order dated 16.8.2010, dismissed the appeals and modified the demand of penalty to the extent of tax payable. Aggrieved by the order of the tribunal confirming the order of assessment and penalty, the appellant approached the writ court by preferring the aforementioned writ petitions.

3. The learned Single Judge who considered the writ petition found that inasmuch as the appellant has not chosen to produce any books of accounts before the authority to show that the income



derived from the renting act of accommodation was incidental to the main activity of providing treatment to the patients, refused to interfere in the order of assessment. However, considering the peculiar facts, it reduced the penalty to 50% of the tax payable. Aggrieved by the aforesaid judgment, the present intra-court appeals are preferred by the petitioner.

4. Heard Sri. Anil D. Nair, the learned Senior counsel appearing on behalf of the appellant assisted by Ms. Mekhala M. Benny, and Sri. V.K. Shamsudheen, the learned Government Pleader appearing on behalf of the respondents.

5. On a consideration of the rival submissions raised across the Bar, we find that these appeals have to fail for multiple reasons. As noticed above, the learned Single Judge has found that the appellant did not produce the books of accounts in order to establish that the income derived out of the rent received from the accommodation is incidental to the treatment given to the inpatients by the appellant. In our considered view, the said finding of the learned Single Judge does not call for any interference, especially since the same falls within the realm of finding of facts. The appellant having failed to prove that the income derived out of



the accommodation was incidental to the treatment extended by the appellant, we are of the view that the appellant cannot succeed. Still further, a reading of the order passed by the appellate tribunal shows that the main activities of the appellant as per the brochures produced before the assessing officer, are canoeing, motor boat cruises, houseboat stay, trekking, Alleppey beach visit, coir factory visit, elephant ride, Kathakali, temple dance, dramas, Mohiniyattam and Kalaripayattu. Therefore, in the light of these activities, the tribunal took note of the fact that the main activities of the appellant are not running the hospital but providing a resort and other facilities and the Ayurvedic treatment is only incidental to that of the facilities. The tribunal further found that the tariff rate of the rooms described are inclusive of the breakfast and other facilities. Hence, the tribunal was of the view that while imparting Ayurvedic treatment to the inpatient, though a special diet is given in accordance with the treatment and the medicine given, the fact that an extra person is accommodated in the resort is charged with a rate and the fact that the breakfast, lunch, and dinner have been provided, shows that the appellant is not running an ayurvedic treatment centre but a resort where the incidental facility of



ayurvedic treatment is being given to the occupants.

In the light of the findings rendered by the tribunal as well as by the learned Single Judge, we are of the view that they are essential in the realm of finding of facts which cannot be re-appreciated by us while considering these intra-court appeals. Therefore, we are of the view that there is no merit in these appeals, and accordingly, the same is dismissed. No order as to costs.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
EASWARAN S.
JUDGE

NS