CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No.55327 Of 2014

[Arising out of OIA No.19-20/ST/Appeal/DLH-IV/2014 dated 24.07.2014 passed by the Commissioner (Appeals), Service Tax, Delhi-IV, Faridabad]

Shri Ashish Jain ..... **Appellant**
(HUF) Plot No.24, Neelam Bata Road,
Faridabad, Haryana-121001

VERSUS

The Commissioner of Central Goods and Service Tax, Faridabad ...... **Respondent**
New CGO Complex, NH-IV, NIT, Faridabad,
Haryana-121001

WITH

Service Tax Appeal No.55328 Of 2014

[Arising out of OIA No.19-20/ST/Appeal/DLH-IV/2014 dated 24.07.2014 passed by the Commissioner (Appeals), Service Tax, Delhi-IV, Faridabad]

Shri Sanjeev Jain ...... **Appellant**
(HUF) Plot No.24, Neelam Bata Road,
Faridabad, Haryana-121001

VERSUS

The Commissioner of Central Goods and Service Tax, Faridabad ...... **Respondent**
New CGO Complex, NH-IV, NIT, Faridabad,
Haryana-121001

APPEARANCE:
Shri Rajiv,Agnihotri, Advocate for the Appellant
Shri Harish Kapoor, Authorized Representative for the Respondent

CORAM: HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.60061-60062/2025

DATE OF HEARING: 10.01.2025
DATE OF DECISION: 10.01.2025
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P. ANJANI KUMAR:

Shri Ashish Jain (Appeal No. ST/55327/2014) and Shri Sanjeev Jain (Appeal No. ST/55328/2014) has leased out their premises to M/s Crystic Resins India Pvt. Ltd. and have been receiving rent individually for their part of the joint property. On the basis of Audit conducted of the accounts of M/s Crystic Resins India Pvt. Ltd., Revenue was of the opinion that Shri Ashish Jain and Shri Sanjeev Jain are Kartas of one Hindu Undivided Family (HUF) and therefore, they are required to pay the applicable service tax; a Show Cause Notice dated 19.01.2013 was issued to the appellants demanding service tax of Rs.5,43,840/- along with interest and penalty; the demand was confirmed along with interest and penalty vide order dated 20.09.2013. On an appeal filed by the appellants, learned Commissioner (Appeals) vide impugned order dated 24.07.2014 partially allowed their appeals setting aside the penalties imposed under Section 77 & 78 while confirming the service tax demanded with interest.

2. Shri Rajiv Agnihotri, learned Counsel for the appellants submits that both the appellants are individuals having joint share in the property and have rented out the property to M/s Crystic Resins India Pvt. Ltd. and have been receiving rent separately through cheque individually; individually, the consideration received by them for the service "Renting of Immovable Property" was exempt from payment of service tax as the consideration received was less than the exemption limit of Rs.10 Lakhs. He submits that the issue is no longer *res integra* and Tribunal has held the issue in favour of the appellants in many cases.

3. Shri Harish Kapoor, learned Authorized Representative for the Department, reiterates the findings of the impugned order.

4. We have heard both sides and perused the records of the case. As submitted by the learned Counsel for the appellants, we find the issue no longer *res integra*. Though, learned Authorized Representative submits that the impugned case is different from the cases decided by the Tribunal inasmuch as both the appellants are Kartas in the same HUF. We find that this fact will not alter the position of the appellants being joint owners and receiving rent separately. This Bench has decided the issue in the case of Ramesh Kumar Chaudhary & Others vide Final Order No.60675-60678/2024 dated 17.12.2024. We observed that:

> 4. Heard both sides and perused the records of the case. The issue of liability to service tax of individual owners of a property when the property is leased to others, has been decided by the Tribunal in a number of cases. We find that Tribunal Bench at Ahmedabad in the case of **Sarojben Khushal Chand – 2017 (4) GSTL 159 (Tri. Ahmd.)** held that:
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> **6.** We find that the limited question of law which needs to be addressed is : whether each of the co-owner, holding immovable property jointly, but receive the lease rent separately in proportion to the share in the property, is eligible to the benefit of threshold exemption limit as prescribed under Notification No. 6/2005-S.T., dt. 1-3-2005, as amended, separately. The relevant notification reads as follows :-
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> **"Service Tax exemption when value of taxable service provided not exceeds Rs. 4 lakhs in a financial year**
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> In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding four lakh rupees in any financial year from the whole of the Service Tax leviable thereon under section 66 of the said Finance Act :
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> Provided that nothing contained in this notification shall apply to, -

(i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or

(ii) such value of taxable services in respect of which Service Tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994.

2. The exemption contained in this notification shall apply subject to the following conditions, namely :-

(i) the provider of taxable service has the option not to avail the exemption contained in this notification and pay Service Tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;

(ii) the provider of taxable service shall not avail the Cenvat credit of Service Tax paid on any input services, under rule 3 or rule 13 of the Cenvat Credit Rules, 2004 (hereinafter referred to as the said rules), used for providing the said taxable service, for which exemption from payment of Service Tax under this notification is availed of;

(iii) the provider of taxable service shall not avail the Cenvat credit under rule 3 of the said rules, on capital goods received in the premises of provider of such taxable service during the period in which the service provider avails exemption from payment of Service Tax under this notification;

(iv) the provider of taxable service shall avail the Cenvat credit only on such inputs or input services received, on or after the date on which the service provider starts paying Service Tax, and used for the provision of taxable services for which Service Tax is payable;

(v) the provider of taxable service who starts availing exemption under this notification shall be required to pay an amount equivalent to the Cenvat credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing exemption under this notification;

(vi) the balance of Cenvat credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the said rules and shall lapse on the day such service provider starts availing the exemption under this notification;

(vii) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services; and

(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed rupees four lakhs in the preceding financial year.

3. For the purposes of determining aggregate value not exceeding four lakh rupees, to avail exemption under this notification, in relation to taxable service provided by a goods transport agency, the payment received towards the gross amount charged by such goods transport agency under section 67 for which the person liable for paying Service Tax is as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994, shall not be taken into account.

Explanation. - For the purposes of this notification, -

(A) "brand name" or "trade name" means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, logo, label, signature, or invented word or writing which is used in relation to such specified services for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified services and some person using such name or mark with or without any indication of the identity of that person;

(B) "aggregate value not exceeding four lakh rupees" means the sum total of first consecutive payments received during a financial year towards the gross amount, as prescribed under section 67 of the said Finance Act, charged by the service provider towards taxable services till the aggregate amount of such payments is equal to four lakh rupees but does not include payments received towards such gross amount which are exempt from whole of Service Tax leviable thereon under section 66 of the said Finance Act under any other notification.

4. This notification shall come into force on the 1st day of April, 2005."

7. The basis of allegation by the Revenue against the Appellants rests on the premise that even though the immovable property is jointly owned by several persons, since the property itself is indivisible, and each person cannot separately render the service without involvement of other co-owners, hence the total rent received as a whole, be considered for the purpose of computing aggregate value of taxable services in extending the Notification No. 6/2005-S.T., dated 1-3-2005, as amended. In other words, the Service Tax is assessed on the total amount of rent, without extending the benefit of exemption Notification No. 6/2005-S.T. on the rent received by each co-owner in proportion to his share in the immovable property rented/leased. The reasoning of the lower authorities in denying the benefit to each co-owner is that the meaning of "person" defined under Section 3(42) of General Clauses Act, includes any company or body of individual whether incorporated or not should be pressed into service to levy Service Tax on the total rent received by all co-owners considering them as body of individual or association of persons in computing the gross taxable value under the exemption Notification No. 6/2005-S.T. The appellants on the other hand, vehemently argued that the definition of 'person' provided under the General Clauses Act, is not relevant and inapplicable to the facts and circumstances of the present case, inasmuch as merely because several persons own the immovable property jointly, they cannot be treated as body of individuals or association of persons, when each co-owner receive the rent proportionate to their share in the immovable property, having separate PAN No. and subjected to TDS and income tax assessment separately. In support of their argument on the scope and meaning of association of persons they have referred to the judgment of Hon'ble Supreme Court in the case of *CIT* v. *Indira Balkrishna* (supra) followed in *Deghamwala Estates* (supra) case where under similar circumstances, the co-owners who received the rent income proportionate to their share had been assessed to income tax separately, but not as an association of persons.

8. Hon'ble Supreme Court, while discussing the meaning of "association of persons" in their judgment in the case of *Commissioner of Income Tax*v. *Indira Balkrishna* - 1960 (4) TMI 7-Supreme Court, observed as follows :-

"We now come to the main question in this appeal. What constitutes an "association of persons" within the meaning of the Income-tax Act? It has been repeatedly pointed out that the Act does not define what constitutes an association of persons, which under Section 3 of the Act is an entity or unit of assessment. Previous to the year 1924, the words of Section 3 were "individual, company, firm and Hindu undivided family." By the Indian Income-tax (Amendment) Act of 1924 (XI of 1924) the words "individual, Hindu undivided family, company, firm and other association of individuals" were substituted for the former words.

By the Income-tax Amendment Act of 1939 (VII of 1939) the Section was again amended and it then said :

"Where any Act of the Central Legislature enacts that income-tax shall be charged for any year at any rate or rates, tax at the rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or members of the association individually."

By the same Amending Act (VII of 1939), sub-section (3) of Section 9 was also added.

Now, Section 3 imposes a tax "in respect of the total income…. of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or members of the association individually." In the absence of any definition as to what constitutes an association of persons, we must construe the words in their plain ordinary meaning and we must also bear in mind that the words occur in a section which imposes a tax on the total income of each one of the units of assessment mentioned therein including an association of persons. The meaning to be assigned to the words must take colour from the context in which they occur. A number of decisions have been cited at the bar bearing on the question, and our attention has been drawn to the controversy as to whether the words "association of individuals" which occurred previously in the section should be read *ejusdem generis* with the word immediately preceding, viz. firm, or with all the other groups of persons mentioned in the section. Into that controversy it is unnecessary to enter in the present case. Nor do we pause to consider the widely differing characteristics of the three other associations mentioned in the section, viz. Hindu undivided family, a company and a firm, and whether in view of the amendments made in 1939 the words in question can be read *ejusdem generis* with Hindu undivided family or company.

It is enough for our purpose to refer to three decisions : In *reB.N. Elia; Commissioner of Income-tax* v. *Laxmidas Devidas*; and In *re Dwarkanath Harischandra Pitale*. In *re B.N. Elias* Derbyshire, C.J. rightly pointed out that the word "associate" means, according to the Oxford Dictionary, "to join common purpose, or to join in action." Therefore, an association of persons must be one in which two or more persons join a common purpose or common action, and as the words occur in a

section which imposes a tax on income, the association must be one of the object of which is to produce income, profits or gains. This was the view expressed by Beaumont, C.J., in *Commissioner of Income-tax*, v. *Lakshmidas Devidas* at page 589 and also in In*re Dwarkanath Harischandra Pitale*, In *re B.N. Elias*, Costello, J., put the test in more forceful language. He said : "it may well be that the intention of the Legislature was to hit combinations or individuals who were engaged together in some joint enterprise but did not in law constitute partnerships… When we find, …. that there is a combination of persons formed for the promotion of a joint enterprise … then I think no difficulty arises whatever in the way of saying that these persons did constitute an association…"
We think that the aforesaid decisions correctly lay down the crucial test for determining what is an association of persons within the meaning of Section 3 of the Income-tax Act, and they have been accepted and followed in a number of later decisions of different High Courts to all of which it is unnecessary to call attention. It is, however, necessary to add some words of caution here. There is no formula of universal application as to what facts, how many of them and of what nature, are necessary to come to a conclusion that there is an association of persons within the meaning of Section 3; it must depend on the particular facts and circumstances of each case as to whether the conclusion can be drawn or not.
Learned Counsel for the appellant has suggested that having regard to Sections 3 and 4 of the Indian Income-tax Act, the real test is the existence of a common source of income in which two or more persons are interested as owner or otherwise and it is immaterial whether their shares are specific and definite or whether there is any scheme of management or not. He has submitted that if the persons so interested come to an arrangement, express or tacit, by which they divide the income at a point of time before it emanates from the source, then the association ceases; otherwise it continues to be an association. We have indicated above what is the crucial test in determining an association of persons within the meaning of Section 3, and we are of the view that the tests suggested by the learned Counsel for the appellant are neither conclusive nor determinative of the question before us."

9. We find force in the contention of the ld. Advocates representing the respective appellants inasmuch as 'association of persons' has been considered as a separate legal entity under the Income-tax Act for assessment and provided separate PAN number different from the PAN number possessed by individual co-owners; who joined together to form an 'association of persons'. In the present case, the show cause notices were issued in many cases to one person among the Joint owners and in other cases to all the persons who had jointly owned the immovable property provided on rent. Needless to mention, the Service Tax Registration of individual assessees for collection of Service Tax is PAN based, hence, collection of Service Tax from one of the co-owners, against his individual Registration for the total rent received by all co-owners separately, is neither supported by law nor by laid down procedure. Thus, it is difficult to accept the proposition advanced by the Revenue that all the co-owners providing the service of renting of immovable property be considered as an association of persons and the Service Tax on the total rent be collected from one of the co-owners. Another argument of the Revenue is that since the property is indivisible and not earmarked against each of the co-owners, hence the Service Tax is leviable on the total rent received against the said property without apportioning against each of the co-owners in proportion to their share. We find fallacy in the said argument of the Revenue. Conceptually Service Tax is levied on the service provided, which is an intangible thing and hence it is not necessary to be identified with physical demarcation of the immovable property given on rent against individual co-owners. Once the value of service provided by a service provider is ascertainable Service Tax is accordingly charged. This Tribunal in similar facts and circumstances in the cases of *DeoramVishrambhai Patel*, *Anil Saini & Others* and *Luxmi Chaurasia* (supra) after considering the issues raised, rejected the contention of the Revenue and allowed the benefit of exemption Notification No. 6/2005-S.T., dt.1-3-2005 as amended to individual co-owners who jointly owned the property and provided the service of renting of immovable property, and received the rent in proportion to the shares in the immovable property.

5. We further find that this Bench in the case of **Anil Saini** (supra) held the issue in favour of the appellants. Therefore, we are of the considered opinion that in the present appeals, service tax cannot be recovered from the appellants in a combined fashion. If considered individually, the appellants are eligible for the benefit of exemption contained under Notification. No. 06/2005-S.T dated 01.03.2005. However, the

appellants have undertaken that they will not ask for refund of the service tax deposited as they have recovered the same from their customer i.e. Axis Bank. As we hold that the appellants are not liable to pay service tax during the impugned period, penalties imposed are not sustainable and therefore set aside.

5. In view of the above, both the appeals are allowed.

(Operative part of the order pronounced in the open Court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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