CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 11244 of 2015-DB

[Arising out of Order-in-Original/Appeal No RAJ-EXCUS-000-APP-08-15-16 dated 30.04.2015 passed by Commissioner of Central Excise-RAJKOT]

Shri Kamleshkumar K Kotecha .... **Appellant**
& Shri Mukund R Palan
Sadhna Building, Hotel Sadhna,
Jawahar Road, Jubeelee Chowk,
RAJKOT, GUJARAT -360001

VERSUS

Commissioner of Central Excise & ST, Rajkot .... **Respondent**
Central Excise Bhavan, Race Course Ring Road,
Income Tax Office, Rajkot,
Gujarat -360001

APPEARANCE :

Shri D.K. Trivedi, Advocate for the Appellant
Shri AR Kanani, Superintendent for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 18.03.2024
DATE OF DECISION: 16.07.2024

FINAL ORDER NO. 11571/2024

RAMESH NAIR :

The brief facts of the case are that appellants are co-owner of a building situated at Jawahar Road, Rajkot. They had given the said immovable property on lease to Punjab National Bank. The total rent received for the period 2008-09 to 2012-13 jointly by them amounts to Rs. 53,49,086/- in aggregate. A show cause notice came to be issued demanding service tax of Rs. 5,29,509/- payable on the aggregate amount of sum total of rent received by them in regard to the said co-owned property aggregating to Rs. 53,49,086/-. The said show cause notice was adjudicated by the Adjudicating Authority vide order-in-original dated 13.08.2014. Being aggrieved by the said order-in-original, the appeal filed before Commissioner (Appeals) came to be rejected therefore, the present appeal filed by both the co-owners of the property leased out to Punjab National Bank.

2. Shri D.K. Trivedi, learned counsel appearing on behalf of the appellant at the outset submits that the amount of rent received individually for one financial year is much below the threshold limit of exemption as per Notification No. 6/2005-ST dated 01.03.2005 as amended vide Notification No. 8/2008-ST dated 01.03.2008. It is his submission that each individual out of both the co-owners has to be considered as individual service provider and therefore, their portion of rent received being within the threshold limit of exemption, service tax liability is not sustainable. He placed reliance on the following judgments:-

(a) Sarojben Khushalchand versus Commissioner of Service Tax, Ahmedabad - 2017(4) GSTL 159 (Tri.-Ahmd)

(b) CCE, Nasik versus Deoram Vishrambhai Patel - 2015(40) STR 1146 (Tri.-Mum.)

(c) Anil Saini & ors. versus CCE, Chandigarh-I- 2017(51) STR 38 (Chandigarh)

(d) CCE, Allahabad versus Laxmi Chaurasia - 2017(49) STR 541 (Tri.-All.)

3. Shri AR Kanani, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of record, we find that there is no dispute that the immovable property is co-owned by both the appellants and the rent was received from Punjab National Bank (lessee) equally to both the co-owners. In this fact, both the co-owners are to be treated as independent service provider. Therefore, individually each appellant received rent for the financial year involved in the entire period of this case is much below the threshold limit of exemption under Notification Nos. 6/2005-ST dated 01.03.2005 and No. 8/2008-ST dated 01.03.2008, therefore service tax demand will not sustain. This issue has been considered time and again in the following judgments:-

(a) Sarojben Khushalchand versus Commissioner of Service Tax, Ahmedabad

"**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 :-

"Service Tax exemption when value of taxable service provided not exceeds Rs. 4 lakhs in a financial year

(1) In exercise of the powers conferred by sub-section 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 :

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.

This notification shall come into force on 4. 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 :
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> "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."
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> By the same Amending Act (VII of 1939), sub-section (3) of Section 9 was also added.
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> 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.
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> It is enough for our purpose to refer to three decisions : In *re B.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…"
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> 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.
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> 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 *Deoram Vishrambhai 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.

10. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law.

(b) CCE, Nasik vs. Deoram Vishrambhai Patel – The following order was passed:

"6. We have considered the submissions made by both sides and perused the records. The issue that needs to be decided in this case is whether the respondent and his brothers are to be treated as association of persons or other vise and service tax liability on it arises, should be confined without the benefit of the Notification No. 6/2005-S.T.

7. It is undisputed that the property which has been rented out by the respondent and his brothers is jointly owned property; Service Tax liability arises on such renting of property.

8. On deeper perusal of impugned order, we find that the first appellate authority has considered all the angles in the dispute and came to the correct conclusion. The findings of first appellate authority is as under.

> "6.2 On mere reading of the Order-in-Original, it is evident that the adjudicating officer has considered above named four persons as one person for determining tax liability and imposition of penalties without telling any legal basis for doing so. The appellants have contested the Order in Original mainly on the grounds that rented property belongs to four separate persons (all brothers) but the service tax has been demanded wrongly by the department from the appellants by clubbing the rent received by all the co-owners and, therefore, the demand off tax is not maintainable on this ground alone. In support they have produced a City Survey Extract as evidence regarding ownership of the rented property which shows that the said property was purchased in 2003 and is owned jointly by all the four co-owners. Further, the lease agreements with M/s. Max New York Life Insurance Co. Ltd., Oriental Bank of Commerce, Axis Bank, Kotak Mahindra Bank and HDFC Standard Life Insurance Ltd. are also entered into by the appellants in their individual capacity, as per SCN also, all four co-owners have obtained separate Registration Certificate on 10-4-2012 and all the four co-owners individually paid their Service tax liability along with interest on 14-2-2012. Thus, the ownership of the Property and providing of taxable renting of immovable Property by the four appellants in this case is in their individual capacity and, therefore, their tax liability should have been determined by considering their individual rental receipts and not collective one. From the various lease agreements made with above mentioned Commercial firms, it cannot be disputed that monthly rent was paid by the above named concerns to each appellant after deducting tax at their end.

6.3 From the show cause notice dated 19-10-2012, it is evident that the appellants had received rent as detailed below :-

		Period	Amount (Rs.)	
		2007-08 (1-6-2007 to 31-3-2008) 2008-09 2009-10 2010-11 2011-12	Rs. 29,21,048/- Rs. 36,27,024/- Rs. 46,72,744/- Rs. 52,63,304/- Rs. 44,28,360/-	

But as the rent was distributed equally among each of the appellant, it is evident that each of them received an amount lesser than Rs. 8 lakhs and 10 lakhs in the years 2007-08 and 2008-09 respectively which is below the exemption limit of eight lakhs and ten lakhs during the relevant period. The appellants were, therefore, not liable to pay service tax on the amounts received by them during these two years by virtue of Notification No. 6/2005-S.T., dated 1-3-2005. The appellant's case is also supported by the Tribunal's decision in the case of *Dinesh K. Patwa* v. *CST, Ahmedabed* which is referred in Para 3(ii) above. However, in the Financial Year 2009-10 and 2010-22, the receipt off rent by each appellant exceeded the statutory exemption limit of Rs. 10 lakhs and the appellants have paid service tax along with interest on their own before receipt of SCN. This fact is not disputed by the department also and no additional tax liability has been worked out for the said period in OIO.

6.4 Since the appellants were individually liable to pay service tax and eligible for the exemption under general exemption Notification 6/2005-S.T., dated 1-3-2005 during the period 2007-08 and 2008-09, no service tax was payable during the said period. Hence, the question of penalty under Section 76 for the said period does not arise. For the subsequent period i.e. 2009-10 & 2010-11, the appellants have already accepted their tax liability and paid Service tax along with interest on 14-2-2012. The said payment of service tax is certainly a delayed payment, but was made by the appellants on their own when they realized that their taxable value for renting of property had exceeded the exemption limit of Rs. 10 lakhs. The adjudicating authority has claimed in his order that the appellants paid service tax only after Department started investigation, but it is not supported by any evidence or the facts on record. The SCN or the OIO do not talk of any audit objection or Preventive action or any Inspection etc. on the basis of which not payment of service tax by the appellants was pointed out. Instead in the SCN, one statement of Shri Chandulal Vishrambhai Patel is only referred to which was recorded on 22-2-2012 which is 8 days after the appellants had paid service tax along with interest on their own. Thus, the claim of the appellant that they had paid service tax for the years 2009-10 and 2010-11 on their own initiative and there was no suppression of facts etc. on their part with any intention to evade service tax cannot be denied. Considering all these facts, I agree with the appellant's contention that this case was squarely covered under sub-section (3) of Section 73 which provided not to issue any notice under sub-section (1) of Section 73 if the service tax not levied or paid was paid along with interest by the person concerned before service of notice on him and informed the Central Excise Officer of such payment in writing. Further in Explanation 2 of the said sub section it is also clearly provided that no penalty under any of the provisions of the Act or the Rules made thereunder shall be imposed in respect of payment of service tax under this sub-section and interest thereon. Hence, in fact no SCN was required to be issued in this case for recovery of service tax and imposition of

penalty and even when it has been issued, no penalty under Section 76 or 78 is imposable in this case for the period 2009-10 and 2010-11."

9. It can be seen from the above reproduced findings of the first appellate authority, the conclusion arrived at is very correct, as co-owners of the property cannot be considered as liable for a Service Tax jointly or severally as Revenue has took identify the service provider and the service recipient for imposing service tax liability, which in this case, we find our individual. The conclusion arrived at by the first appellate authority is correct and he has confirmed the demand raised on the respondents by extending the benefit of Notification No. 6/2005-S.T. We do not find any reason to interfere in such a detailed order.

10. Since the respondents are not in appeal against the said impugned order against the imposition of penalty under Section 77 of the Finance Act, 1994 the order to that extent needs to be a upheld.

11. The appeal filed by the Revenue to the extent its challenges the impugned order is devoid of merit and liability to be rejected and we do so.

12. The appeal is rejected.**"**

(c) Anil Saini & ors. vs. CCE, Chandigarh - The Tribunal passed the following order :-

"3. Heard the ld. DR, Shri Rajeev Ranjan, Joint Commissioner and Shri Pawan Kumar Singh, Superintendent who have taken me through the grounds of appeal and contended that as per the definition of "person" in Section 3(42) of the General Clauses Act, 1897 the respondents are a body of individuals.

4. Heard, Shri Sita Ram (Consultant), for the respondents. He contended that though the agreement for rent was signed through a single document by all the individual co-owners of property. Annexure-1 to the said agreement dated 5-3-2008, very clearly establishes that the Interest Free Security Deposit of Rs. 3,56,400/- was paid through individual cheques to all the eight respondents separately and each respondent was paid Rs. 44,550/-. Similarly, the rent was paid to individual co-owner by the lessee and there is no joint payment to the "association of persons" and that the individual respondents is receiving income from rent therefore each individual is independent in respect of providing service.

5. Having considered the rival contentions, I find that the ground of appeals stated by Revenue in the said appeal is before me are only about what constitutes "association of persons". I cannot find any ground which establishes that the eight individuals who are respondents can be called "association of persons" through any definition provided by any law, when they have not entered into any agreement to form "association of persons". Even the definition of "person" in Section 3(42) of the General Clauses Act, 1897 states that "person" shall include any company or association or body of individuals. So, since the definition is inclusive, there has to be an association of individuals to become "person" under said Section 3(42) of the General Clauses Act, 1897. Therefore, I do not find any sustainable ground advanced by Revenue in the present appeal. In view of the same I dismiss all the eight appeals filed by Revenue and hold that the respondents shall be entitled for consequential relief, if any, in accordance with law. **"**

5. In view of the above decisions, the issue is no longer res-integra. Accordingly, the impugned order is set-aside and the appeal is allowed.

(Pronounced in the open court on 16.07.2024*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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