IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21317 of 2015
Date of decision: 6.10.2015

Jaswant Singh Mann and others

……Petitioners

Union of India and another

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. B.S.Bedi, Advocate for the petitioners.

Ajay Kumar Mittal,J.

1. The petitioners challenge the vires of Section 65B(37) of Finance Act, 2012 (in short, "the Finance Act") whereby the word "person" is defined as person which includes "an association of persons or body of individuals, whether incorporated or not". Further direction has been sought to the respondents not to issue show cause notice to put the petitioners jointly within the purview of service tax in terms of definition of "person" as defined in Section 65B(37) of the Finance Act. Prayer has also been made for restraining the respondents from issuance of any process for levy of service tax for previous years prior to the year 2013-14 while treating the petitioners as joint holder of the immovable property for the purpose of renting thereof.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioners are

owners of SCO No.341-342, Sector 34A, Chandigarh and SCO No.184, Sector 7C, Chandigarh in equal shares. They have let out the aforesaid premises and are receiving rent to the extent of their respective shares individually from the tenants. They have never received rent jointly from the tenants. The petitioners are holding definite shares i.e. 1/6th share each in the said property and it is so recorded in their account books and depicted in their respective ITRs individually filed by them. The petitioners were issued common notice dated 2.12.2014 under the subject "payment of service tax on renting/leasing of immovable property for commercial purposes". They were also served separately a notice dated 15.7.2015 for supply of certain documents. The petitioners supplied the information as required vide letter dated 24.7.2015 individually. The petitioners are income tax assessees and are paying income tax and filing ITRs individually as they are receiving the rent individually and are holding the above mentioned immovable property as co-owners in equal shares. The Finance Act, 2012 introduced Clause 37 of Section 65B where the definition of the word "person" includes "an association of persons or body of individuals whether incorporated or not". According to the petitioners, introduction of this clause causes infringement of their legal rights by making them liable for levy of service tax within the purview of Finance Act as they hold the right of ownership individually to the extent of their shares in the said immovable property though they are co-owners in equal shares. Hence the instant writ petition.

3. We have heard learned counsel for the petitioners.

4. Challenge in this petition has been made to the definition of 'person' as given in Section 65B(37)(vii) of the Finance Act. According to

the petitioners, the above said provision is contrary to Section 3(42) of General Clauses Act, 1897 and Section 26 of the Income Tax Act, 1961, which read thus:-

Clause 37 of Section 65B of the Finance Act, 2012

"In this chapter, unless the context otherwise requires:

xxxxxx

"person" includes

i) an individual

ii) A Hindu undivided family

iii)A company

iv)A society

v) A limited liability partnership

vi)A firm

vii)An association of persons or body of individuals, whether incorporated or not

viii)Government

ix)A local authority,or

Every artificial judicial person, not falling within any of the proceeding sub clauses."

Section 26 of Income Tax Act, 1961

"Where property consisting of buildings or buildings and lands appurtenant thereto is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons,but the share of each such persons in the income from the property as computed in accordance with section 22 to 25 shall be included in his total income.

Explanation : For the purpose of this section in applying the provisions of sub section (2) of section 23 for computing the share of each such person is referred to in this section, such share shall be computed, as if each such person is individually entitled to the relief provided in that sub section."

<u>Section 3(42) of General Clauses Act, 1897</u>

"In this Act, an all Central Acts and regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context -
"Persons" shall include any company or body of individuals, whether incorporated or not".

5. A perusal of the above provisions shows that the word "person" has been defined to include an association of persons or body of individuals whether incorporated or not under clause 37(vii) of Section 65B of the Finance Act. In the present case, the petitioners are owners of the premises in question. They are receiving rent from the tenant though individually. Nothing has been shown by the learned counsel for the petitioners that the Parliament was not empowered to define the expression 'Person' in the statute. Once there exists legislative competence in the Parliament to enact a provision, in the absence of the learned counsel for the petitioners to demonstrate that the same is arbitrary, discriminatory or violative of Article 14 of the Constitution of India, it cannot be declared to be unconstitutional. Accordingly, no ground for interference by this Court under Articles 226/227 of the Constitution of India is made out. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

October 06, 2015 **(Ramendra Jain)**
'gs' **Judge**