Sri Rabi Sankar Tah

Authority for Advance Ruling — West Bengal

28/WBAAR/2019-20 Dated **21.10.2019**

Q Questions Before the Authority

- Whether the applicant and the other two co-owners of a jointly owned immovable property, let out to a central government office, are to be treated as an association of persons or body of individuals, and therefore as a 'person' under section 2(84)(f) of the GST Act, required to register under section 22(1).

F Facts

The applicant is one of three individuals who jointly own an immovable property in equal shares. The property is let out to CGST & CX, Chandannagar Division, under a contract the co-owners executed jointly. Total rent exceeds the section 22(1) threshold, but each co-owner's share does not, and each is assessed separately to income tax on his own share of the rent. The applicant is unregistered.

H Ruling

Whether the applicant and the other two co-owners are an association of persons or body of individuals (and so a 'person' under s. 2(84)(f)) required to register under s. 22(1)	**No. The co-owners **cannot be treated as an association of persons** where their rental income is separately ascertainable and separately assessed to income tax at each co-owner's hand.**	Registration depends on each applicant's own gross turnover, computed separately from the other co-owners, exceeding the threshold. The order does not number its questions, so this row reflects the single ruling in the RULING section.

The Authority held that the co-owners of a jointly held immovable property **cannot be treated as an association of persons** for determining liability and registration under the GST Act where each co-owner's rental income is separately ascertainable and separately assessed to income tax. Whether the applicant must register therefore depends on his own gross turnover, computed separately from the other co-owners. The Authority also said the central authority's earlier clarification, which treated the co-owners as a person, was not a binding decision on the point.

R Reasoning

The Authority relied on the Tribunal's common order in Suganthi Joy E, which followed earlier CESTAT decisions (Deoram Vishrambhai Patel, Anil Saini, Luxmi Chaurasia) allowing co-owners the benefit of the threshold on rent received in proportion to their shares. It held that the Revenue's indivisibility argument fails because service tax attaches to the service provided, not to the physical property. It read Jaswant Singh Mann as deciding only the constitutional validity of section 65B(37)(vii) of the Finance Act, 2012, not the co-owner question. It also relied on

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

section 26 of the Income Tax Act, 1961 and the Kerala AAR in Elambrancheri Khaldoon.

P Provisions Relied On

- Section 100(1), 100(2) proviso and 100(3) of the CGST/WBGST Act, 2017 (appeal provisions in the preamble)
- Section 99 and 96 of the WBGST Act, 2017 (constitution of appellate authority and advance ruling authority)
- Section 97(2)(f) of the GST Act (admissibility of the question)
- Section 98(1) of the GST Act (dispensed with, as applicant is unregistered)
- Section 51 of the GST Act (TDS, the subject of the central authority's earlier clarification)
- Section 22(1) of the GST Act (registration threshold)
- Section 2(84)(f) of the GST Act (definition of person)
- Section 103(2) and 104(1) of the GST Act (binding effect and voiding of ruling)
- Section 26 of the Income Tax Act, 1961
- Section 3(42) of the General Clauses Act, 1897
- Section 65B(37)(vii) of the Finance Act, 2012
- Article 14 of the Constitution of India
- Notification No. 6/2005-S.T dated 1-3-2005, as amended (as cited in the Tribunal's decisions)
- Indira Balkrishna (1960), Jaswant Singh Mann (2016), Suganthi Joy E (CESTAT Chennai, 21/01/2019), Elambrancheri Khald…

! For the Practitioner

This ruling is useful for co-owners of let-out property whose rent is separately assessed to income tax, since each can test registration against his own turnover. It rests on a Tribunal line of authority that practitioners can cite alongside it. It does not decide cases where co-owners act through a common arrangement, where shares are not ascertainable, or where income is not separately assessed, and it binds only the applicant.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> wb_aar_28_2019_21.10.2019_rst.pdf

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