

decided on 27.10.2010 (Commissioner of Income Tax Faridabad v. Bir Singh (HUF) Ballagarh) had held that interest paid to the assessee under Section 28 of the Land Acquisition Act, 1894 (for brevity, “1894 Act”) on enhanced amount of compensation in respect of the acquired land falls for taxation under Section 56 of the Act as “income from other sources” and is exigible to tax in the year of receipt under cash system of accountancy. It had also been observed that where the assessee is not maintaining books of accounts by adopting any specific method, it shall be treated to be cash system of accountancy. In the present case, the interest received by the petitioner was on account of delay in making the payment of enhanced compensation and, therefore, would fall under Section 28 of the 1894 Act. Such payment could not par-take the character of compensation for acquisition of agricultural land and, thus, was not exempt under the Act. Once that was so, the tax at source had been rightly deducted by the payer.”

(15) In view of the above, the tax at source has been rightly deducted and the petitioners can claim the refund, if any, admissible to them by filing the income tax returns in accordance with law.

(16) Writ petitions are dismissed with the aforesaid observations.

Payel Mehta

Before Ajay Kumar Mittal & Ramendra Jain, JJ.

JASWANT SINGH MANN AND OTHERS—*Petitioners*

versus

UNION OF INDIA AND ANOTHER—*Respondents*

CWP No.21317 of 2015

October 06, 2015

Constitution of India, 1950—Art.226—Finance Act, 2012—S.65B(37)—Levy of service tax on leasing of an immovable property for commercial purposes—Common notices—Issuance of—Legality—Held, petitioners were served common as well as separate notice—Nothing has been shown by petitioners that Parliament was not empowered to define the expression 'Person' in the statute—Which includes an association of persons or body of individuals whether incorporated or not—In absence of evidence to show provisions enacted is arbitrary, discriminatory or violative of Article

14 of Constitution of India, it cannot be declared to be unconstitutional—No case made out for interference.

Held that 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.

(Para 5)

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 assesseees 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.”

Section 3(42) of General Clauses Act, 1897

“In this Act, in all Central Acts and regulations made after 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.

Manpreet Sawhney

Before Rajiv Narain Raina, J.

DHARMINDER SINGH—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No.17437 of 2015

October 06, 2015

Constitution of India, 1950—Arts. 14 and 16—Punjab Government Patwaris (Class III) Service Rules, 1966 (as amended by Notification dated 28.10.2014)—Compassionate appointment—Eligibility—Qualification—Amendment of Rules—Deceased father of the petitioner was Patwari and died on 28.9.2011 when petitioner was 4 months short of 15 years and his date of attaining majority is January 1, 2015 — Petitioner claiming compassionate appointment on the post of Patwari—On the date of his attaining majority he did not fulfill the qualification for the post of Patwari as per amended Rules—Held that educational qualifications laid down in rules cannot be relaxed—Petition as far as the claim for appointment as Patwari liable to be dismissed—Made clear that the order will have no bearing on the claim of the petitioner to Class IV post which has already been offered to him by the Department.

Held that a trite law that educational qualifications laid down in rules cannot be relaxed.

(Para 7)

Further held that question that looms large for judgment is as to whether his right of consideration for the Class III post of Patwari is to be pegged down to the date of death of the father on September 28, 2011 when he was 4 months short of 15 years; or to the date of attaining majority on January 1, 2015 when he turned 18 years of age.

(Para 8)

Further held that even in promotion cases, the principle in Rangaiyah case cannot be applied in situations other than where panels