

ADVANCE RULING No. KER/ 12 /2018 Dt.19.09.2018

The petitioner is one of the co-owners of a jointly owned immovable property. There are 13 co-owners holding equal share in 86.78 Cents of land and building. They have rented out these properties to different parties. Total rent from all these properties exceed twenty lakh rupees in a financial year. But, individual share is not exceeding the said threshold. Now, the owners are planning to engage one of the co-owners to collect rent and distribute among them for the purpose of administrative convenience through execution of a power of attorney . In the circumstances,an advance ruling is sought in respect of the following:

- i) Whether small business exemption under Section 22 of the GST Act is available to all owners separately in case of jointly owned property.

ii) Engaging a co-owner to collect and distribute rent among all the owners for administrative convenience will have any implication on the business exemption under Section 22 of the GST Act for individual co-owners.

The authorized representative was heard. He has stated that under GST scenario 'renting of immovable property' is defined as supply of service attracting 18% GST. But, as per Section 22 of the GST Act, a supplier is exempted from registration, if his aggregate turnover is not exceeding Rs. 20 Lakhs in a financial year. Co-ownership of the property is for financial, administrative and family reasons. In such cases, a property may be divided by metes and bounds or there can be proportionate ownership of each owner. As per the provisions of the Income Tax Act, 1961, in the case of jointly owned properties, each joint owner is assessed separately for his share and he is also eligible for any relief as an individual owner of his respective share. Thus, in case of individuals, each individual will be entitled to basic exemption up to threshold limit. In this case also, a co-owner is engaged to collect rent from tenants and distribute among others just for administrative convenience, but the share of each owner is definite and ascertainable.

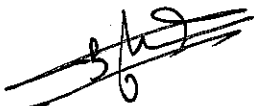
The issue is examined in detail. The rent collected from joint property is equally distributed among the co-owners. Each co-owner received a rent income of below Rs.20 Lakhs, which is below the threshold limit under GST. By mere joining of hands of two or more persons, a different and distinct legal entity or legal personality does not come into existence, unless there is an intention to do so. It is settled law under Section 26 of the IT Act that where the property, consisting of buildings and land appurtenant, 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 person in the income from the property is included in his total income.

A co-owner holding immovable property jointly with other co-owners, but receiving lease rent separately, in proportion to his share in the property, is eligible for the benefit of threshold exemption. There is also judicial pronouncement under Service Tax that clubbing of rent amount received by each co-owner, as per their share in jointly owned rented property, is not permissible. [2017(51)STR 38 (Tri.-Chan)].

The co-owners jointly owned immovable property and rented out these properties to different parties. Co-ownership of the property is for financial, administrative and family reasons. The rent is collected from all the parties together and divided equally and transferred to the bank account of each co-owner. If the individual receipts of a co-owner from all his business, including 'renting of immovable property', exceeds Rs.20 Lakhs in a financial year, the respective person has liability to register under GST Act.

In view of the observations stated above, the following rulings are issued:

- i) Small business exemption, provided under Section 22 of the GST Act, is eligible to the co-owners separately in the case of jointly owned property, where the rent is collected together, but divided equally and transferred to the respective co-owner.
- ii) Engaging a co-owner to collect and distribute rent among all the owners for administrative convenience has no implication on the business exemption under Section 22 of the GST Act for individual co-owners.



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