THE HIGH COURT OF MADHYA PRADESH: JABALPUR

(Division Bench)

M.A.I.T.No.201/2007

Commissioner of Income Tax-II,
Jabalpur (M.P.) ..Appellant/Revenue

Versus

Krishi Upaj Mandi Samiti, Rewa (M.P.) ..Respondent/assessee

Coram

Hon'ble Shri Justice Ajay Kumar Mittal, Chief Justice
Hon'ble Shri Justice Mohd. Fahim Anwar, Judge

Appearance

Shri Sanjay Lal, Advocate for the appellant/Revenue.

O R D E R

(25.11.2019)

Per: Ajay Kumar Mittal, C.J. (Oral)

1. Heard learned counsel for the appellant.

2. This appeal has been preferred by the Revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 19.4.2007 passed by the Income Tax Appellate Tribunal, Jabalpur Bench Jabalpur (for brevity "the Tribunal") in I.T.A.No.77/Jab/2007 filed by the respondent-assessee.

3. This appeal was admitted on 13.2.2008 for determination of the following substantial question of law:-

> "Whether the Income-tax Appellate Tribunal Jabalpur is justified in coming to hold that the Krishi Upaj Mandi Samiti, the first respondent is engaged in charitable work and, therefore, it is entitled to get the benefit under Section 12-A and 12-AA of the Income-tax Act, 1961 ?"

4. Facts in brief as noticed in the impugned order are that respondent Krishi Upaj Mandi Samiti, Rewa (hereinafter referred to as “assessee”) filed an application in form No.10A read with Rule 17A of the Income Tax Rules, 1962 seeking registration under section 12A of the Act on 15.9.2006 stating that it has fallen under the Act for the first time with effect from assessment year 2003-04. As per assessee, Krishi Upaj Mandi is a Samiti which has claimed that the object of the institution is charitable and is for general public utility. It charges 2% of the sale value from the purchasers of agricultural produce who come to Mandi for purchase of product. The institution provides services to the farmers for getting fair rate for their products as prescribed by the State Government and assures the payment to the farmers from the purchasers of such goods. Security is also provided to their products, shelter for products which come for sale and godown facilities are also given so that the farmers sell the goods whenever they get better prices. Out of 2%, 1.2% is transferred to the State Government as Sadak Nidhi which is utilized for the development of village roads and balance amount is utilized for the purpose of general administrative expenses such as salary, electricity, telephone etc. and for capital expenses like rest house for farmers, godown, approach road and making sheds etc. It is further reiterated that the institution is a charitable institution as per provisions of section 2(15) of the Act as it ensures better price to the farmers for their product by providing platform to sell their goods to the trading community and the funds are utilized for betterment of the farmers and general public. The purpose of the institution is to provide facility to the farmers and not for the purpose of profit and the

expenditure is incurred for attaining the object of Mandi. Since the institution is charitable institution and its objectives are charitable, it was prayed that assessee be allowed registration under Section 12A of the Act for availing exemption from levy of tax.

5. The Commissioner of Income Tax vide the order 15.1.2007 refused to register the assessee dissatisfied with the objects and activities of the assessee either as a trust or as an institution under Section 12-A of the Act. The operative part of the said order is as under:-

> "Written reply filed, has been verified. The Samiti does not have any income of the nature which can be treated as exempt under any of the clauses of Section 11. It also does not carry on any charitable activity. It may be relevant to mention here that in the case of M/s Krishi Upaj Mandi Samiti, Katni, the registration sought for u/s 12A has been rejected vide order dt. 26.9.2005. The facts of the case are similar to the case of M/s Krishi Upaj Mandi Samiti, Katni. For the detailed reasons discussed in the case of Krishi Upaj Mandi Samiti Katni (copy of order dt. 26.9.2005 enclosed forms part of this order), I am not satisfied about the objects of the assessee Samiti vis-à-vis its activity are charitable and therefore, refuse to register the assessee either as a Trust or as an Institution. The order under Section 12AA is passed accordingly and the legal consequences follow."

6. The assessee challenged the action of the Commissioner of Income Tax in denying the registration under Section 12AA of the Act by filing an appeal, which has been accepted by the Tribunal holding that the assessee is entitled to registration under Section 12A of the Act. Against the order of the Tribunal, the revenue has filed present appeal before this Court.

7. We have heard learned counsel for the appellant-revenue and perused the record.

8. In order to examine the points in issue, relevant provisions of the Act may be referred to. Section 12AA of the Act provides for registration. The extract of the said provision at the relevant time reads thus:-

"12AA Procedure for registration:-

(1) The Commissioner, on receipt of an application for registration of a trust or institution made under Clause (a) of sub-section (1) of Section 12A, shall—

(a) Call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(b) After satisfying himself about the objects of the trust or institution and the genuineness of its activities, he-

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a copy of such order shall be sent to the applicant;

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(1A) All applications, pending before the Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999 shall stand transferred on that day to the Commissioner and the Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.

(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) of sub-section (1) section 12A.

xxx xxx xxx"

9. A bare reading of Section 12AA of the Act as it existed at the relevant time shows that it provides for procedure of registration for availing the benefits under Section 12A of the Act. Under Section 12AA(1)(a) of the Act, the Commissioner in order to satisfy himself about the genuineness of the activities of the trust or institution can call for such documents or information as he deems necessary. If satisfied about

genuineness of object, he shall pass an order in writing registering the trust or institution.

10. The matter has been examined by the Tribunal after perusing the relevant statutory provisions. The CIT (E) has to satisfy twin conditions while granting registration under Section 12AA of the Act. Firstly, whether the objects of the assessee are charitable in nature and secondly, the activities are genuine. Section 13 of the Act comes into play at the time of granting exemption under Section 11 of the Act and not at the time of granting registration under Section 12AA of the Act. No adverse remarks have been recorded by the CIT with regard to the objects in order to come to the conclusion that its activities are not genuine. Thus, it has been rightly directed by the Tribunal to the CIT to grant registration under Section 12AA of the Act. The Tribunal relying on the decisions of ITAT, Jabalpur in the case of **Krishi Upaj Mandi, Bichhiya and others Vs. ITO** in ITA No.240/Jab/05 dated 13.6.2006**,** ITAT Delhi 'A' Bench in the case of **Market Committee, Sullar Gharat and others Vs. CIT** 2005 94 TTJ (Delhi) 692 and ITAT Nagpur in the case of **Agricultural Produce and Market Committee, Telhara & others Vs. CIT (Nag)** has passed an order in para 6 which is produced as under:-

> "(6) Since the facts and issue in the case in hand and those of the cases decided earlier, noted above, by this Bench of the Tribunal, including one of the Katni Samiti, which has been relied upon by the ld CIT to refuse Registration to the assessee, are identical and no distinguishing feature has been noticed, therefore, following the said precedents, I set aside the order of the ld CIT-II, Jabalpur, and direct him to grant the registration as applied for by the assessee in this case."

11. We proceed to examine the relevant case law on the subject. In the case of **Commissioner of Income Tax Vs. Krishi Upaj Mandi Samiti**

(2009) 308 ITR 380 (M.P.), a Division Bench of Gwalior Bench of this Court considered the similar issue and held that the Market Committee was formed under the Act of legislature for protection of interests of farmers. The requirements of Section 11 of the Act were fulfilled and the Market Committee is entitled to registration under section 12A of the Act.

12. Relying upon the above judgment, the Division Bench of Indore Bench of this Court in the case of **Commissioner of Income Tax Vs. Krishi Upaj Mandi Samiti** reported as **2008(3) MPLJ 315**, has held that Krishi Upaj Mandi does not have any commercial activity but has been constituted under the provisions of the M.P. Krishi Upaj Mandi Adhiniyam to protect the interest of the farmers and ensure that they are not exploited. It is not shown that the fee charged by the Krishi Upaj Mandi is applied for any purpose to the advantage of the Krishi Upaj Mandi. Under these circumstances, when the object of the Krishi Upaj Mandi is benevolent, it cannot be said that it is not entitled to registration under section 12A and 12AA of the Income tax Act. Against this judgment, the Revenue filed **SLP(C) No.14592/2008 (Commissioner of Income Tax, Ujjain Vs. Krishi Upaj Mandi Samiti)** before the Supreme Court which was dismissed on 10.11.2008 in view of its own judgment in the case of **Commissioner of Income Tax Vs. Gujarat Maritime Board (2007) 295 ITR 561**.

13. Learned counsel for the revenue was unable to demonstrate that the findings recorded by the Tribunal were erroneous or perverse and the approach of the Tribunal is legally unsustainable. In view of above

discussion, we answer the substantial question of law accordingly. Consequently, the appeal filed by the appellant-revenue stands dismissed.

(Ajay Kumar Mittal)
Chief Justice

(Mohd. Fahim Anwar)
Judge

C.

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