

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7040 OF 2012

(Arising out of S.L.P. (C) No.20186 of 2010)

Commissioner of Income Tax-II

...Appellant(s)

Versus

M/s. Krishi Utpadan Mandi Samiti

...Respondent(s)

W I T H

Civil Appeal No.7041/2012 @ S.L.P. (C) No.20187 of 2010,
Civil Appeal No.7042/2012 @ S.L.P. (C) No.24153 of 2010,
Civil Appeal No. 7044/2012 @ S.L.P. (C) No.28056 of 2010,
Civil Appeal No.7045/2012 @ S.L.P. (C) No.29319 of 2010,
Civil Appeal No.7046/2012 @ S.L.P. (C) No.26135 of 2010,
Civil Appeal No.7047/2012 @ S.L.P. (C) No.30949 of 2010,
Civil Appeal No.7048/2012 @ S.L.P. (C) No.31204 of 2010,
Civil Appeal No.7049/2012 @ S.L.P. (C) No.33083 of 2010,
Civil Appeal No.7050/2012 @ S.L.P. (C) No.224 of 2011,
Civil Appeal No.7051/2012 @ S.L.P. (C) No.225 of 2011,
Civil Appeal No.7052/2012 @ S.L.P. (C) No.226 of 2011,
Civil Appeal No.7053/2012 @ S.L.P. (C) No.2019 of 2011,
Civil Appeal No.7054/2012 @ S.L.P. (C) No.3080 of 2011,
Civil Appeal No.7055/2012 @ S.L.P. (C) No.4770 of 2011,
Civil Appeal No.7056/2012 @ S.L.P. (C) No.6328 of 2011,
Civil Appeal No.7057/2012 @ S.L.P. (C) No.7512 of 2011,
Civil Appeal No.7058/2012 @ S.L.P. (C) No.11938 of 2011,
Civil Appeal No.7059/2012 @ S.L.P. (C) No.13820 of 2011,
Civil Appeal No.7060/2012 @ S.L.P. (C) No.16812 of 2011,
Civil Appeal No.7061/2012 @ S.L.P. (C) No.16960 of 2011,
Civil Appeal No.7062/2012 @ S.L.P. (C) No.17034 of 2011,
Civil Appeal No.7063/2012 @ S.L.P. (C) No.17718 of 2011,
Civil Appeal No.7064/2012 @ S.L.P. (C) No.17719 of 2011,

Civil Appeal No.7065/2012 @ S.L.P. (C) No.17720 of 2011,
Civil Appeal No.7066/2012 @ S.L.P. (C) No.17721 of 2011,
Civil Appeal No.7067/2012 @ S.L.P. (C) No.17722 of 2011,
Civil Appeal No.7068/2012 @ S.L.P. (C) No.17723 of 2011,
Civil Appeal No.7069/2012 @ S.L.P. (C) No.17724 of 2011,
Civil Appeal No.7070/2012 @ S.L.P. (C) No.17725 of 2011,
Civil Appeal No.7071/2012 @ S.L.P. (C) No.17727 of 2011,
Civil Appeal No.7072/2012 @ S.L.P. (C) No.19985 of 2011,
Civil Appeal No.7073/2012 @ S.L.P. (C) No.19714 of 2011,
Civil Appeal No.7074/2012 @ S.L.P. (C) No.19715 of 2011,
Civil Appeal No.7075/2012 @ S.L.P. (C) No.19716 of 2011,
Civil Appeal No.7076/2012 @ S.L.P. (C) No.19741 of 2011,
Civil Appeal No.7077/2012 @ S.L.P. (C) No.20347 of 2011,
Civil Appeal No.7078/2012 @ S.L.P. (C) No.20348 of 2011,
Civil Appeal No.7079/2012 @ S.L.P. (C) No.21218 of 2011,
Civil Appeal No.7080/2012 @ S.L.P. (C) No.22451 of 2011,
Civil Appeal No.7081/2012 @ S.L.P. (C) No.22452 of 2011,
Civil Appeal No.7082/2012 @ S.L.P. (C) No.22454 of 2011,
Civil Appeal No.7083/2012 @ S.L.P. (C) No.22287 of 2011,
Civil Appeal No.7084/2012 @ S.L.P. (C) No.22288 of 2011,
Civil Appeal No.7085/2012 @ S.L.P. (C) No.22843 of 2011,
Civil Appeal No.7086/2012 @ S.L.P. (C) No.22845 of 2011,
Civil Appeal No.7087/2012 @ S.L.P. (C) No.22846 of 2011,
Civil Appeal No.7088/2012 @ S.L.P. (C) No.22826 of 2011,
Civil Appeal No.7089/2012 @ S.L.P. (C) No.22828 of 2011,
Civil Appeal No.7090/2012 @ S.L.P. (C) No.23056 of 2011,
Civil Appeal No.7091/2012 @ S.L.P. (C) No.23899 of 2011,
Civil Appeal No.7092/2012 @ S.L.P. (C) No.24335 of 2011,
Civil Appeal No.7093/2012 @ S.L.P. (C) No.24754 of 2011,
Civil Appeal No.7094/2012 @ S.L.P. (C) No.24995 of 2011,
Civil Appeal No.7095/2012 @ S.L.P. (C) No.25992 of 2011
and Civil Appeal No.7096/2012 @ S.L.P. (C) No.27734 of 2010.

J U D G M E N T

S.H. KAPADIA, CJI

Heard learned counsel on both sides.

Delay condoned.

Leave granted.

This batch of civil appeals has been filed by the Department.

The question, which arises for determination in this batch of civil appeals, is as follows:

“Whether amounts transferred by the assessee to Mandi Parishad would constitute **application** of income for charitable purposes within the meaning of Section 11(1)(a) of the Income Tax Act, 1961?”

M/s. Krishi Utpadan Mandi Samiti, respondent-assessee herein, is a Market Committee incorporated and registered under the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 [“1964 Adhiniyam”, for short]. The assessee carries out its activities in accordance with Section 16 of 1964 Adhiniyam under which it is required to provide facilities for sale and purchase of specified agricultural produce in the Market Area. The Members of the said Market Committee consist of producers, brokers, agriculturists, traders, commission agents and arhatiyas. The source of income of the assessee is in the form of receipt collected as market fee from buyers and their agents, development cess on sale and purchase of agricultural products and licence fees from traders. Under 1964 Adhiniyam, broadly, there are two distinct entities or bodies. One is Mandi

Samiti [Assessee] and the other is Mandi Parishad. Mandi Samiti [Board] is established and incorporated under Section 12 of 1964 Adhiniyam for a specified Market Area. Section 16 of 1964 Adhiniyam, inter alia, concerns functions and duties of the Market Committee. Under Section 16(1) of 1964 Adhiniyam, the Market Committee is under statutory obligation to enforce the provisions of 1964 Adhiniyam, the Rules and Bye-laws made thereunder so as to provide such facilities for sale and purchase of specified agricultural produce, as may be specified by the Mandi Parishad from time to time. Section 17 of 1964 Adhiniyam deals with powers of the Mandi Samiti. Section 17(iii), inter alia, empowers the Mandi Samiti to levy and collect market fee payable on transactions of sale of specified agricultural produce in the Market Area at such rates, as may be prescribed by the State Government. Under Section 17(iii) (b), the Mandi Samiti is also empowered to charge and collect development cess. Under Section 17(iv), the Mandi Samiti has to utilise Market Committee Fund for the purposes of 1964 Adhiniyam. Under Section 17(v-a), Mandi Samiti can even advance loans to Mandi Parishad on such terms and conditions as may be mutually agreed upon between Mandi Parishad and Mandi Samiti. Section 19 deals with constitution of Market

Committee Fund and its utilization. Section 19(1) stipulates that all monies received by Mandi Samiti shall be credited to a fund called “Market Committee Fund”. Section 19(2), inter alia, states that all expenditure incurred by the Committee in carrying out the purposes of 1964 Adhiniyam shall be defrayed out of Market Committee Fund and surplus, if any, shall be **invested** in such manner as may be prescribed. The expenses to be incurred and debited are indicated in Section 19(3). Section 19-B of 1964 Adhiniyam deals with establishment of Market Development Fund. Under Section 19-B, the Mandi Samiti shall establish a fund to be called “Market Development Fund” to which amounts shall be credited as may be directed from time to time by Mandi Parishad. Under Section 19-B(2), the Market Development Fund shall be applied for development of the Market Area. Under Section 19-B(3), the purposes for which Market Development Fund shall be utilised has been indicated. Section 26-A of 1964 Adhiniyam deals with establishment of Mandi Parishad [**Board**]. Under 1964 Adhiniyam, the Board shall be a body corporate. Section 26-P, inter alia, states that the Mandi Parishad [Board] shall have its own fund which shall be deemed to be a local fund and in which shall be credited all monies received by or on behalf of the

Board, except monies required to be credited in the State Marketing Development Fund under Section 26-PP. Under Section 26-PP, State Marketing Development Fund has been established for Mandi Parishad [Board] in which amounts received from the Market Committee under Section 19(5) shall be credited. Section 19(5), inter alia, states that every Market Committee shall, out of its total receipts realised as development cess, shall pay to the Mandi Parishad [Board] **contribution** at a specified rate. The said payment from the Market Committee [Mandi Samiti] shall be credited to the State Marketing Development Fund under Section 26-PP. The State Marketing Development Fund shall be utilized by the Mandi Parishad [Board] for purposes indicated under Section 26-PP(2). Section 26-PPP deals with establishment of Central Mandi Fund to which amounts specified in sub-section (1) shall be credited. Section 26-PPP(2), inter alia, states that the Central Mandi Fund shall be utilized by Mandi Parishad [Board] for rendering assistance to financially weak and under-developed Market Committees; that the Funds would be used for construction, maintenance and repairs of link roads, market yards and other development works in the Market Area and such other purposes as may be directed by the State Government or the Board.

It is not in dispute that both, the Mandi Samiti and the Mandi Parishad, are duly registered under Section 12AA of the Income Tax Act, 1961 [“1961 Act”, for short]. It is also not in dispute that, after the amendment of Section 10(20) and Section 10(29) by Finance Act No.2 of 2002 with effect from 1st April, 2003, that the word “**Local Authority**” has lost its restricted meaning and, therefore, the assessee [Market Committee] has to satisfy the conditions of Section 12AA read with Section 11(1)(a) of 1961 Act, like any other body or person. According to Shri Rajiv Dutta, learned senior counsel for the Department, in view of the said Amendment *vide* Finance Act No.2 of 2002, the assessee has to show that, during the relevant Assessment Year, income has been derived from property held under Trust and that the said income stood **applied** to charitable purposes. According to the learned counsel, if one analyses the scheme of 1964 Adhiniyam, it becomes clear that the amounts **transferred** by the assessee to Mandi Parishad cannot constitute **application** of income for charitable purposes within the meaning of Section 11(1)(a) of 1961 Act in view of the fact that the assessee [Mandi Samiti] is only a conduit which collects Mandi shulk [fees] whereas utilization of the said Mandi shulk is not by the assessee but is made by another entity, i.e., Mandi

Parishad, whose Accounts are not verifiable and, therefore, according to the Department, such income will not get the benefit of exemption under Section 11(1)(a) of 1961 Act. We find no merit in this contention. In this case, we have analysed the scheme of 1964 Adhiniyam. In this case, the Department has not withdrawn the registration under Section 12AA of 1961 Act. In this case, we are only concerned with the question as to “whether **transfer** of amounts collected by Mandi Samiti to Mandi Parishad [Board] would constitute application of income for charitable purposes under Section 11(1)(a) of 1961 Act?” Even after the amendment of Section 10(20) and Section 10(29) of 1961 Act, the assessee continues to enjoy the registration under Section 12AA of 1961 Act for the reason that the assessee is a Market Committee statutorily established under Section 12 of 1964 Adhiniyam for the advancement of the object of general public utility in terms of Section 2(15) of 1961 Act. [See also Section 16 of 1964 Adhiniyam]. Moreover, it is always open to the Department to verify and find out whether the Mandi Parishad has utilized the amounts for the purposes of 1964 Act.

The question is what do we mean by “application of income”? This judgment is confined to the statutory scheme of 1964 Adhiniyam. Under Section 19(2) of 1964 Adhiniyam, all

expenditure incurred by the assessee in carrying out the purposes of 1964 Adhiniyam [which includes advancing credit facilities to farmers and agriculturists as also construction of development works in the Market Area] has to be defrayed out of the Market Committee Fund and the surplus, if any, has to be **invested** in such manner as may be prescribed. This is one circumstance in the 1964 Act to indicate application of income. Similarly, under Section 19-B(2) of 1964 Adhiniyam, the assessee is statutorily obliged to **apply** Market Development Fund for the purposes of development of Market Area. Under Section 19-B(3), assessee is statutorily obliged to utilize the amounts lying to the credit in the Market Development Fund for extending facilities to the agriculturists, producers and payers of market fees. The Market Development Fund is also to be statutorily utilized for development of market yards. Similarly, all contributions received by the Market Committee [Mandi Samiti] from its members under Section 19(5) shall be statutorily paid by the Market Committee [assessee] to Uttar Pradesh State Marketing Development Fund. These provisions clearly indicate application of income of the assessee to the statutory Funds set up under 1964 Adhiniyam. Keeping in mind the statutory scheme of 1964 Adhiniyam, whose object

falls under Section 2(15) of 1961 Act, there is no doubt that the assessee satisfies the conditions of Section 11(1)(a) of 1961 Act. The income derived by the assessee [which is an institution registered under Section 12AA of 1961 Act] from its property has been applied for charitable purposes which includes advancement of an object of general public utility. Consequently, we see no reason to interfere with the impugned judgement of the High Court.

Before concluding, one point needs to be highlighted. In one of the matters, the Assessing Officer has held that, on the facts and circumstances of the case, the assessee was not entitled to avail the benefits of exemption under Section 12(1) of 1961 Act, despite the fact that it was registered under Section 12AA of 1961 Act, because the assessee was statutorily obliged to contribute to the Fund of the Mandi Parishad under 1964 Adhiniyam. Therefore, according to the Assessing Officer, there was no voluntary contribution. Absent such voluntary contribution, according to the Assessing Officer, the assessee herein was not entitled to claim the benefit of exemption under Section 12(1) of 1961 Act. We find no merit in this finding of the Assessing Officer. At the outset, it needs to be mentioned that the Assessing Officer has not understood the scheme of the

1964 Act. On reading the 1964 Adhiniyam (Act) it is clear that the word “contribution” in the Adhiniyam is in the context of what the members contribute to the Fund(s) held statutorily by the Mandi Samiti which merely **transfers** the amount(s) to the Fund(s) of Mandi Parishad. Even the question framed by Court/Authorities below is “Whether amounts transferred by the Mandi Samiti would constitute application of income under Section 11(1)(a) of 1961 Act”. Therefore, the question of voluntary contribution under Section 11(1)(d) or under Section 12(1) does not arise. The question of “control” may be relevant in the context of Section 11(1)(d) or under Section 12(1). However, in the present case, the question framed deals with application of income under Section 11(1)(a). Hence, the Assessing Officer had erred in invoking Section 12(1). Section 11(1) deals with four items of “income” from property held for charitable purposes. These four items of income are distinct and separate items of income. Section 11(1)(d) deals with the fourth item of income. Section 11(1)(d), inter alia, refers to income in the form of voluntary contributions made with a specific direction that it shall form part of the corpus of the Trust or Institution whereas Section 12(1) refers to non-corpus voluntary contribution. In the present case, neither Section

11(1)(d) nor Section 12(1) of 1961 Act is attracted. In the present case, the narrow controversy is, whether, in the facts and circumstances of the case, the amounts statutorily transferred to Rajya Krishi Utpadan Mandi Parishad would constitute application of income for charitable purposes under Section 11(1)(a) of 1961 Act? Looking to the provisions of 1964 Adhiniyam we hold that the transfer of the amounts by Mandi Samiti constituted application of income under Section 11(1)(a) of 1961 Act.

For the above reasons, these civil appeals filed by the Department are dismissed with no order as to costs.

.....
....CJI.

[S.H. KAPADIA]

.....J.
[MADAN B. LOKUR]

New Delhi,
September 27, 2012.