IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

INCOME TAX APPEAL NO. 55/2013.
The Commissioner of Income Tax-IV, Nagpur.
-**VERSUS**-
A.P.M.C. Kalmeshwar, District Nagpur.

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

CORAM : B.P.DHARMADHIKARI & P.N. DESHMUKH, JJ.

DATE : AUGUST 27, 2015.

Shri A. Parchure with Shri B.Mohata, learned Counsel for the appellant and Shri N.S. Bhattad, learned Counsel for the respondent.

2. The matter is being heard since few dates. On 11.07.2013, this Court while issuing notice has passed the following order.

> " *Heard.*
> *Submission is earlier order of Commissioner of Income Tax-IV in appeal dated 13.10.2006 granting registration under Section 12(A) was never questioned and attained finality. Hence, subsequent order of Income Tax Appellate Tribunal*

dated 27.05.2011, was sought to be reviewed and impugned order dated 13.02.2013 over looks this challenge. Notice, returnable on 5th September, 2013."

3. Thereafter on 04.03.2015, after hearing the respective Counsel, following order has been passed.

" *Heard.*

The question arising for determination is briefly mentioned by this Court in its order dt. 11.07.2013 while issuing notice. The facts show that, on 13.10.2006, orders u/s.12A[a] of the Income Tax Act, 1961 are passed and the assessee is granted registration as a charitable trust from 1.4.2005. This order has attained finality when this Court rejected department's appeal i.e. Income Tax Appeal No.27 of 2007 against it on 20th March, 2009. Thereafter, the assessee moved another application on 30.01.2009 and sought retrospective effect to that registration from 01.04.2002 by condoning delay. It is not in dispute that the provisions of 12(A)(a) of the Income Tax Act have come infor force from 01.04.2002. As Agricultural Produce Market Committee, Bombay has been given that registration by condoning delay by the *competent Authority from 01.04.2002, the Authorities found it proper to follow the same analogy and accordingly the assessee has been given very same benefit.*

The question before this Court is whether separate application seeking such retrospective benefit could have been moved by the assessee. Other questions may be – how many A.P.M.Cs. have been given such treatment latter on by condoning delay from 1.4.2002. The respective Counsel are seeking time of two weeks to further assist the Court. Adjourned accordingly.

Stand over to 25.3.2015."

4. Accordingly learned counsel for the appellant states that only in case of APMC at Mumbai effect from 01.04.2002 has been given. As the respondent APMC applied belatedly i.e. in 2005, the benefit of Section 12A(a) of Income Tax Act has been given to the respondent APMC from 01.04.2005. He also argued that there is no provision which enables grant of such registration retrospectively.

5. He further states that considering the application as filed, registration was given from 01.04.2005. This order of ITAT attained finality. Thereafter by a separate application, retrospective

effect from 01.04.2002 was sought. That was denied by CIT and ITAT again allowed it on 13.02.2013. This order was sought to be reviewed by pointing out that as initial application was for prospective registration, later application seeking retrospective effect, cannot be entertained. That review has been rejected and thereafter, present appeal has been filed.

6. Shri Bhattad, learned counsel for respondent submits that the APMCs. were treated as local authorities under Section 10(20) of the Income Tax Act, 1961 and therefore, were exempt. This situation has been recognized by this Court in its judgment reported at **(1986) 158 ITR 742 (Bom) Krishi Utpanna Bazar Samiti .vrs. Income Tax Officer)**. Thereafter, the provisions of Income Tax Act were amended, and the situation is again looked into by this Court in judgment dated 28.03.2007 in Income Tax Appeal Nos. 4/2006 and other connected matters. He invites attention to paragraph no.8 of the said judgment to urge that when a particular view has been taken, in order to maintain uniformity and consistency, even Income Tax Authorities are duty bound to adhere to that view. He submits that other APMCs, have

received registration and exemption from 01.04.2002, and hence, no exception can be made only in case of present respondent – assessee.

7. We find that the ITAT has while delivering the judgment on 27.05.2013 has considered this situation, and found that an order issued by the Director, exempting Mumbai APMC from 01.04.2002 passed after condoning the delay by the Director (Exemption), was produced before it. ITAT also found that the assessee before it (present respondent) has sufficient and reasonable cause for getting the delay condoned. Accordingly, it has granted the later application moved by the respondent and made the order of exemption applicable retrospectively i.e. from 01.04.2002.

8. The said order was questioned in review by the department by pointing out absence of a provisions therefor, and also by contending that in original application seeking such exemption, there was no prayer to grant it retrospectively. As the application was moved in the year 2005, the benefit for period prior to 01.04.2005 could not have been granted.

9. Even this aspect has been looked into while disposing of the review. ITAT has basically found that as retrospective exemption has been granted to APMC at Mumbai, similar benefit deserved to be extended to respondent assessee.

10. During hearing, we could also gather that the respondent is the only assessee which has not been given the said benefit from 01.04.2002.

11. Learned counsel for appellant at this stage reiterates that as the respondent assessee did not apply within time and its application came in the year 2005 itself, the benefit could not have been given from 01.04.2002.

12. As the ITAT has looked into the rival contentions, and thereafter adhered to the treatment extended to Mumbai APMC and has looked into the orders passed by its Bench at Mumbai for said purpose, we find that no question which can be termed as substantial questions of law arises for our consideration in this appeal. Appeal is accordingly rejected, with no order as to costs.

JUDGE **JUDGE**

Rgd.