

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

**ITA Nos.68 of 2008, 39, 40, 43, 48, 53 of 2010 and 5,6
and 10 of 2011.**

Date of decision: 19.04.2012.

1. ITA No.68 of 2008.

M/s.Agriculture Produce Market Committee, Bye Pass Road, Distt.Solan (H.P.), through its authorized Signatory Sh.Man Singh Verma S/o Sh.Lacchu Ram.

... ..Appellant

Versus

Commissioner of Income Tax, Shimla. ...Respondent

2. ITA No.39 of 2010.

M/s.Agriculture Produce Market Committee, Ponta Sahib, Distt.Sirmour (H.P.), through its Secretary Sh.Raghaw Sood S/o Sh.Naresh Kumar Sood.

... ..Appellant

Versus

Commissioner of Income Tax, Shimla. ...Respondent

3. ITA No.40 of 2010.

M/s.Agriculture Produce Market Committee, Ponta Sahib, Distt.Sirmour (H.P.), through its Secretary Sh.Raghaw Sood S/o Sh.Naresh Kumar Sood.

... ..Appellant

Versus

Commissioner of Income Tax, Shimla. ...Respondent

4. ITA No.43 of 2010.

M/s.Agriculture Produce Market Committee, Ponta Sahib, Distt.Sirmour (H.P.), through its Secretary Sh.Raghaw Sood S/o Sh.Naresh Kumar Sood.

... ..Appellant

Versus

Commissioner of Income Tax, Shimla. ...Respondent

5. ITA No.48 of 2010.

M/s.Agriculture Produce Market Committee, Una, Distt.Una (H.P.) through its Secretary Sh.Sushil Guleria S/o Sh.Omkar Guleria.

... ..Appellant

Versus

Commissioner of Income Tax, Shimla. ...Respondent

6. ITA No.53 of 2010.

M/s.Agriculture Produce Market Committee, UNA, Distt.UNA (H.P.) through its Secretary Sh.Sushil Guleria S/o Sh.Omkar Singh Guleria.

... ..Appellant

Versus

Commissioner of Income Tax, Shimla. ...Respondent

7. ITA No.5 of 2011.

M/s.Agriculture Produce Market Committee, Hamirpur,
Distt.Hamirpur (H.P.), through its Secretary
Sh.Gautam Prashad S/o Sh.Gain Chand Sharma.

... ..Appellant

Versus

Commissioner of Income Tax, Shimla. ...Respondent

8. ITA No.6 of 2011.

M/s.Agriculture Produce Market Committee, Hamirpur,
Distt.Hamirpur (H.P.), through its Secretary
Sh.Gautam Prashad S/o Sh.Gain Chand Sharma.

... ..Appellant

Versus

Commissioner of Income Tax, Shimla. ...Respondent

9. ITA No.10 of 2011.

M/s.Agriculture Produce Market Committee, Hamirpur,
Distt.Hamirpur (H.P.), through its Secretary
Sh.Gautam Prashad S/o Sh.Gain Chand Sharma.

... ..Appellant

Versus

Commissioner of Income Tax, Shimla. ...Respondent

**Appeal under Section 260-A of the Income Tax Act,
1961**

Coram

The Hon'ble Mr.Justice R.B. Misra,J.

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?¹ Yes.

For the Appellant(s): Mr.Ajay Vaidya, Advocate.

**For the Respondents: Mr.Vinay Kuthiala, Senior Advocate with
Ms.Vandana Kuthiala, Advocate.**

Dev Darshan Sud,J.

All these appeals have been preferred by the
Agriculture Produce Market Committee(s) of Solan,
Paonta Sahib, Una and Hamirpur, statutory bodies under
the Himachal Pradesh Agriculture and Horticulture

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

Yes.

Produce Marketing (Development and Regulation) Act, 2005, for the assessment years as tabulated below:-

Name of the assessee	Assessment year	Appeal No.	Date of order of the Tribunal
M/s.Agriculture Produce Market Committee, Solan, District Solan.	2004-2005 and 2005-2006	ITA Nos.791 and 792 of 2007.	19.06.2008
M/s.Agriculture Produce Market Committee, Paonta Sahib, District Sirmaur,	2007-2008 and 2008-2009	ITA Nos.386 and 387 of 2010.	14.05.2010
M/s.Agriculture Produce Market Committee, Paonta Sahib, District Sirmaur,	2004-2005, 2005-2006 and 2006-2007	ITA Nos.364,365 & 366 of 2010.	03.05.2010
M/s.Agriculture Produce Market Committee, Paonta Sahib, District Sirmaur,	2007-2008 and 2008-2009	ITA Nos.386 and 387 of 2007.	14.05.2010
M/s.Agriculture Produce Market Committee, Una, District Una.	2003-2004 to 2008-2009	ITA Nos.971 to 976 of 2010.	31.08.2010
M/s.Agriculture Produce Market Committee, Una, District Una.	2003-2004 to 2008-2009	ITA Nos.971 to 976 of 2010.	31.08.2010
M/s.Agriculture Produce Market Committee, Hamirpur, District Hamirpur.	2003-2004 to 2008-2009	ITA Nos.948 to 953 of 2010.	28.07.2010
M/s.Agriculture Produce Market Committee, Hamirpur, District Hamirpur.	2003-2004 to 2008-2009	ITA Nos.948 to 953 of 2010.	28.07.2010
M/s.Agriculture Produce Market Committee, Hamirpur, District Hamirpur.	2003-2004 to 2008-2009	ITA Nos.948 to 953 of 2010.	28.07.2010

2. The appeals involve a common question of law that is ***as to whether the assessee is entitled to the exemption under Section 10(20) of the Income Tax Act, 1961*** (hereinafter referred to as the 'Act').

3. The facts need not be considered in detail as the common ground in all the orders is that the appellant-assessee claimed exemption under Section

10(20) of the Act claiming that it was a Local Authority within the meaning of the Act and income derived by it was exempt from tax as provided therein. This contention was negatived by the Assessing Officer as confirmed and held in appeal by the Tribunal.

4. Section 10(20) of the Act reads:-

"S.10(20) the income of a local authority which is chargeable under the head ["Interest on securities", omitted by the Finance Act, 1988, w.e.f.1-4-1989"] "Income from house property", "Capital gains" or "Income from other sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service [Substituted for "within its own jurisdictional area" by the Finance (No.2) Act, 1971 w.e.f. 1-4-1972 (not being water or electricity) within its own jurisdictional area or from the supply of water or electricity within or outside its own jurisdictional area].

[Inserted by the Finance Act, 2002, w.e.f. 1-4-2003. Explanation.- For the purposes of this clause, the expression "local authority" means-

- (i) Panchayat as referred to in clause (d) of article 243 of the Constitution [See appendix.]; or***
- (ii) Municipality as referred to in clause (e) of article 342P of the Constitution [For text of article 243P of the Constitution see Appendix.]; or***
- (iii) Municipal Committee and District Board, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund; or***
- (iv) Cantonment Board as defined in section 3 {For text of article 243P of the Constitution, see***

Appendix.] of the Cantonments Act, 1924 (2 of 1924)."

5. Two questions have been raised for the consideration:-

"(i). Whether in facts and circumstances of the case the Hon'ble Tribunal was justified in law in holding that the provisions of the Section 10(20) are not applicable to the appellant and that the appellant is not a Local Authority?

(ii) Whether on facts and circumstances of the case the Hon'ble Tribunal was justified in law in holding that the provisions of the Section 10(20) are not applicable to the appellant and subsequently interest u/s 234A and u/s 234B is liable to be imposed to the appellant?"

5. The questions need not detain us further as they have been settled by the Supreme Court. In **Agricultural Produce Market Committee vs. Commissioner of Income-Tax and Another, (2007)294 ITR 549 (Delhi)**, this question engaged the attention of the High Court of Delhi which, after consideration of the case law on the point and the effect of the explanation added to Section 10(20) of the Act, held:-

"9. The appellant-committee is no doubt a statutory committee established under the provisions of a legislative

enactment. It has been given a distinct nomenclature with definite statutory functions and powers. There is, therefore, no question of treating the appellant-committee as a municipal committee for it is neither known as a municipal committee under the enactment under which it is created nor recognized by fiction of law as such by the Income-tax Act or by any other enactment for that matter. That being so, the court cannot by a process of interpretation include an entity like the appellant into the provisions of the Explanation by drawing a comparison between the nature and functions which a municipal committee is expected to discharge with those discharged by the appellant. Any such process would imply that the court interprets the provision by reference to what in its opinion was intended by Parliament and not what is specifically stated in the provision. It would also amount to reading something into the provision which is not obvious but which the court may on an interpretation attribute or discover. That approach in matters of interpretation has been eschewed by courts in fiscal statutes unlike beneficial legislations where the court has adopted the principle of liberal interpretation.

10. The second reason which dissuades us from accepting the interpretation suggested by Mrs. Ahlawat is also not far to seek. The appellant is a marketing committee as distinct from municipal committee. The expression

"municipal committee" has not been defined under the Act. One can, therefore, draw on the dictionary meaning given to the expression "municipal". Webster's Dictionary defines "municipal" as under:

"All relating to or carried on by local self-government (especially of a town, city, etc.)."

11. In Black's Law Dictionary, the term "municipal" has been defined as under:

"In narrower, more common sense, it means pertaining to a local governmental unit, commonly, a city or town or other governmental unit. In its broader sense, it means pertaining to the public or governmental affairs of a State or nation or of a people. Relating to a State or nation, particularly when considered as an entity independent of other States or nations."

(pp.555-556)

6. In order to put at rest the entire controversy, the Supreme Court in ***Agricultural Produce Market Committee Narela vs. Commissioner of Income-Tax and another, (2008)305 ITR 1 (SC)***, affirming the above decision and after consideration of the provisions of the Delhi Agricultural Produce Marketing (Regulation) Act, 1998, provision of which are in *pari materia* with the Himachal Pradesh Act, holds:-

"28. As stated above, it has been argued on behalf of the appellants that AMC(s) is not a Municipal Committee. The words "Municipal Committee" finds place in item (iii) of the said

Explanation. According to the appellants, although AMC(s) is not a Municipal Committee still is a "local authority" of a like nature and character to that of Municipal Committee performing municipal functions legally entitled to control the local fund, namely, the Market Fund. For that proposition reliance is placed on paragraph 2 of the judgment in the case of R.C. Jain (1981)2 SCC 308, as quoted hereinabove. However, it may be noted that this court in the case of R.C. Jain, was required to consider the question as to whether "Delhi Development Authority" is a "local authority" as its employees stood outside the purview of the Payment of Bonus Act, 1965. Under Section 32(iv) of the Payment of Bonus Act, 1965 it is stated that nothing in the said 1965 Act shall apply to the employees employed by an establishment engaged in any industry carried on by or under the authority of any Department of the Central Government or State Government or a local authority. It is in this context that the court was required to consider in the case of R.C. Jain, as to whether the DDA is a "local authority". There was no definition of "local authority" in the said 1965 Act. Therefore, this court had to go back to section 3(31) of the 1897 Act. As quoted hereinabove, section 3(31) of the 1897 Act defines "local authority" to mean a Municipal Committee, District Board, body of Port Commissioners or other authority. In the case of R.C. Jain,

this Court was aware that the DDA is neither a District Board nor a body of Port Commissioners. Therefore, the only question the court had to address to was: whether DDA would fall within the meaning of the words "other authority" in section 3(31) of the 1897 Act. Therefore, we have to read paragraph 2 of the judgment in the case of R.C. Jain, in the context of section 3(31) of the 1897 Act as the words "local authority" was not defined in the Payment of Bonus Act, 1965. The court, therefore, in the case of R.C. Jain, had to fall back upon section 3(31) of the 1897 Act and in doing so this court in the case of R.C. Jain, applied the functional and incorporation tests.

29. On more aspect needs to be mentioned. In the case of R.C. Jain, the test of "like nature" was adopted as the words "other authority" came after the words "Municipal committee, District Board, Body of Port Commissioners". Therefore, the words "other authority" in section 3(31) took colour from the earlier words, namely, "Municipal Committee, District Board or Body of Port Commissioners". This is how the functional test is evolved in the case of R.C. Jain. However, as stated, earlier Parliament in its legislative wisdom has omitted the words "other authority" from the said explanation of section 10(20) of the 1961 Act. The said Explanation to section 10(20) provides a definition to the words "local authority". It is an exhaustive definition. It is not an inclusive

definition. The words "other authority" do not find place in the said Explanation. Even, according to the appellant(s), AMC(s) is neither a Municipal Committee nor a District Board nor a Municipal Committee nor a Panchayat. Therefore, in our view, the functional test and the test of incorporation as laid down in the case of R.C. Jain, is no more applicable to the explanation to section 10(20) of the 1961 Act. Therefore, in our view the judgment of this Court in the case of R.C. Jain, followed by judgments of various High Courts on the status and character of AMC(s) is no more applicable to the provisions of section 10(20) after insertion of the Explanation/definition clause to that sub-section, vide the Finance Act, 2002.

30. The questions still remains as to why Parliament has used the words "Municipal Committee" and "District Board" in item (iii) of the said Explanation. In our view, Parliament has defined "local authority" to mean-a panchayat as referred to in clause (d) of article 243 of the Constitution of India, Municipality as referred to in clause (e) of article 243P of the Constitution of India. However, there is no reference to article 243 after the words "Municipal Committee" and "District Board". In our view, the Municipal Committee and District Board in the said Explanation are used out of abundant caution. In 1897 when the General Clauses Act was enacted there existed in India Municipal Committees

and District Boards. They continued even thereafter. In some remote place it is possible that there exists a Municipal Committee or a District Board. Therefore, in our view, apart from a Panchayat and Municipality, Parliament in its wisdom decided to give exemption to Municipal Committee and District Board. Earlier there were District Board Acts in various States. Most of the States had repealed those Acts. However, it is quite possible that in some remote place a District Board may still exist. Therefore, Parliament decided to give exemption to such Municipal Committees and District Boards. Therefore, in our view, advisedly Parliament has retained the exemption for Municipal Committee and District Board apart from Panchayat and Municipality. Our view finds support from the provisions contained in Part IX of the Constitution of India. Article 243N provides for continuance of existing laws and Panchayats. It states, *inter alia*, that notwithstanding anything in Part-IX, any law relating to Panchayats in a State immediately before commencement of the Constitution (Seventy-third Amendment) Act, 1992, which is inconsistent with the provisions of Part IX, shall continue to be in force until repealed by a competent Legislature. Similarly, under Part IX-A there is article 243ZF which refers to "Municipalities". This article, *inter alia*, states that notwithstanding anything in Part IX-A, any provision of any law relating to Municipalities in

force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of Part IX-A, shall continue to be in force until amended to repealed by a competent Legislature. In our view, article 243N and article 243ZF indicates that there could be enactments which still retain the entities like Municipal Committees and District Boards and if they exist, Parliament intends to give exemption to their income under section 10(20) of the 1961 Act.

31. Before concluding we quote hereinbelow an important principle of law enunciated by this court in the case of R.C. Jain, which reads as under:

“.....it is not a sound rule of interpretation to seek the meaning of words used in an Act, in the definition clause of other statutes.”

32. Since we are of the view that AMC(s) is neither a Municipal Committee nor a District Board under the said Explanation to section 10(20) of the 1961 Act, we refrain from going into the question: whether the AMC(s) is legally entitled to the control of the local fund, namely, Market Fund, under the said 1998 Act. There is one more reason why we do not wish to express any opinion on the said question. Vide the Finance Act, 2008, income of AMC(s) is exempt. Sub-section (26AAB) of section 10 comes into force with effect from April 1, 2009. Therefore, we do

not wish to express any opinion on the question as to whether AMC(s) is legally entitled to the control of the local fund.

33. We hold that AMC(s) is, therefore, not entitled to exemption under section 10(20) of the 1961 Act after the insertion of the said Explanation, vide the Finance Act, 2002, with effect from April 1, 2003.

(pp.21-23)

7. We, therefore answer both the questions against the assessee and in favour of the Revenue.

(R.B. Misra)
Judge

April 19, 2012.
(aks)

(Dev Darshan Sud)
Judge