



IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: June 02, 2006

ITA No. 749/2006

**AGRICULTURAL PRODUCE MARKET COMMITTEE,
AZADPUR APPELLANT**

Through : Ms. Avnish Ahlawat, Mr. Pawan
Choudhary, Advocates




VERSUS

COMMISSIONER OF INCOME-TAX & ANR. RESPONDENTS
Through : Ms. P.L. Bansal, Advocate

CORAM:

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? 
2. To be referred to the Reporter or not? 
3. Whether the judgment should be reported in the Digest? 

T.S. THAKUR, J.

In this appeal under Section 260A of the Income-tax Act, 1961, the appellant has raised the following substantial question of law for determination of this Court.

- i) Whether the ITAT was correct in law in holding that the appellant Marketing Committee is not a 'Local



Authority' within the meaning of Section 10(20) of the Income-tax Act, 1961?

2. The question arises in the following backdrop :-
3. The appellant Committee is established under the Delhi Agricultural Produce Marketing (Regulation) Act, 1976 which is now replaced by The Delhi Agricultural Produce Marketing (Regulation) Act, 1998. The provisions of the said Act enjoin upon the appellant to provide facilities for marketing of agricultural produce in Azadpur, Sabzi Mandi, Delhi apart from performing other functions and duties such as superintendence, direction and control of markets for regulating marketing of agricultural produce. For the assessment year 2002-03, the appellant committee claimed exemption from payment of tax on the income earned by it on the ground that it was a local authority within the meaning of Section 10(20) of the said Act. The Assessing Officer repelled that claim and brought to tax the Committee's income for the said year. Aggrieved, the Committee appealed to the Commissioner of Income-tax (Appeals) who affirmed the view taken by the Assessing Officer. The matter was then taken up in a further appeal to the Tribunal who held that the assessee was indeed a local authority and, therefore, exempt from payment of income-tax under the Income-tax Act, 1961. A



reference made to the High Court at the instance of the Revenue raised the question whether the Agricultural Produce Marketing Committee, Azadpur, Delhi was a 'Local Authority' within the meaning of Section 10(20) of the Income-tax Act, 1961 read with Section 3(31) of the General Clauses Act, 1897. A Division Bench of this Court comprising Arijit Pasayat, CJ and D.K. Jain, J., as their lordships then were, answered the question in the affirmative and held that the Marketing Committee was a Local Authority within the meaning of Section 10(20) of the Income-tax Act, 1961 read with Section 3(31) of the General Clauses Act, 1897. The decision is reported in Commissioner of Income-tax Versus Agricultural Marketing Produce Committee, 250 ITR 369. The conclusion drawn by this Court was based on a conspectus of the provisions contained in Delhi Agricultural Produce Marketing (Regulation) Act, 1976 and a comparison of the said provisions with those contained in similar other enactments in the States of Punjab, Gujarat & Maharashtra. The Court observed :

“On examination of various provisions referred to above the inevitable conclusion is that the assessee is a body corporate having separate autonomous status. Its operational area is defined, its office bearers are elected and are free to take their own decision. The committee runs a market, providing civic amenities in the market and performs judicial, legislative and executive as well as fiscal functions. It can raise funds, control and manage funds.



(1981) 58 FJR 284; AIR 1981 SC 951 as chiselled and honed by other decisions referred to above squarely applies to the facts of the case. As the indicated criteria are fulfilled, we have no hesitation in holding that the assessee is a local authority. The mere absence of a provision on the lines of the Maharashtra and Gujarat Acts would not be the decisive criteria in view of the analysis made supra. That being the position, the Tribunal's conclusions are irreversible. The question referred is answered in the affirmative in favour of the assessee and against the Revenue."

4. For the assessment year 2003-04, the appellant Marketing Committee once again claimed exemption from payment of tax in terms of Section 10(20) of the Act in response to a notice issued to it under Section 142(1) and 143(2) of the said Act. The Assessing Officer repelled the assessee's claim for exemption relying upon Circular No. 8/2002 dated 7.08.2002 issued by the Central Board of Direct Taxes. It was also of the view that the amended provisions of Section 10(20) of the Income-tax Act, 1961 were not attracted to "Agricultural Produce Marketing Societies" or Agricultural Market Boards, etc., even when they may be local authorities under other central or state legislations. Aggrieved by the said order, the appellant Committee filed an appeal before the Commissioner of Income-tax (Appeals) who upheld the view taken by the Assessing Officer and declined the exemption claimed by the assessee. A further



failed, the Committee has filed the present appeal in which the primary question that falls for consideration is whether the Committee is a 'Local Authority' within the meaning of Section 10(20) of the Income-tax Act, 1961.

5. Appearing for the appellant, Mrs. Ahlawat argued that the Tribunal was in error in taking a view contrary to the one taken by this Court in the previous round of litigation. She urged that this Court having declared the appellant Committee to be a local authority for purposes of Section 10(20) of the Act, the reasoning underlying the said conclusion could not be ignored while determining the very same question for the assessment year 2003-04. Alternatively, she argued that although provisions of Section 10(20) of the Income-tax Act, 1961 had been amended with effect from 1st April, 2003, yet the said amendment did not affect the legal character of the appellant Committee as a local authority. She urged that since the functions of the appellant Committee were akin to that discharged by a municipal committee, the appellant could be treated to be a municipal committee for purposes of exemption from income-tax.

6. We have given our anxious consideration to the submissions made by Mrs. Ahlawat. The question that fell for consideration before the Court in the previous round of litigation



between the parties was whether the appellant Committee was a local authority within the meaning of Section 10(20) of the Income-tax Act, 1961 as it existed before its amendment. Since the Act did not provide any definition for the expression "Local Authority", this Court had interpreted the same by reference to Section 3(31) of the General Clauses Act, 1897 and answered the question in favour of the Committee. The legal position has since the said pronouncement undergone a change in as much as the expression "Local Authority" has been given a restricted meaning in an exhaustive definition for purposes of Section 10(20) of the Income-tax Act, 1961. Any determination of the question by reference to Section 3(31) of the General Clauses Act, 1897 would, therefore, no longer hold the key to the correct understanding or interpretation of the expression as it now has to be understood or interpreted in the light of the amended provision. Reliance upon the provisions of the General Clauses Act, 1897 would, in fact, be permissible only in cases where the enactment in which the expression occurs does not itself provide for a definition or meaning to be given to the same. It is possible that an expression which is defined under the General Clauses Act, 1897 is, at the same time, also given a meaning or definition under a special enactment which meaning may be different from the one



given in the former Act. The decision of this Court in the previous round of litigation does not, therefore, provide a complete answer to the question that arises for the year under consideration in the present appeal. The first limb of Mrs. Ahlawat's argument, therefore, fails and is rejected.

7. That brings us to the alternative submission urged by Mrs. Ahlawat that the appellant Committee is a municipal committee within the meaning of Section 10(20) of the Act as amended w.e.f. 1st April, 2003, by Finance Act, 2002, which added the following explanation to the said provision w.e.f. 1st April, 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; or

(ii) Municipality as referred to in clause (e) of article 243P of the Constitution; 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 of the Cantonments Act, 1924”

8. The most striking feature of the Explanation is that the same provides an exhaustive meaning to the expression “local



authority". The word "means" used in the Explanation leaves no scope for addition of any other entity as a 'Local Authority' to those enlisted in the Explanation. In other words, even if an entity constitutes a 'Local Authority' for purposes of the General Clauses Act, 1897 or for purposes of any other enactment for that matter, it would not be so construed for purposes of Section 10(20) of the Act unless it answers the description of one of those entities enumerated in the Explanation. Mrs. Ahlawat did not make any attempt to bring her case under clauses (i), (ii) and (iv) of the Explanation and in our opinion rightly so because the appellant Committee cannot by any process of reasoning be construed as a Panchayat as referred to in clause (d) of Article 243 of the Constitution of India, a municipality in terms of clause (e) of Article 243P of the Constitution of India or a Cantonment Board as defined under Section 3 of the Cantonments Act, 1924. What she argued was that looking to the nature of the functions enjoined upon the appellant Committee, it must be deemed to be a municipal committee within the meaning of that expression in clause 3 of the Explanation. We regret our inability to accept that submission. We say so for two distinct reasons. Firstly because the expression "municipal committee" appears in a taxing statute and must, therefore, be construed strictly. It is fairly well-settled



by a long line of decisions rendered by the Supreme Court that while interpreting a taxing statute, one has simply to look to what is clearly stated therein. There is, in fiscal statutes, no room for any intendment nor is there any equity about the levy sanctioned under the same. The following passage from Cape Brandy Syndicate Versus IRC, 1921 (1) KB 64 has been approved by the Apex Court in the decisions rendered by their Lordships.

“.....in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.”

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 recognised 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



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 the Parliament and not by 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. Ahalawat is also not far to seek. The appellant is a Marketing Committee as distinct from a 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,



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”

12. In contradistinctions to the above, the term “market” has been defined under The Delhi Agricultural Produce Marketing (Regulation) Act, 1998 as under :-

Section 2(m) : "market" means a regulated market established under this Act, for a market area and includes a market of national importance established under Section 26 and a principal market and a subsidiary market established under Section 23."

13. The expression "market area" is defined in Section 2(n) of the Act to be an area declared as such under Section 4 of the Act, which reads as under :

Section 4:

(1) On the expiry of the period specified in the notification issued under Section 3, and after considering the objections and suggestions, if any, as may be received before such expiry, and holding wherever considered by the Government to be necessary, an inquiry in the prescribed manner, the Government may, by notification, declare an area to be a market area wherein the marketing of agricultural produce specified in the notification shall be regulated in accordance with the provisions of this Act;

(2) XXXXXX

(3) On a declaration being made under subsection (1) no local authority shall, notwithstanding



being in force, establish, or authorise or allow to be established, or continue, or authorise the continuation of any place in the market area for the marketing of agricultural produce specified in the declaration.

(4) XXXXXXXX"

14. The expression "Marketing Committee" is defined in Section 2(p) of the Act as under :

"marketing committee" means a committee constituted for a market area under this Act."

15. We may also extract Section 35 of the Act which provides for constitution of the marketing committees. It reads :

"35. Constitution of the Marketing Committee –

(1) Without prejudice to the provisions of Section 26, there shall be constituted by order to be published in the official gazette, by the Government for every market area a Marketing Committee and different Marketing Committees may be constituted for regulating the marketing of different kinds of notified agricultural produce marketed in the same market area or any part thereof.

(2) Every Marketing Committee shall exercise such powers and discharge such functions as may be vested in it by or under this Act."

16. Mrs. Ahalawat has filed copies of the relevant notifications issued from time to time declaring the market area and constituting a marketing Committee for the same. By Notification dated 14.1.1977, the Administrator declared the



portion of the said notification reads :

"Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the aforesaid Act, and after considering the objections and suggestions received with respect to the aforesaid notification, the Administrator is pleased to declare the Union Territory of Delhi to be the market area for regulating the marketing of agricultural produce pertaining to such fruits and vegetables as are shown in the Schedule hereto annexed, in accordance with the provisions of the aforesaid Act, with immediate effect."

17. The marketing committee for the market area declared in terms of the above notification was constituted by the Administrator in terms of a notification dated 15.1.1977.

18. A conjoint reading of the above notifications would show that the entire Union Territory of Delhi, as it was then described, is a market area and the marketing committee constituted by the Government from time to time is for the said market area. Section 4(3) of the Act extracted earlier forbids local authorities from establishing or authorising or allowing to be established or continuing or authorising the continuation of any place in the market area for marketing of agricultural produce specified in the declaration. That is, however, far from saying that the market area declared under the notification becomes a municipality, municipal committee or any other municipal entity



4(3) of the Act in our opinion leave no manner of doubt that the declaration of a market area by the competent authority does not interfere with the discharge of any functions or powers by the municipal committee or municipal corporation within such area except to the extent indicated in Section 4(3) of the Act. It would not, therefore, be legally correct to say that with the declaration of an area as a market area and the constitution of a marketing committee for the same, the committee takes over the functions of a local self-government of that area which may otherwise under other enactments be the job assigned to a municipal committee or corporation functional in any such area or part thereof. It may also be possible that the nature and functions that the two committees discharge may at times overlap or may be similar in certain other matters, but in the absence of any legal fiction by which a municipal committee is made synonymous to a marketing committee or vice-versa, it will not be permissible to read one for the other especially in the context of a taxing statute.

19. The argument that since the marketing committee takes care of the maintenance of the roads and other functions which ordinarily fall within the jurisdiction of a municipal committee, does not, therefore, lead us anywhere, for similarity in regard to some of the functions between the two entities would



not in itself make the two expressions interchangeable. That is precisely how the Central Board of Direct Taxes has also understood the provision and issued a circular para 12.3 whereof reads as under:-

“The exemption under clause 20 of the Section 10 would, therefore, not be available to the agricultural market societies and agricultural marketing boards etc. despite the fact that they may be deemed to be treated as local authorities under any other Central or State legislation. Exemption under this clause would not be available to the Port Trust also.”

20. In the circumstances, therefore, the Tribunal was in our opinion correct in answering the question in the negative and holding that the appellant was not a Local Authority for purposes of Section 10(20) of the income-tax Act. The question is accordingly answered in the affirmative and this appeal dismissed but in the circumstances without any orders as to costs.

T.S. THAKUR, J.

SHIV NARAYAN DHINGRA, J.

JUNE 02, 2006
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