

Explanation to Section 10(20) of the Income-tax Act, 1961 (“1961 Act”, for short).

3. For the sake of convenience we refer to the facts mentioned in Civil Appeal No..... of 2008 (arising out of S.L.P. (C) No.6757 of 2007) filed by AMC, Narela, Delhi.

4. Appellant-Committee is established under the Delhi Agricultural Produce Marketing (Regulation) Act, 1998 (“1998 Act”, for short). The provisions of the said 1998 Act enjoin upon the appellant to provide the facilities for marketing of agricultural produce in Narela, Delhi. This is apart from performing other functions and duties such as superintendence, direction and control of markets for regulating the marketing of agricultural produce.

5. For the assessment year 2003-04, the appellant-Committee claimed exemption from payment of tax under income earned by it on the ground that it was a “local authority” within the meaning of Section 10(20) of the said

1961 Act. It relied upon the definition of “local authority” in Section 2(l) of the said 1998 Act. The A.O. rejected the appellant’s claim for exemption relying upon Circular No.8/2002 dated 27.8.02 issued by CBDT. The view taken was that the amended provisions of Section 10(20) of the 1961 Act were not attracted to “Agricultural Produce Marketing Societies” or “Agricultural Market Boards” even when they may be local authorities under Central or State Legislations.

6. Aggrieved by the said order, appellant filed an appeal before CIT(A) who upheld the view taken by the A.O. and declined the exemption claimed by the appellant.

7. A further appeal by the appellant, before the Tribunal, also failed.

8. Aggrieved by the decision of the Tribunal, the appellant moved the High Court by way of Income Tax Appeal No.819/2006 under Section 260A of the 1961 Act. By impugned decision dated 2.6.06, Delhi High Court following

its earlier judgment in the case of **Agricultural Produce Market Committee, Azadpur v. Commissioner of Income-tax – (I.T.A. No.749/2006)** dismissed the appellant’s appeal. Hence this civil appeal.

9. At the outset, it may be stated that all AMCs at different places were enjoying exemption from income tax under Section 10(20) of the 1961 Act prior to its amendment by Finance Act, 2002 w.e.f. 1.4.03.

10. Prior to the amendment by Finance Act, 2002, Section 10 (20) of the Income-tax Act, 1961 provided as under:

“CHAPTER III

INCOME WHICH DO NOT FORM PART

OF TOTAL INCOME

Incomes not included in total income.

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included –

(20) the income of a local authority which is chargeable under the head “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 (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.”

11. Through the aforementioned amendment (Finance Act, 2002) the following Explanation stood added to Section 10(20) of the Income-tax Act, 1961 which reads as follows:

“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 (2 of 1924);”

12. Mr. M.L. Verma, learned senior counsel appearing on behalf of the appellants, submitted that AMC(s) has been held to be a “local authority” under Section 10(20) of the 1961 Act

falling outside the taxing net. In this connection, learned counsel placed reliance on the judgment of the Delhi High Court in the case of **Commissioner of Income-tax v. Agricultural Marketing Produce Committee – [2001] 250 ITR 369** and the reasoning given by this Court in the case of **Union of India and others v. R.C. Jain and others - 1981 (2) SCC 308**. According to learned counsel, even after the amendment to Section 10(20) of the 1961 Act, by inserting the Explanation thereto, the AMC(s) continues to be covered by Item (iii) in the said Explanation as it is a “local authority” performing the municipal functions and is legally entitled to the control of local fund, namely, Market Fund under the said 1998 Act. In this connection, learned counsel urged that vide Finance Act, 2002, Parliament has bodily lifted the definition of the “local authority” under Section 3 (31) of the General Clauses Act, 1897 (“1897 Act”, for short) and has incorporated the said definition vide Explanation inserted in Section 10(20) and consequently AMC(s) is a “local authority” and continues to be a local authority even after the said amendment to Section 10(20) of the 1961 Act. According to learned counsel,

since Section 3(31) of the 1897 Act is bodily incorporated into Section 10(20) of the 1961 Act, it follows that the judgments of various High Courts earlier delivered prior to Finance Act, 2002 holding AMC(s) to be a “local authority”, would continue to apply and the tests laid down in those judgments would continue to apply even after the said amendment to Section 10 (20) of the 1961 Act. Therefore, according to learned counsel, the said Explanation does not adversely affect the appellant(s) as the appellant(s) is covered by Item (iii) in the Explanation, which according to the appellant(s), is identical to Section 3 (31) of the 1897 Act on the basis of which AMC(s) is a “local authority”.

13. Learned counsel next contended that even after the amendment to Section 10(20), the appellant(s) is covered by Item (iii) of the said Explanation as it is a “local authority” performing municipal functions and as it is legally entitled to the control of local fund, namely, Market Fund. In this connection, learned counsel pointed out that the appellant(s) has the power and authority to levy and collect fees called

“Market Fees” and in fact it levies and collects “Market Fees” and the fact that the Government exercises control, does not take away the statutory power of the appellant(s) under Section 62 of the 1998 Act.

14. Learned counsel next contended that it is true that the words “other authority” appearing in Section 3(31) of the 1897 Act do not find place in the Explanation to Section 10(20) of the 1961 Act, however, that would not change the basis of decision of this Court in the case of **R.C. Jain (supra)**. Learned counsel urged that the judgment of this Court in the case of **R.C. Jain (supra)** is squarely applicable to the facts of the present case and applying the tests laid down in the said judgment the position which emerges is that AMC(s) is a “local authority” of “like nature and character” as a Municipal Committee performing municipal functions and legally entitled to the control of the local fund, namely, the Market Fund. One more aspect needs to be mentioned. An Explanatory Note (at pages 114 to 116 of the paper book of S.L.P.(C) No.6757 of 2007) states that “Agricultural Produce Marketing Boards”

and “Agricultural Marketing Societies” are not entitled to exemption after insertion of the said Explanation in Section 10 (20) of the 1961 Act. According to learned counsel AMC(s) is neither “Agricultural Produce Marketing Board” nor “Agricultural Marketing Society”. Therefore, according to learned counsel even the Explanatory Note indicates that AMC (s) is covered by the Explanation and, therefore, AMC(s) is entitled to the continuance of the benefit of exemption even after Finance Act, 2002. Further, in the Explanation to Section 10(20) there are three items – Item (i) refers to “Panchayat”, Item (ii) refers to “Municipalities” whereas Item (iii) refers to “Municipal Committees” and “Development Boards”. According to learned counsel, there is no independent definition of “Municipal Committee”. According to learned counsel, the Department is also not able to answer whether any Municipal Committee still exists so as to constitute a separate category or whether they would be covered under Item (ii) in the said Explanation which refers to “Municipality”. Therefore, according to learned counsel, AMC (s) is a “local authority” of like nature and character as a

Municipal Committee performing municipal functions legally entitled to control the local fund.

15. Lastly, learned counsel urged that in any event it is well-settled rule of construction of taxing statutes that if two views are possible then the view that is favourable to assessee should be executed and in case of doubt it should be resolved in favour of that assessee.

16. Mr. Parag P. Tripathi, learned Additional Solicitor General of India, submitted that before the insertion of the Explanation, under Section 10(20) of the 1961 Act, by Finance Act, 2002, various High Courts were of the view that since “local authority” has not been defined under 1961 Act, the definition may be borrowed from Section 3(31) of the 1897 Act. However, according to learned counsel, after the insertion of the Explanation, vide Finance Act, 2002 whereby “local authority” stood defined exhaustively, it was not necessary to invoke Section 3(31) of the 1897 Act. He further contended that the Notes on Clauses in the Finance Bill 2002 shows that

Parliament intended to restrict the exemption to Panchayat and Municipality, as referred to in Article 243(d) and Article 243P(e) of the Constitution of India, Municipal Committees and District Boards, legally entitled to or entrusted by the Government with the control or management of a local fund as well as Cantonment Boards as defined under Section 3 of the Cantonment Act, 1924. In this connection, learned counsel urged that AMC(s) is not mentioned in the Explanation. Therefore, according to learned counsel, it would not be proper to read AMC(s) into the Explanation particularly when Section 10(20) of the 1961 Act is an exemption provision.

17. It was next contended that Section 3(31) of the 1897 Act was not bodily incorporated in the Explanation to Section 10 (20) of the 1961 Act as it sought to be contended on behalf of the appellant(s). Learned counsel submitted that Parliament in its wisdom has excluded the expression “other authority”, found under Section 3(31) of the 1897 Act, from the Explanation to Section 10(20) of the 1961 Act. According to learned counsel, this conspicuous absence has to be

understood in the context, namely, that in the case of **R.C. Jain (supra)**, the focus of this Court was on the said expression “other authority” under Section 3(31) of the 1897 Act and, therefore, reliance placed by the appellants herein on the judgment of this Court in the case of **R.C. Jain (supra)** was misplaced.

18. Learned counsel further submitted that the explanation/definition clause inserted by Finance Act, 2002 is exhaustive as it uses the expression “means” as contradistinct from the expression “includes”. Learned counsel submitted that borrowing definition from other statutes is not a safe guide, particularly, when the explanation is a definition section, specifically designed for grant of the exemption under Section 10(20) of the 1961 Act.

19. Learned counsel next contended that in the hierarchy, mentioned in 1998 Act, the Delhi Agricultural Marketing Board, as defined under Section 5, is in complete control of the finances of AMC(s) and, therefore, according to learned

counsel, the clarification, issued by CBDT, expressly states that Agricultural Marketing Societies and Agricultural Marketing Boards shall stand excluded from the said Explanation. According to learned counsel, since the said Board is the highest authority under the 1998 Act, the CBDT Circular clarifies that the exemption shall not be admissible to such Agricultural Marketing Boards and when such an exemption is not admissible to Agricultural Marketing Boards it would not be admissible to a subordinate body under the 1998 Act, namely, AMC(s).

20. Mr. P. Vishwanatha Shetty, learned senior counsel appearing for the Department, has adopted the arguments of the learned Addl. Solicitor General. Learned counsel submitted that earlier in 1897 when General Clauses Act stood enacted there were District Boards and Municipal Committees in certain areas. Those District Boards, according to learned counsel, were different from the Municipalities. Learned counsel urged that if one looks at the said Explanation in its entirety, it would be clear that Parliament

intended to grant exemption to Panchayat, Municipality, Municipal Committee and District Boards legally entitled to the control or management of a local fund. Learned counsel contended that an AMC(s) is not a Municipal Committee. He contended that the constitution of Panchayat and Municipality indicated them to be a representative body which is not there in the case of AMC(s). Learned counsel submitted that even in the case of a Municipal Committee the body consists of representatives of the people whereas in the AMC(s) that is not the case. In the circumstances, learned counsel submitted that AMC(s) cannot be equated to the Municipal Committee under the said Explanation.

21. Learned counsel lastly urged that the entire finances of AMC(s) are under the control of Agricultural Marketing Board as defined under Section 5 of the 1998 Act and, therefore, it cannot be said that AMC(s) is legally entitled to the control or management of a local fund. In this connection, learned counsel submitted that even in the matter of prescription of fees the upper and lower limits regarding the fees to be

charged by AMC(s) are fixed by the Government. Therefore, according to learned counsel there is no merit in these civil appeals.

22. Before analyzing the submissions made, we quote hereinbelow the relevant sections of the Delhi Agricultural Produce Marketing (Regulation) Act, 1998 which read as under:

“CHAPTER I

PRELIMINARY

2. Definitions -(1) In this Act, unless the context otherwise requires,

(c) “ Board” means the Delhi Agricultural Marketing Board constituted under section 5;

(l) “local authority” means, in relation to an area within the local limits of:-

- (i) The Municipal Corporation of Delhi, that Corporation;
- (ii) the New Delhi Municipal Council, that Council; and
- (iii) the Delhi Cantonment Board, that Board;

Explanation- It is hereby clarified that, for the purpose of this Act, the Delhi Development Authority constituted under the Delhi Development Act, 1957 and the Board and a marketing committee established under this Act, shall be deemed to be local authority;

CHAPTER III

CONSTITUTION AND POWERS OF DELHI AGRICULTURAL MARKETING BOARD

17. Powers and functions of the Board – (1) The Board shall exercise superintendence and control over the marketing committees.

(2) The Government or the Chairman or the Vice-Chairman of the Board or any other official of the Board authorized in this behalf by the Board may call for from any marketing committee or any trader, godown-keeper or any other functionary operating within the market area any information or return relating to agricultural produce and shall have the power to inspect the records and accounts of such marketing committee, trader, godown-keeper or other functionary and shall also have power to seize or take into possession against proper receipt the records accounts books stocks of notified agricultural produce alongwith its containers and carriers.

(3) It may authorise officer/officers of the Board and/or marketing committees to inspect works undertaken by the marketing committees and Board and to take corrective measures.

(4) Subject to the provisions of this Act and the rules and regulations made thereunder, the Board may employ such persons for the performance of its functions as it may consider necessary and the method of recruitment, the scale of pay and other conditions of service of such persons shall be such as may be provided in the regulations made by the Board in this behalf.

(5) The Board shall, subject to the provisions of this Act, perform the following functions and shall have the power to do such things as may be necessary or expedient for carrying out these functions, namely:-

- (i) Coordination of the working of the marketing committees and other affairs thereof including programmes undertaken by such marketing committees for the maintenance of markets, sub-markets, check posts and other sites in the market areas;
 - (ii) undertake the planning and development of markets for agricultural produce;
 - (iii) administer the Market Development Fund;
 - (iv) issue direction to Marketing Committees in general or to one or more Marketing Committees in particular with a view to ensuring improvement thereof;
 - (v) any other function specially entrusted to it by this Act;
 - (vi) such other functions of like nature as may be entrusted to the Board by the Government.
- (6) Without prejudice to the generality of the foregoing provision, such functions of the Board shall include :-
- (a) to consider proposals for selection of new site(s) for establishment of the markets and to make recommendations to the Director for establishing principal market and sub-markets as per provisions of sub-section (2) of section 22;
 - (b) to approve proposal for providing infrastructural facilities in the market and market area;
 - (c) to construct a market or to approve plans, designs and estimates for constructing markets;
 - (d) to sanction, supervise and guide a Marketing Committee in the preparation of plans and estimates for maintenance and improvement works undertaken by the Marketing Committee;

(e) to execute all works chargeable to the Market Development Fund;

(f) to encourage marketing of the agricultural produce on cooperative basis;

(g) to maintain accounts in such forms as may be prescribed and get the same audited in such manner as may be prescribed;

(h) to publish annually at the close of the financial year, its progress report, balance sheet and statement of assets and liabilities and send copies thereof to all the members of the Board and a copy to the Government;

(i) to make necessary arrangements for dissemination of information on matters relating to regulated marketing of notified agricultural produce;

(j) to provide facilities for the training of officers and members of the staff of the Board as also the Marketing Committees;

(k) to prepare and adopt its budget for the ensuring year;

(l) to sanction the budget of the Marketing Committees;

(m) to grant subventions of loans to the Marketing Committees for the purposes of this Act on such terms and conditions as the Board may determine;

(n) to arrange or organize seminars or workshops or exhibitions, etc. on subjects related to agricultural marketing;

(o) to perform such other functions as may be of general interest to the Marketing Committees or considered necessary for efficient functioning of the Board or the Marketing Committees.

(p) to transfer or to provide marketing technology and market assistance to the Marketing Committees as and when required.

CHAPTER V

MARKET OF NATIONAL IMPORTANCE

26. Establishment of market of national importance and Marketing Committee thereof – (1) Notwithstanding anything contained in this Act, where the Government is satisfied that on account of the national importance of marketing of any commodity, in any area, it is expedient to ensure the efficient regulation of the marketing of such commodity in such area, it may establish –

(a) in such area, special market, known as “Markets of National Importance” for such commodities; and

(b) independent Marketing Committees known as “Marketing Committees of Market of National Importance” in relation to such markets, notwithstanding that such area falls within the local limits of the jurisdiction of any other Marketing Committee or Committees already functioning in that area.

(2) The Government may, after consideration of such aspects as, the turnover, upstream catchment area, down-stream servicing (number of consumers served), and price leadership (whether the market influences the price at the national level), declare an area as a special market area known as “Market area of the market of National Importance”.

Provided that no such market shall be established:-

(a) if it handles less than one lakh tones of produce per year;

(b) if, out of the total produce handled by it, less than thirty percent thereof is received from two or more State or Union Territories; and

(c) if the market does not influence the price of the commodity referred to in sub-section (1) at the national level.

CHAPTER VII

MARKETING COMMITTEES – POWERS AND DUTIES

55. Powers and duties of the Marketing Committees- (1) Subject to the provisions of this Act, it shall be the duty of a Marketing Committee:

(i) to implement the provisions of this Act, and rules, regulations and bye-laws made there under for the market area;

(ii) to provide such facilities for marketing of notified agricultural produce therein as the Board may, from time to time, direct;

(iii) to perform other functions as may be required in relation to the superintendence, direction and control of markets, or for regulating and control of markets, or for regulating the market area and for purposes connected with the matters aforesaid, and, for this purpose, may exercise such powers and perform such duties and discharge such functions as may be provided by or under this Act.

(2) Without prejudice to the generality of the foregoing provisions, a Marketing Committee may –

(a) regulate the entry of the persons and of vehicular traffic into the market;

(b) supervise the conduct of those who enter the market for transacting business;

(c) grant, renew, refuse suspend or cancel licences;

(d) provide for settling disputes arising out of any kind of transaction connected with the marketing of notified agricultural produce and all matters ancillary thereto;

(e) prosecute persons for violating the provisions of this Act and to the rules regulations and bye-laws made thereunder;

(f) maintain and merge the market, including the regulation of admissions to, and conditions for use of, the market;

(g) regulate the marketing of notified agricultural produce in the market area and the market, and weighment, delivery of and payment for, such agricultural produce;

Explanation – For the purposes of clause (g) the word ‘regulate’ shall include –

(i) making, carrying out, enforcing or cancelling of any contract of sale of a notified agricultural produce;

(ii) conducting or supervising of a transaction of sale or purchase of a notified agricultural produce in accordance with the procedure laid down under this Act, or rules, regulations and bye-laws made thereunder;

(iii) specifying any place or spot where a notified agricultural produce shall be stored or displayed for purpose of sale by open auction;

(iv) fixing the time for holding auction; and

(v) cancelling an auction if it is not held in the presence of the employees of the marketing committee.

(h) arrange for the collection –

(i) of such notified agricultural produce in the market in which all trade therein is to be carried on exclusively by the Government by or under any law for the time being in force for that purpose, or

(ii) of such other notified agricultural produce in the market as the Government may, from time to time notify in the official Gazette.

(i) acquire, hold and dispose of any movable or immovable property (including any equipment) necessary for the purpose of efficiently carrying out its duties;

(j) collect, maintain, disseminate and supply information in respect of production, sale storage, processing, prices and movement of notified agricultural produce (including information relating to crop-statistics and market intelligence) as may be required by the Director or the Board;

(k) take all such steps to prevent adulteration and to promote grading and standardization of such agricultural produce, as may be prescribed;

(l) enforce the provisions of this Act and of the rules, regulations and bye-laws made thereunder including the conditions of the licences granted, under this Act;

(m) perform such other duties as may be prescribed;

(n) arrange to obtain fitness certificate of health from a veterinary doctor in respect of animals, cattle or birds brought for sale or sold in the market/sub-market;

(o) disseminate information about the benefits of regulation, the system of transaction, facilities provided in the market yard, etc. through such means as posters, pamphlets, hoarding, cinema slides, film shows, group meetings, etc., or through any other means considered by it more effective or necessary;

(p) ensure payment in respect of a transaction which takes place in a market to be made on the same day to the seller, and in default thereof to seize the agricultural produce in question alongwith other property of the commission agent or purchaser if no commission agent is involved in the transaction;

(q) make arrangement for weighmen palledars for weighing and transporting of goods in respect of transactions held in the market yard/sub-yard;

(r) recover the charges in respect of weighmen and palledars and distribute the same to weighmen and palledars if not paid by the purchaser or seller, as the case may be.

62. Power to levy and collect market fee—Every Marketing Committee shall levy and collect such fee (hereinafter referred to as the ‘market fee’) not being in excess of, or less than, the amount determined by the Government by notification published in the official Gazette from every purchaser of notified agricultural produce sold in a market area.

Provided that the amount to be determined by the Government shall not be less than one rupee per one hundred rupees of the sale price of the notified agricultural produce.

66. Assessment market fee payable by commission agent and payment thereof—(1) If no return is furnished in respect of any period by the specified date, or if the Marketing Committee is not satisfied that the return furnished by commission agent is correct or complete, an officer of the Marketing Committee specifically authorized by it in this behalf (hereinafter referred to as the assessing officer) shall proceed in such manner, as may be prescribed in the bye-laws to assess, to the best of his judgment, the amount of market fee due from such commission agent.

Provided that before finalizing any such assessment, the commission agent concerned will be given a reasonable opportunity of showing cause as to why the assessment should not be finalized.

(2) The amount of the market fee assessed under sub-section (1), less than sum, if any, already paid, shall be paid by the commission agent within fifteen days from the date of the receipt of the assessment order by him.

(3) If any commission agent fails to pay the amount of market fee as required by sub-section (2), he shall, in addition to market fee due, be liable to pay simple interest on the amount so due at two per cent per month from the date immediately following the last date for submission of return under clause (b) of section 65, upto the date of assessment under sub-section (1) and at the rate of three percent per month thereafter till realization.

CHAPTER X

MARKET DEVELOPMENT FUND AND MARKET FUND AND AUDIT THEREOF

84. Constitution of Market Development Fund—(1) All moneys received by the Board shall be credited into a fund to be called the Market Development Fund.

(2) No expenditure from the Market Development Fund shall be defrayed unless it is sanctioned by the competent authority. The Market Development Fund shall be operated in the manner as may be prescribed in the rules.

Explanation—For the purpose of this sub-section ‘competent authority’ shall mean the Board, or Vice-Chairman or any other officer of the Board to whom the powers of the Board to incur expenditure have been delegated, as the case may be.

(3) The amount standing to the credit of the Market Development Fund shall be kept or invested in such manner as may be prescribed.

89. Application of Market Fund—(1) Subject to the provisions of section 88, the Market Fund may be expended for the following purposes only, namely:—

- (i) the acquisition of a site or sites for the market yard;
- (ii) the establishment, maintenance and improvement of the market yards;
- (iii) the construction and repair of buildings necessary for the purposes of the market and for convenience or safety of the persons using the market yard;
- (iv) the maintenance of standard weights and measures;
- (v) the meeting of establishment charges including payment and contribution of provident fund, pension, gratuity, leave encashment on retirement or yearly basis, actual reimbursement of hospitalization expenses in the authorized hospitals or other items as may be laid down in the regulations/rules;
- (vi) loans and advances to the employees of the committee;

- (vii) the payment of interest on the loans that may be raised for the purpose of the market and provisions of sinking fund in respect of such loans;
- (viii) the collection and dissemination of information relating to crop statistics and marketing of agricultural produce;
- (ix) expenses incurred in auditing the accounts of the marketing committee;
- (x) payment of honorarium to Chairman travelling allowances of Chairman, Vice-Chairman and other members of the Marketing Committee and sitting fees payable to number for attending the meeting;
- (xi) contribution to the Board as prescribed and Consolidated fund of the National Capital Territory of Delhi to the extent required for salary of the employees of the Government as provided in clause (b) of sub-section (2) and sub-section (3) of this section;
- (xii) contribution to any scheme for development of agricultural marketing including transport and scientific storage;
- (xiii) to provide facilities like grading services and communication to agriculturists in the market area;
- (xiv) to provide for development of agricultural produce in the market area;
- (xv) payment of expenses on elections under this Act;
- (xvi) incurring of all expenses for research, extension and training in marketing of agricultural produce;
- (xvii) prevention, on conjunction with other agencies, State, Union Territory, Central and others in relation to distress sale of agricultural produce;

- (xviii) fostering co-operative marketing and assisting co-operative marketing societies in the procurement and organization of profitable disposal of produce particularly the produce belonging to small and marginal farmers;
 - (xix) acquisition of land for construction of office building, guest house for farmers and visitors and staff quarters and maintenance thereof; hiring built up accommodation for office use, guest house or for other purpose of agricultural marketing;
 - (xx) any other purpose connected with the marketing of agricultural produce under this Act whereon the expenditure of the marketing committee fund is in the public interest subject to the prior sanction of the Board.
 - (xxi) contribution to centralized pension fund of the Board as may be prescribed.
- (2) Without prejudice to the generality of sub-section (1), every marketing committee shall, out of the “market fund” pay—
- (a) to the Board, as contribution, such percentage of its income derived from the licence fee, market fee, fines received as specified below, to enable the Board to defray its expenses on office establishment and other expenses incurred by it in the interest of the marketing committee generally,--
 - (i) if the annual income of a marketing committee does not exceed ten thousand rupees, ten percent.
 - (ii) if the annual income of a marketing committee exceeds ten thousand rupees but does not exceed fifteen thousand rupees, on the first Rs.10,000 ten percent.

(2) No expenditure shall be incurred on any item if there is no provision in the sanctioned budget thereof, unless it can be met by reappropriation from saving under any other Head and has sanction for re-appropriation of the Vice-Chairman of the Board.

95. Preparation of Balance and administrative report— (1)

At the end of every year, a marketing committee shall draw up its final accounts of receipts and expenditure and a balance sheet of its assets and liabilities and prepare an annual administrative report in such manner and in such Form as may be prescribed.

(2) Copies of accounts, balance sheet and administrative report referred to in sub-section (1) shall be submitted to the Board and the Director by such time as may be prescribed.”

(emphasis supplied by us)

23. We also quote Section 3(31) of the General Clauses Act, 1897 herein

below which reads as under:

“GENERAL DEFINITIONS

“3. DEFINITIONS.- In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context, -

(31). “local authority” shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;”

(emphasis supplied by us)

24. The short question which arises in this batch of civil appeals is : whether Agricultural Marketing Committee [AMC (s)] is a “local authority”, so as to be entitled to the benefit under Section 10 of the 1961 Act after insertion of the Explanation in Section 10(20) vide Finance Act, 2002 w.e.f. 1.4.2003.

25. Before analyzing the above question, we quote hereinbelow a comparative chart containing the Explanation to Section 10(20) of the 1961 Act on one hand in juxtaposition to Section 3(31) of the 1897 Act:

Explanation to Section 10(20) of the 1961 Act	Section 3(31) of the 1897 Act
--	--------------------------------------

“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 (2 of 1924);

3. DEFINITIONS.- In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context, -

(31). “local authority” shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.

26. At the outset, it may be noted that prior to Finance Act, 2002, the said 1961 Act did not contain the definition of the word “local authority”. That word came to be defined for the first time by Finance Act, 2002 vide the said Explanation/definition clause.

27. Certain glaring features can be deciphered from the above comparative chart. Under Section 3(31) of the General Clauses Act, 1897, “local authority” was defined to **mean** “a

municipal committee, district board, body of port commissioners or other authority legally entitled to the control or management of a municipal or local fund. The words “other authority” in Section 3(31) of the 1897 Act has been omitted by Parliament in the Explanation/definition clause inserted in Section 10(20) of the 1961 Act vide Finance Act, 2002. Therefore, in our view, it would not be correct to say that the entire definition of the word “local authority” is bodily lifted from Section 3(31) of the 1897 Act and incorporated, by Parliament, in the said Explanation to Section 10(20) of the 1961 Act. This deliberate omission is important. It may be noted that various High Courts had taken the view prior to Finance Act, 2002 that AMC(s) is a “local authority”. That was because there was no definition of the word “local authority” in the 1961 Act. Those judgments proceeded primarily on the functional tests as laid down in the judgment of this Court vide para ‘2’ in the case of **R.C. Jain (supra)**. We quote hereinbelow para ‘2’ which reads as under:

“2. Let us, therefore, concentrate and confine our attention and enquiry to the definition of “local authority”

in Section 3(31) of the General Clauses Act. A proper and careful scrutiny of the language of Section 3(31) suggests that an authority, in order to be a local authority, must be of like nature and character as a Municipal Committee, District Board or Body of Port Commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a Municipal Committee, District Board, or Body of Port Commissioners, but, possessing one essential feature, namely, that it is legally entitled to or entrusted by the government with, the control and management of a municipal or local fund. What then are the distinctive attributes and characteristics, all or many of which a Municipal Committee, District Board or Body of Port Commissioners shares with any other local authority? First, the authorities must have separate legal existence as corporate bodies. They must not be mere governmental agencies but must be legally independent entities. Next, they must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. Next, they must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably but, an appreciable measure of autonomy there must be. Next, they must be entrusted by statute with such governmental functions and duties as are usually entrusted to municipal bodies, such as those connected with providing amenities to the inhabitants of the locality, like health and education services, water and sewerage, town planning and development, roads, markets, transportation, social welfare services etc. etc. Broadly we may say that they may be entrusted with the performance of civic duties and functions which would otherwise be governmental duties and functions. Finally, they must have the power to raise funds for the furtherance of their activities and the fulfilment of their projects by levying taxes, rates, charges, or fees. This may be in addition to moneys provided by government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority."

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 it is a “local authority” of a like nature and character to that of a Municipal Committee performing municipal functions legally entitled to control the local fund, namely, the Market Fund. For that proposition reliance is placed on para ‘2’ of the judgment in the case of **R.C. Jain (supra)**, as quoted hereinabove. However, it may be noted that this Court in the case of **R.C. Jain (supra)** was required to consider the question as to whether “Delhi Development Authority” is a “local authority” as its employees stood outside the purview of 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 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 (supra)** as to whether 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 (supra)** this Court was aware that 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 para ‘2’ of the judgment in the case of **R.C. Jain (supra)** in the context of Section 3(31) of the 1897 Act as the word “local authority” was not defined in the Payment of Bonus Act, 1965. The Court, therefore, in the case of **R.C. Jain (supra)** 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 (supra)** applied the functional and incorporation tests.

29. One more aspect needs to be mentioned. In the case of **R.C. Jain (supra)** 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 (supra)**. However, as stated, earlier Parliament in its legislative wisdom has omitted the words “other authority” from the said Explanation to Section 10(20) of the 1961 Act. The said Explanation to Section 10(20) provides a definition to the word “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 functional test and the test of incorporation as laid down in the case of **R.C. Jain (supra)** 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 (supra)** 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 the insertion of the Explanation/definition clause to that subsection vide Finance Act, 2002.

30. The question 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 “legal 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 the 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 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 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 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 IXA there is Article 243ZF which refers to the “Municipalities”. This Article, inter alia, states that notwithstanding anything in Part IXA, 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 IXA, shall continue to be in force until amended or 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 (supra) 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 Finance Act, 2008, income of AMC(s) is exempt. Sub-section 26AAB of Section 10 comes into force with effect from 1.4.2009. 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 insertion of the said Explanation vide Finance Act, 2002 w.e.f. 1.4.03.

34. For the aforesaid reasons, we find no merit in this batch of Civil Appeals and accordingly the said Civil Appeals are dismissed with no order as to costs.

.....J.
(S.H. Kapadia)

.....J.
(B. Sudershan Reddy)

**New Delhi;
August 21, 2008.**