

THE INCOME TAX OFFICER

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v.

URBAN IMPROVEMENT TRUST

(Civil Appeal No. 10577 of 2018)

OCTOBER 12, 2018

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[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Income Tax Act, 1961:

Section 10(2) Explanation clause (iii) (as amended by Finance Act, 2002) – Whether Urban Improvement Trust (assessee) constituted under Rajasthan Improvement Act is a local authority within meaning of clause (iii) of Explanation to s. 10(2) – Plea of assessee that it is a “Municipal Committee” under clause (iii) of Explanation to s. 10 (2) – Held: Scheme of the Urban Improvement Act, under which the assessee was constituted, does not permit acceptance of the plea that assessee is a “Municipal Committee” within meaning of clause (iii) of Explanation to s. 10(2) – Rajasthan Improvement Act, 1959 – ss. 47, 48, 61 to 64 and 105.

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Allowing the appeals, the Court

HELD: 1. A perusal of the Scheme of the Rajasthan Urban Improvement Act, 1959 as well as the Rajasthan Municipalities Act, 1959 indicate that Urban Improvement Trust undertakes development in the urban area included in municipality/municipal board. Urban Improvement Trust is not constituted in place of the municipality/municipal board rather it undertakes the act of improvement in urban areas of a municipality/municipal board under the Rajasthan Urban Improvement Act, 1959. It may also perform certain limited powers of the municipal board as referred to in Sections 47 and 48 of Urban Improvement Act but on the strength of such provision Urban Improvement Trust does not become a municipality or municipal board. [Para 27][861-A-B]

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2. After the insertion of Part IXA in the Constitution by the Constitution (Seventy-fourth) Amendment Act, 1992 w.e.f. 01.06.1993, Articles 243Q deals with constitution of Municipalities. Section 10(20) Explanation, Clause (ii) relates to

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A Municipalities; the assessee has not based its claim on the basis of Clause (ii) of Explanation rather it has confined its claim to only Clause (iii). Under Clause (iii) claim of the assessee is that it is a “Municipal Committee”. [Paras 27 and 28][861-C-D]

3. The provisions of Sections 47 and 48 of Rajasthan Improvement Act, 1959 are to permit certain powers of the municipal boards to be performed by the Trust which does not transform the Trust into a Municipal Committee. Sections 61 to 64 are the provisions empowering levy of betterment charges, which is again in reference to and in context of carrying out improvement by the Improvement Trust in urban areas. The Municipal Board, Kota performs its functions, in areas where Municipal Board still exists. There is no reason to accept that Urban Improvement Trust is a Municipal Committee within the meaning of Section 10(20)Explanation Clause (iii). Section 105, which provides for ultimate dissolution of Trust and transfer of its assets and liabilities to the Municipal Board, does not in any manner improve the case of the assessee. When the Trust is dissolved or at dissolution, properties and funds and dues vested in or realisable by the Trust shall vest in and be realisable by the Municipal Board, which is a provision for different purpose and object. The above provision does not support the plea that Improvement Trust is a Municipal Committee as referred to in Clause (iii) of Explanation to Section 10(20) of the I.T. Act. Thus, the scheme of the Rajasthan Urban Improvement Act, 1959 does not permit acceptance of the contention of the appellant assessee that Urban Improvement Trust is a Municipal Committee within the meaning of Section 10(20) Explanation (iii). [Paras 35, 36 and 37][865-D-H; 866-A-B]

G *New Okhla Industrial Development Authority v. Chief Commissioner of Income Tax & Ors.* (2018) 8 SCALE 365; *Agricultural Produce Market Committee Narela, Delhi v. Commissioner of Income Tax and Another* (2008) 9 SCC 434 : [2008] 12 SCR 387 – relied on.

Union of India v. R.C. Jain (1981) 2 SCC 308 – referred to.

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Case Law Reference

(2018) 8 SCALE 365	relied on	Para 10
[2008] 12 SCR 387	relied on	Para 29
(1981) 2 SCC 308	referred to	Para 30

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10577 of 2018. B

From the Judgment and Order dated 23.10.2017 of the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Income Tax Appeal No. 287 of 2016

With

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Civil Appeal Nos. 10578, 10579, 10580, 10581, 10584, 10582, 10586, 10585, 10583 of 2018.

Vikramjit Banerjee, ASG, K. Radhakrishnan, Sr. Adv., Rupesh Kumar, Arijit Prasad, Mrs. Anil Katiyar, Advs. for the Appellant. D

Sanjay Jhanwar, Rajat Sharma, Tarun Gupta, Advs. for the Respondent.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. 1. Leave granted. E

2. These appeals have been filed by the Revenue challenging the Division Bench judgments of Rajasthan High Court dated 25.07.2017 as well as subsequent judgment dated 23.10.2017 following earlier judgment. The High Court vide its above judgments has dismissed all the income tax appeals of the Revenue and allowed that of assessee – Urban Improvement Trust. The Division Bench accepted the claim of the assessee that it is local authority within the meaning of Clause (iii) of Explanation to Section 10(20) of the Income Tax Act, 1961 and hence it is entitled for exemption under Section 10(20) of the Act. The Revenue have been contending that Urban Improvement Trust, the assessee is not a local authority within the meaning of Explanation to Section 10(20), hence it is not entitled for exemption. F G

3. For deciding this batch of appeals, it shall be sufficient to notice the facts of Civil Appeal arising out of S.L.P. (C) No. 18067 of 2018 – The Income Tax Officer Vs. M/s. Urban Improvement Trust, Kota. H

A 4. Section 10(20) has been amended by Finance Act, 2002 w.e.f.
01.04.2003. A Notice under Section 142(1) of the Income Tax Act, 1961
(hereinafter referred to as “I.T. Act”) was issued dated 01.08.2005
requiring the assessee to file a return for the assessment year 2003-
2004. A reply was submitted on behalf of the assessee that Urban
B Improvement Trust – the assessee is a municipality within the meaning
of Article 243P of the Constitution of India, hence it is not required to file
an income tax return. Assessing Officer passed an assessment order
dated 28.03.2006 rejecting the contention of the assessee that its income
is exempted under Section 10(20). An appeal was filed by the assessee
before the Commissioner (Appeals). Commissioner (Appeals) passed
C an order on 10.02.2010 holding that assessee is a local authority within
the meaning of Section 10(20) of the I.T. Act. The Revenue filed an
appeal before the Income Tax Appellate Tribunal (hereinafter referred
to as “ITAT”) challenging the appellate order. The ITAT accepted the
Revenue’s claim that assessee is not covered within the definition of
D Clause (iii) of Explanation to Section 10(20). The Appellate Tribunal in
Paragraph 2.6 allowed the appeal and restored back the matter to the
Commissioner of Income Tax (Appeals). Para 2.6 of the Order of the
ITAT is as follows:-

“2.6 Considering our decision in the case of Rajasthan Housing
E Board, we feel that the Ld. CIT (A) was not justified in holding
that income of UTI is exempt u/s 10(20) of the Act. The Ld.
CIT(A) has not decided other issues raised before him by the
assessee because the Ld. CIT(A) was of the opinion that income
of the assessee was exempt u/s 10(20) of the Act. Since we are
vacating the order of the Ld. CIT(A) on the issue of liability of
F exemption u/s 10(20) of the Act, therefore, other issues are required
to be considered afresh by the Ld. CIT (A). Accordingly, the
appeals are restored back on the file of the Ld. CIT(A).”

5. Both the assessee and Revenue aggrieved by the order of ITAT
had filed appeals before the High Court under Section 260A of the I.T.
G Act. The High Court decided all the appeals vide its judgment dated
25.07.2017. High Court held the assessee to be local authority within the
meaning of Section 10(20) Explanation. After answering the above issue
in favour of the assessee, the High court held that other issues have
become academic. Consequently, the appeals filed by the Revenue were
dismissed and that of the assessee were allowed.

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6. Another set of appeals have been filed by the Revenue questioning the subsequent judgment of the High Court dated 23.10.2017 deciding Income Tax Appeal No. 287 of 2016 and other appeals. The above appeals were filed by the assessee against the judgment of the ITAT dated 08.06.2017 wherein ITAT had set aside the order of the Assessing Officer and had directed the Assessing Officer to provide reasons for issuing Notice under Section 148 to the assessee in respect of assessment years 2005-2006 to 2009-2010. Assessee thereafter was allowed to file objection before the Assessing Officer and Assessing Officer was directed to pass a speaking order. Operative portion of the judgment of ITAT contained in Para 7 is to the following effect:-

“7. Since we have set aside the order passed in respect of the assessment year 2005-06 to 2009-10 as the Assessing Officer has not provided the reasons u/s 148 of the Act, therefore, the appeals of the revenue arising out of the order passed by the Ld CIT(A) in respect of the assessment year 2005-06 to 2009-10 are also set aside with the direction to the Assessing Officer to pass fresh order after providing the reasons to the assessee and after deciding the objections if any in terms of the judgment in the case of GKN DRIVESHAFTS (INDIA) LTD. VS. INCOME-TAX OFFICER AND OTHERS [2003] 259 ITR 19(SC). In light of above, all the appeals of the assessee as well as revenue are set aside to the file of the Assessing officer for the statistical purposes.”

7. Aggrieved by the order of the ITAT, the appeals were filed by the assessee. Assessee’s contention before the High Court was that assessee being covered by definition of local authority within the meaning of Section 10(20) Explanation of I.T. Act, its income was exempt. The Division Bench of the High Court relied and quoted its earlier Division Bench Judgment dated 25.07.2017 mentioned above and allowed the appeals filed by the assessees.

8. Revenue aggrieved by the aforesaid two judgments have come up in these appeals. By both the judgments of the High Court, large number of income tax appeals were decided giving rise to different appeals under consideration in this batch of appeals.

9. We have heard Mr. Vikramjit Banerjee, learned Additional Solicitor General of India, Shri K. Radhakrishnan, learned senior counsel

A for the appellants. Shri Sanjay Jhanwar and other learned counsel have been heard for the respondent.

10. Learned counsel for the appellant in support of the appeal contends that the Division Bench of the High Court committed error in coming to the conclusion that Urban Improvement Trust - the assessee
B is a local authority within the meaning of Explanation to Section 10(20) of the I.T. Act. It is submitted that Urban Improvement Trust might have been earlier getting benefit of wide definition of local authority prior to amendment by Finance Act, 2002 but after amendments in Section 10(20) by Finance Act, 2002, Urban Improvement Trust is no longer
C included in the definition of local authority. Learned counsel for the appellant further submits that assessee, i.e. Urban Improvement Trust is not covered by any of clauses, i.e. clauses (i) to (iv) of Explanation to Section 10(20) of the I.T. Act. Learned counsel for the appellant further relies on recent judgment of this Court in **New Okhla Industrial Development Authority Vs. Chief Commissioner of Income Tax & Ors. (2018) 8 SCALE 365**, by which judgment, this Court had
D occasion to interpret Section 10(20) Explanation and the constitutional provisions of Articles 243P and 243Q of the Constitution.

11. Learned counsel for the assessee refuting the submission of appellant contends that Urban Improvement Trust is fully covered by
E the definition of local authority as contained in Explanation to Section 10(20) as amended by Finance Act, 2002. It is submitted that the Urban Improvement Trust is constituted under the Rajasthan Urban Improvement Act, 1959 and the assessee is performing various municipal functions, hence it is also entitled for the benefit, which is extended to the municipalities. Learned counsel for the respondent submits that the
F assessee, i.e. Urban Improvement Trust is covered within the definition of local authority as given in sub-clause(iii) of Explanation, i.e. "Municipal Committee". It is submitted that assessee performs the municipal functions, collects charges, has control over the municipal funds and after dissolution of the trust, the entire fund is reverted back to the
G Municipal Board, which provision clearly indicate that it is a Municipal Committee and covered by definition of local authority under Section 10(20). Learned counsel submits that the judgment of this Court in **New Okhla Industrial Development Authority Vs. Chief Commissioner of Income Tax & Ors.(supra)** is distinguishable since in the said judgment, this Court had occasion to consider the provisions of Uttar
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Pradesh Industrial Area Development Act, 1976, which was entirely different legislation from one, which is under consideration in the present case, i.e. The Rajasthan Urban Improvement Act, 1959. A

12. We have considered the submissions of the learned counsel for the parties and have perused the records.

13. The only issue, which has been raised by the learned counsel for the parties in this batch of appeals is as to “whether the Urban Improvement Trust constituted under the Rajasthan Urban Improvement Act, 1959 is a local authority within the meaning of Explanation to Section 10(20) of the I.T. Act, 1961”? B

14. By Finance Act, 2002, Section 10(20) of the I.T. Act was amended by inserting an Explanation w.e.f. 01.04.2003. Section 10(20) as amended by Finance Act, 2002 is as follows:- C

“**10(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. D

Explanation.—For the purposes of this clause, the expression “local authority” means— E

(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 F

(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);” G

15. By Finance Act, 2002, provisions of Section 10(20A) was also deleted. Section 10(20A) as it existed prior to Finance Act, 2002 was as follows:-

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A “**10(20A)** any income of an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages or for both;”

B 16. At this juncture, it is relevant to notice the Explanatory Notes on Finance Act, 2002. Explanatory Notes was on both the sections – Section 10(20) as well as Section 10(20A). Paragraphs 12.2 to 12.4 and 13.1 to 13.4 of the Explanatory Notes, which are relevant for the present purpose are as follows:-

C “**12.2** Through Finance Act, 2002, this exemption has been restricted to the Panchayats and Municipalities as referred to in Articles 243(d) and 243(p)(e) of the Constitution of India respectively. Municipal Committees and District Boards, legally entitled to or entrusted by the Government with the control or management of a Municipal or a local fund and Cantonment Boards as defined under section 3 of the Cantonments Act, 1924.

D **12.3** The exemption under clause (20) of section 10 would, therefore, not be available to Agricultural Marketing 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 port trusts also.

E **12.4** This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003 2004 and subsequent assessment years.

F **13.1** Under the existing provisions contained in clause (20A) of section 10, income of the Housing Boards or other statutory authorities set up for the purpose of dealing with or satisfying the need for housing accommodations or for the purpose of planning, development or improvement of cities, towns and villages is exempt from payment of income tax.

G **13.2** Through Finance Act, 2002 clause (20A) of section 10 has been deleted so as to withdraw exemption available to the abovementioned bodies. The income of Housing Boards of the States and of Development Authorities would, therefore, also become taxable.

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13.3 Under section 80G, donation made to housing authorities, etc. referred to in clause (20A) of section 10 is eligible for 50% deduction from total income in the hands of the donors. Since clause (20A) of section 10 has been deleted, donation to the housing authorities etc. would not be eligible for deduction in the hands of the donors and this may result in drying up of donations. To continue the incentive to donation made to housing authorities etc., section 80G has been amended so as to provide that 50% of the sum paid by an assessee to an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both, shall be deducted from the total income of such assessee.

13.4 These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003 2004 and subsequent assessment years.”

17. Section 10(20A), which existed prior to amendments made by Finance Act, 2002 exempted any income of an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages or for both. The Rajasthan Urban Improvement Act, 1959 was enacted for the improvement of Urban Areas in Rajasthan. The Act contains following preamble:-

“An act for the improvement of Urban Areas in Rajasthan.

WHEREAS it is expedient to make provision for the improvement and expansion of urban areas in the State of Rajasthan.”

18. Section 10(20A) specifically granted exemption to income of an authority constituted in India by or under any law and the Rajasthan Urban Improvement Act, 1959 was, thus, clearly covered by Section 10(20A) as was availing exemption under Section 10(20A) prior to Finance Act, 2002. What is the consequence of deletion of Section 10(20A) and further insertion of Explanation under Section 10(20) providing for an exhaustive definition of the word “local authority”, which was not defined under the I.T. Act prior to Finance Act, 2002? For definition of local authority, the provisions of General Clauses Act, 1897 - Section 3(31) were looked into and applied. The definition of local

A authority given under Section 3(31) of the General Clauses Act was as follows:-

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

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19. The Explanation added to Section 10(20) now defines the definition of local authority in four clauses. Clause (i) relates to Panchayat as referred to in clause (d) of article 243 of the Constitution. Clause (ii) relates to Municipality as referred to in clause (e) of article 243P of the Constitution. Clause(iv) relates to Cantonment Board as defined in section 3 of the Cantonments Act, 1924 (2 of 1924). Learned counsel for the assessee claim that the assessee is covered under Clause (iii) of Explanation to Section 10(20), which is to the following effect:-

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“(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”

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20. We, thus, have to confine our discussions to above Clause (iii) under which the assessee- Urban Improvement Trust claims to be covered. Before we advert to above Clause (iii), it is relevant to notice certain provisions of the Rajasthan Urban Improvement Act, 1959 to find out the nature of the Urban Improvement Trust constituted under the said Act. The Rajasthan Urban Improvement Act, 1959 defines “improvement” in Section 2(vi) in following manner:-

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“2(vi) **“improvement”** with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land [or making provision for any amenity in, on, over or under any building or land] and includes re-improvement;”

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21. Section 2(x) defines “urban area” as follows:-

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“2(x) **“urban area”** means the urban area notified under Section 3 or, as the case may be, under Section 8;”

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22. Section 2(2) of the Rajasthan Urban Improvement Act, 1959 provides as follows:-

“2(2) All words and expressions not defined in this Act have, wherever used therein, the same meanings as are assigned to them by the Municipal law for the time being in force:” A

23. Section 9 provides for “Constitution of Trust”, which is as follows:-

“**Section 9. Constitution of Trusts.**—(1) The Trust shall consist of— B

(a) Chairman,

(b) two members of the Municipal Board, if any, having authority in the urban area, [XXX].

[(bb) X X X] C

[(c) such number of other persons, as may be determined by the State Government for each Trust, of whom one shall be a person belonging to Scheduled Tribe or Scheduled Caste, if no person of such caste or tribe is represented in the Trust by virtue of Clause (a) or Clause (b)] D

[x X x]

(2) The Chairman and the persons referred to in Clause (c) of Sub-section (1) [x x x] shall be appointed by the State Government by notification. E

(3) The members of the Municipal Board referred in Clause (b) of Sub-section (1) shall be elected by the said Board.

(4) If the said Board does not, by such date as may be fixed by the State Government, elect two of its members to be Trustees, the State Government shall appoint two members of the said Board to be Trustees and every person so appointed shall be deemed to be a Trustee as if he had been duly elected by the Municipal Board. F

(5) If the said Board shall have been superseded or dissolved in accordance with the provision of the Municipal law for the time being in force, it shall be represented on the Trust by persons appointed or elected, as the case may be, by the officer or authority appointed under the said law to discharge the functions and exercise the powers of the Board during the period of its supersession or dissolution. G

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A (6) Of the person referred to in Clause (c) of Sub-section (1) at least one shall be a person in the service of the State Government.

(7) The names of all persons appointed or elected to the Trust shall be notified by the State Government in the Official Gazette.”

B 24. Under Section 47, certain powers under the Municipal laws may be vested in the Trust. Section 48 provides for Transfer of duties etc. of Municipal Board to Trust. Sections 47 and 48 are as follows:-

C “**Section 47. Powers under the Municipal laws vested in the Trust.**—(1) Such provisions of the Municipal law for the time being in force in any part of the State as may be prescribed in the case of each Trust, shall so far as may be consistent with the tenor of this Act, apply to [the urban area for which the Trust is established under this Act and] all references in the said provisions to the Municipal Board, Council or Corporation shall be construed as references to the Trust which, in respect of any

D [such urban area] may alone exercise and perform all or any of the powers and functions which under any of the said provisions might have been exercised and performed by the Municipal Board, Council or Corporation or by the Chairman or President or by any officer thereof:

E Provided that the Trust may delegate to the Chairman or to any officer of the Trust all or any of the powers conferred under this section.

[(2) to (5) Omitted by Rajasthan Act No. 26 of 1976.]

F **Section 48, Transfer of duties etc. of Municipal Board to Trust.**—The State Government may by notification in the Official Gazette transfer to the Trust any of the duties, powers, functions and responsibilities of the Municipal Board and thereupon the Trust shall carry out, exercise, perform and discharge such duties, powers, functions and responsibilities.”

G 25. Section 61 provides for the Improvement Fund. Section 62 empowers the Trust to levy betterment charges. Section 63 provides for assessment of betterment charge and Section 64 provides for settlement of betterment charge by arbitrators. One more section on which reliance has been placed by the learned counsel for the appellant is Section 105, which is to the following effect:-

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“Section 105. Ultimate dissolution of Trust and Transfer of its assets and liabilities to the Municipal Board.—(1) When all schemes sanctioned under this Act have been executed or have been so far executed as to render the continued existence of the Trust, in the opinion of the State Government, unnecessary, the State Government may by notification declare that the Trust shall be dissolved from such date as may be specified in this behalf in such notification and the Trust shall be deemed to be dissolved accordingly.

(2) From the said date—

(a) all properties, funds and dues which are vested in or realisable by the Trust shall vest in and be realisable by the Municipal Board;

(b) all liabilities which are enforceable against the Trust shall be enforceable against the Municipal Board;

(c) for the purpose of completing the execution of any scheme sanctioned under this Act, Which has not been fully executed by the Trust, and, of realising properties, funds and dues referred to in Clause (a) the functions of the Trust under this Act shall be discharged by the Municipal Board as if it were the Trust under this Act, and

(d) the Municipal Board shall keep separate accounts of all moneys respectively received and expended by it under this Act, until all loans raised hereunder have, been repaid and until all other liabilities referred to in clause (b) have been duly met.”

26. It is relevant to notice that in the same year in which the Rajasthan Urban Improvement Act, 1959 was passed, another enactment namely, the Rajasthan Municipalities Act, 1959 was enacted. Learned counsel for the respondent has referred to notification dated 09.07.1970 by which the State Government has established Urban Improvement Trust, Kota. Notification dated 09.07.1970 is as follows;-

“TOWN PLANNING DEPARTMENT

NOTIFICATION

Jaipur, July 9, 1970

No. 5 (3) TP/70- In exercise of the powers conferred by Section 8 read with Section 9 and 13 of the Rajasthan Urban

A Improvement Act, 1959 (Act No. 35 of 1959) of the State Government here by orders :

1. that for the purpose of carrying out improvement of the Urban Area included in the Municipal limits of Kota Town, a board of trustee called the improvement Trust, Kota shall be established.

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2. That the said trust shall consist of:-

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a. A Chairman.

b. Two members/Nominees of the Municipal Council, Kota.

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c. Chief Town Planner or his nominee.

d. 4 other persons.

D In exercise of the powers conferred by sub-section(2) of Section 9 of the said Act, the State Government further appoints the following persons as the Chairman and other Member of the said Trust for a period of three years with effect from 10.7.1970 or earlier till he is required to hold the office under Section 11 and 12 of the said Act:

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1. Shri Nathu Lal Jain, Advocate Chairman

2. Chief Town Planner or his Nominee Member

3. Sushri Nagendra Bala, Ex. M.L.A. Member

4. Collector, Kota Member

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3. The term of the office of the said Trustees shall commence with effect from 10.7.70.

G The Municipal Council, Kota is called upon to appoint the two persons to be trustees of the said Trust in pursuance of sub-section(5) of Section 9 of the said Act within the period of one month from the date of issue of this Notification.

By Order of the Governor,

R.K. Saxena,

Secretary to the Government"

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27. A perusal of the Scheme of the Rajasthan Urban Improvement Act, 1959 as well as the Rajasthan Municipalities Act, 1959 indicate that Urban Improvement Trust undertakes development in the urban area included in municipality/municipal board. Urban Improvement Trust is not constituted in place of the municipality/municipal board rather it undertakes the act of improvement in urban areas of a municipality/municipal board under the Rajasthan Urban Improvement Act, 1959. It may also perform certain limited power of the municipal board as referred to in Sections 47 and 48 but on the strength of such provision Urban Improvement Trust does not become a municipality or municipal board. After the insertion of Part IXA in the Constitution by the Constitution (Seventy-fourth) Amendment Act, 1992 w.e.f. 01.06.1993, Articles 243Q deals with constitution of Municipalities. Section 10(20) Explanation, Clause (ii) relates to Municipalities.

28. Learned counsel for the assessee has not based its claim on the basis of Clause (ii) of Explanation rather it has confined its claim to only Clause (iii). Under Clause (iii) claim of the assessee is that it is a “Municipal Committee”. We, thus, have to answer as to whether it is a Municipal Committee within the meaning of Explanation to Section 10(20) or not?

29. The word “Municipal Committee” as occurring in Section 10(20) Explanation came for consideration before this Court in **Agricultural Produce Market Committee Narela, Delhi Vs. Commissioner of Income Tax and Another, (2008) 9 SCC 434**. In the above case, this Court had examined the Explanation to Section 10(20) as amended by Finance Act, 2002 and the definition of local authority contained therein. After noticing the definition of local authority as contained in Section 10(20) Explanation w.e.f. 01.04.2003 as well as Section 3(31) of the General Clauses Act, 1897. Following was stated in Para 30 and 31:-

“30. At the outset, it may be noted that prior to the 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 the Finance Act, 2002 vide the said Explanation/definition clause.

31. 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

A 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 have been omitted by Parliament in the Explanation/definition clause inserted in Section 10(20) of the 1961 Act vide the 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.”

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C 30. In the above case, earlier judgment of this Court in **Union of India Vs. R.C. Jain, (1981) 2 SCC 308** was considered where this Court had laid down and applied the functional test as to whether a body is local authority or not? This Court laid down that functional test as evolved in **R.C. Jain’s case (supra)** is no more applicable after amendment of Section 10(20) of I.T. Act by Finance Act, 2002. Following
D was laid down in paragraph 35:-

E “35. One more aspect needs to be mentioned. In *R.C. Jain, (1981) 2 SCC 308* 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 *R.C. Jain*. 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 *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 *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
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of Section 10(20) after the insertion of the Explanation/definition clause to that sub-section vide the Finance Act, 2002.” A

31. This Court further noticed the expression “Municipal Committee” in Clause (iii) of Section 10(20). This Court held that the words “Municipal Committee and District Board” in Explanation were used out of abundant caution. In 1897, when the General Clauses Act was enacted there existed in India Municipal Committees and District Boards, which were discharging the municipal functions in different parts of the country. The expression “Municipal Committee and District Board” were included by amendments incorporated by Finance Act, 2002 to take into its fold those Municipal Committees and District Board which are still discharging municipal functions where no other municipalities or boards to discharge municipal functions have been constituted. In paragraph Nos. 36 and 37 following has been laid down:- B C

“36**. 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 “local authority” to mean—a panchayat as referred to in clause (d) of Article 243 of the Constitution of India and municipality as referred to in clause (e) of Article 243-P 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. D E

37. 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 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.” F G H

A 32. This Court further noticed the constitutional provision of Part IX-A and noticed that any law relating to municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, even if inconsistent with the provisions of Part IX-A, shall continue to be in force until amended or repealed by a competent legislature. In Para 39, following has been laid down:-

B “39. Similarly, under Part IX-A there is Article 243-ZF which refers to the “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 or repealed by a competent legislature. In our view, Article 243-N and Article 243-ZF indicate 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.”

C 33. In above case, this Court, thus, has held that the expression “Municipal Committee and District Board” occurring in Clause (iii) of Explanation referred to those bodies, which are discharging municipal functions and power in any part of country and so far has not been substituted by any other Body by any Act of Legislature. The word “Municipal Committee” occurring in Clause (iii) Explanation, thus, has a definite purpose and object. Purpose and object was to cover those bodies, which are discharging municipal functions but are not covered by the definition of municipalities as was required to be constituted by Article 243Q of the Constitution of India. Urban Improvement Trust constituted under the Rajasthan Urban Improvement Act, 1959, thus, cannot be held to be covered by the definition of Municipal Committee as contained in Clause (iii) of Explanation to Section 10(20) of the I.T. Act. Further, as noticed above, prior to deletion of Section 10(20A), Section 10(20A) was a provision which exempted the income of authority constituted in India by or under any law enacted for the purpose of planning, development or improvement of cities, towns and villages or for both. There cannot be any dispute that Urban Improvement Trust, i.e. the

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assessee was fully covered by the definition of authorities as contained in Section 10(20A) prior to its deletion. When there is a specific deletion of Section 10(20A), the said deletion was for an object and purpose. The Explanatory Notes in Paragraph Nos. 13.1 to 13.4 as noticed above clearly mentioned that “income of certain Housing Boards etc. to become taxable”. The deletion of authorities, which were enumerated in Section 10(20A) was a clear indicator that such authorities, which were enjoying exemption under Section 10(20A) shall no longer be entitled to enjoy the exemption henceforth. The deletion of Section 10(20A) thus has to be given a purpose and meaning.

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34. This Court in **New Okhla Industrial Development Authority Vs. Chief Commissioner of Income Tax & Ors. (supra)**, which was a judgment delivered by this very Bench had considered in detail the object and purpose of Section 10(20A), the object and purpose of Finance Act, 2002 amendment adding the Explanation to Section 10(20) and deletion of Section 10(20A).

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35. The provisions of Sections 47 and 48 are to permit certain powers of the municipal boards to be performed by the Trust which does not transform the Trust into a Municipal Committee. The power entrusted under Sections 47 and 48 are for limited purpose, for purposes of carrying out the improvement by the Improvement Trusts.

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36. Sections 61 to 64 as noticed above are the provisions empowering levy of betterment charges, which is again in reference to and in context of carrying out improvement by the Improvement Trust in urban areas. The Municipal Board, Kota performs its functions, in areas where Municipal Board still exists. There is no reason to accept that Urban Improvement Trust is a Municipal Committee within the meaning of Section 10(20) Explanation Clause (iii). Coming back to Section 105, which provides for ultimate dissolution of Trust and transfer of its assets and liabilities to the Municipal Board, this provision does not in any manner improve the case of the assessee. When the Trust is dissolved or at dissolution, properties and funds and dues vested in or realisable by the Trust shall vest in and be realisable by the Municipal Board, which is a provision for different purpose and object. The above provision does not support the contention that Improvement Trust is a Municipal Committee as referred to in Clause (iii) of Explanation to Section 10(20) of the I.T. Act.

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A 37. We, thus, are of the view that Scheme of the Rajasthan Urban
Improvement Act, 1959 does not permit acceptance of the contention of
the appellant assessee that Urban Improvement Trust is a Municipal
Committee within the meaning of Section 10(20) Explanation (iii). The
purpose and object for expression “Municipal Committee” used in Section
B 10(20) Explanation (iii) has been explained, as already noticed above, by
this Court’s judgment in **Agricultural Produce Market Committee
Narela, Delhi (supra)**.

C 38. The entire consideration of the High Court in the impugned
judgment is contained in paragraph 15 to 18 which are to the following
effect:-

D “15. It is true that the functions which are carried out by the
assessee are statutory functions and carry on for the benefit of
the State Government for urban development therefore, in our
considered opinion, the functions carried out by the authority is a
supreme function and fall within the activity of the State
Government.

E 16. In that view of the matter, the judgments which are strongly
relied upon by counsel for the department are of no help in the
facts of the case as the case relied upon by the department was
in respect of industrial corporation which was under the statute
for the purpose of making profit. The fees and other charges
which are covered are statutorily for the development of the urban
area. In that view of the matter, the judgment which sought to be
relied upon by the counsel for the respondents, in our considered
opinion, would be of importance and the functions which are carried
F out by the assessee is statutory function. In our considered opinion,
under clause-10(20) & Sub-clause (3) Municipal Committee and
District Board are legal entity entrusted by the function of the
Government within the control or management of the municipal
or local authority and will try to help the assessee.

G 17. In that view of the matter, the reliance placed by counsel for
the department regarding 10(20) and explanation A will not make
any difference. Taking into consideration income of authority is
under constitution of India vide order enacted either for the purpose
of dealing with or setting up the housing scheme for the purpose
of planning and development of the improvement of the cities,

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town and villages or both for which the authority are created to carry out the function of State which are sovereign whereas the urban development and calculation of development charges will fall under the development charges. A

18. In that view of the matter, deletion of 20A will not make difference in case of assessee. In our considered opinion, Clause-3 will come in the help of the assessee. In that view of the matter, we are considered opinion, that the authority assessee is a local authority for the purpose of carrying out of the improvement and development function of the State.” B

39. The High Court based its decision on the fact that functions carried out by the assessee are statutory functions and it is carrying on the functions for the benefit of the State Government for urban development. The said reasoning cannot lead to the conclusion that it is a Municipal Committee within the meaning of Section 10(20) Explanation Clause (iii). The High Court has not adverted to the relevant facts and circumstances and without considering the relevant aspects has arrived at erroneous conclusions. Judgments of the High Court are unsustainable. C D

40. In view of foregoing discussions, we are of the view that judgments of the High Court deserves to be set aside. All the appeals are allowed. In view of setting aside the judgments of the High Court dated 25.07.2017 and 23.10.2017, the order passed by ITAT revives. Parties shall bear their own costs. E