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IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH "D" AHMEDABAD

Before S/Shri Mukul Shrawat, JM and D.C.Agrawal, AM

ITA No.1315/ahd/2007
Asst. Year :2003-04

The Income-tax Officer, Ward 2(4), Surat.	Vs.	M/s Sachin Notified Area, Plot No.5719, Unnati Building Road No.6, GIDC, Sachin, Dist. Surat.
(Appellant)	..	(Respondent)

Assessee by :-	Shri Gaurav Batham, DR
Revenue by:-	Shri M. K. Patel, A.R.

ORDER

Per D. C. Agrawal, Accountant Member.

This an appeal filed by the Revenue against the order of Id. CIT(A) dated 29/1/2007.

2. The only issue involved in this appeal is whether assessee is entitled to exemption under section 10(20) of the I.T. Act, 1961.

3. The facts of the case are that assessee is a notified area in Surat for the industrial development. It filed return of income at NIL by claiming exemption u/s 10(20). It was claimed by the assessee that it is a local authority notified by the State Government under the Gujarat Industrial Development Act, 1962 (GIDA in short). It has been entrusted with the work of development and collection of tax under the notification dated

21.11.1997 instituted under the Gujarat Municipalities Act 1963. The assessee further claimed that it is a local authority inasmuch as it is a deemed Municipality as it has been created under the Gujarat Industrial Development Act, 1962 (GIDA in short) and under that Act all the provisions of Municipalities Act, 1963 have been made applicable. However, the AO was of the view that with the deletion of section 10(20A) the assessee is no longer a local authority and it is also not a Municipality as defined u/s 10(20) of the Act. He referred to the following definition of local authority as contained in section 10(20) as under :-

- (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 entered 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).

According to the AO assessee is not entitled to exemption under section 10(20) as it is not a Municipality or Panchayat or Municipal Committee or District Board or Cantonment Board. He, therefore, disallowed the payment made by the assessee to District Rural Development Agency (DRDA (in short) which was paid at the direction of the State Government and also added the interest earned by the authority on FDRs.

4. The Id. CIT(A), however, allowed the claim of the assessee through a detailed and reasoned order. He held that State Government has empowered the notified areas so created wherein tax would be levied and

collected. This power is given under section 246A, B, C, D & E of the Gujarat Municipalities Act and also u/s 16 of GIDA. The Id. CIT(A) referred to the decision of Hon. Apex Court in Civil Appeal 364 of 1999 arising out of SLP(C) No.3765 of 1998 wherein Hon. Apex Court held that section 16 of GIDA, 1962 enables the State Government to create and notify areas and equate them with notified areas created under Gujarat Municipalities Act. According to him notified areas so created under GIDA would be governed by the provisions of Gujarat Municipalities Act, 1963 as applicable to notified areas created under that Act. Thus according to the Id. CIT(A) assessee is a notified area and a deemed municipality. Therefore, it is a local authority within the meaning of section 10(20). He finally held as under :-

“5.6 Thus, as per the observations of Hon. Supreme Court, a notified area under the GIDA 1962 is an industrial township. After the amendment to section 264 of the Gujarat Municipalities Act, such notified area would also become a notified area under the Gujarat Municipalities Act and would be deemed to be an industrial township under the provisions of clause (1) of article 243Q of the Constitution of India. In other words, such industrial townships are deemed as a ‘Municipality’ as defined in the Explanation below section 10(2) of the I.T.Act. This would mean that the income of such notified areas would be exempt from taxation under the provisions of section 10(20) of the I.T.Act. The income of the municipality is from taxes collected on various facilities provided to the residents within the specified area. In the case of the assessee, as per the directions of the State Government, the sum of Rs.1,02,80,888/- was to be paid to the DRDA for the development of the Gram and Nagar Panchayat, whose land had been taken away to form such area. Therefore, I am of the view that where the income of the Assessee was to be exempt u/s 10(20) of the I.T. Act, such expenditure being in accordance with the statutory provisions applicable to the functioning of the assessee could not be disallowed and treated as income. On the same ground, the interest earned on Fixed Deposits of the sum of Rs.8,95,711/- also cannot be treated as income and taxed. The AO is, therefore, directed to delete such additions.”

5. Against this, the Revenue is aggrieved and it has raised following ground:-

1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in treating the income of the assessee "Sachin Notified Area" is exempt from taxation under the provisions of section 10(20) of the I.T. Act and thereby deleting the addition in respect of payment made to District Rural Development Agency at Rs.1,02,80,711/- and interest income on Fixed Deposit at Rs.8,95,711/-.

6. The ld. DR submitted that after the amendment in Income-tax Act w.e.f. 1.4.2003 section 10(20A) which provided exemption to income to local authority has been omitted and in place of it section 10(20) has been inserted. Therefore, old concept of 'local authority' as contained in section 10(20A) cannot be borrowed to hold the assessee as local authority. The scope of local authority has been severely curtailed and is confined only to items mentioned therein such as Panchayats as referred to in Article 243(d) of the Constitution, Municipality as referred to in Article 243P(e) of the Constitution, Municipal Committee and District Board and Cantonment Board as defined in section 3 of the Cantonment Act, 1924. The assessee is neither Panchayat nor Municipal Committee nor District Board nor Cantonment Board. The assessee is also not a Municipality as referred to in clause(e) of Article 243P of the Constitution. Ld. DR then referred to Article 243P (e) and submitted that as per that Article Municipality means an institution of self-government constituted under Article 243Q. He then took us to Article 243Q and said that proviso contained therein does not provide the status of Municipality to an Industrial Establishment. Since according to the ld. DR proviso takes away the status of Municipality from the Industrial Establishment

which the assessee is, the assessee cannot, therefore, be treated as Municipality within the meaning of section 10(20).

7. Against this, the Id. AR elaborately supported the order of Id. CIT(A). He submitted that proviso under Article 243Q does not carve out an exception for Industrial Establishment taking it out from the concept of Municipality but in fact it creates a clause in itself like any other clause of Municipality defined in Article 243Q. Thereafter he referred to Section 264A of Gujarat Municipalities Act 1963 which provided the definition of notified area being an urban area specified as industrial township area under proviso to clause (i) of Article 243Q of the Constitution. Thus according to him proviso to clause (i) of Article 243Q of the Constitution provides for concept of notified area being an industrial township. Therefore, according to him it is incorrect to say that notified areas as per the proviso to clause (i) of Article 243Q carves out an exception from being a Municipality. He then referred to section 16 of GIDA which provided for extension of all the provisions of Gujarat Municipalities Act, 1963 to notified areas under GIDA or under Municipalities Act, 1963. He then referred to section 264 of Gujarat Municipalities Act, 1963 for the proposition that all the provisions of Municipalities Act would be applicable to such notified areas. By taking us to these provisions Id. AR submitted that notified areas created under GIDA are treated at par with notified areas created under Municipalities Act, 1963 by virtue of section 264B of that Act. Thus there are two powers given to the State Government to declare an Industrial Township as notified area. One power is given under section 16 of GIDA and the other power is given under section 264B of Municipalities Act. Both the notified areas are treated at par for the applicability of Municipalities Act and, therefore, the notified area so created by the State Government under section 16 of

GIDA would be a Municipality and, therefore, would be entitled to exemption under section 10(20). He then referred to the judgment of Hon. Apex Court in the case referred to by Id. CIT(A) and submitted that Article 243Q of the Constitution and proviso to clause (i) thereto has been elaborated in detail and, therefore, there is no ambiguity which can be perceived on its interpretation.

8. We have considered the rival submissions and perused the material on record. In our considered view the order of Id. CIT(A) deserves to be upheld. No doubt provisions of section 10(20A) of IT Act has been omitted w.e.f. 1.4.2003 and thereby law relating to local authority, as contained therein could not be borrowed to find out whether assessee is a local authority within the meaning of section 10(20). It is to be independently seen whether the assessee is covered under section 10(20) of the Act as a Municipality. As per clause (ii) of section 10(20) a Municipality, as referred to in clause (e) of Article 243P of the Constitution would be a local authority. In Article 243P (e) the Municipality is defined as under :-

243 (e) *“Municipality” means an institution of self-Government constituted under article 243Q.*

From this definition Municipality is an institution of self-government. Therefore, any institution which is created for self-governance of any area could be a Municipality. The Constitution of such institution of self-government has been laid under Article 243Q which reads as under :-

Article 243Q – (1) *There shall be constituted in every State -*

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Government may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit by public notification, specify to be an industrial township.

(2) *In this article, “a transitional area”, “a smaller urban area” or “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.”*

9. The above article clearly defines various institutions of the nature of municipality based on selected areas of the urban area. The self-governing institution which is in the state of transition from a rural area to an urban area is called Nagar Panchayat. The self-governing institution in small urban area is called Municipal Council and self-governing institution in larger urban area is called Municipal Corporation. The proviso to clause (1) in the above Article enables the Governor not to constitute Municipality under this clause if Municipal services are provided or proposed to be provided by an Industrial Establishment in that area. In other words Municipality of the nature of Nagar Panchayat, Municipal Council or Municipal Corporation may not be constituted in that urban area where municipal services are already being provided or proposed to be provided by an industrial establishment. For deciding as to whether municipality under this clause is required to be constituted in an urban area or not the Governor may take into consideration the size of area or Municipal services already provided or proposed to be provided and other factors as he may deem fit. From bare reading of above Article, we infer that where municipal services are provided by industrial

establishment then further other types of municipality need not be constituted in such urban area. In other words there cannot be duplication of municipalities one like Nagar Panchayat, Municipal Council or Municipal Corporation and other like industrial establishment, (like notified areas as the assessee is) if one type is already providing municipal services. The basic factor is the providing of municipal services. This may be provided by Gram Panchayat, Municipal Council or Municipal Corporation or by an industrial establishment i.e. notified area. It is not a case of carving out an exception from the general categories of different municipalities as listed in sub-clause (a), (b) & (c) of clause (1) of Article 243Q but a case of avoiding duplication and therefore, an additional class of municipality called “industrial establishment” or “notified area” providing municipal services or proposed to provide such municipal services is created by the proviso. Therefore, we uphold the contention of Id. AR that proviso to clause (1) to Article 243Q creates another class of institution of self-governance in addition to Nagar Panchayat, Municipal Council and Municipal Corporation. Hon’ble Supreme Court in the case of Saij Gram Panchayat vs. The State of Gujarat & Ors. In Civil Appeal No.364 of 1999 [arising out of slp (C) No.3765 of 1998] rendered on 27.1.1999 has considered the definition of Municipality as contained in Article 243Q which is already referred above.

10. Thus the Hon. Apex Court held that notified areas under section 16 of GIDA would also become notified areas u/s 264A of Gujarat Municipalities Act and, therefore, would mean an industrial township area as per proviso to clause (1) of Article 243Q of the Constitution of India. Hon. Apex Court referring to the decision in the *Solapur MIDC*

Industries Association etc. vs. State of Maharashtra and others (JT 1996 (7) SC 14) has held that industrial township created under GIDA would be deemed to be the industrial township for the purposes of local self-government by observing as under :-

“As held by this Court in Solapur MIDC Industries Association etc. vs. State of Maharashtra & ors. (JT 1996 (7) SC 14), a municipal corporation Act and an industrial development Act have distinct fields of operation and there is no inter se conflict between the two. By reason of the notifications of 7.9.1993, the industrial area developed under the Gujarat Industrial Development Act is also deemed to be an industrial township for the purposes of local self-government. Any possible conflict is also removed by the second notification of 7.9.1993 removing this area from the ambit of the Gujarat Panchayats Act, 1961 cannot be a notified area under the Gujarat Municipalities Act loses all force.”

Regarding interpretation of Article 243Q and treatment to be given to an industrial establishment as deemed municipality Hon. Apex Court in that case held as under :-

“Article 243Q deals with constitution of municipalities. Municipality is defined under Article 243P(e) to mean “ an institution of self-government constituted under Article 243Q. Article 243Q constitutes three types of municipalities (a) a Nagar Panchayat (b) a Municipal Council and (c) a Municipal Corporation. The proviso to Article 243Q deals with all three types of municipalities constituted under clause (1). It provides that a municipality under clause (1) may not be constituted in certain circumstances. This would refer to any of the three types of municipalities. Although the proviso refers to such urban area or part thereof, this “urban” area also covers a transitional area, in transition from rural to urban. It is because this area is also in the process of turning into an urban area that it is put under Part IXA which deals with municipalities in urban areas. Therefore, in respect of any of these three types of areas set out in clause (1) of Article 243Q, having regard to the size of the area, the municipal services being provided or proposed to be provided by an industrial establishment in that area, and such other factors as the Governor will deem fit to consider, he may, by public notification specify such area to be an industrial township. All these

relevant factors would be in operation in an industrial area already notified many years back under an Industrial Development Corporation Act as in the present case. Therefore, there is no breach of Article 243Q if such an area is, under the provisions of an Industrial Development Act, equated with an industrial township under Article 243Q.”

11. Thus we are of the view that once Hon. Apex Court has interpreted that notified areas would be industrial establishments within the meaning of Article 243Q and proviso thereof then such notified areas would be deemed as industrial township for the purposes of local self-government.

12. Now we refer to various sections of Gujarat Municipalities Act as referred to by ld. AR and ld. DR. They are as under :-

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(1) For the purpose of this Chapter, notified area means an urban area or part thereof specified to be an industrial township area under the proviso to clause (1) of article 243Q of the Constitution of India.

264B (2) *An area in regard to which a notification has been issued under subsection (1) is hereinafter called a notified area.*

(1) The State Government may, by notification in the Official Gazette,-

(a) Apply to adapt to any notified area the provision of any section of this Act, or part of any such section or of any rules in force or which can be imposed in any municipal borough under the provisions, of This Act, subject to such restrictions and modifications, if any. as it may think fit;

(b) impose in any such area any tax, which might be imposed therein under the provision of this Act if the said area were a municipal borough,

(c) appoint a person or a committee for the purposes of the assessment and recovery of any tax imposed under clause (b), and in order to arrange for the due expenditure of the proceeds of such taxes, and for the preparation and maintenance of proper accounts, and generally for enforcing the provisions of any sections or rules applied or adopted under clause (a).

(2) The proceeds of any tax levied in any notified area under This section shall be expended only in such manner in which, if the notified area were a municipal borough, the municipal fund thereof might be expended.

264C For the purposes of any section of this Act, which may be applied to a notified area, the person or committee appointed for such area under section 264B shall be deemed to be a municipality under this Act, and the area shall be deemed to be a municipal borough.

Further section 16 of GIDA 1962 reads as under :-

Section 16 of GID Act, 1962-

Notwithstanding anything contained in the provisions for the time being in force relating to notified areas in the Gujarat Municipalities Act, 1963, the State Government, by notification in the Official Gazette-

- a) declare that the provisions relating to notified areas and any other provisions of that Act shall extend to and be brought into force in any industrial area, and thereupon such area shall be deemed to be a notified area under that Act.*
- b) appoints the Corporation or any officer or committee thereof for the purposes of the assessment and recovery of any taxes, when imposed under the provisions so extended and for enforcing such provisions;*
- c) provide that the provisions of any other law relating to local authorities which is in force in that area shall cease to apply, and thereupon such provisions shall cease to apply thereto;*
- d) make such other provision as is necessary for the purposes of the enforcement of the provisions so extended to that area.*

13. A combined reading of these sections indicates that the State Government can create, by notification in official gazette, a notified area and provisions of Gujarat Municipalities Act would be applicable to such notified areas under section 16 of GIDA. Notified areas created under section 264B of Municipalities Act and notified areas declared under section 16 of GIDA would be treated at par as there is no conflict between the two provisions. No distinguishing feature has been provided

in the GIDA or under Municipalities Act. Further it is provided that the provisions of Gujarat Municipalities Act would be applicable to all notified areas whether created under section 16 of GIDA or under section 264B of Municipalities Act. Once provisions of Municipalities Act are applicable to notified area and they are treated as a separate a class of self-governing institution then they have all the ingredients of a municipality and, therefore, they are covered by clause (ii) of Section 10(20). We further note that such notified areas have been given power to impose taxes under the provisions of Municipalities Act, 1963 and collect taxes by appointing a person or committee for that purpose. The Nagar Panchayat, Municipal Council, Municipal Corporation have also been entrusted with the power to levy, assess and collect taxes. It is not the case that Nagar Panchayat, Municipal Council or Municipal Corporation are also functioning simultaneously along with administration by Notified area. The jurisdiction of Nagar Panchayat, Municipal Council or Municipal Corporation and notified area are different and defined and they do not overlap. The urban or transitional urban areas given for self governance to these bodies are clearly demarcated. At least no case has been made out that they overlap. The notified area like the assessee has been given the same power under the Municipalities Act as is given to Nagar Panchayat, Municipal Council or Municipal Corporation. The Municipalities Act is applicable to all classes of urban area either Nagar Panchayat, Municipal Council or Municipal Corporation. It is also applicable with equal force upon the assessee functioning under demarcated and separate areas called Notified areas which are independent of any Nagar Panchayat, Municipal Council or Municipal Corporation. The power to constitute such notified areas or Municipal Council or Nagar Panchayat or Municipal Corporation are derived from Article 243Q of the Constitution and, therefore, we cannot see any

distinction as to how notified areas would not be a self-governing institution like other three bodies. We may further add the word 'Municipality' as used in Article 243P of the Constitution and also in Section 10(20)(ii) of I.T. Act is a generic term and has no existence as such except in the form provided in Article 243Q. No separate institution like municipality can be conceived as such. What is created is a Nagar Panchayat or Municipal Council, Municipal Corporation which are Municipality and so is the notified areas of industrial establishment which is also a municipality because of the powers and provisions contained in Gujarat Municipalities Act equally applicable to all of them. Thus we uphold the order of Id. CIT(A) that assessee is a municipality under section 10(20) of the Act and, therefore, its income is exempt under that section. The appeal of Revenue is dismissed.

14. In the result, the appeal filed by the Revenue is dismissed.

Order was pronounced in open Court on 16/7/2010

Sd/-
(Mukul Shrawar)
Judicial Member

Sd/-
(D.C.Agrawal)
Accountant Member

Ahmedabad,

Dated : 16/7/2010

Mahata/-

Copy of the Order forwarded to:-

1. The Assessee.
2. The Revenue.
3. The CIT(Appeals)-
4. The CIT concerns.
5. The DR, ITAT, Ahmedabad
6. Guard File.

BY ORDER,

Deputy/Asstt.Registrar
ITAT, Ahmedabad