

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****TAX APPEAL NO. 33 of 2014**

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COMMISSIONER OF INCOME TAX RAJKOT II....Appellant(s)  
Versus  
RAJKOT MUNICIPAL CORPORATION....Opponent(s)

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**Appearance:**

MR PRANAV G DESAI, ADVOCATE for the Appellant(s) No.1

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**CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI**  
and  
**HONOURABLE MS JUSTICE SONIA GOKANI**

**Date : 21/01/2014**

**ORAL ORDER**

**(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)**

- 1.Revenue is in appeal against the judgment of the Income-tax Appellate Tribunal, Rajkot Bench, Rajkot (hereinafter referred to as 'the Act') dated July 12, 2013, raising the following questions for our consideration :

*“(A) Whether on the facts and in the circumstances of the case, ITAT is justified in law and on facts in holding that the income from hoarding is “income from other sources” and not “business income” and hence, exempted under section 10920) of the Income Tax Act ?*

(B) *Whether on the facts and in the circumstances of the case, ITAT was correct in following the judgment of a co-ordinate bench and holding that income from hoardings was to be taxed under the head 'Income from other sources' instead of 'Business Income' rather than deciding the case on merits and despite conceding the fact that the submission of the Revenue were not only convincing but also carried sufficient force ?*

(C) *Whether in the facts of the case and in law, the ITAT was justified in coming to the conclusion that the income of the assessee from systematic and continuous letting out of hoardings is exempt under Section 10(20) of the Income Tax Act ?”*

2. Briefly stated the facts are as under :

2.1 The respondent-assessee is the Rajkot Municipal Corporation. For the assessment year 2005-06, the return was not filed by the Corporation. A notice under section 142(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for filing the return was

issued to the respondent-assessee, which direction also the assessee did not comply. Eventually, after one round of remand, the proceedings were placed before the Assessing Officer, in which he noted that the assessee claimed exemption of various receipts basing reliance on provisions of section 10(20) of the Act. Such amounts were received for letting out the community halls, market land, rent, planetarium, stadium rent, etc. A sum of Rs.76.42 lakh was shown as income from hoardings. The assessee stated that the total receipt from such source was Rs.119.32 lakh and claimed depreciation of Rs.16.13 lakh and other expenses of Rs.106.45 lakh. The assessee, thus, claimed net loss of Rs.3.26 lakh. The Assessing Officer allowed 75% of the gross receipts of Rs.119.32 lakh as expenditure and taxed the rest of Rs.29.83 lakh as income of the assessee.

2.2 The assessee carried the matter in appeal.

The CIT (Appeals) held that the income such as

rental income of community hall, market building, planetarium, stadium and market land, etc. were income from services provided by the assessee. He, therefore, held that such incomes were exempt under section 10(20) of the Act. As regards the income from hoardings of Rs.76.22 lakh, the CIT (Appeals) followed the earlier order of the Tribunal and held that the same was in the nature of income from other sources and, therefore, exempt under section 10(20) of the Act.

2.3 The Revenue carried the matter in appeal, particularly, questioning the exemption granted by the CIT (Appeals) to the income of the municipality from hoardings. Before the Tribunal, the assessee contended that it is a local authority. As per section 10(20) of the Act the income from other sources of such local authority would be exempt. It was contended that the income from the hoardings cannot be treated as a business income of the assessee. The Corporation merely charges the licence fees

from the licensees who utilise the space for putting up hoardings. The advertisers approach the licensee and not the Corporation for putting up the advertisements. The Corporation only provides its space on payment of licence fees to the licence holders. Such fees form only a small part of assets of the Corporation. The Corporation does not carry on such activities on regular basis with an intention to carry on business of that nature. It was pointed out that such income was less than 1% of the total revenue of the Corporation.

2.4 The Tribunal in the impugned judgment was *prima facie* convinced with the argument of the Revenue that such income from the hoardings is liable to be assessed as business income under section 28 of the Act and would not be exempt under section 10(20) of the Act. However, the Tribunal felt bound by the earlier decision of the Co-ordinate Bench in the case of **DCIT v. Jamnagar Municipal Corporation in I.T.A.**

**Nos.372 and 373/Rjt/2009,** in which the Tribunal held as under :

*"10. We have considered the rival contentions of both the parties. We find that the assessee is a Municipal corporation and it is local authority and so far as the income of the local authorities are concerned it is exempt but the only income from supply of commodity and services within its jurisdiction is exempt income. We find that leasing out or arising from letting out the place for hoarding/ advertisement is concerned it is not disputed that this income has been arising out in the jurisdiction area of the assessee, therefore, this income is an income from other sources. Therefore, we are of the view that AO is justified in treating this income as "Income from other sources"."*

2.5 The Tribunal resultantly rejected the Revenue's appeal and, therefore, present appeal has been presented before us.

3. The learned advocate for the Revenue vehemently contended that the Tribunal having been convinced

about the validity of the Revenue's contention ought not to have rejected the appeal merely following its earlier judgment. Independently, he contended that the income generated from the hoardings cannot be stated to be income from other sources and must be categorised as business income of the assessee and, therefore, was not exempt under section 10(20) of the Act.

4. Section 10(20) of the Act provides that in computing the total income of the 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.]”*

5. From the said provision, it can be seen that the income of the 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 within its local jurisdictional area or water or from the supply of water or electricity within or outside its own jurisdictional area would not be included in the total income. The fact that the respondent-Corporation is a local authority is not in dispute. The question therefore is whether the income in question can be stated to be "income from other sources" and therefore by virtue of section 10(20) of the Act whether such income would be excluded from the total income of the assessee. On the other hand, if the Revenue is correct in contending that the income from hoardings can be stated to be business income of the assessee, the business carried on by the Municipal Corporation which accrues or arises from the supply of commodity or service within



its local jurisdictional area or from the supply of water or electricity within or outside its local jurisdictional area, such exemption may not be available.

6. In the present case, however, we have no hesitation in approving the decision in the case of ***Jamnagar Municipal Corporation (supra)*** that such income cannot be stated to be business income and must be held to be "income from other sources".

7. Section 28 of the Act pertains to profits and gains of business or profession and provides *inter alia* that the profits and gains of any business or profession which was carried on by the assessee at any time during the previous year, was chargeable to income-tax under the head "Profits and gains of business or profession". The moot question is, can the activity of granting licences and collecting licence fees for permitting hoardings in the Municipal property and collecting licence fees from advertisers

putting up hoardings in private property, could be stated to be the business of the assessee. The Bombay Provincial Municipal Corporation Act, 1949, now renamed as Gujarat Provincial Municipal Corporation Act, 1949 (hereinafter referred to as 'the GPMC Act') provides for constitution of Municipal Corporations, their activities, functions, powers, duties, etc. Chapter VI of the GPMC Act pertains to duties and powers of the Municipal Authorities and officers. Section 63 pertains to obligatory duties of the Corporation. Sub-section (1) of section 63 thereof provides for various obligatory duties, which include :

*“(10) the regulation and abatement of offensive and dangerous trades or practices;*

*xxx xxx xxx*

*(18) the construction, maintenance, alteration and improvement of public streets, bridges, sub-ways, culverts, causeways and the like;*

*(19) the removal of obstructions and projections in or upon streets, bridges and other public places;*

*xxx xxx xxx*

*(22) the securing or removal of dangerous buildings and places;*

xxx                    xxx                    xxx

*(24) fulfillment of any obligation imposed by or under this Act or any other law for the time being in force;"*

7.1 Section 66 of the GPMC Act pertains to the matters which may be provided by the Corporation at its discretion and provides besides other things for taking measures not specifically provided in the said section, which is likely to promote public safety, health, convenience or instruction.

7.2 Section 226 of the GPMC Act pertains to prohibition of projections upon the streets, etc. and provides *inter alia* that except as provided in section 227, no person shall erect, set up, add to, or place against or in front of any premises any structure or fixture, which will overhang, jut or project into, or in any way encroach upon, or obstruct in any way the safe or convenient passage of the public along, any street; or jut or project into or encroach

up on any drain or open channel in any street, so as in any way to interfere with the use or proper working of such drain or channel or to impede the inspection or cleansing thereof.

7.3 Sub-section (2) of section 226 of the GPMC Act empowers the Commissioner, after issuing notice, to require the owner or occupier of any premises to remove or to take such other order as he may deem fit.

7.4 Section 227 of the GPMC Act pertains to projections over streets which may be permitted in certain cases.

7.5 Section 264 of the GPMC Act pertains to removal of structures, which are in ruins or likely to fall.

7.6 Section 386 of the GPMC Act provides for general provisions regarding grant, suspension or revocation of licences and written permissions and levy of fees, etc. Sub-section (1) thereof provides that whenever it is provided by or under this Act that a licence or

a written permission may be given for any purpose, such licence or written permission shall specify the period for which and the restrictions and conditions subject to which, the same is granted and the date by which the application for the renewal of the same shall be made and shall be given under the signature of the Commissioner or a municipal officer.

7.7 Sub-section (2) of section 386 of the GPMC Act provides that except as may otherwise be provided by or under this Act, for every such licence or written permission a fee may be charged as such rate as shall from time to time be fixed by the Commissioner, with the sanction of the Corporation.

8. From the above statutory provisions, it can be seen that the Municipal Corporation has to carry out certain functions of obligatory and some of discretionary character. In carrying out such functions, it has powers granted under the Act. It can generate revenue and apply the same for the purpose of carrying out its functions.

Section 386 of the GPMC Act, in particular, authorises the Municipal Corporation to issue licences, permissions and to charge such fees as may be sanctioned by the Corporation.

9. The activity of the Corporation of granting licences for putting up hoardings in its property and also for granting licences to private property owners to put up hoardings, by no stretch of imagination, can be stated to be business of the Corporation. The Corporation merely charges licence fees to regulate such activities. In terms of its function, it would also be necessary for the Corporation to regulate such activities. E.g. Under sub-section (10) of section 63 of the GPMC Act, it is the duty of the Corporation to regulate and abate the offensive and dangerous trades or practices. Under sub-section (18) thereof, it is the duty of the Corporation to construct, maintain, alter and improve public streets, bridges, sub-ways, etc. Under sub-section (19) thereof, it is the duty of the Corporation to remove obstructions and projections in or upon the streets, bridges and

other public places. Sub-section (22) of section 64 of the GPMC Act requires the Corporation to secure or remove the dangerous buildings or places. Likewise, under sub-section (42) of section 66 of the GPMC Act, at the discretion of the Corporation, it may undertake any measure not specifically hereinbefore named, likely to promote public safety, health, convenience or instruction.

10. If the Corporation, therefore, permits hoardings to be put up in its property by issuing licences, for which it charges licence fees and also charges licence fees from the owners allowing hoardings to be put up in their private properties, in our opinion, the same cannot be said to be business activity of the Corporation. Such licence fees are collected for regulating the activity of putting up hoardings to ensure that it does not damage the public safety and does not offend the public morality and decency. The safety measures, standards of morality and decency, all have to be maintained by the Corporation since such hoardings would be either

in the Corporation property or private property, in number of cases on the plots abutting a public street. We have noticed that the collection from such licence fees is less than 1% of the total revenue of the Corporation. In our opinion, therefore, the view of the Tribunal that such income was not business income, but must be "income from other sources", therefore, calls for no interference.

11. In the result, the Tax Appeal is dismissed.

**(AKIL KURESHI, J.)**

**(MS SONIA GOKANI, J.)**

*Aakar*