



# AIFTP TIMES

Volume 8 – No. 9 • September 2017

## FORTHCOMING PROGRAMMES

| Date & Month             | Programme  | Place    |
|--------------------------|--|----------|
| 2nd December, 2017       | National Executive Committee Meeting                       | Jabalpur |
| 2nd December, 2017       | Extra Ordinary General Meeting                             | Jabalpur |
| 2nd December, 2017       | 1st National Executive Committee Meeting for the term 2018 | Jabalpur |
| 3rd & 4th December, 2017 | 20th National Tax Convention                               | Jabalpur |

## Justice Dr. B. P. Saraf National Tax Moot Court – A Report

Justice Dr. B. P. Saraf National Tax Moot Court was organised by AIFTP East Zone and National University of Juridical Sciences at NUJS, Kolkata on 29th and 30th July, 2017 under the leadership of Mr. R. D. Kakra, Chairman EZ. 11 teams from all over India participated. It was adjudged by 16 Senior professionals. Finals were judged by

- Hon'ble Justice Kalyan Jyoti Sengupra former Chief Justice of Calcutta and Andhra Pradesh and Hon'ble Justice D. P. Dey of Calcutta High Court\*.

Judges in Semi-final were

- Shri P. M. Jagtap, Hon'ble Member, ITAT; Shri N. V. Vasudevan, Hon'ble Member, ITAT, Dr. Ashok Saraf, Senior Advocate and Shri Narayan Jain, Advocate and Author\*.

In award giving ceremony the other dignitaries Dr. Prof Ishwara Bhat, Vice-Chancellor of NUJS thanked AIFTP for presenting 3rd edition of Dr. Justice B. P. Saraf Moot Court and Dr. Ashok Saraf announced to support the Moot Court for 10 years.

Mr. Indu Chatrath was the Chairman and Mr. Subash Agarwal was the Co-Chairman of Moot Court Committee. Mr. Arvind Agarwal was the Convenor. Mr. Kamal Jain, Joint Secretary, Mr. B. K. Loharuka Treasurer, Mr. D. K. Agawal, Mr. N. D. Saha as well as other members of Executive Committee actively helped.

The moot problem was on implication and desirability of heavy taxation under section 115BBE introduced after demonetisation with effect from Assessment Year 2017-18 in case of income declared or assessed under sections 68 to 69D.

Winner was National Law Institute University (NLIU), Bhopal and Runner Up was Hidayatullah National Law University (HNLU), Raipur.

Best Memorial Award was bagged by National Law Institute University (NLIU), Bhopal and the Best Speaker award given to Mr. Satyajit Nair, Delhi University Campus Law Centre.

The performance of students was admirable.

### FOR ANY QUERIES MEMBERS MAY CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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## DIRECT TAXES

Ms. Neelam Jadhav, *Advocate*, KSA Legal Chambers

### High Court

**1. S. 263 : AO after examining the issue accepted the claim for deduction u/s. 24(b) – view of AO was certainly plausible, it was not open for Commissioner to take such order in revision**

The assessee engaged in business of developing and renting immovable property including shopping complex and malls. During assessment claim of the assessee was for deduction of interest paid on Optionally Fully Convertible Debentures (OFCD) in terms of s. 24(b) was accepted as the AO did not disturb this claim of assessee. The CIT held that, assessment order passed by AO was erroneous and prejudicial to interests of revenue and accordingly initiated proceedings u/s. 263 with view to pass suitable order.

The assessee challenged the revision. Before the High Court the assessee submits that funds raised through debentures were utilized for repayment of past loans, these loans were taken for purpose of construction of building. During the original assessment the said issue was pointed out before the AO. And through accounts assessee established precise correlation between debentures and repayment of past loans.

The High Court held that the Commissioner had not controverted in notice for revision that AO after examining issue accepted assessee's claim for deduction u/s. 24(b) even with respect to interest paid on debentures which were utilized for repayment of past loans used for purpose of construction of building. View of AO was certainly plausible, particularly, in view of clarification issued by CBDT. Therefore revision of order is not for Commissioner to take such order. (r.w.s. 143(3) & 24(b)).

*Aryan Arcade Ltd. vs. CIT Special Civil Application No. 2914 of 2016 dated 10/08/2017 (Guj)(HC); source : gujarathighcourt.nic.in*

**2. S. 80HHC : Interest income earned – description of the same specified was deductible from income of assessee under head “profits and gains of Business and profession” – deduction permissible u/s. 80HHC(1) in respect of computing total income in relation to export business**

Assessee was exporter of carpets and he was under obligation to invest some money in fixed deposit with bank in order to avail credit facility for export. On this fixed deposit assessee earned interest and claimed deduction of 90% of said interest under explanation (baa) to sub-s. (4C) of s. 80HHC, but it was disallowed

by AO. Before CIT (Appeals) and Tribunal the appellant failed.

Before the High Court the issue involved whether interest earned by assessee on fixed deposit receipts pledged with bank for availing credit facility for purposes of export was income from business or it would be income from other sources, liable to deduction in terms of explanation (baa) after sub-section (4C) of S. 80HHC while computing taxable income under head “profits and gains of business and profession”.

The High Court held that any relevancy regarding nature of interest income earned by assessee, notwithstanding its nature, as specified percentage of said interest was deductible from “profits of business” computed under head “profits and gains of business and profession” as provided under explanation (baa) to sub-section (4C) of S. 80HHC, interest income as specified was deductible. The Interest income earned by assessee of description specified was deductible from income of assessee under head “profits and gains of business and profession” this would be in addition to deduction permissible u/s. 80HHC(1) in respect of computing and total income in relation to export business. (AY 1998-99)

*Laxminarain Khetan vs. ITO ITA No. 321 of 2007 dtd. 28/07/2017 (All.)(HC); source : www.allahabadhighcourt.in*

### Tribunal

**3. S. 10A : Unit was not out of reconstruction of existing unit and there was no carry forward stock from any old firm – Entire input and out coming stock was new – assessee deserved availed benefit of S. 10A**

Assessee was manufacturer and exporter of jewellery, had claimed exemption u/s. 10A and declared turnover. The AO did not allow exemption u/s. 10A and CIT(A) had confirmed action of AO.

The ITAT held that unit was not made out of any reconstruction of any old unit, as the assessee has acquired land from RIICO on lease and obtained approval from Development Commissioner for manufacturing of embedded jewellery. Assessee had mounted semi-precious and precious stones in silver and gold jewellery and then polished and made it marketable, then exported same from SEZ unit, thus, revenue's claim that assessee was only trading in goods, was not factually correct. Further there was no carry forward stock from any old firm, entire input and out coming stock was new, therefore, it could not be a unit was out of reconstruction of existing unit. The ITAT had allowed the claim of the assessee u/s. 10A.

*Kamal Kishore Gupta vs. ACIT ITA No. 469/JP/2015 dt. 1/8/2017 (Jaip.)(Trib.); source : www.itat.nic.in*

## IMPORTANT CASE LAWS IN SERVICE TAX, CENTRAL EXCISE

S. S. Satyanarayana, *Tax Practitioner*, Hyderabad.

**Service Tax :** The assessee, an association of authorized money changers and money transfer agents, contended that entire sequence of transactions in remittance of money from overseas customer through MTSO route would not attract levy. They relied on Circular No. 163/14/2012-ST dated 10-7-2012 - Even though there was no change in law, still another Circular No. 180/6/2014-ST dated 14-10-2014 was issued levying service tax on consideration received by agents for rendering service to an overseas entity - This circular sought to supersede earlier circulars - Whether circulars issued prior to circular dated 14-10-2014 would continue to bind Revenue Officials unless they were able to point out that earlier circulars were plainly inconsistent or in conflict with provisions of law. **Held :** Transactions in remittance of money from overseas customer would not attract levy in hands of money transfer agents in view of Circular No. 163/14/2012-ST dated 10-7-2012; even though subsequent Circular No. 180/6/2014-ST dated 14-10-2014 was issued levying service tax, same would not be considered unless any change in law was shown by revenue authorities. [*All India Association of Authorized Money Changers &*

*Money Transfer Agents vs. Union of India - [2017] 82 taxmann.com 180 (Bombay)]*

**Service Tax :** The assessee was engaged in activities of supply of vehicles on hire basis and also in goods transportation by road but without obtaining service tax registration. On receipt of the notice from the Adjudicating Authority, the assessee has submitted the relevant details/documents for his verification. Immediately thereafter, the assessee obtained service tax registration and deposited service tax liability along with interest and intimated to the Adjudicating Authority. Thereafter the Adjudicating Authority, on scrutiny of records and documents submitted by the assessee has issued SCN demanding penalty also. The assessee's application before the Settlement Commission for dropping penalty u/s. 78 of the Finance Act, 1994 was rejected by the Settlement Commission. **Held :** Service Tax : Presence of *mens rea* is a necessary constituent for imposing penalty under Section 78 the Finance Act, 1994. [*Mahadev Logistics vs. CCE Settlement Commission (Principal Bench) - [2017] 81 taxmann.com 409 (Chhattisgarh)*].

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### Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Telangana Tax Practitioners' Association for the period 2017-18.

|                        |  |
|------------------------|--|
| President              | Shri V. C. H. Narisi Reddy                             |
| Vice-Presidents        | Shri M. Dayakar Reddy & Shri P. Gopal                  |
| Hon. Secretary         | Shri B. Ramesh   |
| Hon. Joint Secretaries | Shri K. V. Ramana Murthy & Shri. D. Vasant Kumar Reddy |
| Treasurer              | Shri Ramana Reddy                                      |

We wish them all the success.

### Advertisement Tariff for AIFTP Journal (W.e.f. 15th July, 2013)

|  | Particulars        | Per Insertion |
|--|--------------------|---------------|
| 1.   | Quarter page       | ₹ 1,500/-     |
| 2.   | Ordinary half page | ₹ 2,500/-     |
| 3.   | Ordinary full page | ₹ 5,000/-     |
| 4.   | Third cover page   | ₹ 7,500/-     |
| 5.   | Fourth cover page  | ₹ 10,000/-    |
| There shall be Discounts on bulk advertisements. |                    |               |

### Membership of AIFTP as on 31-8-2017 Life Members

|              | Associate | Individual  | Association | Corporate | Total       |
|--------------|-----------|-------------|-------------|-----------|-------------|
| Central      | 0         | 930         | 24          | 3         | 957         |
| Eastern      | 4         | 1353        | 36          | 3         | 1396        |
| Northern     | 0         | 1063        | 17          | 0         | 1080        |
| Southern     | 1         | 1150        | 19          | 8         | 1178        |
| Western      | 4         | 2246        | 37          | 18        | 2305        |
| <b>Total</b> | <b>9</b>  | <b>6742</b> | <b>133</b>  | <b>32</b> | <b>6916</b> |

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### Publications for sale

| Sr. No. | Name of Publication                                       | Edition    | Rate (₹) |             |                 |
|---------|---|------------|----------|-------------|-----------------|
|         |   |            | Members  | Non-Members | Courier Charges |
| 1.      | AIFTP – Of Milestone and Beyond – History Book            | Nov., 2016 | 400.00   | 450.00      | 80.00           |
| 2.      | “212 Frequently Asked Questions on Survey – Direct Taxes” | Dec., 2015 | 240.00   | 270.00      | 60.00           |

- Notes: 1. The above publications are available for sale; those who desire to buy may contact the office of the Federation.  
2. Local/Outstation members not collecting from office are requested to add courier charges, as mentioned above.  
3. Please draw Cheque/Draft in favour of “All India Federation of Tax Practitioners” payable at Mumbai.

### Publications from AIFTP Western Zone for sale

| Sr. No. | Name of Publication   | Edition    | Rates (₹) |             |                 |
|---------|---|------------|-----------|-------------|-----------------|
|         |   |            | Members   | Non-Members | Courier Charges |
| 1.      | Limited Liability Partnership simplified through – Frequently Asked Questions | Nov., 2016 | 200.00    | 225.00      | 60.00           |
| 2.      | Levy of Penalty u/s. 271(1)(c) – Some Important Issues                        | Nov., 2016 | 200.00    | 225.00      | 60.00           |

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