



All India Federation of Tax Practitioners

Price ₹ 5/-
(for Members only)

AIFTP TIMES

Volume 4 - No. 4 | April, 2013

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
16 to 18-10-2013	AOTCA Conference at Hanoi	Vietnam
26 to 28-12-2013 (proposed)*	National Convention	Mumbai

* Subject to confirmation

Renewal Subscription to AIFTP Journal and Voluntary Contribution to Palkhivala National Tax Moot Court Competition and Research on Tax

Dear Members,

We have posted bill for renewal subscription of AIFTP Journal and Palkhivala Foundation in 1st week of March, 2013. Members are requested to send the DD or Cheque in favour of "All India Federation of Tax Practitioners" payable at Mumbai as early as possible.

Members can also download the subscription and an Appeal for voluntary contribution from our website; i.e., www.aiftponline.org and send us the subscription.

Thanking you,

For All India Federation of Tax Practitioners

NARAYAN P. JAIN
Secretary General

Non-Receipt of AIFTP Journal and AIFTP Times

AIFTP Journal is posted to all AIFTP Journal subscribers on 23rd of every month.

If the subscriber does not receive the AIFTP Journal on or before 30th of the month please send a e-mail or written intimation to the office of the All India Federation Of Tax Practitioners to enable the office to take corrective action.

AIFTP Times is posted on 4th of the month to all members.

If the member does not receive the AIFTP Times on or before 10th of the month please send a e-mail or written intimation to the office of the All India Federation Of Tax Practitioners to enable the office to take corrective action. The AIFTP Times can also be downloaded from the website of AIFTP i.e. www.aiftponline.org

Mitesh Kotecha
Chairman, Journal Committee

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

Name	Tel. (O)	Fax	Mobile	E-mail
National President — S. K. Poddar, Adv.	0651-2202787	2309407	9431115265	sheojipoddar40@gmail.com
Deputy President — J.D. Nankani, Adv.	022-22841717	22831717	9821034867	jagdish@nankanis.com
Secretary General — Narayan P. Jain, Adv.	033-22821100	22820180	9830951252	npjain@vsnl.com
Treasurer — CA. Harish N. Motiwalla	022-22002103	22094331	9819422300	hnmotiwalla.ca@gmail.com

FEDERATION NEWS

Narayan P. Jain, *Secretary General*

REPORT OF ONE DAY NATIONAL TAX SEMINAR AT ALL INDIA ARYA VYSYA SAMAJAM, TIRUMALA ON 16TH MARCH, 2013

By Dr. M.V.K. MOORTHY, Chairman, AIFTP (SZ)

Man Proposed. God too blessed the proposal.

The long standing fervent and ardent desire of All India Federation of Tax Practitioners and its members to organise and hold taxation seminar on Tirumala at the abode of Lord Sri Venkateswara has become a reality practically and theoretically. This has become truthful on account of the incessant and collective efforts of all the members of the Managing Committee of the zone as well as the sincere, honest and steady efforts of the National Joint Secretary for the South Zone Mr. Malladi Srinivasa Rao. The said duty minded, highly sensitive and workaholic person threw all his weight in continuously persuading the respected Chairman of Tirumala Tirupati Devasthanams Board of Trustees and the Executive Officer since three months for allotment of break Darshans and special VIPs darshans for the participants and ultimately was successful in arranging happy and satisfactory darshan of the Lord to one and all. I would be failing in my duty, if I don't mention with lot of appreciation of the continuous and steady supervision and monitoring of the arrangements at the uphill in respect of accommodation, catering and other services excellently demonstrated by the Vice Chairman for the State of Andhra Pradesh, Shri AVS Krishna Mohan, Advocate and the learned secretary of the Zone Shri S.S. Satyanarayana who have frequently visited Tirumala at their cost of the work. Ultimately all the relentless, devotional and duty minded efforts of the above-mentioned trio have culminated in a very grand successful seminar organised by the Federation, not ever before 15th March, 2013 at any point of time and certainly with no repetition after 16th March, 2013. The services of the trio with selflessness and service minded goal really require every kind of application by one and all. Therefore, one has to notice that 16th March, 2013 is golden lettered day in the interest of AIFTP.

The seminar was chaired by the beloved National President Shri S.K. Poddar, Advocate of Ranchi who had undertaken a very painful, hectic and tedious journey from Ranchi to Tirumala. It is the fortune of the South Zone to have two luminaries as Guests of Honour Shri P. C. Joshi, Advocate and Dr. K. Shivaram, Advocate and Past National President of the Federation. However the beaming presence of the illuminating personalities namely the National President and the other two Guests of Honour have

adorned the dais and illuminated the venue, though to some extent and for some time, the absence of the other Guests of Honour and the Deputy President has caused a shadow of gloom over the dais.

The unique and distinguishing feature of the Seminar was that individual appreciative citations with the specific photograph of the felicities have been also presented and to the absentees the citations are being arranged through a suitable mode for being delivered to the respective personalities. As a mark of tradition for invoking the blessings of Lord, the National President and two Guests of Honour were escorted by the Vedic Pandits chanting Vedas with poornakumbham which is a rarely conferred privilege at the temples and the seminars on the heads of the sovereign State as well as the judiciary. The Vedic Pandits invoked the blessings of Lord Sri Venkateswara by offering in, the holy water and prasadam. As a continuity of the tradition of the Federation three senior professionals were felicitated. It is also very much gratifying to notice that the AIFTP does not simpliciter believe in seminars, education and ethics alone. It believes that achievement of excellence in ethics would be possible only when the AIFTP also involves itself in the service of the society. When the AIFTP has undertaken a National Taxation Seminar on 16th March, 2013 at the abode of the Lord at Tirumala with all pomp and colours, it was felt expedient to demonstrate the service mindedness of the Federation to the Lord in which direction the National President along with the Past President Shri P.C. Joshi, Advocate and the Chairman of the Zone CA Phalgun Kumar flagged off the service activity by distributing towels, clothes, sarees and bedsheets to the needy and poor people at the venue to mark the closure of inaugural session, whereafter in the cellar where the dining hall is located food was also distributed to the hungry and poor people. Thus the Federation has proved itself that it is pioneer in service activity also in addition to the excellence in professionalism. The Seminar opened for three technical sessions namely on implications of Finance Budget, 2013, spoken by CA Sampath Raghunathan of Chennai, chaired by CA Tirumalai of Hyderabad, the Second Technical Session on Administration of Service Tax law was handled by Shri Vaitheeswaran, Advocate of Chennai chaired by Shri P.C. Joshi, Advocate of Mumbai and the Third Technical Session post lunch on administration of VAT and Duties of assessing

authorities was handled by two learned speakers Mr. M.V.J.K. Kumar, Advocate from Hyderabad and CA M. Sanjay Dhariwal from Bengaluru and the sessions was chaired by the Deputy Commissioner of Commercial Taxes, Nellore Mr. M.D. Imtiaz. The seminar came to a close by 4.30 p.m.

As is known to everyone, the idea of holding the seminar on the uphill at the abode of Lord was initially objected to by all the concerned familiar with the traditions of the temple and the place. However the very ardent and fervent idea of firm nature to hold the seminar at Tirumala against all risks was flexibly encouraged and blessed by the presiding deity Sri Venkateswara Swami, who stood behind all of us and blessed for an accomplished successful seminar. Thus the desire has been transformed into a reality both theoretically and practically. The seminar was attended by nearly 200 delegates. The colourful addition is the participation of the officials from the legal cell and accounts department of TTD for whose participation proceedings were officially issued by the respected Executive Officer directing officers of the above two departments to attend the seminar and report compliance.

The organisers namely All India Federation of Tax Practitioners, South Zone, local co-organisers namely Tirupati Tax Bar Association and Tirupati Sales Tax Practitioners Association were all thankful for the

successful seminar and it is also achieved that the two local Bar Associations have agreed to join the Federation as Associate Members and shortly the applications will be routed through the zonal secretariat.

It is also an additional interesting and welcoming feature that 17 learned professionals from All Gujarat Federation of Tax Consultants led by its president Shri Shailesh Desai and another identifiable jovial and real friend Shri Sameer S. Jani, Advocate from Junagadh in Gujarat State have attended the seminar with their families and thus the said Bar Associations successfully endeavoured to be identified as a Co-organiser of the seminar. All the persons responsible and accountable for the success of the seminar have been suitably recognised and felicitated and every participant, it is believed to have returned home with lot of happiness and satisfaction after having Darshan of the Lord invoking his blessings with value addition of professional knowledge.

Finally the Chairman of the Zone harbouring to hold seminars at different places in the State of Andhra Pradesh as well as the other States with collective effort of his team of office bearers profusely thank the National Executive Committee for its meet in the evening of 16th and for the opportunity given for holding the seminar at Tirumala on 16th instant.



STATEMENT AS PER PRESS AND REGISTRATION OF BOOKS ACT
FORM IV
[See Rule 8]

AIFTP TIMES

1. Place of Publication : All India Federation of Tax Practitioners
215, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020.
2. Periodicity of its Publication : Monthly
3. Printer's Name & Nationality : Shri Kotecha Mitesh Ashwin, Indian
Address : Sethna House, 1st Floor, 56, Trinity Street, Dhobi Talao, Mumbai 400 001 (M.S.)
4. Publisher's Name & Nationality : Shri Kotecha Mitesh Ashwin, Indian
Address : Sethna House, 1st Floor, 56, Trinity Street, Dhobi Talao, Mumbai 400 001 (M.S.)
5. Editor's Name & Nationality : Shri Karkala Shivaram Kittanna, Indian
Address : 2nd Floor, East West Building, Opp. Bombay Stock Exchange,
Bombay Samachar Marg, Fort, Mumbai 400 001.
6. Names and Address of individuals who own the newspaper and partners or shareholders holding more than one per cent of the capital : All India Federation of Tax Practitioners
215, Rewa Chambers, 31, New Marine Lines,
Mumbai 400 020.

I, Shri Kotecha Mitesh Ashwin, hereby, declare that the particulars given above are true to the best of my knowledge and belief.

KOTECHA MITESH ASHWIN
Signature of the Publisher

Date : 28-3-2013.

LETTER TO THE EDITOR

January 15, 2013

The Associate Editors
AIFTP Times,
215, Rewa Chambers,
31, New Marine Lines, Mumbai 400 020

Dear sirs,

Sub: Validity of Stamp Papers

Ref: News item at Sr. No. 14 under the heading "Stamp Papers valid even after six months of Purchase" on Page No. 11 in AIFTP Times Vol. 4 No. 1 for January, 2013.

I refer to the above news item and point out that the decision in the case of *Thiruvengada Pillai v. Navaneethammal and Anr.* of the Hon'ble Supreme Court is in Civil Appeal No. 290 of 2001, dt. 19-2-2008 published in AIR 2008 Supreme Court 1541 (From : Madras) has created confusion in the minds of some members practising in Maharashtra. The said judgment is under the Indian Stamp Act, 1899, as applicable in the State of Tamil Nadu.

I have to draw your attention to the provisions contained in the Bombay Stamp Act, 1958 [Act No. LX of 1958] [hereinafter referred to as 'Bombay Act'] which received the assent of the President on 4th June, 1958 and thereafter adapted and modified by Maharashtra Adaption of Laws [State and concurrent subjects] order 1960 which came into force on 1-5-1960. This Bombay Act has been amended from time to time. By Maharashtra Act No. 18 of 1989 section 52B has been inserted in the said Bombay Act with effect from 1-12-1989 which reads as under:

"52B. In validation of Stamps and saving

Notwithstanding anything contained in sections 47, 50, 51 and 52.

- (a) any stamps which have been purchased but have not been used or in respect of which no allowance has been claimed on or before the day immediately preceding the date of commencement of Bombay Stamp (Amendment) Act, 1989 (hereinafter referred to as 'the commencement date') and the period of six months from the date of purchase of such stamps has not elapsed before the commencement date, may be used for a period of six months from the date of purchase of such stamps is completed or delivered for claiming the allowance under the relevant provision of this Act; and any stamps not so used or so delivered within the period aforesaid shall be rendered invalid.
- (b) Any Stamps which have been purchased on or after the commencement date but have not been used, or no allowance has been claimed in respect thereof from the date of purchase thereof, within a period of six months from the date of purchase thereof shall be rendered invalid."

From the above provision it is clear that Stamp Paper should be used within a period of six months from the date of purchase and if not so used to apply for allowance. It is clearly mentioned in section 52B that "Any Stamps which have been purchased on or after the commencement date but have not been used, or no allowance has been claimed in respect thereof from the date of purchase thereof, within a period of six months from the date of purchase thereof shall be rendered invalid." A provision similar to that in section 52B is not there in the Indian Stamp Act under which the Hon'ble Supreme Court has delivered the judgment referred to in the new item.

I would like to point out that the provision of section 52B cannot be read in the Bombay Court Fees Act as the said Act does not contain any time limit for using the Court fees stamps purchased by the purchaser himself for his use.

If deemed fit you may publish the above clarification in the next issue of AIFTP Times.

Yours faithfully,

Anilkumar K. Asher



BUDGET IMPACT 2013-14 (RAJASTHAN STATE)

By M. L. PATODI, *Advocate*

The Chief Minister (Finance Minister) presented Rajasthan State budget in the State Assembly on 6-3-2013. The State Govt. has issued the notifications on the basis of budget on 6th March, 2013 and same are summarised as under:

1. The time limit for filing of the Quarterly Returns as well as Annual Returns for the AY 2011-12 has been extended up to 30-4-2013 so that the maximum benefit of Deemed Assessment Scheme can be taken by the dealers.
2. The turnover limit for Composition Scheme u/s 3(2) of RVAT Act has been enhanced from ₹ 60 lakhs to ₹ 75 lakhs.
3. **LATE FEE FOR FILING OF RETURNS**
 - i. The late fee of filing the Quarterly Returns is now ₹ 100/- per day subject to maximum of ₹ 25,000/- in place of maximum ₹ 50,000/- in cases where the dealer is required to pay tax monthly.
 - ii. For the assesseees who filed NIL return the late fee on them would be @ ₹ 50/- per day subject to maximum of ₹ 1,000/- in place of ₹ 5,000/-.
4. Time Limit for submission of declaration forms/certificate/VAT-15 forms where assessments have been completed up to 30-9-2012, may be submitted up to 30-6-2013.
5. VAT-15 forms will now be issued electronically and for the period prior to 1-4-2011 it may be issued manually.
6. All payments relating to tax under VAT, CST, Entry Tax, Luxury Tax by registered dealers, will now be made electronically w.e.f. 1-5-2013.
7. All payments relating to tax under VAT, CST, Entry Tax, Luxury Tax by unregistered dealers/person/government departments/Co-operative Societies/Awarder/Public Sector undertaking/casual dealer shall now be deposited electronically w.e.f. 1-5-2013.
8. Central declaration forms like 'E-1', 'E-II', 'F', 'I', 'J' and form 'H' will be issued electronically w.e.f. 1-5-2013
9. The following goods have been exempted under VAT and included in Sch. I appended to VAT Act

137	Cumin seed, aniseed, turmeric, dry chilies, dhaniya, methi, ajwain, suwa, asaliya, kathodi	When sold in a form other than powder or crushed or paste form.
-----	--	---

10. When cumin seed, aniseed, turmeric, dry chilies, dhaniya, methi, ajwain, suwa, asaliya, kathodi are sold in powder or in crushed or in paste form other than mixed with other will be taxable @ 5%.
11. Heavy Loaders including Wheel Loading shovel taxable @ 5% w.e.f. 1-4-2006.

12. RATE OF TAX W.E.F. 6-3-2013 in SCH. IV:

Sl. No.	ITEM	Rate of Tax
1	Processed or preserved meat – (a) Meat; (b) Poultry; and (c) Fish	5%
2	Computer system and peripherals, networking items for LAN and WAN including wired and wireless switch, routers, modem, webcams, IP surveillance system, computer printers including multifunctional devices and electronic diaries.	5%
3	Networking cables of different types such as Flat Cables, CAT 3 cables, CAT 5 cables, CAT 6 cables, unshielded twisted pair (UTP) cables, joining kits and joining material thereof.	5%
4	Parts and accessories (other than cover and carrying cases) of 1 to 27.	5%
5	Stainless Steel Wire and Stainless Steel Wire Rods	5%

13. The rate of tax on tobacco, Tobacco products and pan masala is increased from 50% to 65%.

WORKS CONTRACT TAX

14. Earlier the exemption against 1% exemption fee notification dated 11-8-2006 was for "Works Contract relating to construction". It will now be amended w.e.f. 6-3-2013 as "Works Contract relating to construction or repair".

LUXURY TAX

15. There will not be any liability of Luxury Tax on Dharamshala, Marriage Garden and Community Centres located in a city or town or village having population less than one lakh as per the census of 2011.

STAMP DUTY

16. The stamp duty chargeable on the gift deeds of immovable property, executed in favour of:

- (i) Father, mother, son, brother, sister, daughter-in-law, husband, son's son, daughter's son, son's daughter or daughter's daughter, shall be reduced to 2.5% of the market value.
- (ii) Wife or daughter shall be reduced and charged at the rate of 1% of the market value of the property or rupees 1 lakh, whichever is less.
- (iii) A widow by :
 - (a) Her deceased husband's mother, father, brother or sister; or
 - (b) Her own mother, father, brother, sister, son or daughter shall be exempted.

LAND TAX

17. All classes of lands shall be exempt from Land Tax w.e.f. 1-4-2013 levied under Finance Act, 2006.

ENVIRONMENT & HEALTH CESS

18. The rate of Environment & Health Cess on mineral rights and the miners in respect of which cess shall be levied, are as follows w.e.f. 1-4-2013:

Sl. No.	Mineral	Rate of Environment & Health Cess on mineral rights (per tone of Mineral dispatched (₹))
1	Cement Grade Limestone	10/-
2	SMS Grade Limestone	50/-
3	Gypsum	10/-
4	Rock Phosphate	1000/-
5	Rock Phosphate containing P2O5 less than 22%	50/-
6	Wollastonite	60/-
7	Lead and Zinc	150/-
8	Copper	150/-

**ADVERTISEMENT TARIFF
FOR AIFTP JOURNAL
(W.e.f. October, 2011)**

Per Insertion

- 1. Quarter Page ₹ 1000/-
- 2. Ordinary Half Page ₹ 1,500/-
- 3. Ordinary Full Page ₹ 3,000/-
- 4. Fourth Cover Page –
Three fourth page (in four colour) ₹ 5,000/-
- 5. One single colour page ₹ 11,000/-
- 6. Four colour pages ₹ 20,000/-

Discount

20% on advance for 12 months
15% on advance for 6 months

**Membership of AIFTP
as on 28-3-2013**

Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	775	22	3	800
Eastern	3	1086	35	3	1127
Northern	0	892	17	0	909
Southern	1	833	13	4	852
Western	4	1649	32	15	1700
Total	8	5235	119	25	5388

DIRECT TAXES

Ajay R. Singh, Paras S. Savla, Rahul Hakani, & Renu Choudhuri
Advocates, KSA Legal

SUPREME COURT

1. S. 4(1)(c) of Gift Tax Act, 1958: Deemed gift – Revocable gift of shares – Donor revoking gift but bonus shares continued with donee – Matter remanded [S. 11, 16(1)]

The assessee owned 6,000 shares of Hero Cycles. On 20-2-1982, he executed a deed of revocable transfer in favour of M/s Yogesh Chandra. The deed permitted the assessee to, after completion of 74 months from the date of transfer but before the expiry of 82 months from the said date, exercise the power of revoking the gift. In other words, there was a window of 8 months within which the gift could be revoked. The deed of revocable transfer specifically stated that the gift shall not include any bonus shares or right shares received and/or accruing or coming to the transferee from Hero Cycles by virtue of ownership of the said shares. Effectively, therefore, only a gift of 6,000 equity shares was made by the assessee to the transferee. On 29-9-1982 and 31-5-1986, the company issued 4,000 and 10,000 bonus shares to the transferee. On 15-6-1988, the assessee revoked the gift with the result that the 6,000 shares gifted to the transferee came back to the assessee. However, the 14,000 bonus shares allotted to the transferee while it was the holder of the equity shares of the company continued with the transferee. In AY 1982-83, the GTO relied on *McDowell and Co. Ltd. v. Commercial Tax Officer (1985) 154 ITR 148 (SC)* and held that the revocable transfer was only for the purpose of reducing the wealth tax liability and was void. He, however, made a protective gift-tax assessment. The Tribunal and the High Court (*CGT v. Satya Nand Munjal (2002) 256 ITR 516 (P&H)*) reversed the AO and held that a revocable transfer was valid even if its object was to avoid wealth-tax. The assessee was held liable to pay gift-tax u/r 11 of the Gift-tax Act. In A.Y. 1989-90 the AO and CIT(A) held that the 14,000 shares belonged to the assessee and as the revocation was only with respect to the 6,000 shares and the 14,000 bonus shares continued with the transferee, there was a chargeable gift to that extent. The Tribunal reversed the AO and CIT(A). On appeal by the department, the High Court reversed the Tribunal and held that the assessee was liable to gift tax on the value of the bonus shares gifted by him to the transferee applying the principles of *Escorts Farms (Ramgarh) Ltd. v. CIT (1996) 222 ITR 509 (SC)*. On appeal by the assessee to the Supreme Court, HELD:

The fundamental question is whether there was in fact a gift of 14,000 bonus shares made by the assessee to the transferee. The answer to this question lies in s. 4(1)(c) of the Gift-tax Act which provides that "where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person, the value of the release, discharge, surrender, forfeiture or abandonment to the extent to which it has not been found to the satisfaction of the AO to have been *bona fide*, shall be deemed to be a gift made by the person responsible for the release, discharge, surrender, forfeiture or abandonment". On facts, the assessee had made a valid revocable gift of 6,000 equity shares in the company on 20-2-1982 to the transferee. The only event that took place in A.Y. 1989-90 was the revocation of the gift by the assessee on 15-6-1988. The question whether the revocation of the gift of the original shares in A.Y. 1989-90 constitutes a gift of the bonus shares that were allotted to the transferee on 29-9-1982 and 31-5-1986 requires to be answered in the light of s. 4(1)(c). The question of applicability of *Escorts Farms* has to be decided after a finding is reached on the applicability of the first part of s. 4(1)(c) (matter remanded).

Satya Nand Munjal v. CGT (2013) 350 ITR 640/256 CTR 121/82 DTR 284 (SC)

Om Prakash Munjal v. CIT (2013) 256 CTR 121/82 DTR 284 (SC)

2. S. 16B of Gift Tax Act, 1958: Revocable gift – Interest – Matter remanded

The High Court held *inter alia*, that since gift-tax was leviable on the revocable transfer of equity shares by the assessee to Y, interest was liable to be paid by the assessee on the gift-tax levied. On appeal, the Supreme Court set aside the judgment of the High Court and remanded the matters for fresh consideration on the merits of the case.

Satya Nand Munjal v. CGT (2013) 350 ITR 649/256 CTR 127/82 DTR 275(SC)

HIGH COURTS

3. S. 281B of Income-tax Act, 1961: Provisional attachment – Validity period – Extinguish after passing of assessment order. (S. 144C)

Provisional attachment order passed under section 281B and notices/letters issued to bank and

sundry debtors of petitioner for not to make payment to petitioner would cease to operate after passing of assessment order. Validity period of six months of provisional attachment order would be extinguished after passing of assessment order.

Motorola Solutions India (P.) Ltd. v. CIT [2013] 212 Taxman 35 (P & H)(High Court)

4. S. 7 of Wealth-tax Act, 1957 : Valuation of assets – Immovable property – Let out property – Interest free deposits – Annual rent – Addition was upheld

Assessee let out its property on annual rent of ₹ 4.42 lakhs. It also received interest free deposits of ₹ 31.50 lakhs from tenant – While computing fair market value of property let out, Assessing Officer added interest at rate of 14 per cent on ₹ 31.50 lakhs to figure of annual rent. Commissioner (Appeals) as well as Tribunal held that interest amount could not be added to annual rent to compute fair market value of property. It is undisputed that as per Schedule III, rule 5, where an owner has accepted an amount or deposit, not being an advance payment towards rent for a period of 3 months or less, an amount calculated at rate of 15 per cent per annum on amount of deposit outstanding from month to month shall be added to compute annual rent. In view of aforesaid, computation made by Assessing Officer by adding interest on security deposit to figure of annual rent was to be upheld. Appeal of revenue was upheld.

CWT v. MG Builders Co. (2013) 212 Taxman 15 (Mag.)(Delhi)(High Court)

5. S. 7 of Wealth-tax Act, 1957: Value of assets – Immovable property – Slums on property has to be consideration for the purpose of valuation of property

Assessee acquired 50 per cent of share in a property. He acquired same under registered sale deed. AAC accepted valuation of assessee whereunder apart from consideration mentioned in sale deed and market value of the property, impediments like ownerships slums on property were also taken into consideration in coming to fair market value. On appeal, Tribunal declined to interfere with finding recorded by AAC. On facts, valuation accepted by Tribunal was just and proper and represented true market value of property. (A.Ys. 1996-97 to 2003-04)

CIT v. S.K. Ramprasad (2013) 212 Taxman 15 (Mag.)(Karn.)(High Court)

TRIBUNALS

6. S. 263 of Income-tax Act, 1961: Commissioner – Revision of order prejudicial to revenue – Capital gains – Exemption – Investment in bonds – Beyond prescribed time limit – As no evidence to justify the delay, order under section 263 was held to be justified. (S. 54EC.)

Assessee sold agricultural land on 10-1-2006 and invested the sale consideration in Rural Electrification Corporation Ltd. bonds on 27-1-2007 which is beyond the prescribed time limit. The assessee claimed exemption u/s 54EC. The claim was allowed by the Assessing Officer under section 143(3). Commissioner under section 263 directed the Assessing Officer to disallow the claim. The assessee filed an appeal before the Tribunal. The assessee submitted that delay was due to unavailability of applied forms. However, it was held that there was no evidence to show that assessee had applied for bonds but due to their unavailability, failed to invest within time. The Tribunal also held that it could be accepted that the time-limit for investment extended by Notification up to 31-12-2006 can be stretched up to 27-1-2007 by exercising jurisdiction under the Act. Hence, in the view of above stated legal position withdrawal of exemption u/s 54EC by commission was justified. Note: Notification No. S.O. 2146(E) dated 22-12-2006. (A.Y. 2006-07)

Anuradha Venkatesan (Smt.) v. ITO (2013) 140 ITD 421 (Chennai)(Trib.)

7. S. 251 of Income-tax Act, 1961: Commissioner (Appeals) – Powers – Revision – Commissioner under section 264 has no power to pass an order prejudicial to assessee, issues which are not subject matter of revision under section cannot be enhanced by the Commissioner (Appeals) (S. 35AB, 264)

The Assessing Officer allowed the claim of assessee for deduction under section 35AB in respect of technical know-how fees. The assessee filed petition under section 264 in respect of claim under section 80-IB which the assessee had omitted to make in the original return. Commissioner restored the issue regarding allowability of claim under section 80-IB of the Act to the Assessing Officer. Assessing Officer in fresh assessment proceedings disallowed the claim under section 80-IB. On appeal the Commissioner (Appeals) *suo motu* disallowed the claim under section 35AB. In appeal before the Tribunal it was argued that Commissioner (Appeals) could not have considered the deduction under section

35AB which is beyond his jurisdiction. The Tribunal held that the Assessing Officer was correct in not considering any issue other than the claim of deduction under section 80-IB made by assessee in the application under section 264 before Commissioner as he had no such jurisdiction. No doubt it is true that Commissioner (Appeals) while deciding an appeal has plenary power and can also consider any issue which has been omitted by the Assessing Officer. On the facts the Commissioner (Appeals) cannot consider any issue which is beyond the jurisdiction of Assessing Officer. In the fresh assessment proceedings the Assessing Officer had no jurisdiction to consider any issue other than the claim under section 80-IB and therefore, it cannot be said that in not considering the claim of deduction under section 35AB, the Assessing Officer had failed to do something which was necessary in the assessment. Commissioner (Appeals) has no power to act on any which on which the Assessing Officer has no jurisdiction. Accordingly the order of Commissioner (Appeals) was set aside on this issue.(A.Y. 2003-04)

Hindustan Colas Ltd. v. ACIT (2013) 140 ITD 277 (Mum.)(Trib.)

8. S. 271(1)(c) of Income-tax Act, 1961: Penalty – Concealment – Surrender of income – Levy of penalty held to be valid

During the course of assessment proceedings, the Assessing Officer after obtaining details of creditors, issued notice under section 133(6) of the Act to N and G. In the light of the details reflected in the copy of account of the assessee received from these parties vis-a-vis the books of account of the assessee, the Assessing Officer noticed differences. The assessee surrendered the amount. Accordingly in terms of the surrender of the amount, the Assessing Officer added the amount and initiated penalty proceedings under section 271(1)(c). This was upheld by the Commissioner (Appeals). On appeal to the Tribunal

held that as a result of enquiries made by the Assessing Officer, the assessee did not reconcile the difference in the account of the two parties and instead surrendered the amount as income of the year under consideration. In the course of penalty proceedings, the assessee did not bring any material before the Assessing Officer to rebut the inferences drawn by the Assessing Officer in the course of assessment proceedings. The assessee claimed before the Assessing Officer and the Commissioner (Appeals) that the addition was accepted in order to purchase peace of mind and to bring an end to the issue. But this explanation was tendered only after the Assessing Officer confronted the evidence in the form of copies of account of the assessee in the books of the two parties. Apparently, only when the assessee was cornered, the assessee surrendered the amount. The surrender was not voluntary. The levy of penalty was valid.

Ajay Jain v. ACIT [2013] 21 ITR 41 (Delhi)(Trib.)

9. S. 271B of Income-tax Act, 1961: Penalty – Penalty – Failure to get accounts audited – Business income – Tax audit – Turnover – Online buying and selling of commodities being speculative in nature not liable for penalty. (S. 44AB)

Assessee is engaged in online buying and selling commodities through commodity exchange, as a speculative activity, wherein no physical delivery was taken or given, total transaction booked with such commodity exchange could not be considered as 'turnover' for purpose of considering liability of assessee to get accounts audited u/s 44AB. Buying and selling the units was a speculative transaction. No delivery has taken place hence levy of penalty was deleted.

Banwari Sitaram Pasari HUF v. ACIT (2013) 140 ITD 320 (Pune)(Trib.)



LIST OF PUBLICATIONS

Sr. No.	Name of Publication	Edition	Members	Price Non-Members	Courier Charges
1.	International Taxation — Important Aspects & Issues	Dec., 2012	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 for above publications.
4. Few copies of above to publication are in stock.

INDIRECT TAXES

P. C. Joshi Advocate

1) Entry Tax – Excavator

The Madras High Court after considering the provisions of Section 3(1) of the TN Tax on Entry of Motor Vehicles into Local Area Act, 1990 held that the excavator used in construction works was not covered by the definition of the term 'motor vehicle' and therefore was not liable to any tax.

A. Logirajan v. The Dy. Commercial Tax Officer (2012-13) (18) TNCTJ P. 201

2) Exemption

The Guwahati High Court held that the eligibility certificate once issued cannot be cancelled on a change of opinion as to whether the activity of the assessee amounted to manufacture or not.

Sunil Kumar Taparia v. State of Assam & Ors. (2013) 22 STJ 225 (Gau.)

3) Entries to Schedule

i) Computerised embroidery machine

The West Bengal Taxation Tribunal held that the Sales Tax authority were not justified in levying tax at higher rate of 12.5% on the sale of computerised embroidery machine treating it to be not a machine as contemplated under entry 28 of Part I of Schedule C of the West Bengal VAT Act, 2003 relating to plant and machinery. The taxation Tribunal in that regard applied the meaning of 'machinery' by Gujarat High Court in the case of *Shri Rani Industries v. State of Gujarat 34 STC 153 (Guj)* and Supreme Court judgment in the case of *Scientific Engineering House Pvt. Ltd v. Commissioner of Income-Tax, Andhra Pradesh (1986) 157 ITR 86 (SC)*.

Charu Home Products Pvt. Ltd. v. S.T.O. Fairlie Place charge & Ors. (2013) 22 STJ 229 (WBTT)

ii) Home soda maker

The Kerala High Court applied the principle of harmonious interpretation and the principle of "ejusdem generis" and held that the phrase 'similar home appliances' used in entry 116 of First Schedule, would cover the home soda maker, which cannot have any application or use other than at home.

Moksha Foods & Beverages (P) Ltd. v. Commercial Tax Officer & Ors. (2013) 21 KTR 48 (Ker.)

4) Input tax credit – Set off

a) The Delhi High Court after considering the provisions of section 9(1) of the Delhi Value Added Tax Act, 2004; held that in the absence of any mechanism by which a purchasing

dealer can verify the payment of tax by the selling dealer, the benefits of ITC cannot be denied simply because the Registration Certificate of the seller was cancelled after the transactions with the assessee.

Shanti Kiran India Pvt. Ltd. v. Commissioner Trade Tax (2013) 44 PHT 222 (Del.)

b) The Andhra Pradesh High Court considered the provisions of section 13(1) of APVAT Act, 2005 and held that simply because the registration of selling dealer was cancelled after the transaction with the concerned assessee, the claim of ITC cannot be denied even where the selling dealer did not file the returns or remitted the tax.

Harsh Jewellers v. Commercial Tax Officer, Panjagutta Circle, Hyderabad & Anr. (2013) 22 STJ 221 (AP)

c) The Gujarat High Court considered the language of sections 11(5), 27(11) as well as section 97 held that the input tax credit can be denied for the purchases made from a dealer only after his name was published u/s. 27(11) after the cancellation of his certificate.

Meet Traders v. State of Gujarat (Sales Tax Journal Vol. 51 Part 11, P. 1337)

5) Inter-State sale – Branch transfer

The Kerala High Court upheld the levy of CST on the transactions claimed by the assessee u/s 6A as branch transfer without producing the genuine F form. The one produced was found to be bogus.

Ramasamy M. v. State of Kerala (2013) 21 KTR 66 (Ker.)

6) Interest on provisional refund

The Hon'ble Gujarat VAT Tribunal after considering the provisions of sections 37 and 38 of the GVAT Act held that the assessee who was granted 75% as the provisional refund u/s. 37(1) was entitled to get the interest u/s. 38(2) even though no appeal was filed by the assessee when the provisional refund was granted on the reasoning that the final assessment order contained the earlier provisional refund that resulted in the grant of the remaining 25% claimed by the assessee. It was also held that such an issue can be claimed in an appeal against the final order u/s. 34.

M/s. Mukti Exports Pvt. Ltd v. State of Gujarat (Sales Tax Journal Vol. 51 Part 11, P. 1360)

7) Limitation

a) The Punjab and Haryana High Court held that when the assessment became barred by 'limitation' and the order for extending the time was not passed before the expiry of limitation period, any assessment order passed on the basis of extension later on, could not have been held to be a valid order passed within the limitation period.

State of Punjab v. The Punjab State Electricity Board Patiala & Anr. (2013) 44 PHT 229 (P & H).

b) The Department filed an appeal before the High Court with a delay of more than six years. The same was tried to be explained due to delay in getting approval from the finance department. Even after such approval was received, the appeal was presented nearly after two years, for which there was no explanation. The Hon'ble High Court did not condone the delay and the appeal was rejected.

State of Gujarat (Sales Tax Journal Vol. 51 Part 11, P. 1341).

8) Legislative competence – MRP

The Karnataka High Court after considering the scope of entry 54 of List II, 7th Schedule of the Constitution, held that the tax on the basis of maximum retail price indicated on the label or the container was beyond the State legislative competence.

ITC Ltd v. State of Karnataka (2012-13) 17 KCTJ 314.

9) Luxury tax

i) Auditorium owned by a temple

The Kerala High Court upheld the validity of levy of tax on luxury under entry 62 of List II of Seventh Schedule by rejecting the levy to be in conflict with the levy of service tax under entry 92C of List I of the Constitution.

In the case before the court, an auditorium owned by the temple but not in the same premises, was found to be charging ₹ 8,500/- per day. The proviso to charging section 4(1) of the Kerala Luxury Tax Act provided for an exception to the levy to halls and auditoriums located within the premises and place of worship owned by religious institutions. In the instant case, the auditorium was 100 metres away from the temple and under different survey number. Construing the proviso strictly the court held the auditorium to be liable to luxury tax.

Sree Narayana Dharma Samajam v. Commercial Tax Officer (2013) 21 KTR 1 (Ker).

ii) Hospital rooms

The Kerala 'Luxury Tax' Act was amended by Finance Act, 2008 w.e.f. 1-4-2008 whereby the luxury provided in the hospital charging more than ₹ 1,000/- per day per room was brought under its purview as taxable. The Kerala High Court, held that the hospital cannot be held to be liable prior to the amendment but upheld the same thereafter holding that the amendment was within the scope of legislative power.

Ayurveda Hospital Managements Association v. State of Kerala (2013) 21 KTR 34 (Ker).

10) News from Tamil Nadu

a) By a notification dated 6th February, 2013 u/s. 30 of the TNVAT Act, 2006, the Government of Tamil Nadu granted exemption of the tax payable on sale of furnace oil used in generator sets, to high tax payers consumers for a period from 1st October, 2012 to 31st May, 2013. Similar exemption was also granted to oil companies for *inter se* transactions between each other.

Source 2012-13 (18) TNCTJ Page No. 251 (Statutes).

b) By another similar notification dated 6th February, 2013 the Tamil Nadu Government granted exemption of tax payable on the sale of LPG for domestic use by the consumers in the State, effective from 1st July, 2011 to 5th February, 2013 with a rider that the tax already collected from the final consumers will not be refunded.

Source 2012-13 (18) TNCTJ Page No. 256 (Statutes).

11) Revision – Need for reasons

The Madhya Pradesh High Court set aside the Revision Order for want of reasons and non-consideration of the objection raised by the assessee. In that connection Hon'ble court observed 'Reasons are live links between the minds of the decisions taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. Right of reason is an indispensable part of sound judicial system. Another rationale is that the affected party can know why the decision has gone against him'.

Bharat Constructions Company v. Commissioner of Commercial Tax M. P. (2013) 22 STJ 210 (MP).

12) Recovery

The Delhi High Court after considering the language used in section 53 of the MP Commercial Tax Act and section 529(A) of the Companies Act held that

the provisions of Companies Act would prevail over that of the State Legislature, therefore the tax under the M.P. Act cannot have first charge over the other secured creditors.

Commissioner, Commercial Tax, Govt. of Madhya Pradesh vs. Official Liquidator (2013) 22 STJ 218 (Del).

13) Registration Certificate

The Kerala High Court upheld the cancellation of the registration certificate of a dealer who sought himself to be declared as an insolvent.

NazeerAhmed F.H. v. State of Kerala (2013) 21 KTR 92 (Ker.).

14) Refund

The Gujarat High Court held that the refund due from the order of assessment, cannot be withheld simply because the concerned issues were in litigation before the Supreme Court in some other case.

Krishak Bharati Co-op. Ltd. v. State of Gujarat (Sales Tax Journal Vol. 51 Part 11, P. 1343).

15) Sale in the course of export – Section 5(3)

The Madras High Court held that bill of lading and other connected records were sufficient for claiming the exemption u/s. 5(3); for which the copy of the

foreign agreement order cannot be said to be the only mode of proof.

Teccon Services (P) Ltd v. The Asst. Commissioner (CT) 2012-13 (18 TNCTJ P. 210).

16) Tax on lease

i) The Guwahati High Court after considering the agreement between the assessee-Assam Transport Corporation and ONGC for transportation of school childrens of its employees held that there was no transfer of effective custody and control over the buses which were driven by the drivers of the assessee. The court therefore held that there was no liability of payment of tax treating such transactions as that of deemed sale.

Assam Transport Corporation v. ONGC Ltd. (2013) 22 STJ 223 (Gau.).

ii) The Karnataka High Court upheld the levy of tax u/s. 5-C of the Karnataka Sales Tax Act, in view of the concurrent finding by all the lower authorities including the Tribunal that the agreement between the assessee and its principal provided for the transfer of effective control and possession of the vehicle though driven by the driver of the assessee but under instructions of the principal.

Ali Singhania Bulk Carriers v. State of Karnataka (2013) 22 STJ 243 (Kar.).

Non-receipt of the Times must be notified within one month from the date of publication, which is 4th of every month.

Associate Editors of AIFTP Times : Mr. Kishor Vanjara & Mr. Deepak R. Shah

Printed by Kotecha Mitesh Ashwin Published by Kotecha Mitesh Ashwin on behalf of All India Federation of Tax Practitioners (name of owner) and Printed at Finesse Graphics & Prints Pvt. Ltd., 309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai – 400 013. (name of the printing press with address) and published at All India Federation of Tax Practitioners, 215 Rewa Chambers, 31, New Marine Lines, Mumbai – 400 020 (full address of the place of publication). Editor: Karkala Shivaram Kittanna.

To

Posted at Mumbai Patrika Channel Sorting Office –
Mumbai 400 001.

Date of Publishing : 1st of every month.

Date of Posting : 3rd & 4th April, 2013

If undelivered, please return to :



ALL INDIA FEDERATION OF TAX PRACTITIONERS
215, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020. • Tel.: 22006342
Telefax: 22006343 • E-mail: aiftp@vsnl.com • Website: www.aiftponline.org