



All India Federation of Tax Practitioners

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AIFTP TIMES

Volume 4 - No. 8 | August, 2013

FORTHCOMING PROGRAMMES		
Date & Month	Programme	Place
10-8-2013	Seminar on Natural Justice in Taxation	Kolkata
31-8 & 1-9-2013	One and Half day seminar	Varanasi
6, 7, 8-9-2013	One Day seminar along with backwater trip at House Boat	Kochi
3, 4, 5-10-2013	10th Nani Palkhivala National Tax Moot Court Competition	Mumbai
26, 27-10-2013	Two Days Tax Conference	Baroda
8-11-2013	National Executive Meeting	Rishikesh
9, 10-11-2013	National Tax Conference	Rishikesh
25, 26, 27-12-2013	17th National Convention	Mumbai

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 who have not renewed 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

Note: Members who have not paid the subscription for AIFTP Journal for the year 2013-14 will not receive the journal from July 2013 onwards.

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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ONE DAY SEMINAR

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS (SZ)
Jointly with
ICAI, ERNAKULAM BRANCH

on 6th September 2013
at Hotel Emerald, Vytila, Kochi, Kerala

TOUR PROGRAMME

Location	Kochi - Alappuzha - Kochi
Hotel / Resort	Hotel Emerald
Type of room	Deluxe and suite
Check in date	5th September, 2013
Check out date	8th September, 2013
Food Plan	3 Dinner + 3 Lunch + 3 Breakfast (Pure Veg food except 6th Sept. when there is 2 Non Veg Lunch) (Special Non Veg lunch with Kerala Karimeen dish in Houseboat)
Net rate committed for Rejoice trip	₹ 7,000/- per head
Seminar Delegate Fee	₹ 950/- per head

Day 1 (5th Sept., 2013)

Arrival at Kochi, Guests will be greeted and transferred to the Hotel by Club Mithra Group Vehicles Relax at Hotel, if the group is interested can go for shopping at Lulu Mall. 5.00 pm to 8.00 pm Overnight dinner and stay at Hotel.

Day 2 (6th Sept., 2013)

AIFTP members will be having Seminar at Conference Hall with Welcome drink, Lunch and tea + biscuits

08.30 to 09.30 : Breakfast and Registration
 09.30 to 11.00 : Inaugural Session
 11.00 to 11.15 : Tea break
 11.15 to 13.00 : **First Technical Session**
 Topic : International Taxation - Transfer Pricing
 Speaker : CA P.V.S.S Prasad, Bengaluru
 13.00 to 13.30 : Lunch Break
 13.30 to 15.00 : **Second Technical Session**
 Topic : CENVAT Credit & Reverse Charge Mechanism
 Speaker : Mr. Raghuram, Adv., Bengaluru
 15.00 to 15.15 : Tea Break
 15.15 to 16.30 : **Third Technical Session**
 Topic : Taxation of Charitable Institutions
 Speaker : Dr. Anitha Sumanth, Adv. Chennai
 16.30 to 17.00 : Valedictory Function

The other members who are not attending the meeting can go to:

- Fort Cochin Beach
- Synagogue
- Dutch Palace
- Marine Drive
- Vallarpadam Church

Evening Dinner and stay @ Hotel.

Day 3 (7th Sept., 2013)

Move to Alappuzha - Houseboat for Day Cruise.

(Kochi - Alappuzha : 80 kms) (Conference boat with special upper deck)

The standard check in time is 12.00 noon. The cruise begins to meander through the canals and the backwaters which will slowly mesmerise you to the traditional beauty and culture.

- One can see fine and virgin ravines and rivulets, virgin landscapes, long stretches of winding canals and waterways dotted by tiny hamlets and lush green paddy fields manned by scarecrows, and unimaginable village life.
- There will be a break for an hour and a half that's when your traditional Kerala lunch will be cooked and served.
- Your cruise will be on until 5.30 pm evening when the boat will be anchored on the shore of the lake.

After Day Cruise, visit to Alappuzha Beach and straight back to Kochi.

DINNER MEET AT PRISTINE ISLAND RESORT on 7TH SEPT., 2013

PRISTINE ISLAND RESORT:

Pristine Island is a Floating Resort situated on the beautiful backwaters of Alappuzha, Kerala. This is the only floating resort in Kerala which boasts modern facilities and all amenities.

Day 4 (8th Sept., 2013)

Visit the famous Ernakulam Shiva Temple.

Ernakulam Shiva Temple: also known as Ernakulathappan Temple is one of the major temples of Kerala located in the heart of Ernakulam, the downtown area of the city of Kochi. The temple, dedicated to Lord Shiva, is considered as the city temple, with the presiding deity as the protector of the city, as per local Hindu faiths and traditions. As per the common practice in Kerala, the deity is reverently called Ernakulathappan, which means Lord of Ernakulam. The temple history itself has deep association with history of the city and was one of the 7 royal temples of Kochi Maharajas. The temple in its current form was built under active patronage of Diwan Sri Edakkunni Sankara Warriar in year 1846 and raised to the level of a Royal temple in the Kochi Kingdom.

Visiting Time: 6.00 am to 9.30 pm.

Return back to hotel for breakfast, after that shopping at Oberon Mall and Lunch at Hotel

According to flight timings drop at various points

Dr. M.V.K. Moorthy, Adv.

Chairman - AIFTP-SZ

Ph : 09849004423

CA A Retna Kumar

Vice Chairman - Kerala

Ph : 09447153745

SEMINAR ON "NATURAL JUSTICE IN TAXATION"

You are cordially invited to a Seminar on "Natural Justice in Taxation" on Saturday, the 10th August, 2013 at 3.30 pm at the Calcutta Swimming Club, 1, Strand Road, Kolkata - 700 001.

It is our great pleasure that Hon'ble Mr. Justice Kalyan Jyoti Sengupta, Chief Justice of Andhra Pradesh High Court has kindly consented to be the Chief Guest and Key Note Speaker.

Mr. S.K. Poddar, National President, AIFTP shall grace the occasion as Guest of Honour and Mr. Narayan Jain, Advocate and Secretary General, AIFTP shall present a paper on the subject.

We most humbly seek your participation in such an interesting Seminar.

Indu Chatrath

Zone Chairman

R.D. Kakra

Zone Vice Chairman

N.D. Saha

Zone Secretary

VARANASI TAX CONFERENCE – 2013

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS (NORTH ZONE)

Saturday, 31st August, 2013

&

Sunday 1st September, 2013

Venue: Hotel Clarks, The Mall, Varanasi

Theme : Emerging Professional Challenges with Changing Tax Laws

Day 1 – Saturday, 31st August, 2013

PROGRAMME

- 4.00 P.M. onwards : Spot Registration
- 5.30 P.M. to 7.30 P.M. : Inaugural Session
Chief Guest Hon'ble Chief Justice Allahabad High Court
Mr. Justice Shiv Kirti Singh.
Guest of Honour Member, CBDT (Confirmation Awaited)
&
Hon'ble Mr. Justice Tarun Agrawal, Judge, Allahabad High Court
- 7.45 P.M. : Entertainment Session
Cultural Programme of Indian Classical Music and Dance to be followed by Dinner

Day 2 – Sunday, 1st September, 2013

- 9.00 A.M. onwards : Spot Registration Counter
First Technical Session – Income-Tax
- 9.30 A.M. to 11.30 A.M. : Paper on Impact of Changing Tax Laws in Real Estate
By C.A. Girish Ahuja
- 11.30 A.M. to 11.45 A.M. : Tea Break
Second Technical Session – U.P. VAT
- 11.45 A.M. to 1.45 P.M. : Paper on Impact of Changing VAT Tax Laws in Real Estate
by Senior Advocate Allahabad High Court, Mr. Bharatji Agrawal
- 1.45 P.M. to 2.30 P.M. : Lunch
Third Technical Session – Service Tax
- 2.30 P.M. to 5.00 P.M. : Paper on Impact of Changing Service Tax Laws in Real Estate
by Eminent Speaker C.A. Ashok Batra &
Paper on Changed Service Tax Laws – Negative List, CENVAT Credit
and Abatement
by C.A. Dharmendra Srivastava

Registration

Delegate Fee ₹ 1,500/-, Spouse – ₹ 1,000/-, CA/Law Students ₹ 1,000/-

(Cheque may be drawn in favour of All India Federation of Tax Practitioners (North Zone)
VARANASI BANK A/c. No.30619705916, SBI, Varanasi,
IFSC:SBIN0007233, MICR:221002020)

For outstation guests we have negotiated the best hotels in town at most affordable rates which are as under:-

1. Hotel Clarks (5 Star) – ₹ 3,250/- inclusive of taxes and B/F
2. Hotel Raddison (5 Star) – ₹ 3,000/- inclusive of taxes and B/F
3. Hotel Gateway Taj (5 Star) – ₹ 3,250/- inclusive of taxes and B/F
4. Hotel Rivatas – ₹ 2,500/- inclusive of taxes and B/F
5. Hotel Zeeras – ₹ 1,750/- inclusive of taxes and B/F

For Registration Contact

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Mr. Anand Kumar Pandey, Mobile : 07388074919
Mr. Brij Gopal Das Shah, Treasurer, Mobile : 09839096264

For Hotel Accommodations Contact

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National President

Prem Lata Bansal
National
Vice-President

Arvind Shukla
Conference
Chairman

N.K. Arora
Chairman (NZ)

Anand Kr. Pandey
Conference
Secretary

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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

Hearty Congratulations

Hearty Congratulations for the newly elected office bearers of **The Sales Tax Practitioners Association of Maharashtra** for the period 2013-14.

President : Shri Pankaj K. Parekh
Vice President : Shri Sachin R. Gandhi
Hon. Jt. Secretaries : Shri Pranav P. Kapadia & Dr. Shashank S. Dhond
Hon. Treasurer : Shri Vijay M. Sachiv

We wish them all the success.

Hearty Congratulations for the newly elected office bearers of **Tax Tribunal Bar Association, Delhi** for the period 2013-14 & 2014-15.

President : Shri Balram Sangal
Vice President : Shri S. K. Anand
Secretary : Shri Vinay Aggarwal
Hon. Treasurer : Shri Ravi Chandhok

We wish them all the success.

Hearty Congratulations

Hearty Congratulations for the newly elected office bearers of **Income Tax & Sales Tax Bar Association, Chandigarh** for the period 2013-14.

President	: Shri Jasjit Singh Dhindsa
Sr. Vice President	: Shri Rajendra Malhotra
Vice President(s)	: Shri Suresh Kumar Bhuria • Shri Sanjeev Khurana
Gen. Secretary	: Shri Ajay Gupta
Secretary	: Shri Shaman Jain
Joint Secretary	: Shri Vipin Sharma
Finance Secretary	: Shri Abhay Sharma

We wish them all the success.

Hearty Congratulations for the newly elected office bearers of **Jharkhand Income Tax Bar Association, Ranchi** for the period 2013-14.

President	: Shri Sandeep Gadodia
Vice President	: Shri Suresh Kumar Saboo
Secretary	: Shri Bhola Prasad Sinha
Joint Secretary	: Shri Vijay Kumar Verma
Treasurer	: Shri Anand Kumar Pasari

We wish them all the success.

Hearty Congratulations to the newly elected office bearers of **The Chamber of Tax Consultants** for the year 2013-14.

President	: Shri Yatin K. Desai
Vice President	: Shri Paras K. Savla
Hon. Jt. Secretaries	: Shri Hitesh R. Shah & Shri Hinesh R. Doshi
Hon. Treasurer	: Shri Avinash B. Lalwani

We wish them all the success.

Hearty Congratulations to the newly elected office bearers of **Bombay Chartered Accountants' Society** for the year 2013-14.

President	: Shri Naushad A. Panjwani
Vice President	: Shri Nitin P. Shingala
Hon. Jt. Secretaries	: Shri Raman H. Jokhakar & Shri Mukesh G. Trivedi
Hon. Treasurer	: Shri Chetan M. Shah

We wish them all the success.

Hearty Congratulations to the newly elected office bearers of **Tax Advocates Association, Gujarat** for the year 2013-14.

President	: Shri Varis V. Isani
Vice President	: Shri Kaushal P. Vyas
Hon. Jt. Secretaries	: Shri Harnish P. Modh & Shri Pinakin D. Patel
Hon. Treasurer	: Shri Kishor I. Raval

We wish them all the success.

Hearty congratulations to the newly elected Office Bearers of **The Andhra Pradesh Tax Bar Association** for the term 2013-15 and wish them all the best.

President	: Mr. P.S.R.V.V. Surya Rao
Vice-President	: Mr. C. Venkatram
Secretary	: Mr. K. Nagesh
Joint-Secretary	: Mr. K.V. Ramana Reddy
Treasurer	: Mr. Murad Mohiddin

We wish them all the success.

REPORT ON NTC AT HYDERABAD

by Dr. M.V.K. Moorthy, Chairman, AIFTP (SZ)

In pursuance of the decision taken in the NEC meeting held at Tirupati on 16-3-2013 a Two-Day National Tax Conference at Hyderabad was held on 6th and 7th July, 2013 preceded by NEC meeting on 5th July. From the day of finalisation of the dates, All India Federation of Tax Practitioners (Southern Zone), headquarters situated at Hyderabad in co-ordination with the office bearers of two local bar Associations made best of their efforts to organise the Two-Day Seminar with a significant difference and distinction. The distinguishable feature as discernible is the presence of Hon'ble Justice Anil R. Dave, Judge of the Supreme Court and Hon'ble Justice Kalyan Jyoti Sengupta, Chief Justice of Andhra Pradesh High Court and Hon'ble Justice R.K. Agrawal, Acting Chief Justice of Madras High Court. In addition, the presence of Mr. Ramachandra Rao, the retired Judge of Supreme Court and former Chairman, Law Commission and the presence of his son Justice M.S. Ramachandra Rao and two other Judges of the Andhra Pradesh High Court.

The venue chosen for the conference was an ideal place located in the heart of the city providing very pleasant and enjoyable ambience in all respects to the dignitaries occupying the dais and off the dais as well as the learned delegates.

The inaugural session on 6th instant went on very well beyond vision and expectations. The hall was fully packed finding no vacant place even to stand. The three Hon'ble Judges were received with a traditional welcome by the Pandits with 'Poornakumbham' by chanting Vedas from the entrance to the venue. The Chief Guest released the Souvenir brought out on the occasion of NTC. Hon'ble Justice Dave also released a Book "How to Handle Income Tax Problems" authored by Narayan Jain (Secretary General, AIFTP) and CA Dilip Loyalka. Another booklet brought on Tirumala NTC brought out by Mr. Malladi Srinivasa Rao, the National Joint Secretary was released which was applauded as an excellent job. More significant and the most befitting and embellishing incidence is that the National Joint Secretary Mr. Rao of Eluru again attracted the attention of everyone in the venue by bringing two Archakas from Tirumala Tirupati Devasthanams for blessing the Judges and also honouring them with Lord Balaji reminiscent upper cloth (Shawl) and presentation of Abhishekam Water and Laddu Prasadam. The hall was full of Vedas being vibrated throughout which is a good sign for the great grand success of the Seminar as the chant of mantra invoked the blessings of the Lord. Though there was a delay of 10 minutes, the inaugural session was conducted in terms of the schedule of minute to minute programme from the point of calling the dignitaries to the dais followed by welcome address by the Chairman and lighting of lamp and the address of the gathering by the Presidents of the two local Associations, then Secretary General, Deputy President, National President, Chief Justices of A.P. High Court and Madras High Court. Hon'ble Mr. Justice Kalyan Jyoti Sengupta, Chief Justice of A.P. High Court, a very efficient and legal luminary in direct taxation spoke on the need for discharge of pious duty by everyone in payment of taxes for the development of the country and necessity to reduce the pendency of cases. Then Hon'ble Mr. Justice R.K. Agarwal, Acting CJ of Madras High Court an able and highly calibered taxation specialist dealt with the importance of taxation law and touched upon various zones of litigation and finally advised AIFTP for suggesting proposals to amend laws to the Governments to wriggle out of the litigation in the court.

Finally the Chief Guest His Lordship Justice Anil R. Dave of the Supreme Court mesmerised the audience with the witty and jocular expressions touching upon the concept of the Seminar very effectively and emphasising the need for payment of taxes due to the State by every citizen as the revenue payment is a *sine qua non* for the well being and growth of every country to be developed, developing or underdeveloped. The importance of the branch of law of taxation in view of the fast growing trend in the process of globalization of the entire world into one village was much stressed by him. The Chief Justice concluded his address applauding the role being played by the Federation in enriching the bar as well as the bench.

The important feature to be noticed is that before the Chief Guest commenced his speech, Justice Challa Kodandaram, the former Member of AIFTP, recently elevated to the Bench of the Andhra Pradesh High Court was felicitated. In addition, in continuation of the ideology of the Federation, three senior Professionals namely, Advocate D. Harikishan, C.A. M.V. Purushothama Rao and Tax Practitioner Mr. S.B. Chandrana were also felicitated with presentation of shawl, flower bouquet and memento.

The first Technical Session was on 'An overall view of Service Tax, VAT & GST' and was excellently handled by the Chairman eminent Sr. Advocate Bharat ji Agarwal from Allahabad and Sr. Advocate Arvind P. Datar Sr. Advocate of Madras very effectively and ably elaborated the subject. The feeling of fully packed audience in this Technical Session was tremendous, satisfactory as it was fully educative.

The second Technical Session started post lunch on the topic of 'Domestic Transfer Pricing' a very intriguing burning topic presently haunting various multinational as well as Indian companies on account of the impact flowing from the recent judgment of the Hon'ble Supreme Court in Vodafone Company was very effectively

handled by the seasoned speaker, C.A. P.V.S.S. Prasad of Hyderabad and this session was chaired by another well experienced Direct Tax Advocate S.R. Wadhwa of New Delhi who had great and enriched experience and knowledge in Direct Tax Laws as he was former Chairman of Settlement Commission. With their experience, both the learned professionals ably handled the session and audience was quite happy.

The third session on the subject of 'Central Sales Tax – Inter-State Works Contracts' was another everlasting grey area, subject concerning the entire country and it was dealt with by Advocate Vinayak Patkar of Mumbai, the Chairman of Western Zone and the session was chaired by the most desired and runafter professional, Advocate P.V. Subba Rao, the former Joint Commissioner of Commercial Taxes, and with this session the first day came to an end.

The second day of the Conference on 7th July being Sunday also started in time. The 4th Technical Session on the topic of 'Taxation Accounting Standards' in the Income Tax was very ably handled by C.A. Padamchand Khincha of Bengaluru, a very good professional and teacher and expert in the subject. In his very lucid and orative calibre, presented the subject for easy understanding of the audience. Session was chaired by Shri Srinivasulu, Retired Commissioner of Income Tax who was one of the Committee Members formed to suggest changes in the accounting standards in pursuance of the globalised economy.

Finally the 5th Technical Session on 'Amendments to the Andhra Pradesh Value Added Tax Act, 2005' with reference to Works Contracts again a burning topic having far reaching repercussions and ramifications was handled by Advocate Dr. S.R.R. Viswanath. The learned speaker who was the former Joint Commissioner of Commercial Taxes with his vocabulary very emotionally dealt with the subject and explained the pros and cons of various amendments that have taken place in the APVAT Act, 2005 touching the liability to tax of Works Contractors. As originally scheduled, the Chairman Shri D. Ramachandra Reddy, Additional Commissioner of Commercial Taxes (Legal), Hyderabad, for his personal reasons could not show up and consequently the organisers were required to find out a substitute Chairman in another Advocate V. Bhaskar Reddy, practising in A.P. High Court and a long standing former Asst. Government Pleader for the Commercial Taxes in the High Court.

The Brain Trust Session had commenced post lunch and the trustees in the Brain Trust Session were Sr. Advocate N.M. Ranka, past National President from Jaipur, Advocate P.C. Joshi, former National President of Mumbai, Advocate V.J. Shankaram, a former Officer in Central Excise & Customs Department, now practising as Advocate in Central Excise, Customs and Service Tax areas on Appellate side and finally Advocate P.V. Subba Rao. The questions on all the topics received well in advance were printed in the souvenir along with answers. Many questions were received on the floor from participants and to the extent possible all such questions were answered by the Trustees and the questions that were being received from the Delegates, on account of paucity of time, were also received and sent to the Trustees for answers in due course. The Trustees were felicitated with mementos by the identified Professionals drawn from various parts of the State to recognise their presence with dedication and affection for Federation. The audience present was very jubilant over the way in which the questions were answered with explanation. The session went on for more than two and half hours.

In the Brain Trust Session, before thanking the learned Professional Members of the local partnership Association who really came forward to volunteer in making arrangements from A to Z to make the Seminar grand success were felicitated as a measure of encouragement and appreciation of their excellent work and service.

Finally, the Chairman thanked the learned dignitaries, Speakers, Chairmen of all Technical Sessions and the learned Trustees of the Brain Trust Session for accepting the assignments and sparing their valuable time by taking the pains of travelling a long distance and contributing for the grand success of the Seminar and all the Delegates were also thanked for their excellent co-operation. The media was also thanked. In addition, the business people who were very responsive and generous to comply with the request of the office bearers to come forward and give advertisements in the Souvenir and also the sponsor were profoundly thanked. Thus, the Two-Day National Tax Seminar at Hyderabad held up to the satisfaction and received full throat encomium from one and all.

Per Delegate contribution to the Head Office is also remitted by way of cheque mailed to the Head Office on Monday, i.e., 8th July, 2013.

With this, the given task and responsibility to hold Two-Day National Tax Conference with NEC meeting in South Zone was successfully completed in an accomplished manner deriving appreciating and applause from one and all and the South Zone offers whole heartfelt thanks to the respected National President, all other office bearers and members of NEC for the opportunity and encouragement.



DIRECT TAXES

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

HIGH COURTS

1. S.43(5) : Speculative transaction – Applicability of definition – Set off. (S. 73)

Definition of 'speculative transaction' cannot be applied in the context of section 73 as it is specifically made applicable for sections 28 to 41 and 43. Loss from derivatives trading is speculative loss for section 73 purposes and cannot be set off against non-speculative business losses.

CIT v. DLF Commercial Developers Ltd. (2013) 35 taxmann.com 280 (Delhi) (HC)

2. S.271(1)(c) : Penalty – Unsustainable claim – Disclosure in return

In this case, the respondent-assessee had declared long term capital loss of ₹ 4.39 crores which were inclusive of loss incurred on the sale of US 64 units. The assessing officer disallowed the loss on sale US 64 units on the ground that where income from particular source was exempt from tax then the loss from such source could not be set off from another source under the same head of income. In view of the above, the assessing officer also initiated penalty proceedings and imposed penalty under Section 271(1)(c). The assessee had in its return of income filed a note with its computation of income disclosing all details about the sale of US 64 units, the loss and resultant carry forward. Further, all details were disclosed in the return. From the aforesaid facts, at the highest it can be said that the claim of the assessee was not sustainable in law but there was no furnishing of inaccurate particulars or concealment of income on the part of the assessee. Hence, the penalty was not justified.

CIT v. Nalin P. Shah (HUF), ITA Nos. 49-51/ 2013 (Bom.) (HC)

3. S.14A : Disallowance of expenditure – Dividend from foreign subsidiaries – Interest free funds

Where investment was made by the assessee in foreign subsidiaries, disallowance of interest expenditure under section 14A was not justified since dividend income from foreign subsidiaries, is taxable in India. Also, where the assessee had own interest free funds many times over the investment made in Indian subsidiaries and further, there was no direct nexus between interest bearing borrowed funds and such investment, no disallowance of interest expenditure could be made under section 14A.

CIT v. Suzlon Energy Ltd. (2013) 215 Taxman 272 (Guj.) (HC)

4. S.147 : Reassessment – No difference in tax payable – Disclosure. (S. 80-IA)

The assessee had disclosed fully and truly entire process of manufacture and generation of electricity by gas turbine unit as well as by steam turbine unit. Also, the total tax payable by assessee as per its method of grossing up of rate of tax as well as department's proposed method of grossing up of income was same. Hence, the reassessment proceedings were unsustainable. (A.Y. 2000-01)

NTPC Ltd. v. DCIT (2013) 215 Taxman 101 (Del.) (Mag) (HC)

TRIBUNALS

5. S.14A : Disallowance of expenditure – No expenses incurred – Short term capital gains income. [Ss. 2(24)(x), 36(1)(va), 37(1)]

Even if no exempt income was earned during the year, disallowance u/s 14A is ought to be computed. However, since the assessee pays short term capital gains tax on short term investments, the provisions of Rule 8D will not apply to the assessee and the AO was directed to compute the disallowance after excluding short term investments.

Sundaram Asset Management Co. Ltd. v. DCIT, ITA No. 1774/Mds/2012 dated 19-7-2013 (ITAT - Chennai) (A.Y. 2008-09) (Source: www.itatonline.org)

6. S.271(1)(c) : Penalty – To buy peace of mind and to avoid litigation – Explanation unproved but not disproved

If the assessee gives an explanation which is unproved but not disproved i.e. it is not accepted but circumstances do not lead to the reasonable and positive inference that the assessee's case is false, then the penalty is not imposable. In order to justify levy of penalty, there must be some material or circumstances leading to a reasonable conclusion that the amount does represent the assessee's income and the circumstances must show that there was a conscious concealment or act of furnishing of inaccurate particulars.

Saket Agarwal v. ITO, ITA No. 3194/Del/2012 dated 20-6-2013 (ITAT Delhi) (A.Y. 2008-09) (Source: www.itatonline.org)

7. S.40(a)(i) : Amounts not deductible – Interest – Addition to total income more than once. (Ss. 40A(2), 37(1), and 41(1), Art. 12 of India-USA/Singapore/UAE DTAA)

The assessee paid fees to foreign group companies without deduction of tax at source u/s 195, which was disallowed u/s 40(a)(i). Also, since the assessee had not provided details of group companies, services provided, nature of transactions and basis of payment, the AO disallowed said payment u/s 37(1). Further, assessee had shown its group company as creditor for Rs. 23.73 lakhs towards inspection charges, which were treated by the AO as income of assessee u/s 41(1). Held, the same amount could not be added on three different accounts while determining tax liability of the assessee. (AY 2006-07)

ITO v. ABS Industrial Verification India (P.) Ltd. (2013) 57 SOT 418 (Mum)

8. S.80-IA : Industrial undertakings – Partnership – Body of individuals

If under the provisions of Partnership Act, a firm is not created i.e., it is not a creation of statute, but it is a body of individual regulated by that statute, the assessee firm failed to satisfy applicability clause of provision as envisaged u/s 80-IA(4)(i). (AY 2008-09)

Eshwarnath Constructions v. ACIT (2013) 57 SOT 290 (Chennai)

9. S.92C : Avoidance of tax – Number of comparables – Reasons for exclusion

Since no size or number of comparables has been prescribed under provisions of Transfer Pricing Regulation, Transfer Pricing Officer can include any number of comparables. Merger of two otherwise functionally cannot be reason by itself for exclusion from list of comparables. Where good number of comparables are already available, a company cannot be considered as uncontrolled, if related party transactions exceed 15% of total revenue. In the absence of specific reasons and factors provided under Rule 10B, an entity cannot be excluded from list of comparables only on basis of it either being a high profit making unit or a loss making unit. Risk adjustment and working capital adjustment can be made only on the basis of actual risk or proper data and accurate calculation; and not on ad hoc basis. (A.Y. 2007-08)

Willis Processing Services (I) (P) Ltd. v. DCIT (2013) 57 SOT 339 (Mum.)

10. S.92C : Avoidance of tax – Comparables and adjustment – Additional evidence

The assessee was to be granted permission to file additional evidences as same would go to root of matter and facilitate adjudication of issue raised in appeal. (A.Y. 2007-08)

Global Turbine Services India (P.) Ltd. v. ACIT (2013) 57 SOT 116 (Del.)(URO)



Hearty Congratulations

Hearty Congratulations for the newly elected office bearers of **The Malad Chamber of Tax Consultants** for the period 2013-14.

President : Shri Vishal J. Shah
Vice President : Shri Jayprakash M. Tiwari
Hon. Secretaries : Shri Vipul M. Somaiya & Shri Adarsh S. Parekh
Hon. Treasurer : Shri Kishor J. Hapani

We wish them all the success.

Hearty Congratulations for the newly elected office bearers of **Income Tax Appellate Tribunal Bar Association, Jodhpur** for the period 2013-14.

President : Shri P. M. Chopra
Vice President : Shri Suresh Ojha
Hon. Secretaries : Shri Ashok Jangid & Shri T. L. Jain
Hon. Treasurer : Shri Bhanwar Bissa

We wish them all the success.

INDIRECT TAXES

P. C. Joshi Advocate

1. Circular

The Supreme Court while upholding the judgment of the Allahabad High Court held that the Circular issued by the Commissioner of Sales Tax in regard to Composition of Tax u/s. 7D of the Uttar Pradesh Trade Tax at 1948 was invalid being contrary to the provisions of the law.

State of Uttar Pradesh & Ors v. M/s. Systematic Conscom Ltd. (2013) Punjab & Haryana Taxes Vol. 45, Part 4, P. 264.

2. Components of a Legal Levy

The Supreme Court reiterated its observations in the case of *Ganga Saran and Sons Pvt. Ltd. v. ITO (1981) 3 SCC 143* that there should be all the four ingredients present for a valid levy of tax. The same were as under:

i) The taxable event attracting the levy; ii) the person on whom the levy is imposed and who is obliged to pay the tax; iii) the third, is the rate at which the tax is imposed; and iv) the fourth, is the measure or value to which the rate will be applied for computing the tax liability.

State of Uttar Pradesh & Ors v. M/s. Systematic Conscom Ltd. (2013) Punjab & Haryana Taxes Vol. 45, Part 4, P. 264.

3. Deduction

The Delhi high Court held that once the selling registered dealer produced the prescribed declaration in Form ST-1 under the Delhi Sales Tax Act, 1975, the *prima facie* proof about the correctness was complied with and the law did not cast any duty on the seller to verify the correctness of the form so issued by the purchasing dealer.

Pentex Sales Corporation v. Commissioner of Sales Tax, Delhi (2013) 45 PHT 343 (Del).

4. Entries to Schedule

Aluminium Granules (Powder)

The Madhya Pradesh High Court held that the Aluminium Granules (powder) was covered by entry 36 of Schedule II Part II of the M. P. VAT Act, relating to non-ferrous metal and alloys.

G. K. Micro Metal Pvt Ltd v. State of M.P. & Ors. (2013) 23 STJ 14 (MP).

5. Goods returned – Cancellation of sale

Before the Allahabad High Court, a contract was executed for sale of radar to be used by Indian Navy. The Naval Department however thereafter did not take delivery of antenna of the radar and cancelled the order. Since the seller had already shown the

transaction of antenna as inter-State sale supported by Form C, it claimed the same as goods returned in the subsequent period. The court on the facts held that the sale determined was on the basis of a presumption though in fact it was not a complete sale and therefore the provision of Section 8A of the CST Act providing for a period of six months for return of goods was held to be not applicable.

Bharat Electronics Ltd. v. Commissioner of Trade Tax, UP. (2013) NTN (Vol.52) - 151.

6. Manufacture

The Allahabad High Court followed the judgment of the Supreme Court in the case of *Jagatram Ahuja v. Commissioner Gift Tax, Hyderabad (2000) 8 SCC 249* and held that the definition of a word given in one Act, cannot be imported in the other Act especially where the aims and objects of both were not similar.

Premium Suiting Pvt Ltd v. Union of India & Ors. (2013) NTN (Vol. 52)-121.

7. Recovery

a) Surety – Liability

The Punjab and Haryana High Court held that a surety can be directed to make the payment only in respect of the default by the dealer for the period for which he had furnished surety bond and not in respect of other periods.

Golden Rolls (P) Ltd v. State of Haryana and Ors. (2013) 45 PHT 275 (P&H)

b) Spot collection

The Madras High Court held that the visiting inspecting authority had no jurisdiction to forcibly collect any amount on the spot, without finalising the assessment and issuance of the demand notice thereafter. Such an action was held to be contrary to the provisions of law.

M/s. Astek Electricals and Controls v. The Asst. Commissioner (CT) Ranipet & Ors. (2013-14) (19) TNCTJ P.77.

8. Refund

1) The West Bengal Taxation Tribunal did not approve the non-issuance of the Refund Adjustment Order or Refund Payment Order for the amount found refundable in accordance with the order of assessment simply because some *prima facie* lacunae were detected, but for which no remedial action by revision or rectification was taken up. The Tribunal therefore directed the issuance of the refund as determined in the order of assessment.

J. G. Chemicals Pvt. Ltd. & Anr. v. STO, Salkia Charge & Ors. (2013) 61 S.T.A. P. 325.

2) The Allahabad High Court held that the mistake of the department in crediting the money tendered by the assessee to the credit of an erstwhile firm in which one of the partners, was common, cannot be the reason for non-payment of refund to the assessee. Since the firm in whose account the amount was credited was not in existence, the court directed that the refund may be prepared in the name of partners or the heirs of the firm.

Panna Lal Banarsi Das v. State of U. P. & Anr. (2013) NTN (Vol. 52) - 82.

9. Registration Certificate

The West Bengal Taxation Tribunal set aside the cancellation of registration certificate on the ground

of non-existence of the assessee's place of business. The assessee produced the election I-card as well as the ration card issued by the food department to prove that the ground of cancellation was erroneous.

Shyam Iron Works & Ors v. STO Burtola Charge & Ors. (2013) 61 S.T.A. P. 42

10. Service Tax - Rate applicable

The Delhi High Court applied the decision of the Supreme Court in the case of *Association of Leasing and Financial Service Companies (2011) 18 STJ 51 (SC)* and held that the service tax was payable as per the rate applicable on the date when the service was rendered and not the one prevailing on the date of receipt of the payment.

Vistar Construction (P) Ltd. v. Union of India & Ors. (2013) 23 STJ P. 49.



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