



All India Federation of Tax Practitioners

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(for Members only)

AIFTP TIMES

Volume 4 - No. 12 | December, 2013



*We wish all our members and readers
Merry Christmas and Happy New Year !*



| FORTHCOMING PROGRAMMES | | |
|------------------------|---------------------------------------|--------|
| Date & Month | Programme | Place |
| 25-12-2013 | NEC Meeting (Last for 2012 and 2013) | Mumbai |
| 25-12-2013 | EGM/Election | Mumbai |
| 25-12-2013 | NEC Meeting (First for 2014 and 2015) | Mumbai |
| 26, 27-12-2013 | 17th National Convention | Mumbai |

Report of Tax Conference organised by AIFTP (CZ) at Jodhpur, on the occasion of Foundation Day in and the Memory of Late Shri M. R. Verma, Sr. FCA, Jaipur on Sunday, 24, November, 2013 at Hotel Mango, Mandore Road, Paota, Jodhpur

by Paras Chhajed, Secretary, AIFTP (CZ)

The Central Zone of All India Federation of Tax Practitioners organised a Tax Conference jointly with ITAT Bar Association, Jodhpur wherein around 100 delegates were present.

In inaugural session Hon'ble Shri Hari Om Maratha, Judicial Member, ITAT, Jodhpur Bench was the Chief Guest, Hon'ble Shri N. K. Saini, Accountant Member, ITAT, Jodhpur Bench was the Guest of Honour and Hon'ble Shri J. R. Lohiya, Member, Rajasthan Tax Board, Ajmer was the Special Guest.

Shri Rajendra Kumbhat (IRS), D.C. (retd), Central Excise and Service Tax, and Shri A. L. Gehlot (CA) Ex. Member, ITAT was the Chairman of the First Technical Session.

Welcome speech was given by Shri P. M. Chopra, Member, National Executive of AIFTP who spoke about the history of the Federation. Ten new members were also enrolled in the Federation on this occasion.

Shri Sumer Patwa briefed about the Technical Session subjects and introduction of Paper writers.

First Technical Session was chaired by Shri A. L. Gehlot and Shri Rajesh Mehta, FCA, Indore presented papers on TDS, Capital Gain and latest provisions of HUF which were summarised by Dr. S. L. Jain.

Second Technical Session was chaired by Shri Pradeep Jain (FCA), and Shri Alok Kothari (FCA), Jaipur presented paper on Amnesty Scheme under Service Tax Act., Reverse charge of Service Tax and problems relating to Builders and Construction Services.

Both these Technical Sessions were conducted by CA T. L. Jain who also proposed the vote of thanks.

On this day mementos were presented posthumously to the family members of Shri M. R. Verma and Shri Pars Ram Sharma for their contribution to Federation activities.

Vote of thanks was extended by Shri Ashok Jangid followed by National Anthem.

Master of Ceremonies of the above programme was performed by CA Piyush Chopra.

The media coverage of the conference was published in almost all newspapers in Jodhpur, Jaipur, Ganganagar and Pali editions and the same was telecast on ETV and Local News Channels.

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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**NOTICE OF EXTRAORDINARY GENERAL BODY MEETING OF THE FEDERATION
TO BE HELD ON 25-12-2013 AT MUMBAI**

Dear Members,

An Extraordinary General Meeting as provided in Rule 10 of the Rules & Regulations of the Federation will be held on Wednesday, the 25th December, 2013 at 3.30 p.m. at The Bombay Presidency Radio Club, 157, Arthur Bunder Road, Colaba, Near Gateway of India, Mumbai 400 005 to transact the following agenda as prescribed in Rule 8.

AGENDA

1. To confirm the proceedings of the previous EGM held on 9th December, 2011 at Ranchi.
2. To consider report of the National Executive Committee for the term 2012 & 2013.
3. To consider and ratify the Guidelines/relevant rules for working of Zones as approved by the National Executive Committee in its meeting on 6th October, 2013. (Please refer AIFTP Times November 2013 issue)
4. To consider and ratify Guidelines for Awards as discussed and approved by the National Executive Committee in its meeting on 6th October, 2013 (Please refer AIFTP Times November 2013 issue)
5. To consider amendments to the Memorandum, Rules & Regulations (Please refer AIFTP Times November 2013 issue)
6. To elect 40 members to the National Executive Committee for the term 2013-2014 in accordance with Rule 7(3).
7. To consider suggestions from the members in respect of rendering better service to the members and for overall progress of the AIFTP.
8. To receive the report of the Election Officer.

For All India Federation of Tax Practitioners

Date : 18th October, 2013

Place : Mumbai

Narayan P. Jain

Secretary General

Notes:

1. Copy of Memorandum of Association and Rules and Regulations and specimen nomination form are printed in May, 2002 issue of the Journal and also available in our Website; i.e., www.aiftponline.org. Members are requested to read the same before filing the nomination.
2. Specimen nomination form is available on the website of the Federation and on request may be obtained from the National Secretariat, Mumbai.
3. Nominations are hereby invited for the membership of National Executive Committee from all eligible members in terms of Rules 10(1) and 14 subject to numerical limit as provided in Rule 7(3) for each zone.
4. Nomination form duly proposed and seconded must reach the registered office of the Federation on or before 18th December, 2013 (Wednesday) before 6.00 p.m.
5. Candidate may withdraw the nomination on or before 25th December, 2013 (Wednesday) before actual commencement of Election process.
6. As per clause 10(3) of the constitution of the Federation, the Chairman of the respective zone shall be ex-officio member of the Executive Committee, hence Chairman-elect is not required to file the nomination for the National Executive Committee. A special request is hereby made to all the zones to hold the election of respective zones on or before 30th November, 2013 and convey the result to head office and copy to President and Secretary General through e-mail followed by dispatch through speed post at the earliest.
7. As per the membership of respective zones as on 6th October, 2013 maximum number of candidates who can be elected to NEC as per Rule 7(3) of the Constitution are as under:

| Zones | Members as on 6-10-2013 | Entitlement (Max.) |
|--------------|--------------------------------|---------------------------|
| Central | 804 | 06 |
| Eastern | 1,159 | 08 |
| Northern | 929 | 07 |
| Southern | 877 | 06 |
| Western | 1,719 | 13 |
| Total | 5,488 | 40 |

8. As per Rule 10, clause 6 of the constitution of the Federation, a member who is **more than 5 years** in practice and who has been a member of the Federation for **at least two years** can only file the nomination.
9. At the meeting held on 1-10-2005 at Mumbai it was decided unanimously that notice for Extraordinary General Meeting be published in the AIFTP Times as contemplated under Rule 9 clause 3. Hence, no separate notice will be issued.

10. The National Executive Committee Meeting will be held once in three months at different places in the country, along with two days' conference. The Executive Committee Members have to bear personally the expenses of travelling, stay and delegate fees of the conference and also devote time for the welfare of the Federation. Persons of integrity and who can afford to spend time and money for the welfare of the profession are only requested to file their nomination.
11. The National Executive at its first meeting after election shall elect from amongst its members the following office bearers for two calendar years. (Rule 10 clause 4, read with clause 6).
 1. One President
 2. One Deputy President
 3. Five Vice-Presidents (one from each zone)
 4. One Secretary General
 5. One Hon. Treasurer and
 6. Five Hon. Joint Secretaries (one from each zone)
12. For further clarification the members may contact the Secretary General, Chairman of respective zone or Registered Office.
13. At the last National Executive Committee Meeting held at Mumbai on 6th October, 2013, Dr. K. Shivaram was appointed as the Election Officer.
14. The Nomination Forms would be scrutinised by the Election Officer and conduct the election if warranted at Mumbai at the time of EGM.

17TH NATIONAL CONVENTION

(Wednesday 25th, Thursday 26th & Friday 27th December, 2013)
at Y. B. Chavan Auditorium, Mumbai

Dedicated to Late Shri B. C. Joshi, National President (1984-1990)

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS

Theme : Tax Jurisprudence – Challenges Ahead

Wednesday, 25th December, 2013 – Radio Club – 1.30 p.m. to 6.00 p.m.

Last National Executive Committee Meeting (2012 & 2013)

EGM / Election

First National Executive Committee Meeting (2014 & 2015)

Thursday, 26th December, 2013 – Y. B. Chavan Auditorium – 8.30 a.m. to 6.00 p.m.

8.30 a.m. to 9.30 a.m. Breakfast, Fellowship & Registration

9.30 a.m. to 11.00 a.m. Inauguration

- Chief Guest – To be announced

- Guest of Honour – Mr. Y. P. Trivedi, Sr. Advocate & Member of Parliament

11.00 a.m. to 11.30 a.m. Tea Break

11.30 a.m. to 1.30 p.m.

First Technical Session

Subject : "Panel Discussion on Issues arising out of Transactions with Suspicious Dealers"

Panellists : a) Income Tax – Dr. K. Shivaram, Advocate, Mumbai

b) VAT – Mr. P. C. Joshi, Advocate, Mumbai

Moderator : CA. Pradip Kapasi, Mumbai

1.30 p.m. to 2.30 p.m.

Lunch Break

2.30 p.m. to 4.00 p.m.

Second Technical Session

Subject : "Levy of Service Tax on Supply of Tangible & Intangible Goods IPRs Transactions"

Chairman : CA. Bhavna Doshi, Mumbai

Rapporteur : CA. Sunil Gabhawalla, Mumbai

Paper Writer : CA. Ashit Shah, Mumbai

4.00 p.m. to 4.30 p.m.

Tea Break

4.30 p.m. to 6.00 p.m.

Third Technical Session

Subject : "Panel Discussion on Issues arising out of Real Estate Transactions"

Panellists : a) Income Tax – Mr. Firoz B. Andhyarujina, Sr. Advocate, Mumbai

b) VAT – Mr. Bharatji Agrawal, Sr. Advocate, Allahabad

c) General Law – Mr. K. K. Ramani, Advocate, Mumbai

Moderator : Dr. Anita Sumanth, Advocate, Chennai

Friday, 27th December, 2013 – Y. B. Chavan Auditorium – 8.30 a.m. to 4.00 p.m.

8.30 a.m. to 9.30 a.m. Breakfast & Fellowship

9.30 a.m. to 11.00 a.m.

Fourth Technical Session

Subject : Issues under Capital Gains

- Share Transactions

- Sections 50, 54, 54EC & 54F

Chairman : Mr. S. R. Wadhwa, Advocate, New Delhi

Rapporteur : Mr. Ganesh Purohit, Sr. Advocate, Jabalpur

Paper Writer : Mr. Ajay Singh, Advocate, Mumbai

11.00 a.m. to 11.30 a.m. Tea Break

| | |
|-------------------------|---|
| 11.30 a.m. to 1.00 p.m. | Fifth Technical Session |
| | Subject : Important Controversial Issues relating to Determination of Turnover Sales under the VAT and CST Acts |
| | Chairman : Dr. Ashok Saraf, Sr. Advocate & Advocate General (Arunachal Pradesh), Guwahati |
| | Rapporteur : Mr. J. V. Rao, Advocate, Hyderabad |
| | Paper Writer : CA. K. Sankarnarayan, Kochi |
| 1.00 p.m. to 2.00 p.m. | Lunch Break |
| 2.00 p.m. to 3.30 p.m. | Brains' Trust Session |
| | Co-ordinator : Mr. M. L. Patodi, Advocate, Kota |
| | Trustees : Direct Taxes Mr. N. M. Ranka, Sr. Advocate, Jaipur |
| | Indirect Taxes Mr. P. S. Sarin, Advocate, Delhi |
| | Service Tax Mr. C. B. Thakar, Advocate, Mumbai |
| 3.30 p.m. to 4.00 p.m. | Concluding Session |
| 4.00 p.m. | High Tea |
| Delegate Fees: | For Members : ₹ 3,500/- (Inclusive of Service Tax) |
| | For Accompanying Spouse : ₹ 2,500/- (Inclusive of Service Tax) |

Kindly issue DD / Cheque at par in favour of "All India Federation of Tax Practitioners" payable at Mumbai

NOTE: Members are requested to send their queries for Brains' Trust Session by e-mail at aiftp17nc@gmail.com or by post/courier at Federation's Office on or before 30th November, 2013

For further details, please contact:

| | | | |
|---|---|--|--|
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|---|---|--|--|

Conference Secretariat

215, Rewa Chambers, 31, New Marine Lines, Mumbai – 400 020.

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Note: Members are requested to send all correspondence at the email ID; i.e., **aiftp17nc@gmail.com**

Hotel Tariff

| Hotel | Single Occupancy | Double Occupancy | Triple Occupancy | Four person Occupancy | Deluxe Room | Super Deluxe | Suite Room |
|---|------------------|------------------|------------------|-----------------------|-------------|--------------|------------|
| Sea Green Hotel , T: 66336525 • W: www.seagreenhotel.com | - | 4,790 | 5,135 | 5,480 | - | - | - |
| Sea Green South Hotel , T: 66336535 • W: www.seagreensouth.com | - | 4,790 | 5,135 | 5,480 | - | - | - |
| Hotel Godwin , T: 22841226 • W: www.hotelgodwin.in Additional person : (Child above 5 years chargeable) ₹ 600/- | 4,600 | 5,500 | - | - | 5,700 | 6,060 | 6,500 |
| <i>All the above rates are discounted and Inclusive of all taxes</i> | | | | | | | |

We are also negotiating with the following Hotels which are nearby to Y. B. Chavan Auditorium:

Hotel Diplomat, T: 22021661 • W: www.hoteldiplomat-bombay.com • **Chateau Windsor Hotel**, T: 66224455 • W: www.chateauwindsor.com

DIRECT TAXES

Ajay R. Singh, Rahul Hakani, Neelam Jadhav, Advocates, & CA Rahul Sarma
KSA Legal

SUPREME COURT

I. S. 133(6) : AO empowered to launch fishing and roving enquiry with a view to detect tax evasion

The legislative intention behind s. 133(6) was to give wide powers to the income-tax department to gather general particulars in the nature of survey and store those details in the computer so that the data so collected can be made use of for checking evasion of tax effectively. It would not fall under the

restricted domains of being "area specific" or "case specific." S. 133(6) does not refer to any enquiry about any particular person or assessee, but pertains to information in relation to "such points or matters" which the assessing authority issuing notices requires. This clearly illustrates that the information of general nature can be called for and names and addresses of depositors who hold deposits above a particular sum is certainly permissible.

Kathiroom Service Co-operative Bank Ltd. v. CIT (Supreme Court) (www.itatonline.org.)

2. S. 271(1)(C) Explanation 1 : Voluntary disclosure of concealed income does not absolve assessee of s. 271(1)(c) penalty if the assessee fails to offer an explanation which is bona fide and proves that all the material facts have been disclosed

The assessee filed a return of income for A.Y. 2004-05 declaring an income of ₹ 16 lakhs. During the course of the assessment proceedings, the AO noticed certain documents comprising of share application forms, bank statements, blank share transfer deeds etc had been impounded in the course of s. 133A survey proceedings conducted in the case of the assessee. The AO sought specific information regarding the documents from the assessee. In reply to the show-cause notice, the assessee made an offer to surrender ₹ 40.74 lakhs with a view to avoid litigation and buy peace and to make an amicable settlement of the dispute. The AO assessed the said sum of ₹ 40.74 lakhs to tax and levied penalty u/s. 271(1)(c) for concealment of income and not furnishing true particulars.

The Court observed that the AO shall not be carried away by the plea of the assessee like "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc. to explain away its conduct. Explanation to s. 271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise.

MAK Data P. Ltd v. CIT (Supreme Court) (www.itatonline.org)

3. Ss. 10A/10B – "Exemption" provision : Unabsorbed depreciation and business loss of same Ss. 10A/10B unit brought forward from earlier years have to be set-off against the profits before computing exempt profits

The assessee set up a 100% EOU in A.Y. 1988-89. For want of profits it did not claim benefits u/s 10B in A.Ys. 1988-89 to 1990-91. From A.Y. 1992-93 it claimed the said benefits for a connective period of 5 years. In A.Y. 1994-95, the assessee computed the profits of the EOU without adjusting the brought forward unabsorbed depreciation of A.Y. 1988-89. It claimed that as s. 10B conferred "exemption" for the profits of the EOU, the said brought forward depreciation could not be set-off from the profits of the EOU but was available to be set-off against income from other sources. It was also claimed that the profits had to be computed on a "commercial" basis. The AO accepted the claim though the CIT revised his order u/s. 263 and directed that the exemption be computed after set-off. On appeal by the assessee, the Tribunal reversed the order of CIT. On appeal by the department, the High Court reversed order of the Tribunal and held that the brought forward depreciation had to be adjusted against the profits of the EOU before computing the exemption allowable u/s. 10B.

Himatasingike Seide Ltd. v. CIT (Supreme Court) (www.itatonline.org)

HIGH COURTS

1. S. 254 : ITAT duty-bound to deal with all judgments cited during hearing

Whenever any decision has been relied upon and/or cited by the assessee and/or any party, the authority/Tribunal is bound to consider and/or deal with the same and opine whether in the facts and circumstances of the particular case, the same will be applicable or not. In the instant case, the Tribunal had failed to consider and/or deal with the decision cited and relied upon by the assessee. Under the circumstances, all the appeals to be remanded to the Tribunal to consider the addition made by the AO towards alleged bogus purchases/sales and to take appropriate decision in accordance with law and on merits and after considering the decision.

Dattani & Co. v. ITO (Gujarat) (High Court)(www.itatonline.org)

2. S. 45(4) : Does not apply if the retiring partner takes only money towards the value of his share and there is no distribution of capital assets among the partners

S. 45(4) deals with a distribution of capital assets on the dissolution of a firm or other AOP or BOI or otherwise and provides that if in the course of such distribution of capital asset there is a transfer of a capital asset by the firm, the firm shall be chargeable to tax on capital gains. In order to attract s. 45(4), the conditions precedent are (1) there should be a distribution of capital assets of a firm; (2) such distribution should result in transfer of a capital asset by firm in favour of the partner; (3) on account of the transfer there should be a profit or gain derived by the firm and (4) such distribution should be on dissolution of the firm or otherwise. In other words, the capital asset of the firm should be transferred in favour of a partner, resulting in firm ceasing to have any interest in the capital asset transferred and the partners should acquire exclusive interest in the capital asset. On facts, the partnership firm purchased the property and it was not in the name of any partner. No partner brought that capital asset as capital contribution into the firm. Also, there was no dissolution of the firm because the firm continued to exist even after the retirement of some partners. What was given to the retiring partners is cash representing the value of their share in the partnership. No capital asset was transferred on the date of retirement. In the absence of distribution of a capital asset and in the absence of transfer of capital asset in favour of the retiring partners, no profit or gain arose in the hands of the partnership firm and so the question of the firm being assessed u/s. 45(4) would not arise.

CIT v. M/s Dynamic Enterprises (Karnataka High Court - Full Bench) (www.itatonline.org)

TRIBUNALS

1. S. 40(a)(ia) not applicable in cases where assessee under bona fide belief has not deducted TDS and although department has disputed the same in earlier years but by the time Assessment Order for earlier year was passed and received by the assessee the return for subsequent year was already filed

The assessee Company during the assessment year 2007-08 has paid Lease line Charges, other Charges and Transaction Charges to the Stock Exchange and no TDS Deducted on Lease line Charges, other Charges and Transaction Charges under section 194J. Disallowance

was made by AO in respect of transaction charges u/s. 40(a)(ia) in assessment years 2006-07 as well as 2007-08. For assessment year 2006-07 the disallowance was deleted by the CIT(A) following various decisions of Tribunal. However for Assessment Year 2007-08 the matter travelled up to the Tribunal. The assessee pleaded *bona fide* belief for not deducting the TDS relied on the Bombay High Court decision of Kotak Securities Ltd. By the time assessment order for A.Y. 2006-07 was received, the assessee had already filed the return of income for assessment year 2007-08. Thus no TDS was deducted due to *bona fide* reason and following the decision of Hon'ble High Court in the case of Kotak Securities Ltd. the disallowance made by AO u/s. 40(a)(ia) of the Act as deleted.

Javeri Fiscal Services Ltd. (ITAT Tribunal Mumbai) ITA No. 478/M/2011 for A.Y. 2007-08 dated 6-6-2013 Bench "I".

2. S. 54EC: Deduction for capital gain arose from short term capital gain exemption for 54EC is available S.50: Requirements of the provision is to acquire as assets – No need to prove user :

The assessee had invested ₹ 12,86,500/- in REC Bond u/s. 54EC. It claimed the benefit of investment u/s. 54EC in REC Bonds adjustable against short term capital gain on sale of depreciable assets. The assessee relied on Bombay High Court decision in case of *M/s. ACE Builder Pvt. Ltd. 281 ITR 210 (Bom.)* and claimed the deduction u/s. 54EC.

If assets is depreciable and held for more than 36 month, sale proceeds could be invested under provision of s. 54EC. The Hon'ble ITAT relied on the decision of the High Court and held that the assessee is eligible for the deduction.

Further the assessee had claimed that the cost of new offices at ₹ 54,82,250/- and adjustable against the sale of office premises. The WDV of flat as on 31-3-2006 was Nil.

The Assessing officer denied the claim of set off of the cost of acquisition of the premises acquired by assessee against the sale of office premises on the ground that it is a residential property cannot be used for office. Further, the assessee has not received the possession of the property and not put to use, hence, it cannot be said that the assessee has acquired the new business asset. The learned CIT(A) accepted the fact of acquisition of the premises, however held that the two new properties has not been put to use for the purpose of business before 31-3-2007.

The Tribunal held that sec. 50 makes special provision for the computation of capital gains in the case of depreciable assets. There is no explicit requirement in the statutory provision to the effect that the new asset should also be used in a business carried on by the assessee.

Lalbai Kalidas & Co. (ITAT Tribunal Mumbai) ITA No 5832/M/2011 for A.Y. 2007-2008 dated 8-11-2013 before Bench "A".

3. S. 263 : Order passed u/s. 263 of the Act is neither erroneous nor prejudicial to the interest of revenue. If AO has applied his mind on the issue – merely because second opinion is possible – revision not justified

The assessee was a private limited company engaged in the business of manufacturing of M S Ingots. A survey action u/s. 133A was conducted on 12-3-2008 (A.Y. 2008-09). During the course of the survey the Dept. verified the books of account especially transactions of purchases with details of opening stock, consumptions, sales and closing stock of raw material and finished goods. The Dept. *vide* statement recorded on 12-3-2008 of Director Shri Sanjiv R. Gupta made him declare ₹ 2,87,68,252 as undisclosed income. The survey team had not noticed any discrepancies in the inventory records and excise records. The Director Shri Sanjiv R. Gupta *vide* affidavit dated 25-3-2008 retracted his earlier statement recorded by the Dept. In the course of assessment the assessee filed statement showing monthly quantitative details of purchases, Consumption and closing stock of raw material and finished goods was also furnished, confirmation of parties were filed along with ledger account and Bank statement.

The Dy. CIT *vide* show cause notice dated 14-12-2009 sought reply from the assessee as to why G.P. addition @ 20% of purchases of ₹ 1,43,08,200/- should not be made. The assessee *vide* letter dated 21-12-2009 furnished its explanation and details. The AO accepted the alternative plea that only G.P. can be added. The Assessing Officer thus completed the assessment after proper verification of the survey records, assessee's submission and verifying the details filed by the two parties by issuing summons u/s. 131 of the Act and details filed. The AO sustained the addition of ₹ 28,61,640/- being 20% of ₹ 1,43,08,200/-.

The CIT *vide* notice u/s. 263 of the Act states that the AO action in disallowing 20% of the purchase is incorrect on the ground that the statement recorded during the survey the purchases were proved to be non genuine and therefore the assessment order is erroneous and prejudicial to the interest of the Revenue.

The Hon'ble ITAT held that the entire issue of survey action, genuineness of purchases and statement recorded had been duly considered and adjudicated by the AO in original assessment by a speaking order, therefore the same could not be reconsidered merely because of second opinion of the case. The proceeding sheet noting also reveals the fact that the two parties were summoned u/s. 131 and they had appeared, filed details and confirmed the transaction. As such, no revisionary powers under section 263 of the Act can be exercised in the given case and any such reconsideration of the matter would be bad in law. If two different views are possible in a given situation, notice issued u/s. 263(1) of the Act by CIT holding the assessment order as erroneous is bad in law and quashed.

Mundra Steel & Alloy Pvt. Ltd. v. CIT - I, ITA No. 1709 & 1710 /PN/ 2011 dtd. 20-9-2013 before Pune Bench "B".

INDIRECT TAXES

SALES TAX

P. C. Joshi, Advocate

1. Order after remand

The Madhya Pradesh High Court held that the assessing authority was under an obligation to comply with all the directions of the revisional or appellate authority while remanding the matter. The assessing authority cannot reiterate his earlier observations disregarding the directions of the higher authority.

Shri Sharda Domestic Fuels Pvt. Ltd. v. State of M.P. and Ors. (2013) 23 STJ 275 (MP)

2. Reassessment

The Supreme Court while considering the scope of section 147 read with section 149(1A) of the Income-tax Act, 1961 held that once the period of limitation for re-opening of assessment had lapsed, the question of reopening would not arise. Secondly when the original order was passed, the same was in accordance with the law laid down by the jurisdictional High Court and its subsequent reversal by the Supreme Court did not authorise the department to reopen the assessment closed on the basis of law as it stood on the relevant date.

Dy. Commissioner of Income Tax v. Simplex Concrete Piles (India) Ltd. (2013) 23 STJ 263 (SC)

3. Rectification

The Calcutta High Court held that the misconstruction of the ratio of the earlier judgment by the Tribunal or taking the view contrary to the express statutory provision would amount to a mistake apparent on record that was required to be rectified.

Dy. Commissioner, Commercial Taxes v. Garden Reach Ship Builders & Engg. Ltd. (2013) 62 S.T.A. 158

4. Refund

The Punjab and Haryana High Court in its appellate jurisdiction directed the concerned officer of the Sales Tax Department to quantify the refund in accordance with law within a period of 15 days.

Hardev Electromech v. State of Haryana & Anr. (2013) 46 PHT 21 (All)

5. Res Judicata

The Supreme Court by its judgment dated 8th October, 2013 has reiterated the ratio in the case of *Radhasoami Satsang Bagh v. Commissioner of Income Tax (1992) 193 ITR 321 (SC)* to the effect that when the Revenue had accepted the order of the Tribunal in favour of the assessee relating to past Assessment Years and did not pursue any further, it cannot be allowed to flip-flop on the same issue. The Apex Court concluded the matter with the hope that the Revenue would implement its litigation policy a little more practically and seriously.

Commissioner of Income Tax v. M/s. Excel Industries Ltd. Civil Appeal No. 125 of 2013 decided on 8th October, 2013.

6. Seizure of goods in transit

The Allahabad High Court disapproved the seizure of goods in transit, on mere presumption that the same were likely to be sold in the State. Such an action was held to be merely based on presumption suspicion and doubts; which cannot be sustained in law.

M/s. Seema Enterprises v. The Commissioner, Commercial Tax (2013) 46 PHT 1 (All)

7. Works Contract

a) Galvanisation

The Kerala High Court held that there was a clear transfer of goods in 'some other form' while undertaking the work of galvanising cross arms, stay rods, etc., belonging to customers, by using zinc for coating those items. Consequently the prescribed percentage for labour charges are required to be deducted.

A1 Steel Industrials v. State of Kerala (2013) 21 KTR 482 (Ker)

b) Resale

Under the provision of Karnataka Sales Tax Act, the goods purchased from another registered dealer were not taxable when used in execution of works contract. In the instant case before the Karnataka High Court an electrical contractor had purchased electrical material from a registered dealer on payment of tax. The High Court disapproved the revision of the appellate order granting the relief to the assessee.

Power Associates v. Addl. Commissioner, Commercial Taxes (2013) 23 STJ 409 (Kar)

c) Electrical Contract – Civil Contract

The Allahabad High Court held that merely because the value of electrical work was shown separately in the contract, it cannot be excluded while considering the value of civil contract for the purpose of composition. It also held that the contract for construction of building would cover the electrical work and therefore the entire composite amount would be in the nature of a civil contract.

Skyline Engg. Contracts (India) Pvt. Ltd. v. Commissioner, Commercial Tax (2013) 23 STJ 281 (All)

d) Inter-State Works Contract

The assessee before the Calcutta High Court, undertook the works contract to be executed at Durgapur Steel Plant. For the said purpose, it purchased certain materials from Mumbai with instructions to the supplier to dispatch those materials directly to Durgapur. Since the movement from Mumbai to Durgapur was occasioned as a result of pre-existing contract between the assessee and the contractee the High Court affirmed the views of the Tribunal that the movement from State of Maharashtra to that of West Bengal was in the nature of inter-State works contract covered by section 3 of the CST Act.

State of West Bengal & Ors. v. National Engg. Inds Ltd. (2013) 62 S.T.A. 163

8. News from Gujarat

The Government of Gujarat by notification dated 4th October, 2013 have amended the notification dated 16th May, 2008 whereby all types of medical equipments, devices and implants, would not cover goggles, spectacles of sunglass and sunglass which were not corrective. By yet another notification of the same date, the existing entry relating to switch and socket relays have been deleted.

Gujarat Government Gazette VAT-2013-SCH-II (28A) (22) and (45) (21)



LETTER TO THE EDITOR

Dt. 28-11-2013

To
Shri Narayan Prasad Jain,
Secretary General,
All India Federation of Tax Practitioners,
Respected Sir,

With reference to the report of Tax Seminar at Cochin published in AIFTP Times (October, 2013), I hereby withdraw the portion of the report attributed to CA Shri K. Sankarnarayanan (line 4 to 14) in the larger interest of the Federation and realising the necessity to maintain harmony, brotherhood and Fraternity. I reiterate my appreciation and respect for Shri Sankarnarayanan as a senior member of the Federation.

With Kind Regards

Yours faithfully,

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

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