



All India Federation of Tax Practitioners

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AIFTP TIMES

Volume 4 - No. I | January, 2013

We wish all our members and readers a Happy & Prosperous 2013

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
19-1-2013, 2, 16-2-2013 2, 16, 30-3-2013	Workshop on MVAT & Service Tax – Year 2012-13 (WZ)	Mumbai
5, 6, 7-1-2013	National Seminar 2013 (WZ)	Diu
26-1-2013	Workshop on Time Management (EZ)	Kolkatta
9-2-2013	Half Day Seminar on Scrutiny Assessment and Issues relating to Refund (EZ)	Kolkatta
16-3-2013	One Day Tax Seminar (SZ)	Thirumalai, Tirupati
17-3-2013	National Executive Committee Meeting	Thirumalai, Tirupati

FEDERATION NEWS

Narayan P. Jain, *Secretary General*

NEWS OF FOUNDATION DAY CELEBRATION ON 11TH NOVEMBER, 2012 AT CUTTACK

The Foundation Day celebrations of the AIFTP was held in a grand manner by the members at Cuttack on 11th November, 2012. It was presided by Mr. Subhash Ch. Lal, Senior Advocate. A Seminar was held on the topic "Penalties under the Orissa VAT Act and Entry Tax Act", with Dr. Kanhayalal Sharma, Advocate as the key note speaker, who spoke eloquently on the topic, with special focus on automatic levy of penalty @ 200% on the tax assessed in Audit Assessment and other penal provisions in VAT law like penalty for no filing of audit report, etc. The speakers opposed the penal procedures which contravenes the constitutional rights of a citizen (dealer/assessee). There was a comprehensive discussion. Mr. Jagabandhu Sahoo, Mr. Sanjay Acharya, Bibek A. Mohanty, Natabar Mohanty also spoke. Mr. Rabindra Nath Pal, NEC Member of AIFTP spoke on the activities of the organisation and its role in moulding the tax structure in the country. The most unique feature was that Senior Advocates, Mr. Sadanand Ratho, Mr. Rabindranath Samal and Mr. Nityananda Mohanty were felicitated for their outstanding contribution to the field of law and taxation. Mr. Ramesh Kumar Dhal, Advocate presented the vote of thanks. FOUNDATION DAY CAKE was also cut on the occasion. The celebrations concluded with a cultural programme performed by young and child artistes and a sumptuous dinner. More than 100 professionals participated. The programme was organised under the advice of Shri Indu Chatrath, Eastern Zone Chairman.

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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

**REPORT OF SEMINAR AT JAMSHEDPUR
HELD ON 3RD NOVEMBER 2012**

by Indu Chatrath, Chairman (EZ)

The AIFTP Eastern Zone organised a one day Tax Seminar at Jamshedpur on 3rd November, 2012, jointly with Federation of Jharkhand State Commercial Taxes Bar Association, Jamshedpur Taxation Bar Association and Commercial Tax Bar Association, at the Singhbhum Chamber of Commerce & Industries (JN TATA Auditorium).

The seminar was inaugurated by Hon'ble Mr. Justice D.N. Upadhay, Judge of Jharkhand High Court, Shri B.K. Singh, IRS Commissioner of Income Tax Appeals was the Guest of Honour.

Shri S.K. Poddar, National President of AIFTP highlighted the activities of AIFTP being organised in various parts of the country. Prof. Narayan Prasad Jain, Secretary General called upon the tax professionals to take benefit of AIFTP Seminars and Conferences and update their knowledge in this era of competition. Shri Indu Chatrath urged all to join as member of AIFTP. The seminar was addressed by Shri M. D. Kedia, Shri R. N. Gupta and Shri Narayan Agarwal, FCA, Shri Sumit Garodia, Advocate, Shri M.L. Modi, Sr. Advocate from Ranchi addressed the technical sessions. i.e.,

1. Amended Provisions of T.D.S. under I.T. Law, problems in getting credit of TDS due to mismatch with 26AS and remedy thereof,
2. Key features of Finance Act, 2012-13 relating to Service Tax,
3. Input Tax Credit on Capital Goods & Consumables under Jharkhand VAT Act, and
4. Penalty provisions under JVAT Act 2005 with special reference to movement of goods in the State of Jharkhand.

The seminar was well attended by more than 200 delegates.

LIST OF PUBLICATIONS

Sr. No.	Name of Publication	Edition	Price		Courier Charges
			Members	Non-Members	
1.	International Taxation — Important Aspects & Issues	Dec., 2012	240.00	270.00	60.00
1.	Digest of Case Laws Direct Taxes	Sept., 2012	2,000.00	2,250.00	200/300*
2.	Media & Entertainment Industry (Normal Bound)	Dec., 2009	280.00	315.00	80.00

* Air Charges

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 two publications are in stock.

REPORT OF FOUNDATION DAY CELEBRATION OF AIFTP (SZ)

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

11th November of every year happens to the Foundation Day of All India Federation of Tax Practitioners. Enough was done and is being done by the Federation to continue the pursuit of education and knowledge in respect of various branches of Law amongst the professionals as well as the tax payer-assesseees. Time has come for an introspection as to what has been done by the Federation and its noble, respected and learned members to the society and in its service.

As an exemplary one, the South Zone of the Federation since 2010 onwards has been celebrating the Foundation Day of the Federation on 11th November in altogether unique and innovative manner by serving the cause of the society. In continuation of the said tradition, 11th November the Foundation Day of the Federation is celebrated at missionaries of charity, Mother Theresa ID Hospital for Sick and Dying Destitutes at Secunderabad. Apart from us, the former Zonal Chairman and former National Vice President, Advocate P. V. Subba Rao, Mr. S. Satyanarayana, Secretary of the Zone, Mr. Narsinga Rao, Treasurer of the Zone and other respected Members namely, Mr. V. Nagendra Prasad, Mr. Amarnath, Mr. Ghanshyam Upadhyay, Mr. M. V. L. Narsinga Rao have visited the place where the sick and dying destitutes are being serviced by well trained and highly devoted sisters. It may be well appreciated that apart from money, donation and intention, one should have a real heart to serve the needy and suffering fellow human beings in the society. We have seen such an honest and sincere and dedicated service mind in the ten sisters of the institute. We have gone round various wards where the patients and inmates were accommodated and we have also interacted with some of the inmates namely, one Mr. Suresh, who was brought there in an unconscious state suffering from mental depression on account of certain family problems and the said person was being served by the institute and in the words of the said person, it is known clear that to a larger extent he is out of depression and he talked to me in English and another inmate with whom I have also interacted one is Mr. Paramathma. All the inmates were really cheerful and happy ourself and other brother members have approached them and we also felt an inexpressible sense of bliss and satisfaction, for, we have an opportunity this day to interact and share some of the ideas and agonies that our fellow human beings in the society have been facing. The Institute maintained three wards where the inmates capable to move and do their daily chores and others who could not move. The Institute caters separately for the male and female. We were also shown the chart of menu being given to the inmates every day and really it is wonderful and excellent experience for all of us. We all collective donations in the name of the Federation, a total amount of ₹ 27,982/- was donated to the Institute in the form of three cheques and cash. We have also some photographs with the inmates in front of Mother Theresa statue distributing some cookies and fruits to the inmates.

WORKSHOP ON “TIME MANAGEMENT”
ON 26TH JANUARY, 2013 Organised by AIFTP (Eastern Zone)

A workshop on “Time Management” will be held on Saturday, the 26th January, 2013 at the “Country Roads” in Panchala off the National Highway 6, Bombay Road (Via New Howrah Bridge-Kona Express Way), South 24 Parganas, West Bengal. Shri Narayan Jain has agreed to share his practical experience on how to make best use of your precious time. This workshop will be followed by a Picnic at the same spot. The programme will begin at 10 am and continue till 4 pm.

Assembly point : We will depart from Aaykar Bhawan, P-7, Chowringhee Square, Kolkata so participants are requested to assemble by 8.30 am positively.

Delegate fee (inclusive of conveyance, Lunch, Tea and Snacks) is ₹ 600.

Indu Chatrath
Zone Chairman

N.D. Saha
Zone Secretary

Achintya Bhattacharya
Co-ordinator

HALF-DAY SEMINAR ON “SCRUTINY, ASSESSMENT AND ISSUES RELATING TO REFUND”
ON 9TH FEBRUARY, 2013 Organised by AIFTP (Eastern Zone)

A Half-Day Seminar on “Scrutiny Assessment and Issues relating to Refund” will be held on Saturday, the 9th February, 2013 at 3.30 pm at Indian Council for Cultural Relations, 9A, Ho Chi Minh Sarani, 4th Floor, Kolkata – 700 071. The expert comments will be made by Shri S.K. Poddar, National President and Prof. Narayan Jain, Secretary General. The Speakers are FCA Purushottam Agarwalla and Shri Subash Agrawal, Advocate. Please attend positively. (There will be meeting of Managing Committee at the same Venue from 2.30 pm to 3.30 pm).

Indu Chatrath
Zone Chairman

N. D. Saha
Zone Secretary

Arvind Agarwal – Sumit Binani
Co-ordinators

WORKSHOP ON MVAT & SERVICE TAX

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS (WESTERN ZONE)
Jointly with
**BOMBAY CHARTERED ACCOUNTANTS' SOCIETY,
THE CHAMBER OF TAX CONSULTANTS,
THE MALAD CHAMBER OF TAX CONSULTANTS AND
THE SALES TAX PRACTITIONERS' ASSOCIATION OF MAHARASHTRA**

Venue : STPAM Library, 104, Vikrikar Bhavan, Mazgaon Mumbai - 400 010
Time : 2.30 p.m. to 5.30 p.m.
Fees : ₹ 1,500/- for Members & ₹ 2,000/- for Non-Members (Including Service Tax)

Sr. No.	Date	Day	Subject	Speakers
1	19.01.2013	3rd Saturday	Issues in Works Contract Transactions under MVAT, CST & Service Tax	CA Vikram Mehta - MVAT CA Ashit Shah - Serv. Tax
2	02.02.2013	1st Saturday	Issues in Point of Taxation Rules, 2011 Issues in Interest, Penalties and Show Cause Notices/Summons	CA Rajiv Luthia
3(a)	09-02-2013	2nd Saturday	Issues in Applicability of MVAT to Builders & Developers - Legal Aspects	Shri Vinayak Patkar, Advocate
3(b)	09-02-2013	2nd Saturday	Issues in Applicability of MVAT to Builders & Developers - Practical Aspects	Shri Dinesh Tambde, Advocate
4	16.02.2013	3rd Saturday	Issues in CENVAT Credit Rules, 2004	Shri Naresh Thacker, Advocate
5(a)	23-02-2013	4th Saturday	Search & Seizure provisions under MVAT Act	Shri Deepak Bapat, Advocate
5(b)	23-02-2013	4th Saturday	Interest, Penalties and Prosecution under MVAT Act	Shri Ashvin Acharya, Advocate
6	02.03.2013	1st Saturday	Issues in Input Tax Credit under MVAT	Shri C. B. Thakar, Advocate
7	16.03.2013	3rd Saturday	Issues in Branch Transfer & Sales in transit under CST Act	Smt. Nikita Badheka, Advocate
8	30.03.2013	5th Saturday	Taxation of Hoteliers, Restaurants, Caterers, Franchisee, etc. under MVAT, Luxury Tax & Service Tax	CA Sujata Rangnekar - MVAT CA Manish Gadia - Serv. Tax

For further details contact

Pravin R. Shah, Hon. Secretary, AIFTP (WZ) • M : 9821476817
Tushar P. Joshi, Hon. Jt. Secretary, AIFTP (WZ) • M : 9821135246

Kindly issue the cheque in favour of
"All India Federation of Tax Practitioners - Western Zone" payable at Mumbai

NATIONAL SEMINAR 2013, DIU

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)
&
ALL GUJARAT FEDERATION OF TAX CONSULTANTS, AHMEDABAD

Jointly with
RAJKOT TAX CONSULTANTS SOCIETY • JAMNAGAR TAX PRACTITIONERS ASSOCIATION
TAXATION ADVISERS ASSOCIATION, JUNAGADH
on 5th, 6th & 7th January, 2013 DIU (U/T)

THEME - REACHING TO GRASSROOT

AIFTP & AGFTC's endeavour to penetrate at the grassroot level and render services to the members by interaction and imparting education at small places of India/Gujarat by holding Seminars & Conferences to update members background for the National Seminar at Diu.

The Federation updates the members on all aspects of Taxation be it Direct or Indirect Taxation. Five to six two day seminars and number of one day and half day seminars are organised every year. The Zones are active in organising one day seminars, study circles, workshops, RRC, etc. in association with local Associations. The aim is to cultivate the strong bond of fraternity amongst members and professionals. The Federation tries to reach even the remote places by organising seminars.

Accordingly, it is decided to organise National Seminar 2013 jointly with three local associations from 5-1-2013 to 7-1-2013 at Radhika Beach Resort, Diu.

The course shall comprise four technical sessions and Brains' Trust. Legal luminaries from all over the country are likely to attend the event. Delegates from various parts of India shall be participating.

Diu District is an island off the south coast of Gujarat's Kathiawar peninsula, separated from the mainland only by a tidal creek. Nagoa is located at the eastern end of the island, which is union territory, is replete with Portuguese culture and contemporary living. Located on the sea coast off the Gujarat, Diu is an erstwhile Portuguese colony that boasts of several historical monuments, churches, temples and other picturesque places that might be of interest to you during your sightseeing tours. Diu's biggest attraction, the Nagoa beach, is bang opposite the Radhika Beach Resort.

Place of tourist interest like Fort, Church, Gangeshwar Temple, Jalandhar Beach, etc. can be visited. Horse-shoe shaped, the Nagoa Beach is by far the most famous beach in Diu. Additionally, the high points are the Gir Forests and the Somnath Temple that are at a comfortable driving distance from the resort.

Income Tax

1. Assessment of Partnership Firms – CA. Samir N. Divetia, Ahmedabad
2. Practical Issues on TDS & CPC – CA. Mahendra Sanghvi, Mumbai
3. Recent Judicial Trends on Challenge to Reassessment Proceedings – Mr. K.H. Kaji, Sr. Advocate, Ahmedabad.

Value Added Tax & CST

Taxation of Works Contract – CST – 3B Sale in the Course of Transit – Mrs. Nikita Badheka, Advocate, Mumbai.

Service Tax : Negative List Regime – CA. Jigar Shah, Ahmedabad.

LOGISTICS: Bus : Regular bus services to Diu.

- Ahmedabad to Diu is 375 kms; • Bhavnagar to Diu is 205 km; • Gir to Diu is 97 kms
- Veraval to Diu is 84 kms; • Una to Diu is 24 kms

Air : Jet Airways operates a daily flight between Mumbai and Diu. From the airport Radhika Beach resort is hardly 1 km. We provide airport pick up service on request. Flight from Mumbai is 9W 2500 leaving Mumbai at 13.00 & reaching Diu at 14.05. From Diu to Mumbai the flight is at 14.35 reaching Mumbai by 17.20 hrs.

Rail : The nearest railway station is Veraval. The train service is available to Rajkot and Ahmedabad from Veraval. Ahmedabad is connected with rest of the country by rail. There is a daily train between Bombay – Veraval and Jabalpur - Veraval.

The meeting of the Office Bearers, Past Presidents and other Members of NEC will be held at 4.30 P.M. at Radhika Beach Resort, Diu on Friday i.e. 4th January, 2013. NEC Members and other Members are requested to attend the same.

REGISTRATION:

Registration for National Seminar 2013, Diu can be made with AIFTP Mumbai or AGFTC, Ahmedabad or Taxation Advisors Association, Junagadh on payment of ₹ 6,500/- (Rupees Six Thousand Five Hundred Only) per participant. Account Payee cheque or draft may be drawn in the name of "Taxation Advisors Association, Junagadh" payable at Junagadh or remitted in cash. This amount includes stay on twin or triple sharing basis on first come first serve basis, breakfast, lunch & dinner, study material and local site seeing. It does not include cost of Somnath or Gir Forest visit and extended stay of more than 2 nights & 3 days.

Detailed programme of the event shall be given at the time of registration. Registration form is available on our website.

AIFTP

Mr. S.K. Poddar, National President
Mr. J. D. Nankani, Deputy President
Mr. Ashvin C. Shah, Vice President
Mr. Vinayak Patkar, Chairman, Western Zone
Mrs. Nikita R. Badheka, Chairperson, Conference Committee
Mr. Vipul Joshi, Vice Chairman, AIFTP (WZ)
Mr. Pravin Shah, Secretary, AIFTP (WZ)

All Gujarat Federation of Tax Consultants

Mr. Shailesh C. Desai, President
Mr. Hersh Samir Jani, Secretary
Mr. Bhailal K. Patel, Chairman, Convention Committee
Mr. Latesh K. Parikh & Mr. Kanubhai N. Patel, Co-Chairman
Mr. Rajeev Doshi, Co-Chairman, Saurashtra Region

Rajkot Tax Consultants Society

Mr. G.C. Domadia, *President*
Mr. Mahendra Pujara, *Hon. Secretary*

Taxation Advisors Association, Junagadh

Mr. H.R. Patel, *President*
Mr. Samir Jani, *Secretary*

Jamnagar Tax Practitioners Association

Mr. Mukesh Modi, *President*
Mr. Umesh Ravani, *Hon. Secretary*

ONE DAY TAX SEMINAR AT THIRUMALAI (TIRUPATI)

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (SZ)
jointly with
TIRUPATI TAX BAR ASSOCIATION

on 16th March, 2013

PROGRAMME

Saturday, 16th March, 2013

- 8.30 am to 9.30 am : Registration & Breakfast
9.30 am to 10.30 am : Inauguration
Chief Guest : Shri S.K. Poddar, Advocate, National President, AIFTP, Ranchi
Guest of Honour : Shri P. C. Joshi, Advocate, Past President, Mumbai
Shri N. M. Ranka, Sr. Advocate, Past President, Jaipur
Dr. K. Shivaram, Advocate, Past President, Mumbai
Shri Bharatji Agrawal, Sr. Advocate, Past President, Allahabad
Shri M. L. Patodi, Advocate, Past President, Kota
Shri J. D. Nankani, Advocate, Deputy President, Mumbai
- 10.30 am to 10.45 am : Tea Break
10.45 am to 12.00 Noon: **First Technical Session** : Implications of Union Budget for 2013-14
Chairman : CA. S. Tirumalai, Hyderabad
Speaker : CA. Sampath Raghunathan, Hyderabad
- 12.00 Noon to 1.30 pm : **Second Technical Session** : Administration of Service Tax Today
Chairman : Shri V. J. Shankaram, Advocate, Hyderabad
Speaker : Shri Vaitheeswaran, Advocate, Chennai
- 1.30 pm to 2.30 pm : Lunch Break
2.30 pm to 4.00 pm : **Third Technical Session** : Administration of VAT Act – Duties of assessing Authorities
Chairman : Md. Imtiaz, Dy. Commissioner (CT), Nellore
Speakers : CA Sanjay Dhariwal, Bangalore
Shri MVJK Kumar, Advocate, Hyderabad

On 17th March 2013, the meeting of Office Bearers and NEC is organised. It will begin with breakfast for NEC Members and Advisors followed by lunch.

Delegate Fee: ₹ 2,500/- (Accommodation Amount Extra)

The delegates seeking/requesting for Darshan of Lord will have to pay additional amount of ₹ 500/- per person along with separate ID cards for self as well as spouse if wishes to join. Probable time for Darshan is 3 to 5 hours. The members intending to have Darsan are requested to wear traditional dress as dress code is now-a-days made compulsory. Carry original ID Cards. To carry and possess prohibited and forbidden articles like liquor and cigarettes on the way to and on Tirumala is a serious offence inviting arrest by the security.

Certain important places of visit up and down the Hills of Tirumala are given under:

Tirumala : Important places to see: 1. Lord Venkateswara (Balaji), 2. Varahaswamy Temple, 3. Srivari Padalu, 4. Japali Hanuman Temple, 5. Venugopala Swamy Temple, 6. Papavinasanam, 7. Museum. Probable time to visit all places is 3 to 5 hours.

Tirupati : Important places in Tirupati are 1. Tiruchanuru (Alamelu Manga Temple) 3 KM from Tirupati, 2. Srinivasa Mangapuram, 10 km from Tirupati, 3. Kapilatheertham (local), 4. ISKCON Temple [Hare Krishna Temple] (local), 5. Govindaraju Swamy Temple (near Tirupati Railway Station) - 3 hours.

Your Contactees for all requirements

Name	Mobile	E-mail
Dr. M.V. K. Moorthy, Chairman, AIFTP (SZ)	M: 09849004423	advocatemoorthy@yahoo.co.in
Malladi Srinivasa Rao, Joint Secretary-AIFTP	M : 09885796999	e-mail: sai9malladi@yahoo.com
AVS Krishna Mohan, A.P. State Vice Chairman	M : 09849048517	avskrishnamohan@yahoo.co
CA. Phalgun Kumar, Tirupathi	M: 09441886303	



**All India Federation
of Tax Practitioners**

BOOK RELEASE ANNOUNCEMENT

We are pleased to make the announcement of the release of publication of the All India Federation of Tax Practitioners titled "International Taxation – Important Aspects & Issues", which is dedicated to late Shri V. Ramachandran, Past President, AIFTP. Hon'ble Mr. Justice Swatanter Kumar, Judge, Supreme Court of India has released the publication on 15th December, 2012 at Udaipur in a Two Day National Tax Conference organised by the AIFTP (Central Zone) in association with local associations. The same was also released by Hon'ble Mr. Justice V. C. Daga, Judge, Bombay High Court (Retd.) on 15th December, 2012 at Mumbai in a Two Day Conference organised by the AIFTP (Western Zone) in association with local associations.

This is a unique publication explaining the provisions and various controversies relating to International Taxation. This publication contains contribution by Renowned Authors on Authority for Advance Rulings; Business Connection; Basic Principles of Interpretation of Double Taxation Agreements; Capital Gains; Deduction at Source; Double Taxation Reliefs; Fees for Technical Services; Income accrues or arises; Interest and Penalties; Payments to non-residents; Royalties; Transfer Pricing – Controversial issues; Vodafone Voodoo and Cross Border Transactions Issues – Bird's eye view – Tax Laws and Investments – USA.

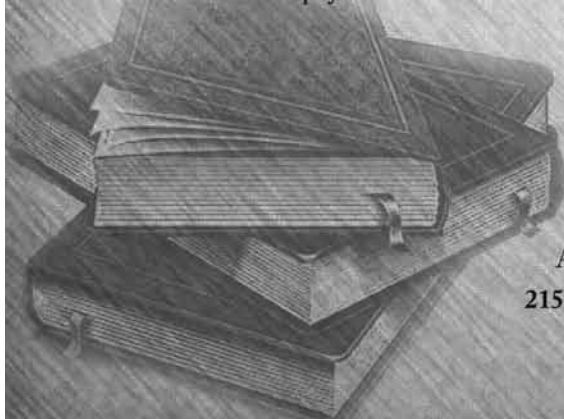
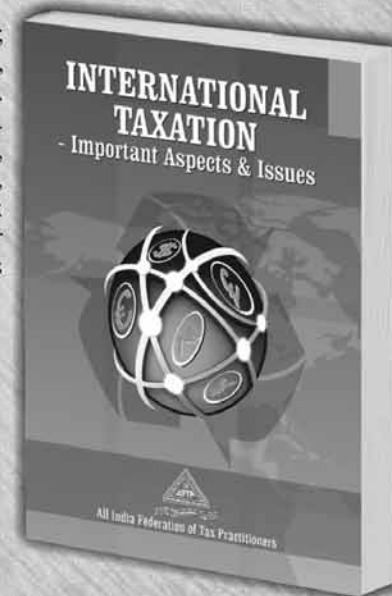
This publication will serve as a useful reference for Tax Consultants, Tax-payers, Advocates; Chartered Accountants & Government Authorities as well as tax officials in understanding the various issues relating to International Taxation.

This publication is authored by S/Shri Ajay Vohra, Advocate; Arvind P. Datar, Sr. Advocate; CA. H. Padamchand Khincha, N. M. Ranka, Sr. Advocate; Nikhil Ranjan, Advocate; Niraj Sheth, Advocate; Nitesh S. Joshi, Advocate; Parag A. Vyas, Advocate; CA. Pradip N. Kapasi, CA. Premraj Rathod, CA. Rajan Vora, S. Rajaratnam, Advocate; S. R. Wadhwa, Advocate; CA Shailvi Singhal, CA. Sunil M. Lala, Sujeet S. Karkal, Advocate; Justice T. N. C. Rangarajan (Retd.) & Mr. V. K. Sridhar, Tax Consultant. The same is edited by S/Shri N. M. Ranka, Sr. Advocate, Jaipur & Dr. K. Shivaram, Advocate, Mumbai. Convenor of the said publication is Mrs. (Dr.) Anita Sumanth, Advocate, Chennai.

The price of publication is ₹ 300/-.

For subscribers of www.itatonline.org / members of the Federation / BCAS / CTC / STPAM, the same is available at a price of ₹ 240/- and for others, the same is for ₹ 280/-. Local / Outstation members not collecting from office are requested to add ₹ 60/- per publication as courier charges.

Please make all drafts payable to "All India Federation of Tax Practitioners".



For Further Details Please Contact:

ALL INDIA FEDERATION OF TAX PRACTITIONERS
215, Rewa Chambers, 31, New Marine Lines, Mumbai – 400 020
Tel.: 2200 6342 Telefax: 2200 6343 E-mail: aiftp@vsnl.com

DIRECT TAXES

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

HIGH COURTS

- S. 10A : Exemption – Conversion of assessee company from DTA to STP – Neither splitting up nor reconstruction – Non intimate to STPI regarding the commencement of commercial production is immaterial – Entitled for exemption u/s 10A**

Where there was neither splitting up nor reconstruction of the business already in existence on conversion of assessee company from DTA to STP unit with permission of STPI, fact that the assessee did not intimate to STPI regarding the commencement of their commercial production is immaterial, assessee entitled for exemption u/s. 10A.

Cadtrium Engineering Solutions (P.) Ltd. v. ITO (2012) 78 DTR 347 (Delhi) (HC)

- S. 40(a)(ia) : Amount not deductible – Deduction of Tax at Source – Special Bench verdict that s. 40(a)(ia) applies only to “amounts payable” stayed**

In *Merilyn Shipping & Transports v. ACIT 146 TTJ 1 (Vizag)*, the Special Bench held by a majority that as s. 40(a)(ia) refers to “amount payable”, only the outstanding amount or the provision for expense as of 31st March (and not the amount already paid during the year) is liable for disallowance if TDS is not deducted. It was held that this interpretation was necessary as the Finance Bill proposed the disallowance to apply to any “amount credited or paid” but this was changed to “amount payable” in the Finance Act. On the department’s appeal to the High Court, the High Court has *vide* order dated 8-10-2012 directed “interim suspension” of the Special Bench’s verdict.

CIT v. M/s Merilyn Shipping & Transports (Andhra Pradesh) (High Court)

- S. 194C : Tax Deducted at Source – Works Contract – Contract for purchase and sale of gas – No carriage contract – Provision not applicable to fixed transportation charges paid separately**

Assessee having obtained supply of gas from GAIL at the receiving point of its factory through pipelines and equipments laid down, owned and maintained by GAIL under an agreement with the clear understanding that the ownership of gas would

pass on to the assessee at the delivery point, the agreement was for purchase and sale of gas and there was no contract for carriage of goods and therefore S. 194C was not applicable to the fixed transportation charges paid separately by the assessee to GAIL.

CIT v. Krishak Bharati Co-operative Ltd. (2012) 78 DTR 154 (Guj.)(HC)

TRIBUNALS

- S. 14A : Business expenditure – Disallowance – Exempt income – Dividend income earned on shares held as stock-in-trade – Applicability of provision**

The issue in the matter was relating to applicability of section 14A of the Act when the assessee has not incurred any expenditure for earning of the dividend income yielded on shares held as stock-in-trade. It is a settled proposition at the level of Hon’ble High Court of Karnataka that the provision of section 14A has no application to the dividend income arising out of the shares held as stock-in-trade, it was further held that earning of dividend income out of the shares held on trading account is merely an incidental income as the assessee is always want those shares to be parted or sold and only the unsold shares is the source of such incidental dividend income. In such case, the provisions of section 14A are not applicable.

ACIT v. M/s. Prescient Securities Pvt. Ltd (Mum.) (Trib.) (I.T.A. No. 5281/M/2011 dated 21-11-2012)

- S. 48 : Capital gain – Computation – LTCG – Assessee has option to compute long term capital gain or loss in respect of each transaction separately with or without indexation whichever is beneficial to it**

The dispute is regarding computation of tax in respect of long term capital gain. The assessee had incurred long term capital loss in case of certain transactions and long term capital gain in respect of shares of one company. The assessee had computed long term capital loss with indexation which had been set off against long term capital gain without indexation and net long term capital gain was subjected to 10% tax as per section 112. After considering the decision of *CIT v. Anuj A. Sheth (HUF) (324 ITR 191)* and decision of Tribunal in *Kesav S. Phansalkar v. ITO [(3 ITR (AT)236]* it was held that the assessee is that it has the option to compute long term capital gain or loss in respect of

each transaction separately with or without indexation whichever is beneficial to it.

Mr. Vipin Kumar Jain v. Jt. Commissioner of Income Tax (Mum.) (Trib.) (ITA No. 4086/Mum/2011)

6. 54EC : Capital Gain – Exemption – Limit of ₹ 50 lakhs does not apply to the transaction but financial year – Cheque has to be issued within 6 months – Encashment of Cheque & Allotment of Bonds beyond 6 months is irrelevant

In A.Y. 2008-09, the assessee sold land on 14-12-2007 and computed capital gains of ₹ 1.57 crores. He invested ₹ 50 lakhs on 3-3-2008 (F.Y. 2007-08) in REC Bonds and ₹ 50 lakhs on 4-6-2008 (F.Y. 2008-09) in NHAI Bonds and claimed a deduction of ₹ 1 crore u/s 54EC. The NHAI Bonds were allotted on 30-6-2008. The AO & CIT(A) restricted the assessee's claim to ₹ 50 lakhs on the ground that (i) the Proviso to s. 54EC imposed a ceiling of ₹ 50 lakhs for the investment and (ii) the allotment of the NHAI Bonds was made beyond 6 months of the date of transfer. It was held that in *Aspi Ginwala (ITAT Ahmedabad)* that the Proviso to s. 54EC merely restricted the investment that can be made in one F.Y. to ₹ 50 lakhs but it did not restrict the exemption to ₹ 50 lakhs. However, a contrary view was taken in *Raj Kumar Jain & Sons (ITAT Jaipur)* that the exemption u/s 54EC had to be restricted to ₹ 50 lakhs. However, Circular No.3/2008 dated 12-3-2008 issued by the CBDT makes it clear that the Proviso only intended to restrict the investment in a particular financial year and did not intend to restrict the maximum amount of exemption permissible u/s 54EC. The fact that the

Proviso uses the words "in a financial year" fortifies this interpretation. Accordingly, it has to be held that the assessee is entitled to total deduction of ₹ 1 crore in respect of the investment of ₹ 50 lakhs made in each financial year. Further, it was also held that the cheque was issued to NHAI before the expiry of 6 months from the date of transfer. The fact that the allotment of the Bonds was made after 6 months is irrelevant. A payment by cheque which is encashed subsequently relates back to the date of receipt of the cheque. The date of payment is the date of delivery of the cheque and not the date of its encashment (*Kumarpal Amrutlal Doshi (ITAT Mumbai)* followed).

Vivek Jairazbhoy v. Dy. CIT (Bang.)(Trib.)(www.itatonline.org)

7. S. 271(1)(c) : Penalty – Concealment or furnishing of inaccurate particulars – Two computations filed with return – Bona fide mistake warrants no penalty

Where there were two computation of statement prepared and the return of income was filed by assessee on the basis of incorrect computation but in subsequent year, claimed the brought forward losses on the basis of correct computation and thereby not claiming any extra benefit in subsequent year, it was held that the mistake committed by assessee in filing return of income on basis of incorrect statement is a *bona fide* mistake. Hence, no penalty warranted.

Shayong Pulp Conversion Mills Pvt. Ltd. v. ITO (Pune)(Trib.) (ITA no. 548/PN/2007 dt. 5-11-2012)

INDIRECT TAXES

Nikita R. Badheka Advocate & Notary

1. Appeal – Dismissal without reason

Tribunal had in the absence of assessee dismissed the appeal. In the said order it did not consider the merit, nor dismissed the same on default. The Allahabad High Court held that the order without reason is lifeless and cannot be sustained in law unless recording of reasons is specifically dispensed with under the Statute. The Tribunal has not framed the points for determination nor assigned any reasons. The order was set aside by the High Court to decide on merit.

Money Honey Electronics v. Commissioner of commercial Tax 2012 NTN (Vol. 49)-190 (All)

2. Bail-Guarantor

The petitioner was alleged to have stood as a guarantor for his co-accused who had created a fake firm and made fake bills with an objective to evade Value Added Tax in violation of Punjab Value Added Tax Act. The Court observed that the Petitioner was in custody w.e.f. May 12, 2011, Challan has already been presented against him. and the trial is likely to take a long time. The main accused appears to have not been arrested till date. In view of the above, the petition was allowed. Petitioner was ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the trial Court.

Ganga Ram v. State of Punjab (2012 42 PHT 418 (P&H))

3. Contempt of Court

By an order dt. 14th November, 2011, the Patna High Court had held that in view of the absence of material to show that the goods were smuggled goods, the Authorities should not have detained and seized the truck loaded with betel nuts. The order was properly communicated, despite this the trucks were not released but after 7 months 100% cash security and cash bond was demanded, when no such directions were made by High Court. Court held this to be direct confrontation with Judicial order. The officer had crossed his judicial limits. The Contemner was held guilty of contempt of Court and punished with simple imprisonment for 3 months and fine of ₹ 2,000/-. The Court directed contemner to surrender to police. Continuation of Investigation even after the seizure and detention was quashed by Court was held to be contempt of Court.

Birendra Kumar Singh v. UOI Dy. CST Customs etc. (2012) 43 PHT 111 (Patna)

4. Entry—Spring leaf Iron and steel

The Allahabad High Court, following its earlier decision in Sethi Traders held that individually Spring leaves are not motor part but when they are put to heat, bended, and then tied up together with nuts, bolts and socket are taxable are motor parts. The spring leaf was held as iron and steel.

Commissioner of Commercial Taxes v. Gitanjali Traders-2012 NTN (Vol. 49)-189 (All)

5. Entry – Post-it paper – Whether all kinds of paper

Appellant imported jumbo rolls of paper of different colours, which contained strips of adhesive on one side, then cut the paper into pieces and prepare 'post-it-paper' with the adhesive at one edge on one side of the paper, which is generally used as a flag and also used for writing purposes. It can be reused number of times so long as the adhesive is working. The Karnataka High Court held it to be covered under the entry of "All kinds of paper".

3M India Limited v. State of Karnataka 2012-13 (17) KCTJ) (Kar.)

6. Excess stock

In a search operation carried on by the Officers of Central Excise Department, a discrepancy was found with regard to raw materials and finished goods on physical verification vis-à-vis as found in the accounts book. The assessments were sought to be reopened under Sales Tax. In a writ petition the High Court held that the petitioner will have an opportunity

during reassessment proceedings to explain his stand but at this stage of the proceedings granting permission, it cannot be said that the information of excess stock in respect of finished and unfinished goods is not germane to form the belief that the turnover of the assessee has escaped assessment. The reason to believe for sanctioning the proceeding did exist.

Associated Pigments Ltd. v. State of U.P. & Others -2012 NTN (Vol. 49) – 53 (All.)

7. Input tax credit – Default by supplier

Under section 8 of Haryana Value Added Tax Act, 2003, dealt with the issue of non deposit of tax by the selling dealer, even after collecting from the purchasing dealer. the Court held, rebate of input tax from the output tax is admissible even though the selling dealer has not deposited the tax unless fraud, connivance or collusion between two is proved.

M/s. Mittal Engineering Industries, v. State of Haryana (2012) 42 PHT 408 (HTT)

8. Lease rent – Towers on buildings, interest and penalty, recovery of amount paid as service tax from Union by State

The activity of providing of cellular telephony towers on rent to various service providers was taxed stating that the transaction falls under the definition of "deemed sale" under section 2(29)(d) of the Act read with sections 3 and 4(1)(b) of the VAT Act, 2003. The equipment is fixed on earth on the top of roof of a building just to enable it for functioning. Karnataka High Court on Writ held, just fixing the equipment on the building or on earth does not lose its form of equipment. It cannot be claimed as part of immovable property Telecom companies were given the equipment on lease and rent was received to use the equipment, therefore the right to use the goods has been transferred by the petitioner to the telecom companies and that very much falls within Article 366(29A)(d) of the Constitution. Assessment orders upheld.

Regarding levy of interest and penalty the High Court. The same cannot be imposed as, in the usual course the petitioner having exercised his *bona fides*, having registered under the service tax, went on paying service tax.

The Court also directed State to recover of tax on transfer of use of towers to telecom companies from the Union in a separate proceedings based on the judgment rendered herein as the, petitioners had paid service tax to the first respondent i.e. Union and it is for the State to seek for recovery

of the amount so paid by the petitioner to the first respondent

Essar Telecom Infrastructure (P) Ltd. v. Union of India and Others 2012 NTN (Vol. 49)-263 (Kar.)

9. Maximum rate of tax

The Punjab and Haryana High Court held that the maximum rate of sales tax applicable on goods sold to a Government Department against certificate in Form 'D' by an industrial unit holding exemption certificate for the purpose of computing notional sales tax liability shall be the rate applicable to the transaction under the Act and not the maximum rate of sales tax

State of Haryana v. M/s. Sumita Industries, Jind (2012) 42 PHT 404 (P&H)

10. Penalty

when there is bonafide dispute of taxability of goods, summary power of imposing penalty under section 31(8) is not intended to be exercised. The power under section 31(8) of the Haryana VAT Act has to be invoked when a person is found to be concealing relevant information or giving misleading information nor acting in a clandestine manner or wherefrom the available information itself attempt to evade tax is established. Checking Officer has no power to impose penalty under section 31(8) of the HVAT Act merely on the ground of taxability of goods when the documents accompanying the goods in transit are found to be proper and genuine.

M/s Rishab Farms & Industries Ltd., Jhajjar v. State of Haryana (2012) 43 PHT 31 (HTT)

11. Recovery from president of Society

The recovery certificate for recovering trade tax dues from a society registered under the Societies Registration Act of which the petitioner was the President, could be recovered from him as he has really managing the entire society.

Babu Ram Yadav v. Addl. Commissioner, Trade Tax, Sector-1, Firozabad & Others 2012 NTN (Vol. 49)-60 (All.)

12. Refund - To partner or firm

On assessment being set aside, the amount deposited by one of the partners was refundable. The issue was whether the refund cheque can be issued in the name of one of the partners. The Allahabad High Court held that refund is permissible only in the name of firm even though the payment was claimed to have been made by one of the partners. The High Court, however granted leave to one partner to take

action against the other partner for recovery as per law. The revision cannot be filed under Sales Tax Act for this purpose.

Chotey Lal Jai Prakash v. Commissioner of Trade Tax 2012 NTN (Vol. 49)-204 (All.)

13. Sale in course of export

The Madras High Court, allowing a writ petition, held that the sales made to the 100% EOU will fall under the definition of "Zero rated sales" in terms of section 18 of the Tamil Nadu Value Added Tax Act, 2006. If the EOU has made the export and proof of export is brought on record, section 18 of the Tamil Nadu Value Added Tax Act, 2006, has to automatically apply. The Court further held that findings of the authority in the impugned orders are perverse and based on a misreading of the provisions of section 18(i) of Tamil Nadu Value Added Tax Act, 2006 and section 5(3) of the Central Sales Tax Act, 1956.

Emerald Stone Export v. Assistant Commissioner (CT), FAC, Pudukkottai 2012 NTN (Vol. 49)-258 (MAD)

14. Stamp Papers valid even after six months of purchase

Supreme Court in the case of *Thiruvengada Pillai vs. Navaneethammal* decided on 19-2-2008 held that stamp paper do not have any expiry period and a person possessing stamp paper for which he has no immediate use, can seek refund of the value thereof by surrendering such stamp paper to the Collector provided it was purchased within the period of six months next preceding the date on which it was so surrendered. The stipulation of the period of six months prescribed in Section 54 is only for the purpose of seeking refund of the value of the unused stamp paper, and not for use of the stamp paper. Section 54 does not require the person who has purchased a stamp paper, to use it within six months. Therefore, there is no impediment for a stamp paper purchased more than six months prior to the proposed date of execution, being used for document.

(Press Information Bureau, Government of India, May 22, 2012)

15. Works Contract - Liability

The Karnataka High Court allowed. the appeal of the assessee holding he is not liable to pay tax on the purchase of sand and jelly which are used in a very negligible percentage in Electrical works contract.

(Power Associates v. Addl. C.C.T & Anr. (2012-13(17) KCTJ))(Kar.)

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We are pleased to inform you that Shri J. K. Ranka, leading Advocate (Rajasthan High Court) and former Secretary General of All India Federation of Tax Practitioners has been selected as the Judge of the Hon'ble High Court.

In the past also many of our members have been elevated to the Bench in Hon'ble High Courts and some of them were also elevated as the Judge of the Hon'ble Supreme Court. We are proud of such members.

National Executive Committee congratulate Shri J.K. Ranka and we wish him all the best.

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