



All India Federation of Tax Practitioners

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AIFTP TIMES

Volume 3 - No. 11

November, 2012



*We wish all our members and readers
Very Happy Diwali and Prosperous New Year*



FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
14-12-2012	National Executive Committee Meeting	Udaipur
15 & 16-12-2012	National Tax Conference (CZ)	Udaipur
14 & 15-12-2012	Two Days Seminar on Real Estate Development	Mumbai
6, 15, 29-12-2012 3, 19-1-2013, 2, 16-2-2013 2, 16, 30-3-2013	Workshop on MVAT & Service Tax – Year 2012-13	Mumbai

FEDERATION NEWS

Narayan P. Jain, Secretary General

Report on the deliberations that have taken place in the inaugural function of the Late National President V. Ramachandran's Foundation Trust as well as the Memorial Lecture delivered by a Sitting Judge of the Hon'ble Supreme Court Hon'ble Mr. Justice F.M. Ibrahim Kalifulla in Hotel Park Sheraton, Chennai

As stated earlier, at the request of Dr. Anita Sumanth daughter of the late National President of the Federation and in terms of your kind permission, I have attended the function both as a close and intimate friend of Mr. Ramachandran as well as representative of the All India Federation of Tax Practitioners on 29-9-2012. The foundation trust was constituted by registering a Deed of Trust and the trustees among others would include Dr. Anita Sumanth, the daughter and Dr. Padmaja Ramachandran, the spouse of late Ramachandran. It was declared that the trust was formed to institute a Gold medal to be conferred on a final year law student scoring distinction in taxation branch from

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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the Madras Law University, to contribute necessary financial assistance for the conduct of various conferences, seminars, symposiums in pursuit of education and knowledge to provide medical services to the needy people and also finally to conduct Moot Court competitions in various States in the name of the past National President of the Federation. The foundation trust was declared inaugurated by His Lordship Hon'ble Mr. Justice F.M. Ibrahim Kalifulla, Judge of the Supreme Court by handing over the registered Trust Deed to the two grandsons of Late. Ramachandran, who are the sons of Dr. Anita Sumanth, the daughter of Ramachandran. The trust inaugural function was held under the auspices of the Revenue Bar Association, Chennai which is celebrating its Golden Jubilee year ending by 20-2-2013.

His Lordship Mr. Justice F.M. Ibrahim Kalifulla was invited by the Trust to deliver the first memorial lecture immediately after inaugural of the trust. His Lordship was pleased to accept the assignment and elaborately recalled the nostalgia he had with Late. Ramachandran as a practicing senior advocate in Madras High Court. His Lordship was pleased to elaborately deal with and narrate his expressions with record of impressions with the presentation of arguments in a unique manner by the late Senior Advocate. Then Chief Guest Mr. Justice F.M. Ibrahim Kalifulla in the presence of 4 sitting Judges of Madras High Court and the members of ITAT both from Madras and A.P. initiated his lecture on the concept namely "recent trends in taxation". His Lordship started his lecture saying he had the opportunity to sit in the Tax Bench in the Madras High Court during the assessment year 2010-2011. It was stated that in the Tax Bench, it was found that there was so much to learn on interpretation of statutory provisions, understanding of innumerable legal concepts, application of civil law, criminal law, Hindu Law, Mohammedan Law, Foreign Exchange Regulatory Law, Partnership Act, Company Law, Contracts Acts, Law in relation to Banking – Financial Institutions, Central Excise and Customs Law and various decisions of the judiciary. It was remarked that in a tax practice, the application of other statutes on issues concerning taxation is something unique, then it was as usual quoted the old saying of Mark Twain who said that only two things are certain in this Life-"Death and taxes". He also referred to the excerpts in Koutilya's Arthasasthra which provided complete details about how a king should collect and utilize the tax. To the surprise of one and all, it was stated that in India for the first time Income tax was introduced in 1860 in the colonial regime of Britain and subsequently the Income-tax Act, 1922 was enacted giving specific nomenclature to various Income-tax authorities and laying the foundation for a proper system of tax administration.

It was also reiterated by His Lordship that there will be a lot always for interpretation of the statutory provisions in fiscal laws. The Hon'ble Supreme Court, Judge also quoted the remarks of the immediate former CJI Hon'ble Justice S.H. Kapadia rendered on 22-9-2012 in the conference on Economic Growth in Asia and Changes of Corporate Environment. About the concept saying that people should be educated on economics as well to understand the inequalities from the point of loss, which is a matter of fact but not from profit angle which was a matter of opinion – value adopts very different criteria. To understand the fiscal law, one should be clear of the various concepts inbuilt therein.

Dealing with the aspect of interpretation of taxing statutes, His Lordship stated in terms of the statement of Lord Cairns in the case of Partington reported in (1869) LR 4 HL P. 100 which statement continues till date to the effect that if the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind. On the other hand, if the court finds that the subject cannot be brought within the letter of the law, then the subject is free from liability, however apparently within the spirit of the law, the case might otherwise appear to be. The statement in the old English case by Justice Rowlatt in the famous Cape Brady Syndicate case which is also a golden principle of law of interpretation of statutes which holds the field even now to the effect that in a taxing statute one has to look merely at what is clearly said. There is no room or any intendment. There is no equity about a tax, there is no presumption as to a tax. Nothing is to be read and nothing is to be implied. One can look fairly at the language used. The said doctrine of law of interpretation was for the first time applied by the Apex Court in a judgment in the case of A.V. Fernandez reported in AIR 1957 SC 657. The recent judgment of the Supreme Court in AIR 1998 SC 120 was also mentioned about the exigibility of a subject to liability to tax and it was emphasised that the charging section has to be construed strictly.

Then His Lordship has dwelt on the aspect as to how the taxation laws have grown in leaps and bounds in the recent times. It was quoted that the enactment of Income-tax Act, 1961 was based on account of the recommendations of Income Tax investigation commission headed by Sir Srinivasa Varadachariar in 1947

as also taxation enquiry commission of 1953-54 constituted under the chairmanship of Dr. John Matha and thereafter the Tyagi committee in 1958. Post 1961, Bhuthalingam Committee suggested various measures for rationalization and simplification of personal Income-tax and Corporate tax. In 1979 direct taxes enquiry committee was setup under the chairmanship of Justice K.N. Wanchoo which committee looked into aspects of tax evasion and black money inhering the incidental and ancillary problems prevailing in India in direct taxation system and the recommendation favoured introduction of search and seizure. In 1972 a committee headed by Shri K.N. Raja suggested to bring agriculture income under Income-tax Net and the method of computation of tax on agricultural income is still being followed. In 2002 a task force was setup under the chairmanship of Dr. Vijay Kelkar, the then finance secretary to streamline the taxation system in India and the recommendations inter-alia included certain operational objectives amongst which suggested alignment of incentives to tax payers and the tax administration and widening of the tax base. The task force committee also stressed for the requirement of quoting PAN in each and every financial transactions , so that any kind of potential impact from financial transactions would not get sidetracked, neglected or overlooked. The TDS and TCS devices are important measures to bring into the tax net unorganised sectors, which also comprehended salary people, payment of interest on securities, dividends, winnings from lotteries, horse race, payment to contractors, commissions, fees for professional services and payment of compensation on acquisition of land.

His Lordship finally came down to the point of introduction of a draft bill of direct taxes code Bill 2010. The statement of the then Hon'ble Finance Minister in the parliament on 6-7-2009 while presenting the Union Budget of 2009-10 says that tax reform is a process and not an event and the thrust of the code is to improve the efficiency and equity of tax system by eliminating the distortions in the tax structure. The direct tax code 2010 vide Bill No. 110/2010 presented in the parliament is still pending. In DTC Bill definitions are set out at the end of the statute in clause 314 containing 208 definitions.

His Lordship was also pleased to narrate the periodical developments that had taken place on the sphere of agricultural income and the various developments taken place in the agriculture by the active support of the corporate sector. The statistics according to his Lordship reveal that the returns of cultivation of non food grains are significantly higher than those from cultivation of traditional food grains and the developments clearly show that there is noticeable presence of the corporate sector in agriculture.

In the end, His Lordship profusely thanked the Revenue Bar Association of Chennai and the trustees of the Late Ramachandran Memorial Trust, his brother Judges from the Madras High Court and the participants. The meeting was attended by more than 200 participants.

In the light of the above pleasant deliberations that have taken place in the inaugural function of Late V. Ramachandran Memorial Trust, I am very happy to report that the services of the former late National President of the Federation Mr. V. Ramachandran, a Senior Advocate were commanded by one and all, as a towering personality and legend in fiscal laws, a continuous teacher found in him and a very composed lawyer at the bar and before the Bench even in odd and adverse climatic conditions and was highly respectful and courteous, submissive even at the unwanted or undesirable comments in the course of hearing of a case.

Sir, the Federation is fortunate enough to have Late V. Ramachandran as its National President who gave ever cherishing face lift to the Federation in the southern zone and I am hopeful that his daughter Dr. Anita Sumanth, the Vice Chairperson for the State of Tamil Nadu would maintain, and strive hard to continue upkeep his ideas and ideologies in general in the profession as also the expansion and spread of the activity of the Federation in times to come.

Thanking you,

Yours sincerely,

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



TWO DAYS SEMINAR ON REAL ESTATE DEVELOPMENT

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)

Jointly with

**THE CHAMBER OF TAX CONSULTANTS &
THE SALES TAX PRACTITIONERS' ASSOCIATION OF MAHARASHTRA**

on 14th and 15th December, 2012

We are pleased to announce a Two Day Seminar on "Real Estate Transactions - Legal, Taxation and Accounting Aspects" jointly with The Chamber of Tax Consultants and The Sales Tax Practitioners Association of Maharashtra.

This is one of the most important and burning topics of today, considering the complexities of transactions and also on account of several recent amendments and Court Rulings. The focus of the Seminar will be to enlighten the participants about the conceptual understanding, recent developments and controversies as well as to provide solutions thereto. Each and every aspect of Real Estate development is covered by this two day Conference. The topics have been selected keeping in mind the day-to-day needs of legal and tax professionals, apart from the needs of the consumers as well as the housing industry. The faculty comprises of eminent professionals, who will share their rich knowledge and experience with the participants. **At the end of each session there will be answers to the questions from participants.**

Due to the focus on in-depth discussion, the enrolment is restricted. Interested participants are requested to block these two dates and register at the earliest. **Kindly download the Seminar enrollment form from the website-www.aiftponline.org.**

Days and Dates : Friday and Saturday, 14th & 15th December, 2012

Time : 9.30 a.m. to 5.30 p.m.

Venue : West End Hotel (4 Star Hotel), New Marine Lines. Near Churchgate Station, Next to Bombay Hospital, Mumbai - 400 020.

The topics / issues enumerated hereunder will be discussed with respect to, and in the context of, Real Estate Development

1st Technical Session : IMPORTANT CONCEPTS

Speakers

- Salient features of General Law, including Transfer of Property Act, Indian Contract Act, Specific Relief Act, Indian Easements Act, etc. (With special emphasis on concepts of day-to-day importance)
- The concept of various kinds of ownership and possessory rights. e.g. ownership, lease, tenancy, leave and licence, other easements and possession in rights, title by adverse possession, illegal occupation, etc.

Mr. Parimal Shroff, Solicitor

2nd Technical Session : OVERVIEW OF APPLICABLE LAWS

A. Provisions of Maharashtra Regional Town Planning Act [MOFA], Bombay Municipal Corporation Act, Development Control Regulations MHADA Act, SRA, CRZ, ULC Act, etc.

Mr. Viren Mtsquita, Solicitor

B. Concept of FSI/TDR, different kinds of FSI
Different types of premium payable to local authority.
Set Back Area, Reservations, etc.

Mr. Amit Sapre, Architect

3rd Technical Session : REDEVELOPMENT OF PROPERTIES

- Specific provisions relating to redevelopment of existing property :
 - o Pre 1940s building and existing societies
 - o Relevant provisions of MOFA category, Maharashtra Co-operative, Maharashtra Ownership Act, Societies Act, SRA, Tenancy Act, etc.

Mr. J. S. Soloman, Solicitor

4th Technical Session

Speakers

- Maharashtra Housing Regulatory Bill
(This is important latest development) Mr. P. A. Jani, Solicitor
- Deemed Conveyance

5th Technical Session : DRAFTING & STAMP DUTY & REGISTRATION

Development Agreements in various situations (including with Society) and documents / deeds supplemental and incidental thereto. Stamp Duty
Speaker: Mr. Pravin Veera, Solicitor
Chairman: Mr. A. R. Jani, Solicitor

6th Technical Session : ACCOUNTING ASPECTS

- Including latest Guidance Note of ICAI CA. P. R. Ramesh

7th Technical Session

Relevant provisions of Income-tax Act, Wealth-tax Act
(Including Development Agreements implications in hands of society and members. Wealth tax obligations, etc.) – Recent Developments
CA. Pradip Kapasi

8th Technical Session

Relevant provisions under VAT
(Including recent legislative and judicial developments)
Speaker: CA Prem Chhatpar
Chairman: Mr. P. C. Joshi, Advocate

9th Technical Session

Relevant provisions under Service Tax Act
(Including recent legislative and judicial developments)
Speaker: Mr. Vipin Jain, Advocate
Chairman: Mr. Vikram Nankani, Advocate

Fees : **Members** ₹ 2,750/- (Enrolment upto 31st October, 2012)
₹ 3,000/- (Enrolment after 31st October, 2012)
Non Members ₹ 3,250/- (Enrolment upto 31st October, 2012)
₹ 3,500/- (Enrolment after 31st October, 2012)
(Including service tax, tea, breakfast, lunch and course material)

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

Hearty Congratulations

Hearty congratulations to the newly elected office bearers of Direct Taxes Professional Association (DTPA), Kolkata for the period 2012-13.

President : Mr. Pramod Kr. Himmatsinghka
Imm. Past President : Mr. Bishnu Kr. Loharuka
Sr. Vice President : Mr. Paras Kochar
Vice President : Mr. Sunil Surana
Secretary : Mr. Kamal Bagrodia
Jt. Secretary : Mr. Deepak Jain
Treasurer : Mr. Ramesh Chokhani

We wish them all the success.

TWO DAYS NATIONAL TAX CONFERENCE ON DIRECT & INDIRECT TAXES

Organised by

**ALL INDIA FEDERATION OF TAX PRACTITIONERS (CZ)
AND
UDAIPUR TAX BAR ASSOCIATION, UDAIPUR TAX BAR CHARITABLE SOCIETY**
Jointly with
RAJASTHAN TAX CONSULTANTS ASSOCIATION

on Saturday & Sunday, 15th-16th December, 2012
at MMM Govt. Ayurvedic College Auditorium, Alkapuri, Udaipur (Rajasthan)

Udaipur Tax Bar Association & Udaipur Tax Bar Charitable Society, a professional body established in the year 1951 is engaged in promoting professional environment among Advocates, Chartered Accountants and Tax Practitioners in particular and Society at large through educational and professional conferences, seminars, study circles, public meetings, refresher courses and continuing educational programmes for the professionals from time to time. Besides, Udaipur Tax Bar Charitable Society is always volunteer in providing academic and vocational assistance to the students undergoing professional courses in accountancy and law.

In the year 2012, Udaipur Tax Bar Association is completing its 61 years of glorious presence and on this occasion, wish to acclaim and celebrate the same. The Executive Committee of the Udaipur Tax Bar Association has resolved to organise a two days "All India Conference on Direct & Indirect Tax" on Saturday & Sunday, the 15th-16th December, 2012, with the object of **share, care and succeed**. The proposed conference will be attended by galaxy of persons at the helm of affair in the Government, Judiciary, Tax Departments, Chamber of Commerce and Industries, Business Organisations, Chartered Accountants and Tax Practitioners from all over the country. In the history of Udaipur this will be a unique Conference, which shall open many avenues of knowledge in field of direct & indirect taxes and finance, thus, helping the business community and tax payers. On this gracious occasion, we are bringing a souvenir for which we earnestly appeal to all professionals, industrialists, businessman and other bodies to extend co-operation by way of providing an advertisement to be published in the said souvenir.

We, the Managing Committee of All India Federation of Tax Practitioners (CZ) and members of Executive Committee of Udaipur Tax Bar Association and Udaipur Tax Bar Charitable Society and Rajasthan Tax Consultants Association, earnestly request you to favour us by your gracious participation. We are sure you will carry fond memories of the same.

PROGRAMME OF THE CONFERENCE

FIRST DAY : 15TH DECEMBER, 2012

8.30 a.m. to 9.45 a.m.	:	Registration and Breakfast
9.45 a.m. to 11.45 a.m.	:	Inaugural Session
11.45 a.m. to 12.00 Noon	:	Tea Break
		First Technical Session
12.00 Noon to 1.30 p.m.	:	HUF under Direct Taxes and Civil Laws
1.30 p.m. to 2.15 p.m.	:	Lunch Break
		Second Technical Session
2.15 p.m. to 3.15 p.m.	:	Real Estate Transactions
		(i) Issues under the income tax
3.15 p.m. to 4.15 p.m.	:	(ii) Issues under the VAT & Service Tax
4.15 p.m. to 5.15 p.m.	:	(iii) Issues in drafting of agreements for development and transfer of Immovable Properties (including MOUs)
5.15 p.m. to 5.30 p.m.	:	Tea Break
7.00 p.m. to 9.30 p.m.	:	Cultural Programme & Dinner (with family)

SECOND DAY : 16TH DECEMBER, 2012

9.00 a.m. to 10.00 a.m.	:	Breakfast
		Third Technical Session
10.00 a.m. to 11.30 a.m.	:	Controversial issues in input tax credit and entry tax with special reference to Rajasthan legislations
11.30 a.m. to 12.00 Noon	:	Tea Break
		Fourth Technical Session
12.00 Noon to 1.30 p.m.	:	Latest issues under the Service Tax
1.30 p.m. to 2.15 p.m.	:	Lunch Break
		Fifth Technical Session
2.15 p.m. to 3.45 p.m.	:	Brains' Trust
3.45 p.m. to 4.00 p.m.	:	Tea Break
4.00 p.m. to 5.00 p.m.	:	Valedictory Session
5.00 p.m.	:	High Tea & Good Bye

DELEGATE FEE

(Includes kit, course material, breakfast, lunch, dinner and cultural programme)

- | | | |
|----|------------------------------------|---|
| 1. | For member of professional bodies: | ₹ 1,500/- (For regn. up to 30th November, 2012) |
| | | ₹ 1,800/- (after 30th November, 2012) |
| 2. | For accompanying person/spouse: | ₹ 1,200/- (without kit & course material) |
| 3. | For Corporate Bodies/Other | ₹ 2,000/- |

For other information contact:

Chairman, Registration Committee

DEEPAK AREN, 0294-2420301, 2524992 (M) 9414470818 utba.udaipur@gmail.com
109, Samruddhi Complex, Opp. Krishi Mandi, Hiran Magri, Sector No. 11, Udaipur (Raj.) - 313 002

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Conf. Chairman

S.C. Maheshwari
Chairman (CZ)

Paras Chhajed
Secretary (CZ)

LIST OF PUBLICATIONS

Sr. No.	Name of Publication	Edition	Members	Price Non-Members	Courier Charges
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:

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

WORKSHOP ON MVAT & SERVICE TAX – YEAR 2012-13

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	06.12.2012	Thursday	Issues in Definition of Service, Exempt & Declared Services	CA Sunil Gabhawalla
2	15.12.2012	3rd Saturday	Issues in Valuation of services, Abatement & Reverse Charge Mechanism	CA Naresh Sheth
3	29.12.2012	5th Saturday	Issues in Place of Provision of Service Rules, 2012	CA Girish Raman
4	03.01.2013	Thursday	Issues in Taxation of Intangible Goods & Leasing Trans. under MVAT CST & Service Tax	CA Deepak Thakkar – MVAT CA Bharat Shemlani – Ser. Tax
5	19.01.2013	3rd Saturday	Issues in Works Contract Transactions under MVAT, CST & Service Tax	CA Vikram Mehta – MVAT CA Ashit Shah – Ser. Tax
6	02.02.2013	1st Saturday	Issues in Point of Taxation Rules, 2011 Issues in Interest, Penalties and Show Cause Notices/Summons	CA Rajiv Luthia
7	16.02.2013	3rd Saturday	Issues in CENVAT Credit Rules, 2004	Eminent Faculty
8	02.03.2013	1st Saturday	Issues in Input Tax Credit under MVAT	Shri C. B. Thakar, Advocate
9	16.03.2013	3rd Saturday	Issues in Branch Transfer & Sales in transit under CST Act	Smt. Nikita Badheka, Advocate
10	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 – Ser. Tax

For further details contact

Pravin R. Shah – Hon. Secretary, AIFTP (WZ) • M : 98214 76817
 Tushar P. Joshi, Hon. Jt. Secretary, AIFTP (WZ) • M : 98211 35246

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 as on 30-10-2012**

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	Associate	Individual	Association	Corporate	Total
Central	0	767	22	3	792
Eastern	2	1077	35	3	1117
Northern	0	883	17	0	900
Southern	0	815	13	3	831
Western	4	1639	32	15	1690
Total	6	5181	119	24	5330



**All India Federation
 of Tax Practitioners**



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 Tribunal Bar Association**

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for Members of AIFTP at 20% discount, i.e., ₹ 2,000/-

and for Non Members at 10% discount, i.e., 2,250/-

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

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OR

Income Tax Appellate Tribunal Bar Association

Old CGO Building, 4th Floor, Room No. 445, M. K. Road, Mumbai- 400 020.

Tel: 2205 5138 | Fax: 2203 6119

E: itatonline.manager@gmail.com | W: www.itatonline.org

The publication titled "Digest of Case Laws Direct Taxes including Allied Laws – Tax Companion (2003-2011)" was released by Hon'ble Mr. D. Manmohan, Vice President, ITAT (Mumbai Zone) on 12th September, 2012 in Court Room No.1, ITAT, Mumbai in the presence of Hon'ble Members of ITAT, Shri Y.P. Trivedi, Senior Advocate and Member of Parliament and members of Bar Association.

The Hon'ble Vice President presented the publication to the members of Editorial Team and Research Team. A short film on publication was also shown which explains the contents of the publication.

DIRECT TAXES

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

SUPREME COURT

1. Income-tax details can be disclosed under RTI only if in "larger public interest" : Right to Information Act

It was held by the Apex court that the details disclosed by a person in his Income tax returns are "personal information" which stands exempted from disclosure under clause (j) of section 8(1) of the RTI Act, unless it involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information. On facts, as the Petitioner has not made a *bona fide* public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual u/s 8(1)(j) of the RTI Act.

Girish Ramchandra Deshpande v. CIC (Supreme Court)(www.itatonline.org)

HIGH COURTS

2. S.10A: Newly established undertakings – Free Trade Zone – Computation of period of five years viv-a-vis initial year

Assessee which had commenced its manufacturing activities in the previous year relevant to A.Y. 1984-85, could claim exemption for A.Ys. 1984-85 to 1988-89 and had no option of choosing any five consecutive years for availing the benefit of exemption u/s 10A. In case of an assessee who had already started availing the benefit of S. 10A in any assessment year prior to substitution of sub-section (3), there is no manner in which it could exercise option under the new sub-section (3). Hence assessee could not claim exemption u/s 10A. (A.Y. 1986-87 to 1990-91.)

Expo Packing v. ACIT (2012) 76 DTR 12 (Guj.)(High Court)

3. S. 37(1): Business expenditure – Capital or revenue – Enhanced lease rentals, Relinquishment of right, non compete fees

Enhanced lease rent paid by the assessee company to the extent it is attributable to the expenditure incurred by the lessor trust on modernisation and improvement of the plant and machinery which has been taken on lease and to normal appreciation in the lease rentals prevailing in the market would be revenue expenditure.

Relinquishment of the right to purchase Khairwood from State Government by the lessor-trust in favour of the assessee resulted in better availability of raw material at a cheaper price to the assessee and not acquisition of the source of raw material itself and, therefore, part of the enhanced lease rent which is attributable to the right to purchase Khairwood is also revenue expenditure.

Lessor-trust having agreed not to compete with the assessee's business within a specified area after leasing out whole of its production unit to the assessee, the benefits which accrued to the assessee company on account of elimination of competition from the trust were of enduring nature and hence, increase in lease rent, to the extent it is attributable to this benefit, is a capital expenditure. (A.Ys. 1992 – 93 to 2003-04 & 2007-08)

Shanker Trading (P) Ltd. v. CIT (2012) 76 DTR 40 (Delhi)(High Court)

4. S.47(ii): Capital gains – Transaction not regarded as transfer – Dissolution of firm

Amount received by a partner on dissolution of firm cannot be brought to tax as capital gains by virtue of s.47(ii). (A.Y. 1978-79)

CIT v. Abid A. Kalvert (2012) 76 DTR 109 (Bom.)(High Court)

TRIBUNALS

5. S. 2(22)(e): Definition – Deemed Dividend – Share application money – No material placed on record by the department to show that the entries recorded in the books of account are false, untrue and without any basis

The assessee was engaged in the business of website hosting, domain name registration and allied services and showed share application money received from another company under the head current liabilities. The AO observed that the amount was in the nature of loans and advances and had common directors. It was held that it is a settled law that the making of an entry or the absence of an entry could not determine the rights and liabilities of a party. In the absence of any material placed on record by the department to show that the entries recorded in the books of account are false, untrue and without any basis, the amount received by the assessee did not come under the scheme of loan and advances. Section 2(22)(e) was not applicable. (AY 2006-07)

ITO v. Direct Information P. Ltd. (2012) 18 ITR 562 (Mum.)(Trib.)

6. S. 11: Charitable or Religious Trust – Principal objects was promotion of vegetarianism and distribution of prasad – Preparing and selling vegetarian food held to be incidental to object of assessee trust

Assessee was a charitable trust and its principal objects included promotion of vegetarianism and distribution of prasad. The AO finding that assessee was in business of running an eating house/restaurant, took a view that entire character and focus of assessee had become totally commercial. Since the promotion of vegetarianism is undoubtedly a charitable activity, business of preparing vegetarian food items and selling same was very much incidental to object of assessee trust and such business could be conducted by a charitable trust as per provisions of section 11(4). Thus, assessee's claim for exemption was to be allowed. (A.Y. 2008-09)

ADIT (Exemption) v. Sri Sri Radha Damodar Charitable Trust (2012) 52 SOT 622 (Mum.)(Trib.)

7. S. 74: Losses – Capital Gain – Set-off of brought forward long term capital loss against the current short term capital gain – Restriction imposed is not against short term capital gain, hence set-off allowed

The assessee declared the short term capital gain and brought forward long term capital loss relating to AY 2001-02 to the extent set-off by it against the said short term capital gain. The claim of assessee

was rejected on the ground that as per amendment u/s 74(1) by Finance Act, 2002 w.e.f. 1-4-2003, the assessee was entitled to set-off of the brought forward long term capital loss relating to A.Y. 2001-02 only against long term capital gain and not against short term capital gain. It was held by the Special Bench that restriction imposed therein in terms of setting-off long term capital loss only against long term capital gain and not against short term capital gain is applicable only in relation to and brought forward from period prior to assessment year 2003-04 which shall be governed by provisions of section 74(1) as stood prior to amendment made w.e.f. 1-4-2003. (A.Y. 2003-04)

Kotak Mahindra Capital Co. Ltd. v. ACIT (2012) 138 ITD 57 (Mum.)(SB)(Trib.)

8. S. 148: Reassessment – Reasons to be recorded – Notice issued prior to recording reasons for reopening assessment liable to be quashed

In the instant case, the notice for reassessment was issued on 16-10-2007 whereas the reasons recorded subsequently on 26-10-2007. It was held that the requirement of mandate as contained u/s 148(2) is that the AO shall, before issuing notice, record his reasons for doing so. Thus, as verified from the assessment records produced reasons have not been recorded prior to issuance of notice u/s 148, notice so issued was thus quashed. (A.Y. 2006-07)

Bhalchandra A. Rakvi (HUF) v. ITO [ITA 2374/M/2011 dated 10/10/2012](Mum.)(Trib.)



INTERNATIONAL TAXATION

CA Dhanesh Bafna, CA Madhav Khandelwal, Sujeeth Karkal, *Advocate*

TRIBUNALS

1. Permanent Establishment – Article 5 – India Switzerland DTAA

The Tribunal held as under:

- i. The fees received by the assessee, a Swiss company, from enabling sellers registered on its offshore website to sell goods to buyers in India is not assessable as "fees for technical services" u/s 9(1)(viii) as the assessee does not render any "managerial, technical or consultancy services" to the payers.
- ii. On facts, though eBay India & eBay Motors conducted activities exclusively on behalf of the assessee and thus became its dependent agents but did not constitute a "Dependent Agent Permanent Establishment". By simply providing marketing services to the assessee or making

collection from the customers and forwarding the same to the assessee, it cannot be said that eBay India entered into contracts on behalf of the assessee. Thus the test laid down in Article 5(5)(i) of the Double Tax Avoidance Agreement ('DTAA') is not satisfied.

- iii. eBay India & eBay Motors are not taking any managerial decisions. All business decisions and deals are settled through the assessee's websites. eBay India & eBay Motors have no role to play either in the maintenance or the operation of the websites. They have absolutely no say in the matter of entering into online business agreements between the sellers and the assessee or the finalisation of transactions between the buyers and sellers resulting into the accrual of the assessee's revenue. Consequently, they are not a "place of management" of the assessee's overall business under Article 5(2)(a) of the DTAA.

- iv. In absence of any PE in India, business profits of assessee as per Article 7 cannot be taxed in India.

eBay International AG v. ADIT 25 taxmann.com 500 (Mum.)(Trib.)

2. Disallowance under S. 43B and 14A – Article 7(3) – India Mauritius DTAA

The Tribunal held as under:

- i. S. 43B: The wordings of Article 7(3) of the India-Mauritius DTAA provides that "in determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere". As there is no limitation of subjecting allowance to tax laws of respective states, all expenses incurred for the purpose of business of the permanent establishment have to be allowed as deduction and no disallowance under S. 43B can be made.
- ii. S. 14A: However, position is different under S. 14A of the Act and the expenses incurred in relation to the income which does not form part of 'business profits' cannot be allowed as deduction. There can be no dispute on the fact that only such part of interest can be disallowed which has been incurred in relation to the income not forming part of the

'business profits' of the assessee as per Article 7 of the DTA. In such a case, the disallowance of interest is definitely called for but it cannot exceed the actual amount of interest paid in respect of borrowed funds used for the purposes of making investment in tax free bonds, which in the present case is only one day.

State Bank of Mauritius Ltd. v. Dy. DIT 25 taxmann.com 555 (Mum.)(Trib.)

3. Offshore supplies and Services – Not taxable

The Tribunal held as under:

- i. The assessee had entered into a contract with ONGC for fabrication and installation of on-shore and off-shore oil facilities and pipelines.
- ii. The total consideration was earmarked towards different activities and separate payment had to be made on the basis of work of design, engineering, procurement and fabrication. These operations had been carried out and completed outside India.
- iii. The project office in India constituted a permanent establishment ('PE') of the assessee.
- iv. However, the PE was in respect of the installation and commissioning work done in India and the activities carried outside India were not attributable to the said PE and hence, are not taxable in India.

National Petroleum Construction Company v. ADIT 26 taxmann.com 50 (Delhi)(Trib.)



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