



All India Federation of Tax Practitioners

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AIFTP TIMES

Volume 3 - No. 9

September, 2012

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
5-10-2012	National Executive Committee Meeting	Bengaluru
6 & 7-10-2012	National Tax Conference (SZ)	Bengaluru
11, 12 & 13-10-2012	9th Nani Palkhivala Memorial National Tax Moot Court Competition	Mumbai
17, 18, 19 & 20-10-2012	AOTCA Seoul Meeting 2012	Korea
15 & 16-12-2012	National Tax Conference (CZ)	Udaipur

FEDERATION NEWS

Narayan P. Jain, Secretary General

REPORT ON "TAX CONFERENCE 2012" HELD ON 14-7-2012 AT RAIPUR (C.G.)

All India Federation of Tax Practitioners, Central Zone, had organised a one day "Tax Conference 2012" on 14-7-2012 at New Circuit House, Civil Lines, Raipur (C.G.).

The programme began with Saraswati Vandan. CA. S.C. Maheshwari, Chairman AIFTP (CZ) highlighted the objects of the AIFTP and invited the new professionals to become its life members.

CA. S.C. Maheshwari chaired the first session. The eminent faculties Shri V.S. Datey from Pune dealt on the subject "Service Tax Based on Concept of Negative List" and CA. Gautam Nayak from Mumbai dealt on the subject "Recent Developments in TDS & TCS".

In the second session Shri P.M. Chopra, Advocate & Imm. Past Chairman of Central Zone of AIFTP chaired the session. The eminent faculties Dr. S.L. Jain from Jaipur dealt on the subject "Search and Survey" and CA. R.B. Doshi from Raipur dealt on the subject "Important issues in Exemption from capital gain".

The conference was attended by 250 delegates comprising of Chartered Accountants & Advocates mostly from Chhatisgarh and some were from Rajasthan and Madhya Pradesh.

The Raipur Branch of the Regional Council of the Institute of Chartered Accountants of India had announced to give credit of 6 CPE hours to the Chartered Accountant participants of this "Tax Conference 2012".

At the end vote of thanks was given by CA. Paras Chhajed, Secretary AIFTP (CZ).

S.C. Maheshwari
Chairman, AIFTP (CZ)

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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REPORT ON NATIONAL TAX CONFERENCE OF AIFTP AT BHUBANESWAR

by

Rabindra Nath Pal

Secretary, Bhubaneswar National Tax Conference, 2012

It was in Bhubaneswar, the capital city of Odisha, that the 'National Tax Conference 2012' was organised by the All India Federation of Tax Practitioners (E.Z.) jointly with the Bhubaneswar Tax Bar Association on the 11th & 12th of August, 2012. The venue was the spacious and hi-tech auditorium of KIIT University along with all the best facilities one can dream of for a National level conference.

The theme of the conference was "JAGRUTI, 2012", which relates to "New Challenges for Tax Professionals in the changing scenario". The Chief Guest in the inaugural session was Hon'ble Mr. Justice Ananga Kumar Patnaik, Judge, Supreme Court, who spoke at length about the emerging global scenario in the field of taxation and the challenges for the professionals. He enlightened the professionals about various subject matters of adjudication in the Apex Court and what to expect in the future. He also stressed that due to globalization the geographical boundaries have melted and no country can claim to be immune to any event in any corner of the world. Accordingly new spheres are developing in taxation like Transfer Pricing, etc.

The inaugural session was presided over by Shri S.K. Poddar, National President, AIFTP. Hon'ble Justice B.P. Das, Judge, Orissa High Court, in his speech stressed on the fine balance to be maintained between integrity in collection of tax by the tax gatherer and arbitrariness and over-zealousness of the officials. He also advised the tax practitioners in rendering the right advice to their clients to pay their taxes honestly which is essential in building the nation. Padmashree Pravin H. Parekh, Sr. Advocate and President of the Supreme Court Bar Association recounted several instances from his practice in the taxation side. While speaking on the occasion Shri Narayan Jain, Secretary General, AIFTP briefly threw light on objects and activities of AIFTP, and also spoke on the imminent challenges in taxation. He expressed concern on insertion of various deeming provisions in the Income-tax Act, which is against the concept of taxing real income. Sri Rabindranath Pal presented the report as Secretary of the Conference organising committee.

The first Technical Session on "Solutions of problems relating to Computerisation and E-TDS under the IT Act and recent amendments by the Finance Act, 2012 for curbing tax evasion" was chaired by Shri S.R. Wadhwa, Advocate, who himself, spoke eloquently on the subject. The other speakers were CA. A.K. Sabat, who spoke very interestingly on the recent amendments to the Income-tax Act as affected by the recent Budget. Dr. Kanhayalal Sharma, Advocate, elaborated on the various problems faced due to computerisation and E-Filing of Returns, processing and rectifications on-line as well as other practical problems faced by practitioners. Shri Narayan Jain, Advocate explained the various amendments relating to TDS and TCS, the Vodafone judgment. He felt that the late fee of ₹ 200 per day for delay in filing of TDS/ TCS statements was not a right step in view of the fact that in appropriate cases the provision of levy of penalty already existed. Now even if the delay is due to reasonable cause, the assessee will have to pay late fee of ₹ 200 per day automatically. Such attempts of the Government should have been avoided, Mr. Jain added.

The second Technical Session was on "Service Tax in the present scenario with special reference to Real Estate and Works Contracts with penal provisions and matters relating to Central Excise and Customs". The session was presided by Shri Bharatji Agarwal, Sr. Advocate and Past President, AIFTP, who set the ball rolling with his excellent preview of the subject. The speakers were Shri Mukul Gupta, Advocate and CA. Anjan Sirkar, who dealt at length on various aspects of service tax especially on real estate and constructions, as well the negative list propounded in the last Budget. The vote of thanks by Mr. Jagabandhu Sahoo, Advocate made the delegates happy.

This was followed by a cultural programme in which the entire gamut of Odishan Culture was portrayed including Odissi dance, Chhau, the martial dance, Sambalpuri dance and Gotipua, the original form of Odissi as practiced in the Jagannath temple of Puri, which was highly appreciated.

The next day, i.e., the 12th August, 2012 started with the Third Technical session on "New challenges for professionals under recent trends within fiscal policy of India and tracking of Black Money." The session was chaired by Hon'ble Mr. Justice M. M. Das, Judge, Orissa High Court, who spoke on the challenges to professionals as well as need to avoid any temptations to achieve quick success. Shri M. L. Patodi, IPP, AIFTP was the Co-Chairman of the session. Shri P. C. Joshi, Advocate spoke at length on the rising trends of corruption and hoarding black money and the need for professionals to expose corruption and not yield to any illegal demands. The session was converted to an open session with members of the audience participating actively and airing their views.

The Fourth Technical session was on "Ensuing GST Regime and challenges" which was the highlight of the conference especially because it was presided over by the Hon'ble Chairman of the Empowered Committee on GST, Shri Sushil Kumar Modi, who is also Deputy Chief Minister of Bihar. He felt that the GST will be enacted soon. Shri Sushil Modi then stated that it was wrong to lay the blame for the delay in implementation of GST on the States. The first and foremost step is the constitutional amendment which not only needs to be passed by the parliament but also requires to be ratified by half of the states. He informed that states are apprehensive of any loss to revenue that might be caused due to GST and one of reasons for such a fear is that the Central Government has not yet compensated the losses of the state suffered due to reduction of CST from 4% to 2%. He promised that when a council would be constituted for the preparation of the GST legislation, it will include representatives from AIFTP whose advice would be given due consideration. Shri A.K. Ganguli, Sr. Advocate of the Supreme Court, gave an overview on the constitutional aspects of GST and how it shall take shape in the future. Shri P.C. Joshi, Advocate too spoke on the various aspects relating to taxing of goods and services. The Member of Parliament, Shri. K V Singhdeo was also one of speakers.

The fifth Technical Session was on the subject "Problems of VAT Law, Penalties and Input Tax Credit law related to stock transfer". The session was presided by Hon'ble Justice B.N. Mahapatra, Judge, Orissa High Court. The Chief Speaker was Mr. Subhash Lal, Senior Advocate, who presented a succinct account of the problems faced in the implementation of VAT and the problem areas that still existed in the law. Shri Jagabandhu Sahoo spoke on the practical problems faced in VAT administration. Hon'ble Justice B.N. Mahapatra also highlighted some issues under the VAT law which needed immediate attention.

The valedictory session was very interesting due to the Chief Guest Hon'ble Dr. Arijit Pasayat, former Judge of the Supreme Court who not only spoke on the bottlenecks in taxation and the hurdles faced by the practitioners but also related several anecdotes which regaled the audience. The session was presided over by Shri S.K.Poddar, our National President who thanked one and all for the astounding success of the conference and expressed that all will return from the conference with indelible and everlasting memories. The chairman of Conference Committee Sri Manas Ranjan Mohapatra and Secretary Sri Rabindra Nath Pal, Co-Chairman Sri Natabar Mohanty were specially honoured by S.K.Poddar, National President; Shri J.D. Nankani, Deputy President, Shri Narayan Jain, Secretary General, Shri Indu Chatrath, Zone Chairman and Shri N.D. Saha, Zone Secretary for grand success of National Tax conference 2012 at Odisha. Shri R.K. Mishra, Shri R.N. Gupta, Shri Mahendra Kr. Chaudhary and Shri R.D. Kakra, all the Vice Chairmen of East Zone as also other members of NEC as well as managing committee actively extended their help. About 150 students from Law University and other Institutions also participated. A beautiful and informative Souvenir was also released.

NOTICE OF ANNUAL GENERAL MEETING

Notice is hereby given that the Annual General Meeting of the All India Federation of Tax Practitioners will be held on Friday, the 14th September, 2012 at 5.30 p.m. at 215, Rewa Chambers, 31, New Marine Lines, Mumbai - 400 020 to transact the following business:-

A G E N D A

1. To read and approve the minutes of last Annual General Meeting held on 16th September, 2011 at Mumbai.
2. To receive and adopt the Annual Report of the National Executive Committee of AIFTP for the year 2012.
3. To consider and adopt the Audited Accounts of AIFTP for the year ended 31st March, 2012.
4. To appoint Auditors for the year 2012-13 and to fix their honorarium.
5. To transact any other business with the permission of the Chair.

Place : Mumbai
Date : August 16, 2012

Sd/-
Narayan P. Jain
Secretary General

Note:

1. The Annual Report and the Audited Profit and Loss Account and Balance Sheet will be circulated to the National Executive Committee Members by e-mail.
2. Accounts for the year ended 31st March, 2012 and the report of the National Executive Committee can be collected from the office of the Federation from 12th September, 2012 onwards between 11.30 a.m. to 5.00 p.m. The accounts and reports can be made available to the members through email on request to the office.
3. If there is no quorum by 5.30 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.



TWO DAYS NATIONAL TAX CONFERENCE

Jointly conducted by

AIFTP - ALL INDIA FEDERATION OF TAX PRACTITIONERS (SZ)

&

KSCAA - KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION

on **6th & 7th October 2012**

at **Jnana Jyothi Convention Centre**

Bangalore University Campus, Near SBM Circle, Bangalore

Theme : "Wider Vistas in Taxation"



Day-1: Saturday 6th October 2012

08:30 AM	Breakfast & Registration
09:45 AM	Inaugural Address by Chief Guest Hon'ble Mr. Justice J. Chalemashwar <i>Judge, Supreme Court of India</i>
11:15 AM	Tea Break
FIRST TECHNICAL SESSION	
11:30 AM	Direct Tax - Domestic Transactions & Transfer Pricing Speaker - CA. Pradip Kapasi, <i>Mumbai</i> Chairman - CA. P.V.S.S. Prasad*
01:15 PM	LUNCH BREAK
SECOND TECHNICAL SESSION	
02:30 PM	Direct Tax - Transaction Of Gifts/Cash Credits/ Share Premium/ Unexplained Investments, etc. Under Income Tax Speaker - CA. K.C. Devdas, <i>Hyderabad</i> Chairman - CA. H. Nagin Chand Khincha, <i>Bangalore</i>
03:30 PM	Presentation By Main Sponsor
03:45 PM	Tea Break
THIRD TECHNICAL SESSION	
04:00 PM	VAT/CST Speaker - Adv. K.K. Chytanya, <i>Bangalore</i> Chairman - Dr. Ashok Saraf, <i>Gauhati</i>
ENTERTAINMENT SESSION	
07:00 PM	Entertainment With Family Dinner

DELEGATE FEE*

Registration	On or before	After
	15.09.2012	15.09.2012
1. Delegates From Bangalore	2000	2250
2. Outstation Delegates	1750	2000
3. For Spouse {Without Delegate Kit}	1250	1250

Kindly issue cheques/DD in favour of

ALL INDIA FEDERATION OF TAX PRACTITIONERS or
KSCAA

*Includes applicable levies if any.

FOR HOTEL RESERVATION

CA. Ravi Prasad	+91 98451 28993	raviprasad@mssv.firm.in
CA. Sanjay Dhariwal	+91 99720 70601	sanjay@dnsconsulting.net

Day-2: Sunday 7th October 2012

FIRST TECHNICAL SESSION

10:00 AM	Panel Discussion On VAT Panelists: Sr. Adv. Bharatji Agarwal, <i>Allahabad</i> CA. S. Ramasubramanian, <i>Bangalore</i> Adv. P.C. Joshi, <i>Mumbai</i> Adv. P.S. Sarin, <i>New Delhi</i> Moderator: CA. Venkataramani S, <i>Bangalore</i>
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11:45 AM Tea Break

SECOND TECHNICAL SESSION

12:00 AM	Service Tax - Reverse Charge Mechanism, Refunds, Mega Exemption & Abatements Speaker - Adv. V. Raghuraman, <i>Bangalore</i> Chairman - Sr. Adv. K.P. Kumar, <i>Bangalore</i>
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01:30 PM LUNCH BREAK

THIRD TECHNICAL SESSION

02:30 PM	Wealth Management Speaker - Mr. Rakesh Rawal,* <i>Bangalore</i>
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03:30 PM Tea Break

FOURTH TECHNICAL SESSION

03:45 PM	What Is Service Under Service Tax & Negative List Speaker - CA. Ashok Batra, <i>New Delhi</i> Chairman - Adv. K.S. Ravishankar, <i>Bangalore</i>
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*Subject to Confirmation.

" WIDER VISTAS IN TAXATION "

Conference Convenor	: CA. Padam Chand Khincha
Conference Co-ordinator	: CA. D.R. Venkatesh & CA. Venkataramani S.

ALL INDIA FEDERATION OF TAX PRACTITIONERS

Chairman - South Zone	: Dr. MVK Moorthy
Vice Chairman - South Zone	: CA. Sanjay Dhariwal
Secretary	: Mr. S.S. Satyanarayana
National Joint Secretary	: Mr. M. Srinivasa Rao

KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION

President	: CA. Maddanaswamy B.V.
Vice President	: CA. C.R. Dhavalagi
Secretary	: CA. Raveendra S. Kore

For further details & Registrations contact :

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**TARIFF AND OTHER DETAILS - HOTELS IN BENGALURU
TARIFF IN RUPEES**

SL. NO.	NAME OF THE HOTEL	LOCATION	SINGLE ROOM	DOUBLE ROOM	NON-AC	AC	DOUBLE ROOM	SINGLE ROOM	SUITE	CATEGORY OF THE HOTEL	CONTACT PHONE NO.	EMAIL ID
1	ARIHANT RESIDENCY	GANDHINAGAR	1400	1650	1900	1900	BUSINESS	41146688			80	happystaytarihantresidency@yahoo.in
2	ABHISHEK	CRESCENT ROAD	NA	NA	2450	2450	3 STAR	9972095409	NA			skh.homes@gmail.com
3	ATRIA	PALACE ROAD	7000	7600	12000	12000	BUSINESS	22205205	2000			rooms@atriahotel.com
4	BANGALORE GATE	MAJESTIC	NA	1800	2000	2600	3 STAR	41100777	2650			res@bangaloregate.com
5	CHALUKYA	SHESHDRIPURAM	1700	2010	2375	2650	3 STAR	22266866	NA			reservation@hotelchalukya.com
6	GOLDEN RESIDENCY	MAJESTIC	NA	1300	1500	1500	STANDARD	41476434	NA			goldenresidency@gmail.com
7	JANARDHANA	SHESHDRIPURAM	NA	1800	2100	2100	STANDARD	9972095409	NA			skh.homes@gmail.com
8	KAMAT MINERVA	JC ROAD	NA	1400	1500	3000	STANDARD	26703813	3000			res.min@kamatyatri.in
9	KANISHKA	GANDHINAGAR	1050	1275	1350	1650	STANDARD	22265544	2360			skh.homes@gmail.com
10	SOLITAIRE	SHESHDRIPURAM	NA	NA	3500	3500	4 STAR	9448558205	NA			pleasuretours@rediffmail.com
11	SOVEREIGN HOTEL	GANDHINAGAR	NA	2250	2650	3350	3 STAR	224348880	3350			shakirblr@gmail.com
12	VIJAY RESIDENCY	MAJESTIC	NA	3188	3600	5331	3 STAR	22373722	5331			genera@vijayresidency.net

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Discount

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

**Membership of AIFTF
as on 31-8-2012**

Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	761	22	3	786
Eastern	2	1071	35	3	1111
Northern	0	880	17	0	897
Southern	0	812	13	3	828
Western	4	1632	32	15	1683
Total	6	5156	119	24	5305

Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of the Taxatio Academic & Welfare Forum Association, Western Uttar Pradesh for the year 2012-14

Chief Patron : Shri B. D. Jain, Advocate, Meerut

Chairman : Shri N. K. Arora, Advocate, Muzaffarnagar

Chief Convener : Shri Arun Kumar Jain, Advocate, Meerut

General Secretary : Shri Bharat G Bhushan, Advocate, Meerut

Vice Chairman : Shri Amar Singh, Advocate, Noida
Shri Manu Rishi, Advocate, Meerut

We wish them all the success.

DIRECT TAXES

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

SUPREME COURT

- S. 214 : Interest payable by government – Aggregate of advance tax/ TDS paid exceeds the assessed tax – Advance Tax or TDS loses its identity as soon as it is adjusted against the liability created by the assessment order and becomes tax paid pursuant to the assessment order – Judgement of Sandvik Asia required reconsideration**

Issue under consideration before the Apex court was whether interest is payable by the Revenue to the assessee if the aggregate of installments of Advance Tax/TDS paid exceeds the assessed tax. The assessee relied upon *Sandvik Asia Limited vs. CIT 280 ITR 643* where it was held that the assessee was entitled to be compensated by the Revenue for delay in paying to it the amounts admittedly due. The Apex court doubting the correctness of *Sandvik Asia* (supra) held that the judgment in *Modi Industries Ltd.* correctly laid down that advance tax or TDS loses its identity as soon as it is adjusted against the liability created by the assessment order and becomes tax paid pursuant to the assessment order. If advance tax or TDS loses its identity and becomes tax paid on the passing of the Assessment Order, then, is the assessee not entitled to interest under the relevant provisions of the Act? The Apex court thus held that the view taken in *Sandvik Asia* was not correct and thus, directed the Registry to place this matter before the Hon'ble Chief Justice on the administrative side for appropriate orders.

CIT v. Gujarat Fluoro Chemicals (SC) (www.itatonline.org)

- S. 147 : Reassessment – Reopening after expiry of four years – Mere “change of opinion” is not permissible for reopening of assessment**

In the instant case, the assessee claimed a deduction which was allowed by the AO in s. 143(3) assessment. Subsequently, after the expiry of 4 years, the AO reopened the assessment u/s 147 on the ground that the said loss was a “speculative loss” and could not be allowed as a deduction. It was held by the Apex court that the assessee had disclosed full details in the Return of Income in the matter of its dealing in stocks and shares. According to the assessee, the loss incurred was a business loss, whereas, according to the Revenue, the loss incurred was a speculative loss. It was therefore held that rejection of the objections of the assessee to the re-opening of the assessment by the Assessing Officer was clearly based on change of opinion and thus, reopening of assessment merely on change of opinion was not maintainable.

ACIT v. ICICI Securities Primary Dealership Ltd. (SC) (www.itatonline.org)

HIGH COURTS

- S. 68 : Cash Credit – Affidavits and statements filed to show source of income – Addition deleted as no independent inquiry was made by AO to disprove the creditworthiness of creditors**

Where no independent inquiry was made by AO to disprove the creditworthiness of creditors, as established by affidavits and statements showing source of income, etc. Thus, *CIT(A)* justified in deleting the addition under section 68. (AY 1990-91)
CIT v. Abdul Aziz (2012) 251 CTR 58 (Chatt.) (High Court)

- S. 80I : Deduction – Industrial undertaking – Carries activity of computer data processing services and sale of computer stationery amounted to manufacture or production of any article or thing, thus deduction allowed**

The assessee is an industrial undertaking carrying out activity of computer data processing services and sale of computer stationery amounted to manufacture or production of any article or thing. It was held that assessee was entitled to special deduction under section 80I. (AYs. 1989-90 and 1990-91)

CIT v. Business Information Processing Services (2012) 345 ITR 548 (Raj.) (High Court)

- S. 147 : Reassessment – Claim of Depreciation – Reason to believe to be tested on the material as at the time when reasons were recorded**

Order of Tribunal deleting the addition on the basis of reopening of assessment held to be cryptic. It was held that the reason to believe to be tested on the material as at the time of when reasons were recorded. Matter remanded back to the Tribunal. (AY 2001-02)

CIT v. Jagson International Ltd. (2012) 345 ITR 414 (Delhi) (High Court)

- S. 260A : Appeal – High Court – Tax effect less than ₹ 10 lakhs – Low tax effect Circular no. 3 of 2011 dated 9-2-2011 is retrospective and applies to pending appeals (S. 268A)**

The department filed an appeal in June 2000, tax effect of which was less than ₹ 10 lakhs. The assessee claimed, relying on Instruction No. 3/2011 dated 9-2-2011, that as the tax effect was less than ₹ 10 lakhs, the appeal was not maintainable. The department opposed the plea on the ground that the said instruction was prospective and did not apply to the appeals filed before 9-2-2011. It held by the High Court dismissing the revenue appeal that S. 268A was inserted by the Finance Act, 2008 w.r.e.f 1-4-1999 to reduce litigation in small cases and regulate the right of the revenue to file or not to file pursuant to this power. Though clause 11 provides that the instruction would apply to appeals filed on or after 9-2-2011 and appeals filed that date would be governed by the instruction operative at the time the appeal was filed, in number of cases, it has been interpreted to mean that the monetary limits specified in the Instruction would apply to pending appeals as well. (AY 1986-87)

CIT v. Virendra & Co. (Bom.) (High Court) (www.itatonline.org)

TRIBUNALS

7. S. 158BFA(2) : Penalty – Search and Seizure – Assessment and penalty proceeding different and separate from each other – Substantial Question of law relating to quantum proceeding admitted by the Jurisdictional High Court, hence penalty be deleted

Search action was conducted on assessee and its sister concern. The assessee was carrying on the business in the same premises along with the sister concern and had partners in common. One of the partners gave statement in the capacity of being partner of both the firms. Addition was made in hands of sister concern with respect to amount which did not have any correlation with any incriminating material. Moreover, it was not clear in respect of which firm's books of account the partner made the statement. The explanation of assessee was rejected and addition was sustained by the Tribunal. However, Hon'ble jurisdictional High Court admitted the substantial question of law against the order passed by Tribunal sustaining the addition. With respect to the penalty levied u/s 158BFA(2) it was held that the assessment and penalty proceedings are different and independent of each other. Relying on various judicial pronouncements it was further held that the admission of substantial question of law by Hon'ble High Court lends credence to the bona fides of the assessee and hence penalty be deleted.

ACIT v. M/s. Ekta Exports (Mum.) (Trib.) [IT(SS)] A No.22/M/2011 dated 24/8/2012 for period of 1-4-1990 to 14-11-2000)

8. S. 271(1)(c) : Penalty – Concealment on income/ furnishing of inaccurate particulars – There cannot be different treatment given to the same assessee in different assessment years on same set of facts,

hence penalty deleted on the basis of principle followed in earlier years

In the instant case, AO was satisfied about the explanation given by the assessee as bona fide in respect of two assessment years but levied the penalty with reference to the third assessment year. It was held that since the explanation offered was common and the fact that the bank account came to knowledge after search, there cannot be different treatment given to the same assessee in different assessment years on same set of facts. Thus, following the earlier year judgments and principle the penalty u/s 271(1)(c) was deleted for the said assessment year.

Haren P. Choksey v. DCIT (Mum.) (Trib.) (ITA No. 3549/M/2011, dated 1-8-2012)

9. S. 271(1)(c) : Penalty – Concealment of income/ furnishing of inaccurate particulars – Filing of revised ROI after survey but before the issue of the s. 148 notice, penalty not leviable

It is the settled law that if a revised return offering additional income is filed after investigation has started but before the issue of the s. 148 notice, s. 271(1)(c) penalty is not leviable. In Sureshchand Mittal 251 ITR 9, the Supreme Court held that even where the assessee surrendered additional income by way of a revised return after persistent queries by the AO, once the revised ROI has been regularised by the revenue, the assessee's explanation that he had declared the additional income to buy peace had to be treated as bona fide and s. 271(1)(c) penalty could not be s. On facts, as the assessee filed a revised ROI after survey but before the issue of the s. 148 notice, penalty was not leviable.

Radheshyam Sarda v. ACIT (ITAT) (Mum.) (www.itatonline.org)

INDIRECT TAXES

Nikita R. Badheka
Advocate & Notary

1. Attachment of legal heir's bank account

Wife's bank account was attached for recovery of arrears of deceased proprietor. The Madras High Court held that on death of proprietor the recovery can be proceeded against executor, administrator or other legal representative only to the extent of assets of the assessee in their hands. Therefore unless it is shown that husband had passed on assets to wife, no action can be initiated against the wife. Personal bank account of wife cannot be attached.

S. Gowari v. The Assistant Commissioner of Chennai – 2012-13 (18) TNCTJ page 15 (Mad.)

2. Cancellation of Registration

The Petitioners RC was cancelled stating that he had not filed annual return. Petitioner had filed detailed letter in response to notice explaining correct factual position despite that the registration was cancelled. The Madras High Court held that under TVAT Act, registration can be cancelled only on the basis of sufficient reason after hearing the dealer. The impugned order did not contain any reason nor opportunity of hearing was provided before cancellation. The cancellation order was set aside.

Ms. Vel Enterprises v. AC, Salem – 2012-13 (18) – page 11 - TNCTJ - MAD)

3. Check-post – detention of vehicle or goods

A vehicle passing through Tamil Nadu was detained as it did not have transit pass. The transporter claimed his vehicle should be freed and only goods be detained. He possessed all the documents to transport the goods. The value of goods detained was more than value of tax involved. The Madras High Court released the truck and made clear that the respondents can proceed against the goods which were detained.

T. Rekha v. The state of Tamil Nadu, 2012-13(18) TNCTJ – page 5 (Mad.)

4. Collection of cheques by Enforcement – Audit Team

The Sales Tax authority Salem, conducted spot inspection. Omission was pointed out to the assessee. In spite of explanation by assessee, the officials forcibly collected three cheques. In writ filed before Madras High Court, the Court accepted the argument that the enforcement wing had no jurisdiction to collect the tax at the time of inspection,

without verification and without the assessment. The Court directed return of cheques.

Sri Balaji Auto Spares v. AC, Salem -2012-13 (18) TNCTJ - page 1 (Mad. - HC)

5. Entry tax

UP entry tax authorities levied entry tax on paper meant for writing, printing and packing purpose. On the purchases of Duplex Board for manufacturing match box entry tax was levied. The UP Tribunal deleted the levy of entry tax by holding that in common parlance the duplex board purchased for manufacture of match box cannot be treated as paper of all kinds.

Ms. Vimco Ltd v. Commissioner of Trade Tax (2012 NTN (Vol 48) Tribunal - 305-UP)

6. Interest on unpaid refund

The assessee claimed interest on the amount deposited as security at the check-post for obtaining declaration in terms of circular by the Commissioner. The said amount was to be adjusted at the time of final assessment. The assessment resulted in refund. The refund of security was delayed and the Allahabad High Court attributed the delay on account of negligence or lapses on the part of authorities. The Court directed respondents to calculate the interest on delayed payment of interest treating the security deposit as excess tax - advance tax deposited.

Rajendra Pratap Singh & Co. v. State of UP & Others 2012 NTN (vol.48)-380 (All.)

7. Sale in course of exports - Supply to Bombay High Court

M/s. PSL Ltd. supplied goods to Bombay High situated beyond 12 nautical miles from Surat Hajira unit. The transaction was taxed as interstate trade. The Gujarat VAT Tribunal in a lucid and detailed judgment allowed the claim of Sale in course of export after considering host

of judgments of Supreme Court, Bombay High Court and Gujarat High Court as also to Constitution of India and Maritime zone act, international Convention etc. L&T 45 VST 361 (Guj.) and Pure Helium 49 VST 14 (Bom.) referred to extensively. The Tribunal held

1. The Bombay High Platforms which are beyond territorial waters, around 180 km. off the coast cannot be construed to form part of the territory of India. Therefore levy of tax treating transaction as interstate sale was without jurisdiction.
2. The transaction constitutes export sales for the reasons:
 - a] Location of platform is in Exclusive Economic Zone in terms of sec. 7(6) of Meritme Zone Act, 1976
 - b] Part of the goods required to complete the order are manufactured and supplied from Gujarat State to factory of PSL.
 - c] Movement of goods started from Gujrat State and ended at ONGC platform.
 - d] As the goods have travelled to Bombay High sec. 3(a) of CST Act will not be applicable.
 - d] The provisions of Constitution of India, CST Act, Maritime Zone Act, UNCLOS are not appreciated by lower authorities.
 - e] Article 1 of Constitution defines territories of India as covering land mass and does not cover international waters including Exclusive Economic Zones (EEZ)
 - f] Article 297 of Constitution declares that the Union of India has control only over the resources in EEZ. It does not mean the territorial limits of India are extended to EEZ or Continental Shelf.

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