



All India Federation of Tax Practitioners

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(For Members only)

# AIFTP TIMES

Volume I - No. 6 • June, 2010

## FEDERATION NEWS

J. K. Ranka, Secretary General

### FORTHCOMING PROGRAMMES

Date & Month	Programme
26th June, 2010	Annual General Meeting of AIFTP (EZ) at Kolkata
3rd July, 2010	National Executive Committee Meeting at Hyderabad
3rd & 4th July, 2010	Two Days National Tax Conference at Hyderabad
17th & 18th July, 2010	Mega Seminar on Direct & Indirect Taxes at Siliguri
7th August, 2010	Full Day Workshop on "Investment in India - Tax and Regulatory Aspects"
2nd October, 2010	National Executive Committee Meeting at Chennai
2nd & 3rd October, 2010	Two Days National Tax Conference at Chennai
11th December, 2010	National Executive Committee Meeting at Indore
11th & 12th December, 2010	Two Days National Tax Conference at Indore

### IMPORTANT ANNOUNCEMENT (WESTERN ZONE)

Dear Members,

All India Federation of Tax Practitioners (WZ) jointly with CTC & STPAM are in the process of making the representation on matters relating to Registrar of Firms, Maharashtra. Members are requested to send their suggestions more particularly on Administrative as well as Technical and Legal Issues latest by 30th June, 2010 at the Federation's email id aiftp@vsnl.com so that they can be taken up during the representation.

**Kishor Vanjara**

*Chairman*

Law & Representation Committee, AIFTP (WZ)

### FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

Name	Tel. (O)	Fax	Mobile	E-mail
<b>National President</b> — M. L. Patodi, Adv.	0744-2361179	2363637	9829035256	patodiml@bsnl.in
<b>Deputy President</b> — S. K. Poddar, Adv.	0651-2202787	2309407	9431115265	sheojipoddar@rediffmail.com
<b>Secretary General</b> — J. K. Ranka, Adv.	0141-2379203	2379204	9829010593	ranka@datainfosys.net
<b>Treasurer</b> — Nikita R. Badheka, Adv.	022-22030011	22030012	9821037885	nikita.badheka@gmail.com

**TWO DAYS NATIONAL TAX CONFERENCE** at Taj Krishna Hotel, Road No. 1, Banjara Hills, Hyderabad on 3rd and 4th July, 2010 (Saturday and Sunday) from 9.00 a.m. to 5.30 p.m. Organised by All India Federation of Tax Practitioners - Southern Zone in Association with Twin Cities Tax Practitioners Association. The Theme of the Conference is **The Role of Tax Professional in Borderless World.**

**3 July 2010, Saturday**

**Inauguration : 9.45 a.m. - 11.15 a.m. - Chief Guest - Hon'ble Justice Anil R. Dave, Judge, Supreme Court of India**

Topic	Timings	Speaker	Chairman
Tea break	11.15 a.m. - 11.30 a.m.		
Conversion into Limited Liability Partnership (LLP) - Taxation issues	11.30 a.m. - 1.00 p.m.	Mr. Kishor Karia, FCA, Mumbai	Hon'ble Mr. G. C. Gupta, Vice President, ITAT, Hyderabad
Lunch	1.00 p.m. - 2.00 p.m.		
Overlapping issues - VAT vs Service tax	2.00 p.m. - 3.15 p.m.	Mr. S. Thirumalai, FCA, Hyderabad	Mr. M. L. Patodi, Advocate, Kota
International Financial Reporting Standards (IFRS)	3.15 p.m.- 4.15 p.m.	CA. Nikshit H. Shah, ACA, CISA, Hyderabad	Mr. P. R. Ramesh, FCA, Hyderabad
Tea break	4.15 p.m. - 4.30 p.m.		
Sec.195 - Payments to non-residents - withholding tax issues under Income-tax law	4.30 p.m. - 5.45 p.m.	Mr. H. Padamchand Khincha, FCA, Bengaluru	Mr. M. V. Purushottama Rao, FCA, Hyderabad

**4 July 2010, Sunday**

Breakfast	8.15 a.m. - 9.30 a.m.		
Cross border services - service tax issues	9.30 a.m. - 10.45 a.m.	Mr. V. Lakshmikumaran, Advocate, New Delhi	Mr. Bharatji Agrawal, Sr. Advocate, Allahabad
Taxability of gifts (including shares and securities - Income-tax law)	10.45 a.m. - 12.00 Noon	Mr. K. C. Devdas, FCA, Hyderabad	Dr. K. Shivaram, Advocate, Mumbai
Tea break	12.00 Noon - 12.15 p.m.		
Controversies - Central Sales tax (issues - Sec. 6(2) & declarations)	12.15 p.m. - 1.30 p.m.	Mrs. Nikita Badheka, Advocate, Mumbai	Dr. M. V. K. Moorthy, Advocate, Hyderabad
Lunch	1.30 p.m. - 2.30 p.m.		

**Brain Trust Session (2.30 p.m. to 4.30 p.m.)**

**Guest of Honour** \*Shri S.S.N. Moorthy, Chairman, CBDT  
**Chairman** Mr. N. M. Ranka, Sr. Advocate, Jaipur  
**Direct Tax Panelist** Mr. Sampath Raghunathan, Hyderabad  
 Mr. K.K.Chythanya, Advocate, Bengaluru

**Indirect Tax Panelist** Mr. P. C. Joshi, Advocate, Mumbai  
 Mr. P. V. Subba Rao, Advocate, Hyderabad

\* Confirmation awaited

**DELEGATE FEE:**

S. No.	Particulars	Early Bird Incentive (up to 25th June, 2010)	After 25th June, 2010
		Amount (Rs.)	Amount (Rs.)
1	For Members of AIFTP, Twin Cities Tax Practitioners Association, ICAI, ICSI, ICWAI and Bar Association	2000.00	2500
2	For Individual Non-Members	2500.00	3000
3	For Corporate Delegates	3000.00	3000

**HOTEL TARIFF CHART**

S.No	Name of the hotel	Single	Double
1	Taj Krishna	6000	6000
2	Taj Deccan	4000	4000
3	Taj Banjara	4000	4000
4	Hotel NKM's Grand	2800	3500
5	Hotel Golkonda	3000	3500
6	Hotel IK London Residency	1500	1500
7	Inner Circle	1750	1950
8	Hotel Green Park	4200	5200
9	Kamat Lingapur Hotel	3000	3700
10	Hotel Manasvi	2025	2325

**Note :** Cheque/DD in favour of "All India Federation of Tax Practitioners" payable at Hyderabad. Outstation Delegates are requested to send DDs payable at Hyderabad to the following address:

Mr.V.Ahalada Rao, Secretary, AIFTP-SZ,  
 No.113, Block-B, Sri Datta Sai Commercial Complex, RTC 'X' Roads,  
 Hyderabad - 500 020, Andhra Pradesh.  
 Phone No. 040-66623101, Mobile No. 09849027041

## ANNOUNCEMENT (SOUTHERN ZONE)

In a recent meeting with the Commissioner (CT), the Twin City Tax Practitioners Association, Hyderabad has requested the Commissioner (CT) to provide the facility of online filing of returns to Authorised person (Authorised by the dealer).

The Commissioner (CT) has considered the request made by the Association favourably and a provision in e-return application is now made available for the Authorised Person to register with e-return application and to the returns online. The Authorised Person can register with his e-mail ID and choose desired user name and password. He has to obtain Authorisation from the dealer in Form 560 and approach the concerned AC(LTU)/CTO for adding that particular dealer to his list of dealers for filing returns online. The help document is given in Annexure.

All members are requested to avail this new facility to file the returns online.

### FULL DAY WORKSHOP ON "INVESTMENT IN INDIA - TAX AND REGULATORY ASPECTS" - 7-8-2010

All India Federation of Tax Practitioners – Western Zone will be organizing a Full Day Workshop on "Investment in India - Tax and Regulatory Aspects" covering FEMA & TAXATION on Saturday, 7th August, 2010 at M. C. Ghia Hall, Bhogilal Hargovindas Building, 18/20, K. Dubash Marg, Kala Ghoda, Mumbai – 400 001 from 9.30 a.m. to 6.00 p.m.

The topics to be discussed are as under:-

1. Overview of FEMA, Residential Status and Types of Transactions under FEMA.
2. Important Definitions under FEMA.
3. Investment by PROI:
  - a. FDI Policy and Direct Investment Scheme.
  - b. Portfolio Investment Scheme by FII & NRIs.
  - c. Investment by NRIs (including immovable property) on a Non-Repatriation basis.
4. Taxation of Non-Residents in India:
  - a. Residential Status under Income-tax Act, 1961.
  - b. Scope of Income.
  - c. Provisions of Section 9.
  - d. Special Scheme of NRI Taxation.
5. Income of Foreigners in India.
6. Presumptive Taxation of Non-Residents.
7. Provision of Tax Treaty & its application.

**Restricted to  
50 participants on  
first come first served basis.**

S/Shri Dilip J. Thakar, Vispi Patel, Dhishat B. Mehta, Paresh P. Shah. Naresh Ajwani, Pradip Kapasi & Harish N. Motiwalla, Chartered Accountants would address the abovementioned workshop.

Delegates Fee:- Rs. 1,000/- (For Members) Rs. 1,250/- (For Non-Members)

(Fees includes Breakfast, Lunch & Study Material)

**Note: Cheque should be in favour of "All India Federation of Tax Practitioners - Western Zone" payable at Mumbai. Outstation members are requested to make the payment by DD only.**

## ANNOUNCEMENT (EASTERN ZONE)

ALL INDIA FEDERATION OF TAX PRACTITIONERS (EZ) organised a MEGA-SEMINAR ON DIRECT & INDIRECT TAXES on 17th & 18th July, 2010 at Uttar Banga Marwari Sewa Trust, Near P.C. Mittal Bus Stand, Sevoke Road, Siliguri in association with NORTH BENGAL TAX ADVOCATES ASSOCIATION and SILIGURI TAX ADVOCATES BAR ASSOCIATION

### TENTATIVE PROGRAMME

#### **FIRST DAY (17th July, 2010)**

Registration: 2 pm to 2.30 pm

Inaugural Session (2.30 pm to 4.00pm):

(to be presided over by Chairman, AIFTP-EZ)

Dignitaries and dais Arrangement:

Ministers of State & Centre (to be confirmed)

Shri M.L. Patodi, President, AIFTP

Shri Bharatji Agarwal, IPP, AIFTP

D.K. Agarwal, Siliguri, President, North Bengal Tax Advocates Assn. Welcome Address

Sujit Basu, Siliguri, President, Siliguri Tax Advocates Bar Assn, Few Words

H.C. Singhal, Chairman, Programme Committee

Kunal Pal, Secretary, North Bengal Tax Advocates Assn.

Apurba Saha, Secretary, Siliguri Tax Advocates Bar Assn.

Tea Break : 4.00 pm to 4.30 pm

#### **Technical session -I (4.30 pm to 5.45 pm):**

VAT : Works contract – recent controversies:

Chairman : Shri P.C. Joshi

Speakers : Shri Venkat Ramani, Ms. Nitu Hawelia

Tea Break (5.45 pm to 6.00 pm)

#### **Technical session - II (6.00 pm to 7.15 pm):**

Penalty u/s 271(1)(c) of the IT Act

Chairman : Shri Bharat Ji Agarwal

Speaker : Shri S.K. Poddar, Shri Deepak Jain

#### **Technical session –III (7.15 pm to 8.30 pm)**

Subsequent sale u/s 6(2) under the CST Act with reference to latest judgment of Hon'ble Supreme Court and Recent Amendments

Chairman : Shri M.L. Patodi

Speakers : Dr. Ashok Saraf, Shri Sandip Choraria

DINNER : 8.30 pm onwards followed by entertainment Program

#### **SECOND DAY**

#### **Technical session – IV (9.00 am to 11.00 am) :**

Amendments made by the Finance Act, 2010 with special reference to LLP ;

TDS on Transporters

Direct Tax Code: Key features

Chairman : Shri Satya Prakash, CCIT, Jalpaiguri

Shri Narayan Jain

Shri Piyush Agarwal

#### **Technical session - IV (11.00 am to 11.45 am):**

Service Tax with focus on Rent and Construction

Chairman : Shri M.L. Patodi

Speaker : Shri Mukul Gupta

#### **Brain Trust Session (11.45 am to 12.45 pm):**

Chairman : Shri Bharat Ji Agarwal

Shri P.C. Joshi, Shri M.L. Patodi, Dr. A.K. Saraf,

Shri Mukul Gupta, Shri Subash Agarwal

#### **Valedictory Session (12.45 pm to 1.15 pm)**

Chief Guest : CIT, Siliguri

Guest of Honour: Addl. Commissioner of Commercial Taxes, Siliguri

Dignitaries from AIFTP

LUNCH (1.15 pm to 2.15 pm)

**DELEGATE FEE Rs.500/- IF CONFIRMED WITHIN 30TH JUNE AND ONWARDS Rs.600/-  
Rs.800/- with Non-AC dormitory accommodation attached to the venue.**

### PLEASE CONFIRM YOUR PARTICIPATION to :

C.K. Chatterjee, Kolkata	(09830495134)	chirachatterjee@yahoo.com
D.K. Agarwal, Siliguri	(09474380665)	dk2ita@yahoo.co.in
Sujit Basu, Siliguri	(09800883008)	sujitbasu_adv@yahoo.co.in
Sandip Choraria, Kolkata	(09830022880)	taxconcept.sc@gmail.com

#### **All India Federation of Tax Practitioners (EZ)**

Narayan Jain, Chairman - East Zone

NP Jain & Co. 3, Ho Chi Minh Sarani, Kolkata 700 071 098309 51252

E Mail npjain@vsnl.com Website : www.aiftpeast.org

## NOTICE

NOTICE is hereby given to all Members of Eastern Zone, that the Annual General Meeting of the All India Federation of Tax Practitioners (EZ) will be held on Saturday the 26th day of June, 2010 at Conference Room of Calcutta Chamber of Commerce, 18H, Park Street, Kolkata-700 071 at 4-00 P.M. to transact the following agenda:

1. To confirm the minutes of the last Annual General Meeting held on 20th June, 2009.
2. To discuss, examine and adopt the Audited Statement of Account for the financial year 2009-10.
3. To appoint Auditor for the year 2010-11.
4. Any other matter with the permission of Chair.

Date : 7th June, 2010

Place : Kolkata

**C. K. Chatterjee**  
Secretary (EZ)

## REPRESENTATION TO CHAIRMAN, CBDT

Dated : 21-5-2010

Shri S.S.N. Moorthy, IRS  
Chairman,  
Central Board of Direct Taxes,  
North Block,  
New Delhi - 110 003

Dear Shri Moorthy Ji,

### **Sub: Validity of approval u/s 80G(5)(vi) of the Income-tax Act, 1961 to Charitable Institutions**

Clause (vi) of sub-section (5) of section 80G of the Income-tax Act, 1961 (the Act), read with Rule 11AA of the Income Tax Rules, 1962 requires approval of the Commissioner of Income-tax to a charitable institution or a fund so that the donor becomes entitled for the prescribed deduction from his total income. Proviso to clause (vi), omitted *vide* clause 33 by the Finance (No. 2) Act, 2009 provided that "any approval shall have the effect for such assessment year or years not exceeding five assessment years as may be specified in the approval".

2. The object of the omission of the proviso was to provide that the approval once granted shall continue to be followed in perpetuity and the Commissioner could withdraw the approval only if he was satisfied that the activities of the institution or the fund were not genuine or were not carried out in accordance with its objects. This was duly explained in the Explanatory Memorandum to the Finance (No. 2) Bill, 2009 in the following words:-

*"Further as per clause (vi) of sub-section 80G of the Income-tax Act, 1961, the institutions or funds to which the donations are made have to be approved by the Commissioner of Income-tax in accordance with the sub-rules prescribed in rule 11AA of the Income-tax Rules, 1962. The proviso to this clause provides that any approval granted under this clause shall have effect for such assessment year or years, not exceeding five assessment years as may be specified in the approval.*

*Due to this limitation imposed on the validity of such approvals, the approved institutions or funds have to bear the hardship of getting their approvals renewed from time to time. This is unduly burdensome for the bonafide institutions or funds and also leads to wastage of time and resources of the tax administration in renewing such approvals in a routine manner.*

*Therefore, it is proposed to omit the proviso to clause (vi) of sub-section (5) of section 80G to provide that the approval once granted shall continue to be valid in perpetually. Further, the Commissioner will also have the power of withdraw (ing) the approval if the Commissioner is satisfied that the activities of such institution or fund are not genuine or are not being carried out in accordance with the objects of the institution or fund'.*

3. Instances are being brought to the notice of the Federation by our members that despite the omission of the proviso and clear articulation of its objective, the approvals under the said clause (vi) of sub-section (5) of section 80G are not being granted in perpetuity by some of the Commissioners of Income-tax leading to great hardship to the charitable institutions or funds and their donors.

4. One of the reasons being given by the Commissioners is that the consequential amendment to sub-rule (4) of Rule-11AA of the Income-tax Rules, 1962 has not been made by the Board and the said sub-rule continues to require the Commissioners to grant approval for a limited period and to specify the assessment year or years for which the approval is valid. The said sub-rule (4) of Rule-11AA reads as under:-

*"Rule - 11AA(4) Where the Commissioner is satisfied that all the conditions laid down in clauses (1) to (v) of sub-section (5) of section 80-G are fulfilled by the institution or fund, he shall record such satisfaction in writing and grant approval to the institution or fund specifying the assessment year or years for which the approval is valid'.*

5. As your honour are well aware, rules being a form of delegated legislation, cannot be interpreted to frustrate the objective of the provisions in the Income-tax Act which are made by the Parliament. In view of the pronounced intention behind the omission of the said proviso to clause (vi) of sub-section (5) of section 80G, namely, to grant approvals in perpetuity to genuine charitable institutions or funds, necessary

clarificatory instructions may kindly be issued to the Commissioners of Income-tax requiring them to grant approvals in perpetuity pending formal amendments in this regard to sub-rule (4) to Rule-11AA which can be made later in due course.

6. An early action is requested as a large number of bonafide charitable institutions and funds are involved all over the country.

A line in reply is requested

Thanking you,

Yours faithfully,

**S.R. Wadhwa**

Dated: 19-5-2010

The Chairman  
Central Board of Direct Taxes  
Ministry of Finance, Dept. of Revenue  
North Block, New Delhi - 110 001

Respected Chairman,

**Sub. Clarification regarding appeal fee for appeal to the ITAT against penalty u/s 271(1) (c) and other penalties in the I income-tax Act, 1961**

There has been a prolonged controversy as to whether the Tribunal fee on an appeal against the order of penalty levied u/s 271(1) (c), is connected with the total income computed by the Assessing Officer and is governed by clauses (a) to (c) of s. 253(6) or it has no nexus with the amount of income assessed and the is, therefore, governed by clause (d) which prescribes a fee of Rs. 5001-

The Special Bench of the ITAT in the case of Bidyut Kumar Sett Vs. Income Tax Officer vide their order dated 08.10.2004 reported at (2005) 92 ITD 148 (Cal) (SB) had held that section 271(1) (c) is governed by clauses (a) to (c) of section 253(6) and not by clause (d) thereof and as such, the appeal fee would be linked to the income assessed.

Recently, by the judgement dated 06.05.2008, the Hon'ble Patna High Court, in Dr. Ajith Kumar Pandey v. ITAT reported at (2009) 310 ITR 195 (Pat), has not agreed with the judgement of the Special Bench, and has held that the penalty appeal u/s 271(1)(c) has no connection or bearing with the total income of the assessee. [Copy of the High Court's judgement enclosed for ease of reference] As such, the fee payable would be in accordance with clause (d) of section 253(6) and will be Rs. 5001- only. Since Dr. Ajith Kumar Pandey's judgement, has superseded the order of the Special Bench of the Tribunal, and is the only judgement of a High Court on this issue, it represents the law of the land and is required to be followed all over the country.

Apart from the legality of the issue, collection of fees is not a source of revenue but is a safeguard against the filing of frivolous appeals. In respect of penalty appeals, this cannot be the consideration as the Department is now starting prosecution proceeding even in very small cases of concealment penalties of Rs 30,000 to Rs 40,000, after CIT(A)'s orders, where due to high appeal fee, linked to the income assessed, the assesses did not file appeals to the Tribunal In some such small cases the Board has even rejected their requests for compounding of the prosecution proceedings. Consideration of fairness and justice would, also demand that the in respect of concealment penalty appeals, the assesses should not be prevented from approaching the Tribunal- the highest fact finding authority in securing justice according to law simply by high fee barriers.

We, therefore, request the Board to kindly issue a circular formally accepting the judgement of the Patna High Court so that the matter is stands settled beyond any pail of controversy.

Thanking you,

Yours faithfully,

**S.R. Wadhwa**

Encl: As above

Date : 6th April, 2010

## **Renewal Subscription to AIFTP Journal and Voluntary Contribution to Palkhivala National Tax Moot Court Competition and Research on Tax**

Dear Members,

We have posted bill for renewal subscription of AIFTP Journal and Palkhivala Foundation on 24th March, 2010. Members are requested to send the DD or Cheque in favour of "All India Federation of Tax Practitioners" payable at Mumbai at the earliest.

Members can also download the subscription and an appeal from our website; i.e., [www.aiftponline.org](http://www.aiftponline.org) and send us the subscription.

Thanking you,

For All India Federation of Tax Practitioners  
**J. K. RANKA**, *Secretary General*

## **Hearty Congratulations**

Hearty congratulations to Ms. Gouri G. Chandnani for being appointed as a member of the Regional Direct Taxes Advisory Committee, by the Central Board of Direct Taxes, New Delhi. We wish her all the success.

## **Updation of E-mail Addresses**

We request you to please inform/send your latest e-mail addresses to keep update the activities of AIFTP/other developments, on [info@aiftponline.org](mailto:info@aiftponline.org).

J. K. Ranka  
Secretary General, AIFTP

### **APPEAL TO MEMBERS**

Dear Members,

The journal has become monthly from January, 2002. We desire that the journal should become self-sufficient. Hence, we request you to send us advertisements for the journal. The rates of advertisement are as under:

- |  |             |
|--|-------------|
| 1. Quarter Page  | Rs. 600/-   |
| 2. Ordinary Half Page  | Rs. 1,000/- |
| 3. Ordinary Full Page  | Rs. 2,000/- |
| 4. Second and Third Cover Page                               | Rs. 2,500/- |
| 5. Fourth Cover Page –<br>Three fourth page (in four colour) | Rs. 3,500/- |

**J. K. RANKA**  
*Secretary General*

### **Membership of AIFTP as on 10-6-2010**

#### **Life Members**

	Associate	Individual	Association	Corporate	Total
Central	1	659	21	2	683
Eastern	—	838	33	0	871
Northern	—	792	17	0	809
Southern	—	707	13	2	722
Western	3	1521	32	13	1569
<b>Total</b>	<b>4</b>	<b>4517</b>	<b>116</b>	<b>17</b>	<b>4654</b>

## DIRECT TAXES

AJAY R. SINGH, PARAS S. SAVLA, RAHUL K. HAKANI & RANGESH BANKA  
Advocates, KSA Legal

### SUPREME COURT

#### 1. S. 80P (2)(e) – Deduction – Co-operative Society – Income from letting of Godown

Department is directed to examine the total income of the assessee society and determine the amount allocable as rental income in the composite charge received by it towards ginning and pressing charges and godown rent by applying the principle of proportionally instead of adopting an ad hoc measure of attributing 50 per cent of the charges as rental income.

*CIT vs. Baba Saheb Kedar Ginning & Pressing Co-operative Society Ltd. (2010) 38 DTR 153 (SC)*

#### 2. S. 253(1)(b) – Appeal Tribunal – Maintainability – Non-payment of admitted tax – IS. 249(4)

The provisions of section 249(4)(a) cannot be read in to section 253(1)(b), and in the absence disenabling provision in section 253(1)(b) appeal was maintainable despite non-payment of full of admitted tax.

*CIT vs. Pawan Kumar Laddha (2010) 38 DTR 3 (SC)*

#### 3. COD approval

Supreme Court doubts law requiring PSUs to obtain COD approval and refers the matter to a larger bench for reconsideration.

*CCE vs. Bharat Petroleum Corporation (Supreme Court) www.itatonline.org*

#### 4. Company Law Tribunal

Parliament is competent to constitute Tribunals for special Acts. However, the failure to ensure independence of judiciary and separation of judicial and executive power renders the Company Law Tribunal unconstitutional. Suggestions given on how to remedy the defects

*UOI vs. R. Gandhi (Supreme Court – 5 Judges) www.itatonline.org*

#### 5. Speaking orders

Detailed guidelines laid down as to how judgments should be written

*JCIT vs. Saheli Leasing & Industries (Supreme Court) www.itatonline.org*

### HIGH COURT

#### 6. S. 80HHC – Deduction – Other income

Receipts with no nexus to exports have to be excluded for s. 80HHC deduction

*CIT vs. Dresser Rand India (Bombay High Court) (2010) 323 ITR 429 (Bom.), www.itatonline.org*

#### 7. S. 194J – Payment of professional fees

Though a hospital by itself, being an artificial entity, is not a “medical professional”, yet it provides medical services by engaging the services of doctors and qualified medical professionals. These are services rendered in the course of the carrying on of the medical profession. S. 194J applies to payments made to non-professionals such as hospitals. CBDT Circular on TPA liability is valid except for view on penalty

*Dedicated Health Care Services TPA vs. ACIT (Bombay High Court) www.itatonline.org*

#### 8. S. 254(2A) – Power to grant stay

ITAT should dispose of stay granted appeals within s. 254(2A) period.

*Shri Jethamal Faujimal Soni vs. ITAT (Bombay High Court) www.itatonline.org*

#### 9. S. 263 – Time limit for revision of orders

Assessment order is not affected in respect of items that are not subject of reassessment. Time limit for s. 263 begins from date of original order for such items

*Ashoka Buildcon vs. ACIT (Bombay High Court) www.itatonline.org*

#### 10. S.276CC – Failure to furnish return – Only Karta could be liable for tax offence of the HUF.

Member of HUF cannot be held liable for delay in filing of the return of HUF, though he has participated in the assessment proceedings.

*Roshanlal vs. Special Chief Magistrate ( 2010 ) 322 ITR 353 (All).*

### TRIBUNAL DECISIONS

#### 11. S. 5 – Accrual of income

Timeshare membership fee is taxable only over the term of contract

*ACIT vs. Mahindra Holidays & Resorts (ITAT Chennai Special Bench) www.itatonline.org*



**12. S. 9(1) – Permanent Establishment**

To compute the PE 'duration test' under Article 5(2) of the DTAA, different project sites can be aggregated only if the test of interconnection and interrelationship is satisfied.

*ADIT vs. Valentine Maritime (Mauritius) (ITAT Mumbai) www.itatonline.org*

**13. S. 43(5) – Speculative transactions – Derivatives**

Derivatives are speculative transaction if not for *bona fide* hedging.

*ACIT vs. Dinesh K. Mehta HUF (ITAT Mumbai) www.itatonline.org*

**14. S. 45 – Capital gains – Business income – Sale of shares – IS. 28(ii)**

Principles to be applied while deciding whether sale of shares is capital gain or business income.

- (a) As per the books of account, the assessee has treated the entire investment in shares as an "investment" and not as "stock-in-trade";
- (b) The assessee is not a share broker nor he is having a registration with any Stock Exchange;
- (c) Almost 83% of the capital gain is from shares that were held for a long period of time;

- (d) There were no derivative transactions by the assessee;
- (e) There were no transactions without delivery;
- (f) The assessee used his own surplus funds for investing in shares and not borrowed any money;
- (g) In the preceding years, the assessee consistently declared the gain/profit on the sale of the shares as 'Capital Gains' and the same has been accepted by the A.O. Though the rule of *res judicata* is not applicable to income-tax proceedings, in the absence of change in facts, there should be consistency in the approach of the Revenue;
- (h) The assessee received substantial dividend on the investments

*Management Structure & Systems vs. ITO (ITAT Mumbai) www.itatonline.org*

*Also see : Smt Sadhana Nabera vs. ACIT (ITAT Mumbai) www.itatonline.org*

**15. S. 50C – Full valuation of consideration**

S. 50C does not apply to 'rights' in land and building like tenancy rights.

*Kishori Sharad Gaitonde vs. ITO (ITAT Mumbai) (www.itatonline.org)*



**SUBSCRIPTION RATES (W.E.F. 1-4-2008)**

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## INDIRECT TAXES

### SALES TAX DECISIONS

P. C. JOSHI, Advocate

#### Doctrine of Res judicata

The Punjab and Haryana High Court held that when the Department did not assail the orders for the later years, in favour of the assessee, it cannot challenge the same issue for the earlier years in view of the fact that the subsequent years orders were allowed to attain finally by not challenging it in Appeal or revision by the revenue.

*State of Haryana vs. Shree Cement Ltd. Gurgaon. (2010) 36 PHT 48*

#### Discrimination

The Allahabad High Court held that where the higher rate of tax was levied on the goods manufactured out of raw materials on which taxes were not paid within the State as compared to the tax on the goods manufactured from the local tax paid raw materials, there was a clear case of discrimination hit by Articles 301 to 304 of the Constitution.

*Mittal Metals vs. State of U.P. & Another 2010 NTN (Vol.43) - 41*

#### Entry Tax

- (1) The Madras High Court held that the Assessee was entitled to adjust the sales tax payable under T.N. General Sales Tax Act, 1959 to the extent of tax paid under the provisions of Tamil Nadu Entry Tax Act.

*Commercial Tax Officer vs. Coimbatore Auto Garage Pvt. Ltd. 2010 -11 (16) TNCTJ Pg.1*

- (2) A five member bench of the Supreme Court presided over by Hon'ble Justice S.H. Kapadia (Now Chief Justice), while considering numerous Writ Petitions, recommended the Constitution of still larger Bench for reconsideration and to decide the parameters of judicially evolved concept under the provisions of the Constitution in regard to the legality or otherwise of levy of Entry Tax vis-a-vis the impact of Article 304 (a) and (b).

*M/s. Jindal Stainless & Anr vs. State of Haryana & Ors. (2010) 36 PHT Pg.21.*

#### Entries to Schedule

##### Battery chargers for cell phone

The V.A. Tax Tribunal held that even though the cell phone and its parts were chargeable to tax @ 4%, the battery charger was not a part of the mobile phone but an accessory thereof. The rate of tax therefore on Battery charger was held to be 12½%

*Nokia India P. Ltd. vs. State of Punjab (2010) 36 PHT 55*

##### Exemption to Successor

Before the Allahabad High Court, the assessee as the successor of eligibility certificate holder, requested for amendment to the certificate enabling it to claim the unexpired portion of the exemption. Such an application was required to be made within 60 days from the date of succession. In the instance case the assessee was to succeed a sick unit under an Order of Succession by BIFR. However, the Department considered the period of limitation from the actual date of the order of BIFR while the assessee submitted the application within the prescribed period treating the date of communication to them as the commencement of limitation. The Hon'ble Allahabad High Court in its writ jurisdiction held that the date of communication would be the crucial date for the purpose of making the application and not the date of order in question.

*M/s. Mirc Electronics Ltd. vs. State of U.P. & Ors. 2010 NTN (Vol.42) 229*

##### Limitation

The Punjab and Haryana High Court held that in the absence of prescribed period of limitation at the relevant time, for passing the order of assessment, the authority ought to have passed orders within a reasonable period of 3 years and in any event not beyond 5 years. The Court held the orders passed after the expiry of 5 years to be illegal and unsustainable.

*Shubh Timb Steels Ltd. vs. State of Punjab (2010) 36 PHT 95*

##### Penalty

The Supreme Court after considering the language of section 68(3) read with sub rule (6) of Rule

21(A) of the West Bengal Sales Tax Rule, 1995, held that the scope of the provisions, wherein the phrase 'any person' was used, would include a clearing and forwarding agent or any other person, transporter and customs house Agent who made the declaration in the prescribed form. In the case before the Apex Court, the Appellant was the Customs House Agent whose duty was to clear the consignment of goods imported but after clearance, handed over the consignment to the Transport Agent. Since the declaration was signed by the Appellants, the obligation undertaken by him was to transport the consignment to the destinations outside the State of West Bengal and the proof of such transportation was the countersigned copy of the declaration which has to be produced before the assessing authority. The signed copy of the declaration has to be carried to the exit checkpost where a copy thereof would be retained. The Appellant did not produce the countersigned copy of the declaration, with the result a rebuttable presumption was raised that the tax was sought to be evaded and the goods were consumed in the city. Though the confirmation from the consignee about his receiving the goods was produced, the Supreme Court held that such a confirmation did not rebut the presumption because under the law, the consignee was not liable for the breach committed by the person who had declared in the prescribed form before the appropriate authority. The penalty imposed by the authority for non production of the countersigned copy of the declaration was confirmed by the Supreme Court.

*Kamal Kumar Agarwal (2010) 36 PHT 146 (SC)*

### **Reassessment**

- (1) The Supreme Court after considering the provisions of Section 11E of Bengal Finance (Sales Tax) Act, 1941 held that it was not necessary for the Commissioner to record the reasons that led him to the satisfaction for reopening the assessment.

*M/s. Supreme Paper Mills Ltd. vs. Assistant Commissioner (Commercial Taxes) Kolkata (2010) 36 PHT 31 (SC) (Full Bench)*

- (2) The Allahabad High Court while quashing the reassessment proceedings initiated solely on account of change of opinion held that the original assessment having been done after considering in details the facts that the price of the liquor and the bottles were separately specified and no tax was liable on the value

of the bottles in view of dec. 3 AB of the U.P Trade Tax Act, 1948

*M/s. Sir Shadilal Enterprises Ltd. Shamli, District Muzaffarnagar vs. State of UP & Others 2010 NTN (Vol.43) -1*

### **Role of legal profession**

The Supreme Court took a serious note of rampant unethical practice by some of the Advocates on record in lending their names for submitting the Special Leave Petition, without having or taking any responsibility for the case. Such Advocates were found to be not appearing when the matters were listed before the Court nor did they take any interest or responsibility for processing or conducting the case. The Apex Court in that connection observed that the very purpose of having the system of Advocates on record get defeated in such cases. In the case before the Court the petition was filed without any sense of responsibility either by the party or their Counsel. Such a practice was held to be not only disservice to the Institution but also adversely affected the administration of justice. The Supreme Court therefore held the conduct of all of them as reprehensible.

*Smt. Poonam vs. Sumit Tanwar JT 2010 (3) SC 259.*

### **Sale in the course of Export**

The Madras High Court held that where the printed label and printed hand bags were sold to the exporter of readymade garments, the seller was entitled to claim exemption u/s 5(3) of the Central Sales Tax Act, 1956.

*M/s. Excess International vs. Tamil Nadu Sales Tax Appellate Tribunal and Ors. 2010-11 (16) TNCTJ Pg.9*

### **Writ Jurisdiction**

The Supreme Court while dealing with a case under the Hindu Marriage Act, 1955 made distinction in a Writ Petition before the High Court under Article 226 and before the Supreme Court under Article 32 of the Constitution. In that regard it held that the remedy under Article 32 was available only for enforcement of the fundamental rights while under Article 226 of the Constitution, the High Court can grant relief for any other purpose also.

*Smt. Poonam vs. Sumit Tanwar JT 2010 (3) SC 259.*





## LIST OF PUBLICATIONS

Sr. No.	Name of Publication	Edition	Price		Courier Charges
			Members	Non-Members	
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2. Outstation members 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.

## Obituary

One of our oldest member of AIFTP, Binod Behari Das whose soul has left for heavenly abode on 24th December 2009 at 11-10 p.m. at Balasore, Orissa.

We pray God to rest his soul in eternal peace.

*Non-receipt of the Times must be notified within one month from the date of publication, which is 3rd of every month.*

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