



All India Federation of Tax Practitioners

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AIFTP TIMES

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FEDERATION NEWS

J. K. Ranka, Secretary General

FORTHCOMING PROGRAMMES

Date & Month	Programme
10th April, 2010	National Executive Committee Meeting at Baramati Guest House, Baramati Stadium, Gate No. 1, Cuttack – 753 005 at 6.00 p.m.
10th & 11th April, 2010	Two days National Tax Conference at Cuttack

Report of the felicitation function held at Delhi on 13-2-2010

AIFTP (Northern Zone) has organized a Felicitation Function in Honour of Hon'ble Mr. Justice Tirath Singh Thakur & Hon'ble Mr. Justice Swatanter Kumar, Judges SC of India on 13th day of February 2010 at Amal Tas India Habitat Centre, New Delhi in the Evening.

Mr. P.H. Parikh, Mr. C.S. Aggarwal, Mr. O.P. Dua, Mr. Ashok Aggarwal, Mr. O.S. Bajpai and Mr. H.C. Bhatia, Advocates were also present at the occasion.

Programme was conducted by Mr. Sanjay Sharma, Joint Secretary, AIFTP (NZ) and Ms. Prem Lata Bansal, Chairperson, AIFTP (NZ), welcomed the guests. Mr. M.L. Patodi, National President along with Mr. J.K. Ranka, Secretary General were also present on this function. Justice Mr Tirath and Justice Mr. Swatanter Kumar appreciated the endeavour and activities of the Federation in imparting the education among the fraternity. Mr. S.R. Wadhwa, Mr. H. L. Madan. Mr Balram Sangal, Mr. Rakesh Agrwal, Mr. Ram Autar Bansal, Mr. Raj K. Batra, Ms. Neetika Khanna and Mr. D.K. Gandhi contributed to the success of this Function. Vote of Thanks was presented by Mr V.P. Gupta, Vice Chairman, AIFTP (NZ)

D. K. Gandhi
Secretary, AIFTP (NZ)

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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

Report on Varanasi Tax Conference on Union Budget - 2010

All India Federation of Tax Practitioners (Northern Zone) organized a one day Tax Conference on 7th March 2010 at Hotel CLARKS, Varanasi in association with Income Tax Bar Association, Varanasi and six other local associations. The theme of the conference was *"Impact of Union Budget – 2010 on Economic Development"*. The Conference was dedicated to the Memory of Late Shri Anil Kumar Singh who passed away on 19th November 2009.

This Conference on Union Budget – 2010 was attended by nearly 400 Delegates from 4 States of India. The technical sessions were interesting in subject, rich in deliberation and graceful in presentation.

The conference was inaugurated by the Chief Guest Hon'ble Mr. Justice Rakesh Tiwari, Judge, Allahabad High Court followed by his inaugural speech which was very rich and thought provoking. The welcome address was delivered by the Chairman of the Conference Committee Shri Arvind Shukla and theme of the conference was elaborated by Shri M.L.Patodi, National President in his address. Shri Bharatji Agrawal donated a cheque of Rs.51,000.00 to the Income Tax Bar Association, Varanasi for the Late Shri Anil Kumar Singh Memorial fund which was instituted to Promote the Quest of Knowledge of Tax professionals by organizing various study circles, seminars and conferences. On this occasion Smt.Premlata Bansal, Zonal Chairperson,(NZ) also addressed the audience. Shri H.C. Bhatia, Vice President (Northern Zone) moistened many eyes when he addressed the audience on an emotional level with his moving reminiscence of Late Shri Anil Kumar Singh. The departed soul was missed dearly and will be remembered fondly by everyone whose life he touched. Vote of Thanks was delivered by Shri O.P.Shukla, Co-Chairman, Conference Committee.

The *first* technical session on *"Limited Liability Partnership"* was very elaborate and thought provoking. The Chairman of the session Hon'ble Mr. Justice Rakesh Tiwari, Judge Allahabad High Court conducted the session meticulously. CA. (Mrs.) Jamuna Shukla, introduced the subject and CA. Navin Chandra Agrawal, presented the paper covering the various aspects of the subject and CA. Mahendra B.Gabhawal, offered his comments as expert of the subject and summarized the debate. Vote of Thanks was delivered by Shri Brajesh Jaiswal, Secretary, Conference Committee.

The *second* technical session relating to *"Union Finance Bill"* was Chaired by Shri Sudhir Chandra, Member, CBDT. The Guests of Honour were Shri S.S.Bajpai, Director General of Income Tax, U.P. and Shri U.K.Shukla, Chief Commissioner of Income Tax, Allahabad. The paper was presented by Shri S.K. Poddar, Advocate, Ranchi and Shri Shambhu Chopra, Advocate, Allahabad. Shri Bharatji Agrawal, Senior Advocate, Allahabad High Court offered his expert comments and the subject was concluded and summarized by him. Vote of thanks was delivered by CA. (Smt.) Rashmi Kesharwani.

The *third* technical session relating to *"Art of Powerful Presentation by Professionals"* was Chaired by Shri Arun Tripathi, Chairman, Uttar Pradesh Bar Council. The Guests of Honour were Shri D.Roy Choudhary, CIT, Varanasi and Shri Santosh Kumar, CIT (A), Varanasi. The session was presented by the young and dynamic Chartered Accountant, Shri Amar Umar. He kept the audience enthralled by his presentation. The Tax Conference culminated with the Valediction. The valedictory session was charged with emotions and the accolades that were showered on the members of Conference Committee. The Vote of Thanks was delivered by CA. Puneet Kumar Singh.

The entire conference was conducted in very smooth manner by a large team of outstanding master of ceremonies headed by Shri Sanjay Kumar, Advocate.

The whole arrangements and settings were organized in a magnanimous way as professionals from in and around Varanasi gathered here to pay Tribute to the Memory of Late Shri Anil Kumar Singh. And with the successful conduct of this event his memory lives on.

News from Central Zone

Mr. S.L.Chhajed who has completed 50 Years of his practice was honoured by AIFTP (CZ) on 21st February, 2010 at Bhopal. On 6th March, 2010 Budget Seminar held at Ujjain and Indore jointly with TPA Ujjain, TPA Indore, Ujjain and Indore Branch of CIRC of ICAI with AIFTP (CZ). The Chief Speaker was Shri Dr.Rakesh Gupta CA, ICWS, CS, LLB, Phd, Advocate, Supreme Court. At both the places the attendance was more than 200.

Suresh Ramnani
Jt. Secretary, AIFTP

M.D. Sodani
Vice President, AIFTP

**Report on Union Budget – Finance Bill 2010, Meeting
held on Saturday, the 27th February, 2010 at 4.00 P.M. at the premises of Federation of
Andhra Pradesh of Chambers of Commerce and Industry (FAPCCI), Surana Udyog
Auditorium, Federation House, 11-6-841, Red Hills, POB 14, Hyderabad**

All India Federation of Tax Practitioners-Southern Zone along with ICWAI, Hyderabad Branch and AP Tax Bar Association conducted a meeting to analyze the Union Budget meeting 2010-11 by experts Dr. C.P. Ramaswamy, Advocate & Former Income Tax Commissioner and CA. B. Shankar

The speakers analyzed specifically from the Direct Tax & Indirect Tax angle and impact on the industry, trade and profession. The speakers further analyzed the impact also on the common man from the angle of the essential goods and services. The response at the meeting was overwhelming from all categories of the people which include professionals like Tax Practitioners, Chartered Accountants, Company Secretaries, Cost Accountants, Finance Managers and Accounts Managers from the Corporate Sector.

The meeting was organized by Mr. P. V. S. S. Prasad, Chairman, Mr. V. Ahalada Rao, Secretary, and Mr. S. Satyanarayana, Treasurer of All India Federation of Tax Practitioners, Southern Zone.

V. Ahalada Rao
Secretary, AIFTP (SZ)

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.

J. K. Ranka
Secretary General, AIFTP

Hearty Congratulations

Hearty Congratulations to the newly elected Office Bearers of the Western India Regional Council of the Institute of Chartered Accountants of India, for the year 2010-11.

CA. Sanjeev Lalan : Chairman
CA. Makarand Joshi : Vice-Chairman
CA. Mangesh Kinare : Secretary
CA. Parag Raval : Treasurer

We wish them all the success.

International Study Tour

International Study Tour to Alaskan Cruise with Canadian Rockies from 27th May, 2010 to 13th June, 2010.

We regret to inform you that, we have decided to cancel the International Study Tour with heavy heart, since the required number of minimum 40 participants could not be gathered.

NATIONAL TAX CONFERENCE, 2010

on

10th and 11th April, 2010

Venue : Saheed Bhawan Auditorium, Choudhury Bazar, Cuttack – 753 009

**THEME : EFFECT OF PROPOSED DIRECT AND INDIRECT-TAX LAWS IN THE
CHANGING ECONOMIC SCENARIO OF THE COUNTRY**

Organised by

**ALL INDIA FEDERATION OF TAX PRACTITIONERS (EZ), ALL ORISSA TAX BAR ASSOCIATION
IN ASSOCIATION WITH ALL THE TAX BAR ASSOCIATIONS
& CHARTERED ACCOUNTANTS ASSOCIATIONS OF ORISSA**

PROGRAMME

SATURDAY, 10th APRIL, 2010

8.30 a.m. to 10.00 a.m.	: Registration & Breakfast
10.00 a.m. to 12.00 Noon	: Inaugural Session
	: Inaugurator : Mr. Naveen Patnaik, Hon'ble Chief Minister of Orissa
	: Chief Guest : Hon'ble Justice A. K. Pattnaik, Judge of Supreme Court of India
	: Guests of Honour : Hon'ble Chief Justice, Orissa High Court Hon'ble Dr. Justice Arijit Pasayat, Former Judge, Supreme Court of India, Chairman, Competition Law Tribunal Mr. P. H. Parekh, President, Confederation of India Bar Association Mr. M. L. Patodi, President, AIFTP Mr. Bharatji Agrawal, Immediate Past President, AIFTP Mr. S. K. Poddar, Deputy President, AIFTP Mr. Narayan P. Jain, Chairman, AIFTP (EZ) Mr. J. K. Ranka, Secretary General, AIFTP
12.00 Noon to 12.15 p.m.	: Tea Break
12.15 p.m. to 1.45 p.m.	: First Technical Session
	: <i>Subject</i> : Income Tax
	: <i>Topic</i> : Important Provisions of Finance Bill, 2010 and Direct Tax Code
	: <i>Chairman</i> : Hon'ble Justice B. P. Das, Judge, Orissa High Court
	: <i>Guest of Honour</i> : Mr. Kamalakanta Mohapatra, Chief Commissioner of Income-Tax, Orissa
	: <i>Expert Comment</i> : Dr. K. Shivaram, Advocate & Past President, AIFTP
	: <i>Speakers</i> : Mr. T. N. Pande, Former Chairman, CBDT Mr. N. P. Jain, Advocate, Chairman, AIFTP (EZ) Mr. A. K. Sabat, FCA, Bhubaneswar
1.45 p.m. to 2.30 p.m.	: Lunch
2.30 p.m. to 4.00 p.m.	: Second Technical Session
	: <i>Subject</i> : Customs, Excise and Service Tax
	: <i>Chairman</i> : Justice Khandeparkar, President, CESTA, New Delhi
	: <i>Speakers</i> : Mr. Ravi Shankar, Advocate, Bengaluru Mr. Jayanta Das, Advocate, Delhi
	: <i>Moderator</i> : Mr. D. N. Panda, Member Judicial, Customs, Excise and Service Tax Tribunal, Delhi
	: <i>Expert Comment</i> : Bharatji Agrawal, Sr. Advocate & Imm. Past President, AIFTP
4.15 p.m. to 6.15 p.m.	: Third Technical Session
	: <i>Subject</i> : Competition Law
	: <i>Chairman</i> : Hon'ble Dr. Justice Arijit Pasayat, Chairman, Competition Law Tribunal
	: <i>Speakers</i> : Mr. Rahul Sanu, Member Competition Law Tribunal Mr. Praveen Tripathy, Member Competition Law Tribunal
6.30 p.m. to 7.30 p.m.	: National Executive Committee Meeting
7.30 p.m. to 9.30 p.m.	: Cultural Programme (Best of Orissa's Dance & Music)
8.30 p.m. to 10.00 p.m.	: Dinner

SUNDAY, 11th APRIL, 2010

- 8.30 a.m. to 9.30 a.m. : Breakfast
10.00 a.m. to 11.30 a.m. : **Fourth Technical Session**
11.30 a.m. to 12.00 Noon : Tea Break
Subject : **Goods and Service Tax Law**
Chairman : Hon'ble Dr. Justice I. A. Ansari, Judge,
Guwahati High Court
Speakers : Mr. Laxman Kumaran, Advocate, Delhi
Dr. Ashok Saraf, Sr. Advocate, Guwahati High Court
Mr. Sahadev Sahoo, Asst. Commissioner,
Commercial Tax
- 12.00 Noon to 1.30 p.m. : **Fifth Technical Session**
1.30 p.m. to 2.15 p.m. : Lunch Break
Subject : **Works Contract vis-a-vis VAT & Entry Tax**
Chairman : Hon'ble Justice Indrajit Mohanty, Judge,
Orissa High Court
Speakers : CA. S. Venkatramani, Bengaluru
Mr. M. R. V. Rao
Expert Comments : Mr. P. C. Joshi, Advocate & Past President, AIFTP
- 2.15 p.m. to 4.15 p.m. : **Sixth Technical Session**
Subject : **Brain Trust Session**
Chairman : Mr. N. M. Ranka, Sr. Advocate & Past President, AIFTP
Panelists : Mr. S. N. Rotho, Former Member, ITAT
Mr. Sahadev Sahu, G.S.T.
- 4.15 p.m. to 6.15 p.m. : **Valedictory Session**
Chief Guest : Hon'ble Justice B. N. Mohapatra
Guests of Honour : Dr. P. C. Ghadei, Hon'ble Minister Finance & Excise,
Orissa
Mr. M. L. Patodi, President, AIFTP
Mr. S. K. Poddar, Deputy President, AIFTP,
Mr. N. P. Jain, Chairman, AIFTP (EZ)
- 6.15 p.m. : High Tea

Conference Registration Fees

Up to 30th March, 2010	Rs. 1,250.00	Accompanying Spouse	Rs. 1,000.00
Spot Registration	Rs. 1,500.00	Representatives of Corporates	Rs. 3,000.00

**Outstation Members are requested to make the payment by Demand Draft only in favour of
"All Orissa Tax Bar Association" payable at Cuttack**

For further details, pl. contact

Conference Chairman

Mr. B. K. Mohanty, Senior Advocate Ph. : 0671-2319126, (M) 9437032326
Former Advocate General, Orissa High Court, Orissa.

Co-Chairman

Mr. B. Panda, Advocate, (O) 0671-2310768 (M) 9337118046, Joint Secretary, AIFTP

Conference Secretariat

Mr. S. N. Sahu, President, All Orissa Tax Bar Association
Madhusudan Nagar, Tulasipur, Cuttack - 753 008.

Tel. Fax : 0671 - 2307252 (Off.) Resi. : 0671 - 2302006, Mob. : 9861144132

Mr. M. Udaipuria, Advocate, Joint Secretary, All Orissa Tax Bar Association

Tel.: (O) 0671-2368865 (M) 9437068865

Mr. D. K. Sheth, Advocate, Chief Co-ordinator

Tel.: (O) 0671-2507386 (M) 9861052386

AND

Mr. B. N. Mohapatra, Advocate

Vice-Chairman, AIFTP (EZ)

E-17, BJB Nagar, Bhubaneswar – 14 • Ph. : 0674 - 2431937/2431938, Mob. : 9337110348

HOTEL ROOM TARIFF AT CUTTACK

Sr. No.	Name of Hotel	Contact No.	Single A/C	Double A/C	Executive A/C	Budget A/C
1.	Hotel Akbari Continental, Dolamundai	00-91-6712423251 2423254/64/69	Rs. 1,200/-	Rs. 2,200/-	Rs. 3,000/-	-
2.	Hotel Dwaraka, Barjakabati Road, Cuttack	06710-2422220	Rs. 1,185/-	Rs. 1,650/-	Rs. 2,300/- Rs. 1,720/-	Rs. 2,500/- Rs. 1,980/-
3.	Hotel Bombay Inn College Square, Ice Factory, CTC	0671-6549801/ 2010566	Rs. 850/-	Rs. 950/-	Rs. 1,500/-	Rs. 1,200/-
4.	Grand Residency, Link Road, CTC 21	23/3229/2313129	Rs. 1,800/-	Rs. 2,200/-	Rs. 2,400/3,000	Platinum Single Rs. 3000 Double Rs. 3600
5.	Panthanivas	0671-2306916 2306867	Rs. 1,000/-	Rs. 1,500/-		
6.	Mahabir Galaxy Hotel	0671-2310281	Rs. 1,200/-	Rs. 1,500/-	Rs. 2,200/-	
7.	Hotel Manorama Plaza, Mahatab Road	0671-2331681 6980077	Rs. 700/-	Rs. 900/-	Rs. 900/-	Rs. 1,100/-
8.	Hotel Lords, Haripur Road, Dolamundai	0671-	Rs. 250/-	Rs. 500/-		
9.	Hotel Silver City, Badam Badi Bus Stand	0671-2333120 2335320	Rs. 500/-	Rs. 600/-	Rs. 600/-	Rs. 700/-
10.	Hotel Monalisa & Suchitra Palace Bus Stand, Link Road	0671-2421109 3204779	Rs. 550/-	Rs. 700/-	Rs. 850/-	
11.	Hotel Swagat, Bus Stand	0671-2329430	Rs. 600/-	Rs. 700/-		
12.	Hotel Shree Jagannath Maahatab Road	0671-2310804 2327805	Rs. 800/-	Rs. 1,000/-		
13.	Hotel Bishal, Bus Stand, Badambadi Link Road	0671-2310752 2310993	Rs. 500/-	Rs. 600/-		
14.	Hotel Sagar Shree Haripur Road	0671-2433132 2430251/2429037 09437103396	Rs. 1,100/-	Rs. 1,000/-		
15.	Hotel Ashoka College Square, Ice Factory, CTC	0671-2647509 2648815	Rs. 700/-	Rs. 800/-	Rs. 850/-	Rs. 950/-
16.	Hotel Vijaya College Square, Ice Factory, CTC	0671-2647557 2648560		Rs. 600/-		
17.	Hotel Neeladri, Mangalabag	0671-2144221		Rs. 700/-	Rs. 800/-	
18.	Bombay Hotel	0671-2649009-18		Rs. 625/-	Rs. 1,000/-	
19.	Hotel The Triple 'C', Buxi Bazar	0671-2424100/101 102/103	Rs. 1,500/-	Rs. 2,000/-		
20.	Nilam Lodgs, Haripur Road, Dolamundai	0671-2433553 5561213	Rs. 1,170/-	Rs. 1,230/-		

HOTEL ROOM TARIFF AT BHUBANESWAR

Sr. No.	Name of Hotel	Contact No.	Single A/C	Double A/C	Executive A/C	Budget A/C
1.	Mayfair, 8-B, Jaydev Vihar, BBSR - 13	91-674-2360101			Rs. 9,000/- (Cottage)	Rs. 16,000/- (Deluxe Cottage)
2.	Swosti Group, P-1, Jaydev Vihar, Bhubaneswar - 751 013, Orissa.	0674-2300008/14/28	Rs. 5,600/-	Rs. 6,600/-	Rs. 15,000/-	
3.	The New Marrison 6, Janpath, Bhubaneswar - 751 001.	06710-2422220 91-674-2380850-57	Rs. 6,100/-	Rs. 6,500/-		
4.	Hotel Pal Regency	0674-2361156 9937144466 9937144477 9438784263	Rs. 2,500/-	Rs. 3,000/-	Rs. 7,999/- (Suite)	
5.	Panthanivas, Lewis Road, BBSR-14.	0674-2432515 0674-2432314	Rs. 1,200/-	Rs. 1,500/-		

DIRECT TAXES

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

SUPREME COURT

1. Bad debts – Mere write-off sufficient – S. 36(1)(vii)

Bad debts need not be proven to be irrecoverable under section 36(1)(vii). It is sufficient if they are written off.

TRF Limited vs. CIT (SC)
Source : www.itatonline.org

2. Block Assessment – Notice – Ss. 143(2), 158BC

Issue of section 143 (2) notice is mandatory for block assessment proceedings. Disclosed items cannot be assessed in block assessment. Circulars are binding on the revenue.

ACIT vs. Hotel Blue Moon (SC)
Source : www.itatonline.org

3. Book profits – Depreciation – S. 115J

MAT companies can provide depreciation as per Income-tax Rules while computing section 115J book profits referred to Larger Bench.

Dynamic Orthopedics vs. CIT (SC)
Source: www.itatonline.org

4. Deduction – Interest – S. 80P

Interest on surplus funds is “other income” and not eligible for deduction under section 80P

The Totgars’ Co-operative vs. ITO (SC)
Source: www.itatonline.org

HIGH COURT

5. Business Expenditure – Employees contribution – PF - S. 43B

Even employees’ contribution to PF paid before due date of filing ROI is allowable under section 43B.

CIT vs. Aimil Limited (Delhi)
Source : www.itatonline.org

6. Deduction – S. 80-IA

Section 80-IA deduction allowable without setting off loss of other units.

CIT vs. Sona Koya Steering Systems (Delhi)
Source : www.itatonline.org

7. Reassessment – Material Facts – S. 147

Reopening u/s 147 not valid if there is no finding regarding failure to disclose material facts.

Bhavesh Developers vs. AO (Bom.)
Source : www.itatonline.org

8. Reopening – Reasons to believe – Ss. 143, 147.

Even if there is no assessment under section 143(3), reopening under section 147 is bad if there are no proper “reasons to believe”. Assessing Officer cannot go beyond the recorded reasons.

Prashant S. Joshi vs. ITO (Bom.)
Source: www.itatonline.org

TRIBUNAL

9. Capital Gains – Exemption – Ss. 10 (38) & 70(3)

Non-exempt capital loss cannot be set off against exempt capital gains

G. K. Ramamurthy vs. Jt. CIT (Mum.)
Source : www.itatonline.org

10. Deduction – Setoff of Losses – S. 10A

Deduction has to be made at the stage of computing the income under head “Profits & gains” and not at the stage of computing the gross total income. The deduction under section 10A attaches to the undertaking and not to the assessee. The losses of a non-eligible unit cannot be set off against the profits of an eligible unit and are eligible to be set-off against other income or to be carried forward.

Scientific Atlanta vs. ACIT (Chennai) (SB)
Source : www.itatonline.org

11. International Taxation – Agent – Arm’s length – S. 9(1)

Foreign Co not liable to tax in India if Indian agent is paid on arm’s length basis.

BBC Worldwide vs. DDIT (Delhi)
Source : www.itatonline.org

12. International Taxation – Transfer Pricing – S. 92B(1)

Notional interest on interest-free loans can be assessed under transfer pricing law.

Perot Systems TSI vs. DCIT (Delhi)
Source : www.itatonline.org

13. Search and Seizure – Assessment – S. 153A

Section 153A does not authorize *de novo* assessment. Non-pending assessments do not abate. Additions must be confined to search material.

Anil Kumar Bhatia vs. ACIT (Delhi)
Source: www.itatonline.org

INTERNATIONAL TAXATION

CA. DHANESH BAFNA, CA. MADHAV KHANDELWAL, SUJEETH KARKAL, Advocate

ADVANCE AUTHORITY RULING

1. Business Profits in the absence of PE- India – Japan DTAA – Article 7

It was ruled that the payment received by the applicant from VARs (“third party re-sellers”) on account of supplies of software products to the end-customers (from whom the licence fee was collected and appropriated by VAR) does not result in income on the nature of royalty to the applicant and moreover payments received by the applicant could not be taxed as business profits in India in the absence of permanent establishment as envisaged by Article 7 of the India-Japan Tax Treaty.

M/s. Dassault System K.K., [34 DTR 218 (AAR)]

2. Fees for Technical Services – India-Germany DTAA – Article 12(4)

It was ruled that the preparation of conceptual designs, drawings and study models to the requirements of the client and providing 3D walk-through presentation, etc., were all critical services of technical and consultancy nature. The mere fact that the sub-contractor was required to perform most of the services connected with designing the complex and receives nearly half the contract value does not mean that the applicant had not rendered any consultancy services apart from presenting a conceptual architectural design. The payment received by the applicant were, therefore, in the nature of “Fees for Technical Services” within the meaning of Explanation 2 to Section 9(1)(vii) of the Income- tax Act, 1961, read with Article 12.4 of India-Germany DTAA. However, the payment received by the sub-contractor from the client on the basis of certification made by the applicant could not be tagged on to the applicant's income.

GMP International GmbH [2010-TIOL-03-ARA-IT]

TRIBUNAL

3. Interest free loan to AE's – ALP – Income Tax Act, 1961 – S.92

The Tribunal held that if the assessee's contention that whenever interest free loan is granted to the associated enterprises, there should not be any adjustment was accepted, it would tantamount to taking out such transactions from the realm of section 92(1) and section 92B of the IT Act. Section 92(1) mandates that any income arising from an international transaction should be computed having regard to the arm's length price. The question of rate of interest on the borrowing loan was an integral part of arm's length price of determination. RBI's approval did not put a seal of approval on the true character of the transaction and it had to be judged as to whether the transaction was at arm's length or not.

Perot System TSI (India) Ltd. vs. DCIT [2010-TIOL-51-ITAT-Del]

4. Determining ALP – Transfer Pricing – Income Tax, 1961 – S.92

The Tribunal held that the manner in which the A.L.P. is to be determined by any of the method prescribed in Sec. 92C is provided in Rule 10B of the IT Rules, 1962. After examining the parameters prescribed in Rule 10B, it could be seen that bad debts written off could not be factor to determine the arm's length price of any international transaction. It was further held, that the TPO had exceeded his limitation by following the method which was not authorised under the Act or rules. The Arms Length Price determined by the TPO and adopted by the Assessing Officer to the extent of royalty payable to the CA Inc Management, USA was not as per the procedure prescribed and same could not be sustained.

CA Computer Associates Pvt. Ltd. vs. DCIT [2010-TIOL-68-ITAT-Mum]

Obituary

We deeply mourn the sad demise of our member **Shri D. Parthasarathy**, Senior Sales Tax Practitioner from Hyderabad on 25-2-2010. We pray the Almighty to rest his soul in eternal peace and grant fortitude to the bereaved family to bear the irreparable loss.

INDIRECT TAXES

SALES TAX DECISIONS

P. C. JOSHI, Advocate

Rectification

The Bombay High Court while disposing off a Writ Petition by the Commissioner of Sales Tax held that an application for rectification before the Tribunal can be made within two years and once that was rejected by the Tribunal there can be no second application for rectification of a mistake appearing in the first Appellate order. In other words, successive Rectification Applications were not maintainable as there was no such power specifically conferred by section 62 of the Bombay Sales Tax Act, 1959. The above was the position in law. However, the Hon'ble Court noticed that the grievance of the assessee related to non-consideration of a particular ground though raised in the memo of Second Appeal before the Tribunal. The mistake continued even while disposing off the Rectification Application because more than one such application were heard together and only common points were decided. Considering that aspect of matter, the High Court remanded back the entire matter to the Tribunal for re-hearing the Rectification Application only in regard to the ground not considered earlier. All other points decided earlier were directed to be concluded and was not required to be re-opened.

Commissioner of Sales Tax vs. Maharashtra Sales Tax Tribunal & Ors. Writ Petition No. 968 of 2003 dated 25th September, 2009.

Entries in Schedule

1. Declared Goods

The Bombay High Court held that the expression 'tool' appearing in section 14(iv)(ix) of the Central Sales Tax Act, 1956 would mean that the same have to be read independently without considering the impact of the later words 'alloy and special steels'. The High Court in that connection noticed that there was comma after the word 'tool' and therefore, the principles of *ejusdem generis* do not apply.

In view of that position, the High Court held that engineering files made of iron and steel were declared goods.

Commissioner of Sales Tax vs. M/s. Raymond Limited Sales Tax Reference No. 2 of 2003 dt. 28th August, 2009.

2. Moulded Plastic Footwear

The Full Bench of the Haryana Tax Tribunal reversed the clarification by the Commissioner under section 56(3) of

the Haryana Value Added Tax and held that the moulded plastic footwear and hawai chappals were covered by entry 55 of schedule C and were taxable @ 4% against 12.5% clarified by the Commissioner.

Liberty Shoes Limited, Karnal vs. state of Haryana (2010) 35 PHT 218 (HTT-FB)

Limitation

1. The Himachal Pradesh Tax Tribunal upon considering the language used in section 33 of the Himachal Pradesh General Sales Tax Act, 1968 held that the time limit of 60 days was absolute and was not relaxable by application of section 5 of the Limitation Act. The Tribunal in that connection followed the judgement of the Supreme Court in the case of *Commissioner of Customs & Central Excise vs. Hongo India Pvt. Ltd. (2009) 24 VST 298.*

Amar Roller Flour Mills Ltd. vs. Excise and Taxation Commissioner, Himachal Pradesh, Shimla and another. (2010) 35 PHT 297 (HPTT)

2. The Punjab and Haryana High Court held that the revisional jurisdiction should be exercised within a period of three years, though no period of limitation was prescribed under the Act.

Tara Chand Sham Lal vs. State of Punjab and others (2010) 35 PHT 143 (P&H)

Penalty

1. The Supreme Court set-aside the judgement of the Rajasthan High Court confirming the imposition of penalty in a stereotyped manner without being supported by any reason.

Asst. Commercial Taxes Officer vs. M/s. Economic Transport Organisation (2010) 35 PHT 263 (SC)

2. The Punjab and Haryana High Court held that when the goods were delivered to the transporter duly supported by valid transport receipt for onward transmission to the consignee mentioned therein, the delayed movement of goods cannot necessarily lead to the conclusion that there was an attempt to evade tax leading to imposition of penalty.

Vardhman Industries Ltd. vs. State of Punjab and Another (2010) 35 PHT 99 (P & H)

Interest

The Allahabad High Court (Lucknow Bench) held that when the tax liability itself was challenged before the Court, there was no case for levy of interest.

Commissioner, Trade Tax, U. P. Lucknow vs. M/s. Jaiswal Trading Company, Faizabad (2010) 35 PHT 105 (All)

Goods

The Karnataka High Court held that the artificially created light energy transmitted to the consumers through optic fibre cables were goods within the meaning of article 366(12) of the Constitution as well as section 2(15) of the Karnataka VAT Act and section 2(7) of the Sale of Goods Act. Accordingly the High Court held that the composite transaction of transmission of broadband connection between subscribers by the service provider was that of sale of goods and therefore, liable to be taxed for the entire amount under the provisions of Karnataka VAT Act even though, the company may have paid the service tax under the provisions of Finance Act, 1994.

Bharti Airtel Ltd. (Formerly M/s. Bharti Tele Ventures Ltd.) vs. State of Karnataka and others (2010) 35 PHT 106 (Kant)

Law Applicable – Works Contract

The Haryana Tax Tribunal held that in the case of Works Contract, the taxable event was the transfer of property in goods involved in the execution of works contract, therefore, when the rate of tax was increased during the work in progress pursuant to an agreement executed prior to the date of increase in rate of tax, the same would be leviable on the basis of amended law that was prevailing on the date of actual execution of the works contract.

Buildwell Engineers & Contractors, Faridabad vs. State of Haryana (2010) 35 PHT 154 (HTT) (FB)

Luxury Tax & Service Tax

The Kerala High Court upheld the constitutional validity of levy of luxury tax on cable TV operators on the footing that the cable TV network fell within the meaning of Entertainment appearing in entry 62 of list 2 of 7th schedule to the constitution. The fact that the Union Government levied Service Tax under Finance Act, 1994 was not a bar against such a levy of luxury tax by the State Government.

Asianet Satellite Communications Ltd. & Anr. vs. State of Kerala & Anr. (2010) 18 KTR 1 (Ker.)

Sale

The Madras High Court after reviewing the case law on the point of taxability of transactions involving import of crude oil and the loan transactions between oil companies, held that such transactions were loan

transactions not liable to tax under the provisions of Tamil Nadu General Sales Tax Act, 1959.

M/s. Madras Refineries Ltd. vs. The Asst. Commissioner (2010) 15 TNCTJ 243

Input Tax Credit

The West Bengal Taxation Tribunal disapproved the disallowance of ITC by the Appellate Authority solely relying on his scrutiny of only 2 entries out of 439. Such verification cannot amount to a representative checking.

Shri Pradeep Kumar Sangneria (2010) 55 STA 30

News from U. K.

The scheme of disclosure of the unreported tax liabilities launched on 11th January, 2010 that was applicable only to Medical Professionals was now extended to dentists also.

Source: Lubbock Fine e-bulletin for the month of February, 2010

News from Punjab

1. The Government of Punjab increased the rate of tax in schedule B of the Punjab Value Added Tax Act 2005 from 4% to 5% w.e.f. 29th January, 2010.

2. The entry tax on lubricants was levied from 5th February, 2010 @ 12.5% in the hands of all persons including a taxable person registered under the Punjab VAT Act, while the transformers were made liable to entry tax @ 4%, furnace oil @ 2% and diesel @ 8.8% from the same date.

3. By an ordinance dated 4th February, 2010, the Punjab Value Added Tax Act 2005 was amended effective from the same date, so as to provide for levy of additional tax on the taxable turnover @ 10% of the tax payable by a dealer. The said levy however, was not applicable to the declared goods mentioned in section 14 of the CST Act.

Source: All the above news are obtained from Punjab and Haryana Taxes Journal dt. 20-2-10 Vol.35 Part 4.

News from Haryana

The Haryana Cabinet on 4th February, 2010 decided to raise the rate of tax on all the items covered by schedule C of the Haryana VAT Act from 4% to 5% except industrial inputs and packing materials.

Source: (2010) 35 PHT 40 (JS)

News from Uttar Pradesh

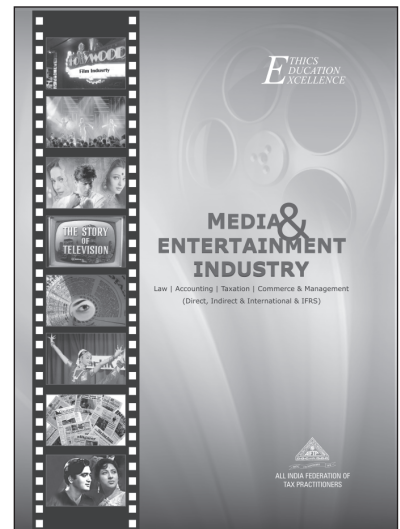
By a notification dated 4th February, 2010, the Governor of U. P. amended several existing rules under Uttar Pradesh VAT Act. The amendments are made to be effective from the date of notification.

Source: 42 NTN Part 3 February, 10 issue.

BOOK RELEASE ANNOUNCEMENT

We are pleased to make the announcement of the release of publication of the All India Federation of Tax Practitioners titled “**Media & Entertainment Industry**”. Hon’ble Mr. Justice Dalveer Bhandari, Hon’ble Mr. Justice G. S. Singhvi, Judges, Supreme Court of India & Hon’ble Mr. Justice Jagdish Bhalla, Chief Justice, Rajasthan High Court released the publication on 19th December 2009 at 15th National Convention at Jaipur organised by the AIFTP (Central Zone) in alliance with various prominent local associations.

The Publication encapsulates various tax, legal, accounting and commercial aspects of the multiple segments of the Indian Media and Entertainment industry. This is an unique publication on Media & Entertainment Industry in questions and answers format (Over 400 FAQs) with exhaustive coverage on subjects of Accounting, Costing, Dispute Resolutions, Entertainment Laws, Entertainment Policies, Entertainment Tax, FEMA & RBI Guidelines, IFRS, Income Tax, International Taxation, Management, Overview on GST, Prevailing Practices, Service Tax, Transfer Pricing, Value Added Tax and Sales Tax. The diverse issues addressed in this book by 34 authors, would benefit almost everyone who is a partaker in the industry – the industry and professionals alike. This book may also be a useful reference to the Revenue authorities and facilitate an enhanced understanding of the constantly evolving media and entertainment industry. The publication is edited by CA. Pradip Kapasi, Mumbai and Dr. K. Shivaram, Advocate, Mumbai. Convenors for the publication are Mr. Ajay Sekhri and Ms. Isha Sekhri, Chartered Accountants, Mumbai.



This publication will be a useful guide to tax-payers and tax consultants.

This publication is in association with Ranka Public Charitable Trust.

**The price of the publication is Rs. 350/- for Normal Bound & Rs. 450/- for Hard Bound.
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Northern	—	768	17	0	785
Southern	—	680	13	2	695
Western	3	1505	32	10	1550
Total	3	4389	115	14	4521



LIST OF PUBLICATIONS

Sr. No.	Name of Publication	Edition	Price		Courier Charges
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1.	Media & Entertainment Industry (Normal Bound)	Dec., 2009	280.00	315.00	70.00
2.	Media & Entertainment Industry (Hard Bound)	Dec., 2009	360.00	405.00	90.00
3.	A Handbook on FEMA – Taxation – Frequently Asked Questions	Mar., 2009	240.00	270.00	70.00
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