



All India Federation of Tax Practitioners

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Federation News

J. K. Ranka, Secretary General

FORTHCOMING PROGRAMMES	
Date & Month	Programme
3rd July, 2010	National Executive Committee Meeting at Hyderabad
3rd & 4th July, 2010	Two Days National Tax Conference at Hyderabad
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
8th January, 2011	National Executive Committee Meeting at Ahmedabad
8th & 9th January, 2011	Two Days National Tax Conference at Ahmedabad

REPORT FROM CENTRAL ZONE

On 23rd April, 2010 we have arranged Felicitation Programme of the Hon'ble Minister for Finance and Commercial Tax Shri Raghav Ji and the Commissioner of Commercial Tax Shri Shailendra Singh and on this occasion, memorandum in respect of various issues relating to VAT, Entry Tax was submitted jointly with Tax Practitioners Association Ujjain, Dewas, Shajapur and Rajgarh.

M.D. Sodani
Vice President (AIFTP-CZ)

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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REPORT ON NATIONAL TAX CONFERENCE AT CUTTACK

By Narayan Jain, *Chairman, AIFTP (EZ)*

National Tax Conference was held at Cuttack on 10th & 11th April, 2010. Inaugurating the Conference Shri Naveen Patnaik, Hon'ble Chief Minister of Orissa said that simpler tax regime is necessary for making the nation's economy stronger. He hoped that the introduction of GST and new Direct Tax Code will be able to achieve the object of simplification and minimising the number of tax laws as VAT, CST, Service Tax, Entertainment Tax, etc. will be merged into GST.

Hon'ble Justice A.K. Patnaik of Supreme Court felt that simple and rational tax laws will be helpful both to Government as well as tax-payers. Hon'ble Justice V. Gopalagowda, Chief Justice of Orissa High Court said that new tax system with lower taxes is likely to result in better tax collection. Shri M.L. Patodi, President, AIFTP welcomed all the dignitaries and highlighted the role of AIFTP in updating the knowledge of tax professionals in various parts of the country. Mr. Shaikh Naimuddin, Member-CBDT said that the Government is considering suggestions for improving the proposed Direct Tax Code. Mr. P.H. Parekh, President, Confederation of India Bar Association pointed out certain anomalies and difficulties being faced by tax-payers. Shri Bharatji Agarwal, Imm. Past President, AIFTP asked the delegates to carry out their professional role without any fear and make use of their knowledge in the interest of proper administration and compliance of tax laws. Hon'ble Justice Arijit Pasayat former Judge of the Supreme Court appreciated the role of AIFTP. Mr. Sharda Prasad Nayak, Hon'ble Minister for Food Supply and Consumer Welfare also spoke. Shri S.K. Poddar, Deputy President, AIFTP proposed vote of thanks for the inaugural session and specially thanked the Chief Minister and Hon'ble Judges for their gracious presence. Dr. Ashok Saraf, National Vice President, Mr. Narayan P. Jain, Chairman, AIFTP (E.Z.), Mr. J.K. Ranka, Secy. General, AIFTP; were also present.

In the first technical session, Hon'ble Justice Arijit Pasayat, former Judge of the Supreme Court and now the Chairman of Competition Law Appellate Tribunal highlighted the role of Competition Law Tribunal and the opportunities for the professionals. Shri K.K. Sharma, Advisor Law; Mrs. Praveen Tripathy, Member Competition Law Tribunal and Mr. Manoj Ahuja shared the relevance of competition law with reference to several other countries.

In the second technical session, Mr. Shaikh Naimuddin, Member-CBDT said that the Government is proceeding with an open mind on Direct Tax Code and considering various suggestions, six issues have been short listed for reconsideration. He assured that

the CBDT is moving for a tax-payers friendly tax regime. Dr. K. Shivaram pointed out in his expert comments certain difficulties in the Direct Tax Code and urged the member CBDT and the Government to mitigate the same. Mr. Narayan P. Jain, Advocate and Author appreciated the amendments allowing relaxation to the businessman carrying on business as a proprietor or an individual or HUF buying the specified goods and assets as stock-in-trade by exempting them from the provisions of section 56(2)(vii) by the Union Finance Minister. Mr. Jain pointed out that the definition of "relative" u/s 56(2) needs to be modified so that gifts received by uncle from nephew or by Mama (maternal uncle) from Bhanja (nephew) is also exempted. CA A.K. Sabat also presented his analytical suggestion for changes in Direct Tax Code. Mr. S.K. Mishra, former Chairman Settlement Commission presided over the session and thanked the panelists for their commendable analysis of the Finance Bill, 2010 and the new Code.

The third technical session was on Custom, Excise and Service Tax. It was presided over by Shri Bharatji Agarwal, Sr. Advocate and Immediate Past President of AIFTP. He also analysed the recent controversial issues. Mr. K. Ravi Shankar, Advocate from Bengaluru; Mr. P.K. Das, Commissioner of Central Excise, Custom, and Service Tax; Shri D.N. Panda, Judicial Member, Customs, Central Excise and Service Tax Tribunal analysed the recent developments on their respective topics in detail.

The first day was concluded with an interesting cultural programme of Odishi and Sambalpuri dances and music.

On the next day, fourth technical session was on Works Contract vis-a-vis VAT & Entry Tax. It was presided over by Shri P.C. Joshi, Advocate and Past President of AIFTP. He also analysed the recent controversial issues. The speakers CA S. Venkatramani, Bengaluru; Shri P. Purushottam, Advocate, Chennai threw light on the implications of various provisions. Mr. Venkatramani also highlighted the case of Raheja and the tax leviable on builders vis-a-vis the decisions of the Courts. Shri H.C. Bhatia also contributed his views on the subject.

The fifth technical session was on "Goods and Service Tax Laws". It was presided over by Hon'ble Justice I.A. Ansari of Guwahati High Court. The speakers Dr. Ashok Saraf, Sr. Advocate and National Vice President, AIFTP; Shri Nikunja Bihari Dhal, Commissioner of Commercial Taxes, Orissa, Mr. Sahadev Sahu, Asst. Commissioner of Commercial Taxes analysed the recent controversies and threw light on the proposed GST regime. Dr. Saraf said

that there should be only one Central GST instead of Central and State GST both. Hon'ble Justice I.A. Ansari also analysed the issues vis-a-vis the legal position in view of the decided cases. Shri Narayan Jain proposed a vote of thanks and a standing ovation was accorded to Hon'ble Justice Ansari for his wonderful speech.

It was followed by an interesting Brain Trust Session presided over by Shri N.M. Ranka, Sr. Advocate and Past President of AIFTP. The trustees were Shri D.N. Panda, Judicial Member, Customs, Central Excise and Service Tax Tribunal; Mr. S.N. Rotho, Former Member, ITAT; Mrs. Premalata Bansal, North Zone Chairperson, AIFTP; Mr. Sahadev Sahu, ACCT. They dealt with various spot questions of the delegates. The Chairman suggested that questions should be sent by delegates in advance so that the session could be more meaningful.

At the Valedictory session, Hon'ble Justice B.N. Mohapatra was the Chief Guest. He appreciated the

AIFTP and Orissa Tax Bar Association for holding of the Conference at Cuttack and assured his continued co-operation in such activities. Shri M.L. Patodi, National President appreciated the organisers as well as all dignitaries and speakers for their contribution in making the Conference successful. Shri S.K. Poddar, Deputy President, AIFTP also expressed his satisfaction on the Conference.

Shri N.P. Jain, Chairman, AIFTP (E.Z.) recognised the efforts of S/Shri B.K. Mahanti, S.N. Sahoo, B. Panda, B.N. Mahapatra (Vice Chairman), R.K. Mishra, Sarbeshwar Sahoo, Matadin Udaypuria, R.N. Pal, Binod Agarwal, Bibek Mohanty, Gajanan Sawdia, Mrs. Meetal Jethi, and Ms. Saswata Patnaik. On request of Shri Jain, Hon'ble Justice B.N. Mohapatra presented bouquet to all above persons as a gesture of appreciation of their good work.

The Conference was attended by about 300 persons.

FULL DAY WORKSHOP ON "INVESTMENT IN INDIA - TAX AND REGULATORY ASPECTS"

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 & NRI's.
 - c. Investment by NRI's (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.**

Eminent Speakers would lead the discussion, which will be announced in the forthcoming issue.

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 - WZ" payable at Mumbai. Outstation members are requested to make the payment by DD only.

DIRECT TAXES

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

SUPREME COURT

1. Block assessment – Income disclosed in regular assessment – S. 158BC

Any material of evidence unrelated to search could not form the basis of the computation of undisclosed income especially when the income had been disclosed by the assessee in regular assessment and had been assessed. Dept. SLP dismissed

CIT vs. Krishna Kumar R. Parmar (2010) 322 ITR (St.) 2 (SC)

2. Business expenditure – Capital or revenue – Royalty – Ss. 3AB, 37(i)

Matter is remitted to the High Court to carry out an indepth exercise to understand the actual expenses undertaken by the assessee in "duplication" of software provided by it by the American company and then answer the question as to whether the royalty paid by the assessee to the American company is allowable in its entirety under section 37 or only one-sixth thereof is allowable under section 35AB.

CIT vs. Mastek Ltd. (2010) 35 DTR 106 (SC)

3. Penalty – Concealment – Unsustainable claims – S. 271(1)(c)

Section 271(1)(c) penalty cannot be imposed even for making unsustainable claims.

CIT vs. Reliance Petroproducts (2010) 322 ITR 158 (SC) / Source: www.itatonline.org

4. Business expenditure – Current repairs – Ss. 31, 37

Replacement of machinery whether current repairs, matter remanded to the High Court for *de novo* consideration, of assessee's claim for deduction in the light of judgment of *CIT vs. Sri Mangayarkarasi Mills Ltd. (2009) 315 ITR 114 (SC)*.

CIT vs. Hindustan Textiles (2010) 230 CTR 105 (SC), (2010) 36 DTR 131 (SC)

HIGH COURT

1. Appellate Tribunal – Power – Stay – S. 254(2A)

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

Shri Jethmal Faujimal Soni vs. ITAT (Bom.) Source: www.itatonline.org

2. Tax planning – Validity

Tax planning is valid. As McDowell (5 judges) has been explained in Azadi Bachao (2 judges), the latter is binding.

Porrits & Spencer (Asia) vs. CIT (P&H) Source: www.itatonline.org

3. Tax Deducted at Source – Contract manufacturing – Amounting to sale – S. 194C

Tests laid down to determine when contract manufacturing will amount to a contract of sale for section 194C TDS.

CIT vs. Glenmark Pharmaceuticals (Bom.) Source: www.itatonline.org

4. Deduction – Export – Book profit – Ss. 80HHC, 115JB

Deduction under section 80HHC of the Act is to be worked out on the basis of the adjusted book profits under section 115JB.

Deduction – Export – Netting of interest – S. 80HHC

For Expl. (baa) to section 80HHC, netting of income from expenditure is not allowed.

CIT vs. Asian Star Co. (Bom.) Source: www.itatonline.org

CIT vs. Ambika Cotton Mills Ltd. (2010) 321 ITR 448 (Mad.)

Editorial Note:- CIT vs. Ajanta Pharma Ltd. (2009) 318 ITR 252 (Bom.), dissented.

5. Recovery – Stay – Ss. 201(1), 201(1A), 226(3)

Strictures against dept. for disposing stay applications without proper reasons.

Paramount Health Services vs. ACIT (Bom.) Source: www.itatonline.org

6. Capital expenditure – Deduction – Computation of profit – S. 10(23C)(v)

Section 10(23C)(v) benefit cannot be denied merely because there are profits. In computing the profits, capital expenditure has to be deducted.

Pinegrove International Charitable Trust vs. UOI (P & H) Source: www.itatonline.org

TRIBUNAL

1. Tax Deducted at Source – Obligation to pay – S. 195(1)

Section 195(1) TDS obligation does not arise if the payment is not chargeable to tax. Samsung Electronics not followed.

ITO vs. M/s. Prasad Production (Chennai)(SB) Source: www.itatonline.org

2. Business expenditure – Penalty – Fine – National Stock Exchange – S. 37

Though every member of National Stock Exchange is obliged to abide by its rules and regulations, a violation of a statutory law or rule hence, fine imposed on the assessee, a member of NSE for violation of regulations of NSE cannot be disallowed.

Gold Crest Capital Markets Ltd. vs. ITO (2010) 36 DTR 177 (Mum.)(Trib.)

3. Capital Gains – Business income – Investment in shares – Ss. 28, 45

Assessee engaged in trading of shares as well as investment in shares. Profit on sale of investment shown as short term or long term investments is assessable as capital gains and not as business income.

Paresh D. Shah vs. Jt. CIT (2010) 2 ITR 311 (Mum.)(Trib.)

Editorial Note: Refer Mumbai Tribunal Jayashree Pradip Shah ITA No. 3608/Mum/07 Asst. Year 2004-05 Bench J dt. 24-2-2010 against the assessee.

4. Capital Gains – Computation – Cost of Acquisition – Fair Market Value – 1st April, 1981 – S. 55A

Value adopted by assessee much higher than fair market value reference to valuation officer permissible. Average of both valuation was taken.

Valuation charges incurred by assessee, not spent in connection with cost of acquisition or cost of improvement of asset hence not deductible.

VijayKumar M. Shah vs. Dy. CIT (2010) 2 ITR 116 (Mum.)(Trib.)

Editorial Note:- Refer Bombay High Court Daulat Mota HUF ITA No. 1031 of 2008 dt. 22-9-2008 (Unreported), Smt. Krishnabai Tingre (2006) 101 ITD 317 (Pune)

5. Deduction – Profits and Gains from infrastructure undertaking – Interest on over due payment – S. 80-IA

Interest received by an assessee on overdue payments from customers is eligible for deduction under section 80-IA.

CIT vs. Advance Detergents Ltd. (2010) 188 Taxman 15 (Delhi)

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	Total	5,500/-	8,000/-	12,000/-	15,500/-

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INTERNATIONAL TAXATION

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

ADVANCE RULING

1. Derivative Transaction – Business Income

The authority held that the income of the applicant, a Canadian company, arising from the 'derivative transactions' on the Indian stock exchanges is business income and in absence of permanent establishment it is not liable to be taxed in India by virtue of Article 7(1) of the DTAA between Indian and Canada.

Royal Bank of Canada [36 DTR 409 (AAR)]

HIGH COURT

2. Tax Deduction at Source – S. 195 – Income-tax Act, 1961 – Samsung Electronics Company Ltd. [320 ITR 209 (Kar.)] dissented from

The High Court Held that if in the course of assessment proceedings of the recipient, it was held that the sum received by the recipient is not chargeable to tax, then the assessee cannot be treated in "default" inasmuch as section 195(1) of the Act casts an obligation to deduct tax at source on the sum 'chargeable under the provisions of this Act'.

Van Oord ACZ India (P) Ltd. vs. CIT [36 DTR 425 (Del)]

TRIBUNAL

3. TDS obligation does not arise if the payment is not chargeable to tax – S. 195 (1) – Income-tax Act, 1961 – Samsung Electronics Company Ltd. [320 ITR 209 (Kar.)] not followed.

The assessee made a remittance to IMAX Canada towards technology transfer fee without deduction of tax at source. The Special Bench held the effect of the judgments of the Supreme Court in Transmission Corporation (239 ITR 537) and Eli Lilly (312 ITR 225) is that s. 195(1) applies only if the payment made to the non-resident is chargeable to tax. If the payer has a *bona fide* belief that no part of the payment has income character, s. 195 (1) will not apply and it is not necessary to apply to the AO u/s 195(2). This interpretation is supported by the Circulars of the CBDT setting out the alternative procedure for TDS. The services rendered by the payee were auxiliary to the sale of equipment, the consideration was not chargeable to tax in India.

ITO vs. M/s. Prasad Production (Chennai ITAT Special Bench) (www.itatonline.org)

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

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:

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|--|-------------|
| 1. Quarter Page | Rs. 600/- |
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J. K. RANKA
Secretary General

Membership of AIFTP as on 10-4-2010

Life Members

	Associate	Individual	Association	Corporate	Total
Central	1	652	21	2	676
Eastern	—	830	33	0	863
Northern	—	781	17	0	798
Southern	—	696	13	2	711
Western	3	1510	32	12	1557
Total	4	4469	116	16	4605

INDIRECT TAXES

SALES TAX DECISIONS

P. C. JOSHI, Advocate

Appellate Power – Penalty imposition

The Bombay High Court after interpreting the provisions of sec. 55(6)(b) and sec. 36(2)c of the Bombay Sales Tax Act, 1959 held that the first Appellate Authority, after deciding the appeal before him, had no power to impose the penalty for the first time u/s 36(2)c. The High Court also held that no penalty was justified for the periods for which the returns were in fact filed in time, especially when the gross turnover of sale and purchase were determined on the basis of books of account and no case of concealment was found.

M/s. Zenith Computer Ltd. vs. The State of Maharashtra – Sales Tax Reference 2 of 2005 decided on 1st April, 2010

Burden of proof

The Supreme Court while considering the scope and applicability of sec. 6(A) of the CST Act, 1956 held that the burden to prove that the movement of goods was otherwise than on account of sale was duly discharged by the assessee when it furnished the prescribed declaration in Form 'F' along with the evidence of despatch.

JT 2010 (3) SC 418 M/s. Hindustan Petroleum Corporation Ltd. vs. Commissioner of Sales Tax and Anr.

Declaration

Before the Bombay High Court the question about the claim of deduction by acceptance of a certificate under notification u/s 41 came up. The certificate was issued by Zilla Parishad when in fact the Zilla Parishad cannot be said to be part of the Government; with the result, the certificate so issued was unauthorized.

After considering the provisions of section 41(2) of the Bombay Sales Tax Act, 1959, the Bombay High Court held that there was no duty cast on the seller to go behind the declaration issued by the buyer, who can be proceeded within a suitable case. In other words the declaration produced by the seller was held to be correctly allowed by the Tribunal.

Commissioner of Sales Tax Maharashtra State vs. MRF Ltd. Sales Tax Ref. 3 of 2000 decided on 5-2-2010.

Entries

The Bombay High Court held that an item like 'chemical' was required to be interpreted in the manner in which the common man considered it. Applying the said test the High Court held that 'steam' was not 'chemical' though technically and scientifically it was considered as chemical.

M/s. Gopalandan Rasayan vs. The State of Maharashtra & Ors. Sales Tax Ref. No. 5 of 2001 pronounced on 8-4-2010.

Entries in schedule

The Commissioner of U.P. Trade Tax, while deciding an Application u/s 59 of the U.P. VAT Act held that the corrugated boxes were covered by entry 90 of Part C of Schedule 2 as packing material while corrugated sheets and corrugated board were covered by Entry 176 of Part 'C' of Schedule 2. In both the cases the tax payable was 4%.

Clarification in case of Premier Packaging P.Ltd., Ghaziabad (2010) NTN (Vol. 42) P.16

Form 'F'

The Allahabad High Court while disposing of several Writ Petitions relating to imposition of normal Central Sales Tax in the absence of Form 'F' in case of job work and goods return, set aside the levy for want of Form 'F' and directed the recomputation after bearing in mind the remark of the Supreme Court in the case of Ambica Metal Works Ltd. (both of Allahabad High Court and Supreme Court)

A.C.P.L. Jewels Private Ltd., vs. Union of India and Others (2010) 35 PHT 430 (All)

Goods return

The Allahabad High Court while considering the provisions of Rule 44B) of the U.P. Trade Tax Rules, held that the replacement of defective products and goods return have different connotations. Therefore where the defective tyres were replaced by a new one, during a warranty period after considering the loss of rubber and value of rubber available on the used tyres, supply of new tyres involved a transaction of sale. In such a situation the limitation of 6 months for claim of goods return was not applicable.

Apollo Tyres Ltd. Mohkampur, Delhi Road, Meerut vs. State of U.P. & Ors. 2010 NTN (Vol. 42) - 169.

Hindi v/s English

The Indirect Tax Tribunal under U.P. VAT Act held that a notification in Hindi would prevail over the translation of the said notification in English especially when the official language of the State of U.P. was Hindi. In an event of conflict, or a difference between the notification in English and Hindi, the language of the Notification in Hindi was applicable.

M/s. Security Printer of India P. Ltd. vs. Commissioner of Commerical Taxes, U.P. (2010) NTN. Vol. 42 – 35 Tri. 77

Interest

The Haryana Tax Tribunal held that if the dues that arose was on account of failure of the assessing authority to adjust the earlier refund; the assessee cannot be made to suffer interest.

M/s. Lakshmi Industrial Corporation vs. State of Haryana (2010) 35 PHT 451 (HTT)

Interest

The Punjab and Haryana High Court after considering the provisions of sec. 12(3) of the Punjab General Sales Tax, 1948 held that the Assessee was entitled to get the interest, under section 12(3) of the Act when the refund was delayed; from the date of the order of assessment which showed Nil liability of the Assessee.

Cobra Instalacionesy Services vs. State of Punjab & Ors. (2010) 35 PHT P. 497 (P&H)

Input Tax Credit

The Gujarat High Court while disposing of a petition under Article 226 of the Constitution, held that if the transaction for which input tax credit was claimed, was genuine and *bona fide* one, and supplier was identified, there was no reason why benefit of input tax credit should be denied to the assessee merely on technical grounds.

M/s. Vimal Enterprise & 2 – Petitioner(s) vs. The Union of India thro' the Secretary & 3 Respondent(s) STJ March, 2010 - P. 1178

Penalty under section 10A of CST Act

In the Registration Certificate issued to the assessee before the Haryana Tax Tribunal, all types of machinery, equipment, tool and instruments for service station was mentioned. The assessee issued declaration in Form 'C' for effecting the purchase of assets that were required for servicing and repair automobiles and other machinery that were required to be used for repairing or replacing wornout parts. The Tribunal held that the description mentioned in the certificate was wide enough to cover the items purchased and therefore there was no case of

violation of the provisions under CST Act. The penalty imposed by lower authorities was quashed.

Batra Auto Co., Faridabad vs. State of Haryana (2010) 35 PHT 535 (HTT)

Raw material – Meaning

In an exhaustive Judgment, the Hon'ble Gujarat High Court considered various meanings given by Courts as well dictionaries of the expression. Raw Material – subsidiary material, processing material and fuel and held that the fuels consumed by the industry for generating electricity, which in its turn was used in the manufacture of finished products, can be considered as raw material or processing material or consumable stores as contemplated in section 15B of the Gujarat Sales Tax Act, 1969

After considering the corresponding provisions under the Gujarat VAT Act, the Hon'ble High Court also held that all goods which had a role to play in the process of manufacturing of goods without which it would not be commercially expedient to undertake such an activity; will also be treated as used in the activity of manufacture of goods as processing material or consumable stores.

Ami Pigments Pvt. Ltd. thro' its Director – R.R. Patel & 21- Petitioners vs. State of Gujarat thro' Secretary & 1 – Respondents STJ March 2010 – P. 1133

Reassessment

The Allahabad High Court held that in absence of any material on the basis of which a reasonable belief can be entertained by the Tax authorities in regard to the wrong assessment earlier, no reassessment can be justified.

Secondly, the notice u/s 21 of the U.P. Trade Tax Act, 1948 must indicate reasons on the basis of which the assessment of the turnover was framed.

Super Chemical Agra vs. Additional Commissioner Grade 1 (2010) NTN (Vol. 42)- 163

Reassessment

The Supreme Court set aside the order of reassessment that was passed ex parte without giving proper time to the assessee for response.

In the original assessment Form "F" was accepted for movement of goods otherwise than by way of sale.

JT 2010 (3) SC 418 M/s. Hindustan Petroleum Corporation Ltd. vs. Commissioner of Sales Tax and Anr.

Recovery

The Allahabad High Court disapproved the initiation of recovery proceedings against assessee before expiry

of statutory period of 30 days as contemplated in Ss. 35(3) & 33(7) of the U.P. VAT Act. Such an action of attachment of Bank account was held to be arbitrary and nothing short of harassment to the assessee. The Hon'ble High Court awarded exemplary cost of Rs. 25,000/- that was required to be paid by the Officer concerned through an account payee cheque.

M/s. Vinayak Traders, Etah vs. State of U.P. (2010) NTN Vol. 42 Page 185

Rectifications – Scope of the appeal

Before the Bombay High Court, the assessee challenged the rectification resorted to by the Tribunal whereby it recalled its earlier judgment on merit, based on the earlier Bombay High Court Judgment and refixed the case for fresh hearing. The High Court while admitting the writ petition, directed the Tribunal not to proceed further in the fresh proceedings that may be taken up after recall of the judgment by it through the impugned judgment in Rectification Application by the State.

S.R. Drugs Pvt. Ltd. vs. Commissioner of Sales Tax. Writ Petition No.472 of 2010 decided on 26-3-2010.

Sale in the course of export u/s 5(3) of the Central Sales Tax Act. The Allahabad High Court held that during the period 1986-87 the submission of Form 'H' was not mandatory. Therefore when the sale took place to an exporter who effected the purchase on the basis of an order from the Foreign buyer, there was no basis for disallowing the claim u/s 5(3) of the CST Act.

M/s. B.S. Agricultural Industry vs. Commissioner of Trade Tax 2010 NTN Vol. 42 P. 188

Scope of Reference Jurisdiction

The Bombay High Court while dealing with the reference before it, held that when the subsequent event, made the reference an academic one and the impugned order of the Tribunal because of those later developments did not affect the liability of the assessee to pay tax, interest or penalty, the Reference though properly made by the Tribunal, was held to be not tenable in view of the language used in section 61, with the result the Reference was returned unanswered.

Commissioner of Sales Tax Maharashtra State vs. Ashish Enterprise. Sales Tax Ref. 3 of 2001 decided on 16-4-2010

Tax on Lease Rent

The Haryana Tax Tribunal held that the amount received by the assessee as lease rent for two trucks

given on lease that was received after 1-4-2003. was liable to tax even where the trucks were capital assets of the assessee who was not carrying on the business of leasing. In such an eventuality the fact that the agreement was entered into prior to 1-4-2003 was of no consequence.

M/s. Liberty Cement Pvt. Ltd. vs. State of Haryana (2010) 35 PHT 485

The maintenance of road on BOT basis

While clarifying the question raised by the assessee under section 85 of the Punjab VAT Act, the authority held that a contractor engaged in upgradation operation and maintenance of road specified in a specified area by the Government on BOT basis, involved the transfer of property in goods as soon as the material required for upgradation or maintenance got imbedded into property of the Government and such transfer took place instantly; with the result such a transaction was held liable to tax under the Punjab VAT Act.

M/s. Chetak Enterprises, Jallalabad, Punjab (2010) 35 PHT 96 JS

Two revisions

The Bombay High Court held that without admitting and assuming for the sake of argument that the provisions of Bombay Sales Tax Act, 1959 provided for more than one revision still the revisional power by the Additional Commissioner was required to be exercised within the prescribed period provided in section 57 in regard to issue of notice within 3 years and passing of the order within 5 years from the date of the order sought to be revised.

In the case before the High Court, the Assistant Commissioner revised the order of assessment in which the set off granted in assessment was not disturbed and revision was in regard to levy of Purchase Tax u/s 14. The assessee challenged the revision in First Appeal before the Deputy Commissioner who set aside the revision as uncalled for. Thereafter the Additional Commissioner sought to revise the quantum of set off granted in the Assessment Order by counting the period of three years from the date of the appeal order, initiation of such a revision of quantum of set off (not the subject matter of appeal) was held to be barred by limitation when counted from the date of the Assessment Order which in reality was to be revised.

Commissioner of Sales Tax Maharashtra State vs. Kirloskar Tractors Ltd. Sales Tax Ref. No. 1 of 2002 passed on 16-4-2010.

Reminder

**AN APPEAL TO CONTRIBUTE TO
SEVENTH PALKHIVALA NATIONAL TAX MOOT COURT
COMPETITION AND RESEARCH ON TAX**

Dear Member,

We have started this yearly event since 2004. We have successfully organized these mega event since 2004, with the help of members like you. Last year, 16 law colleges from all parts of our country participated in the competition. We are also encouraging law students to contribute a research paper on tax law. Last year's best & 2nd best research paper on subject "Transfer Pricing Regulation - Confluence & Conflict between India, OECD and other Countries - A Comparative Study" are published in January 2010 issue of our Journal.

Palkhivala Memorial National Tax Moot Court Competition is one of the prestigious yearly educational activity of the Federation and ITAT Bar Association, Mumbai for the development of Tax Bar of our country and introducing young lawyers to the field of Taxation.

The Seventh Moot Court Competition is scheduled to be held in the month of September, 2010. This year, we intend to send an invitation to 100 law colleges to contribute for Research Paper.

One of the unique advantages of this Moot Court Competition is that the law students have the privilege of arguing in the court rooms before the sitting members of ITAT. The performance of the students are judged by the Hon'ble

High Court Judges and the Hon'ble members of ITAT. All participants are presented certificates and the winning team gets the trophy.

At the inaugural session and valedictory session of last year's Moot Court Competition, the Judges and the members desired that as a tribute and remembrance to Shri Nani A. Palkhivala, we must continue to organize National Tax Moot Court Competition at Mumbai every year for benefit of the law students and development of the Tax Bar. In view of above, we made an appeal to the members that if we are able to get the support from at least 60 professionals to contribute additional subscription of Rs. 25,000/- each for five years, whom we can consider the "Patron members" of Palkhivala Memorial National Tax Moot Court Competition, then it would be possible to organize the National Tax Moot Court Competition for development of the Tax Bar for another five years, which can be reviewed thereafter.

We are happy to state that, few members of ITAT Bar Association, Mumbai have already volunteered to contribute for this noble cause. We once again make an appeal to you to contribute and associate with Palkhivala Memorial National Tax Moot Court Competition as "Patron member". We are sure, with the co-operation and active support from the members of the Federation & ITAT Bar Association, we would continue the educational course for another five years.

The yearly expenditure for organising The National Tax Moot Court Competition and Research on Tax would be approximately Rs. 11 lakhs (Rupees Eleven lakhs). As decided by the National Executive Committee, we appeal all members to contribute an amount of at least Rs. 300/- and above as their contribution, which would help for the development of tax bar and professional fraternity.

For All India Federation of Tax Practitioners

M. L. Patodi
National President

S. K. Poddar
Dy. President

J. K. Ranka
Secretary General

Nikita R. Badheka
Treasurer

Reminder

LIFE MEMBER – AIFTP JOURNAL SUBSCRIPTION 2010-11

Dear Members,

The AIFTP Journal is the mouthpiece of the All India Federation of Tax Practitioners and it is also a rich source of information for updating our members with the latest developments on Direct and Indirect Taxes.

The unique feature of our Journal is that every quarter, we publish the gist of important case laws reported in more than 30 tax magazines. We publish opinions of eminent professionals, thought provoking speeches of Hon'ble Judges of Apex Court and High Courts, important articles on Direct and Indirect Taxes, articles on Wealth Management and Answers by eminent professionals on various controversial issues. We also update members on judicial pronouncements by Supreme Court, various High Courts and Tribunals on direct & indirect taxes.

We are sure, our journal would definitely help you to keep you updated on latest case laws and development of law.

The AIFTP Journal subscription for the year 1st April, 2010 to 31st March, 2011 falls due for payment on 15th April, 2010.

You are requested to remit the amount of Rs. 400/- for one year or Rs. 1,000/- for three years by Cheque / Demand Draft by due date i.e., 15th April, 2010.

Thanking you,

Yours sincerely,
For All India Federation of Tax Practitioners

Nikita R. Badheka
Treasurer

Note :

1. Payment should be made by Account Payee Cheque/Demand Draft in favour of "All India Federation of Tax Practitioners"
2. Outstation members are requested to send payments only by Demand Draft payable at Mumbai drawn in favour of "All India Federation of Tax Practitioners".
3. An early payment of the subscription would be highly appreciated.
4. Please write your name on the reverse of Cheques/D.D.

Hearty Congratulations

Congratulations to the newly elected office bearers of the Income Tax Bar Association, Varanasi for the year 2010-11.

President	Shri Subhash Chand	Library Secretary	Shri Sanjay Verma
Vice President	Shri Vipin Shanker Gupta	Joint Secretary	Shri Kalyan Shukla
Secretary	Shri Ajai Kumar Singh (I)	Treasurer	Shri Ramesh Chand Pathak



List of Publications

Sr. No.	Name of Publication	Edition	Price		Courier Charges
			Members	Non-Members	
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
Western Zone					
4.	Co-operative Housing Society	Oct., 2006	160.00	180.00	40.00
5.	Tax Professionals' Manual	Dec., 2005	280.00	315.00	70.00

Notes:

1. The above publications are available for sale; those who desire to buy may contact the office of the Federation.
2. Outstation members are requested to add courier charges, as mentioned above.
3. Please draw separate Cheque/Draft in favour of "All India Federation of Tax Practitioners" payable at Mumbai for publications at Sr. Nos. 1 to 3 and separate Cheque/Draft in favour of "All India Federation of Tax Practitioners – Western Zone" payable at Mumbai for publications at Sr. Nos. 4 & 5

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.

Associate Editors of AIFTP Times : Mr. Kishor Vanjara & Mr. Deepak R. Shah

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