

# AIFTP TIMES

Volume 5 - No. 7 | July 2014

## FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
19-7-2014	Annual General Meeting (Northern Zone)	Ghaziabad
19-7-2014	Seminar on Union Finance Bill, 2014	Kolkata
26-7-2014	Annual General Meeting (Southern Zone)	Chennai
31-7-2014	Annual General Meeting (Western Zone)	Mumbai
16, 17-8-2014	Justice Dr. B. P. Saraf National Tax Moot Court Competition (Eastern Zone)	Kolkata
22-8-2014	National Executive Committee Meeting	Nagpur
23, 24-8-2014	National Tax Conference (Western Zone)	Nagpur
6-9-2014	One Day Tax Conference (Western Zone)	Anand
4 to 6-10-2014	3rd Residential Refresher Course (Western Zone)	Goa

## NOTICE TO MEMBERS

Notice is hereby given that the Annual General Meeting of the Members of All India Federation of Tax Practitioners (Northern Zone) will be held on Saturday, the 19th July, 2014 at A-102, Kabana Apartments, Windsor Park - Assotech, Indrapuram, Ghaziabad at 6.00 p.m. to transact following business:-

### AGENDA

- To read and approve the minutes of the last AGM.
- To receive and adopt the Annual Report of the Managing Committee (NZ) for the year 2013-14.
- To consider and adopt the audited accounts of the Federation (NZ) for the year ended 31st March, 2014.
- To appoint Auditors for the year 2014-15 and fix their honorarium.
- To transact any other business with the permission of the Chair.

Yours faithfully,  
For AIFTP (NZ)

Sd/-  
Hon. Jt. Secretaries

Place : Ghaziabad  
Date : 21-6-2014

Note: If there is no quorum by 6.00 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

### FOR ANY QUERIES MEMBERS MAY CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

Name	Mobile	Tel. (O)	Fax	E-mail
<b>National President</b> – J. D. Nankani, Adv.	9821034867	022-22841717	22831717	jagdish@nankanis.com
<b>Deputy President</b> – Dr. M. V. K. Moorthy, Adv.	9849004423	040-23228474	23261667	mvkmoorthy59@gmail.com
<b>Secretary General</b> – CA. Harish N. Motiwalla	9819422300	022-22002103	22094331	hnmotiwalla.ca@gmail.com
<b>Treasurer</b> – CA. Janak K. Vaghani	9324680306	022-22821978	-	janak.vaghani@gmail.com

## NOTICE TO MEMBERS

Notice is hereby given that the Annual General Meeting of the Members of All India Federation of Tax Practitioners (Southern Zone) will be held on Saturday, 26th July, 2014 at 5.30 p.m. at Rodary Centre, 3rd Floor, Air India Building, Marshallas Road, Egmore, Chennai – 600 006 to transact following business:-

### AGENDA

1. To read and approve the minutes of the AGM.
2. To receive and adopt the Annual Report of the Managing Committee (SZ) for the year 2013-14.
3. To consider and adopt the audited accounts of the Federation (SZ) for the year ended 31st March, 2014.
4. To appoint Auditors for the year 2014 - 2015 and fix their honorarium.
5. To transact any other business with the permission of the Chair.

Yours faithfully,  
For AIFTP (SZ)  
Sd/-  
**(G. Baskar)**  
Hon. Secretary

Place : Chennai  
Date : 28-6-2014

Note: If there is no quorum by 5.30 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

## NOTICE TO MEMBERS

Notice is hereby given that the Annual General Meeting of the Members of All India Federation of Tax Practitioners (Western Zone) will be held on Thursday, the 31st July, 2014 at 215, Rewa Chambers, 31, New Marine Lines, Mumbai – 400 020 at 6.30 p.m. to transact following business:-

### AGENDA

1. To read and approve the minutes of the AGM held on 19th July, 2013.
2. To receive and adopt the Annual Report of the Managing Committee (WZ) for the year 2013-14.
3. To consider and adopt the audited accounts of the Federation (WZ) for the year ended 31st March, 2014.
4. To appoint Auditors for the year 2014-15 and fix their honorarium.
5. To transact any other business with the permission of the Chair.

Yours faithfully,  
For AIFTP (WZ)  
Sd/-  
**(Pravin R. Shah)**  
Hon. Secretary

Place : Mumbai  
Date : 21-6-2014

- Note: 1. Accounts for the year ended on 31-3-2014 and the report of the Managing Committee for the Western Zone can be collected from the Office of the Federation from 25th July, 2014 onwards between 11.30 a.m. to 5.00 p.m. The accounts and report can be made available to the members through e-mail on request to the office.
2. If there is no quorum by 6.30 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

## Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of The Bhavnagar Income Tax Bar Association, Bhavnagar for the period 2014-16.

President : Shri Hitesh Rajyaguru  
Vice President : CA Ashwinbhai Patel  
Jt. Secretaries : Shri Rameshbhai Trivedi & Shri Hemantbhai Patel  
Treasurer : CA Anandbhai Parikh

We wish them all the success.

## SEMINAR ON UNION FINANCE BILL, 2014

You are cordially invited to attend Seminar on Union Finance Bill, 2014 jointly organized by All India Federation of Tax Practitioners (Eastern Zone) and The West Bengal National University of Juridical Sciences (WBNUJS) for analysis of Union Budget 2014-15 to be held on Saturday, the 19th July, 2014 at 3.00 p.m. at Ambedkar Bhavan, The West Bengal National University of Juridical Sciences, 12 LB Block, Sector - III, Salt Lake City, Kolkata - 700 098.

Prof. Dr. P. Ishwara Bhat, Vice-Chancellor, WBNUJS has kindly consented to preside over.

### Panelists

- |   |   |
|---|---|
| 1. Shri Nirmal Kumar Poddar, Senior Advocate    | 4. Shri Sanjay Kumar, Assistant Professor, WBNUJS |
| 2. Shri Narayan Jain, Advocate & Author         | 5. Shri S.M. Surana, Advocate                     |
| 3. CA Sanjay Bhattacharya, Chartered Accountant | 6. Shri Subhash Agarwal, Advocate                 |

CA Indu Chatrath, Chairman, Eastern Zone will be the moderator.

**N. D. Saha**

*Convenor*

**Abhishek Mishra - Arvind Agarwal**

*Co-convenors*

## Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Central Gujarat Chamber of Tax Consultants, Vadodara for the period 2014-15.

- President : Shri Bhaskar B. Patel  
Vice Presidents : Shri Bharat M. Swami & Shri Jagesh M. Shah  
Hon. Secretary : Shri Pranav M. Shah  
Hon. Jt. Secretaries : Shri Himanshu M. Vaghela & Shri Kaushik M. Vaidhya  
Hon. Treasurer : Shri Sanjay V. Patel  
Hon. Jt. Treasurer : Shri Nakulesh K. Patel

We wish them all the success.

Hearty Congratulations to the newly elected office bearers of Income Tax & Sales Tax Bar Association, Chandigarh for the period 2014-15.

- President : Shri Sushil Ghai  
Sr. Vice President : Shri Adarsh Vir Singh  
Vice Presidents : Shri Vijay Sharma & Shri Anil Kumar Verma  
General Secretary : Shri Ajay Gupta  
Secretary : Shri Abhay Sharma  
Joint Secretary : Shri Chetan Jain  
Finance Secretary : Shri Ishaan Malhotra

We wish them all the success.

## RENEWAL SUBSCRIPTION TO AIFTP JOURNAL

Dear Members,

We have posted bill for renewal subscription of AIFTP Journal on 3rd March, 2014. Members are requested to send the DD or Cheque in favour of "All India Federation of Tax Practitioners" payable at Mumbai as early as possible.

Members can also download the subscription Form 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**

**JANAK VAGHANI**

*Treasurer*

**Note: Members who have not paid the subscription for AIFTP Journal for the year 2014-15 will not receive the journal from July 2014 onwards.**

### Announcement

#### 3RD RESIDENTIAL REFRESHER COURSE at Goa (4th to 6th October, 2014)

All India Federation of Tax Practitioners – Western Zone is happy to announce a fun-filled 3rd Residential Refresher Course at Goa. The topics for discussion will cover Post Budget Developments in Direct & Indirect Taxation and their implications. The uniqueness of this RRC is to get insight into these latest developments in taxation in a true Goan atmosphere of fun & frolic!!!!

Details will be announced soon.

**DO BLOCK THE DATES IN ADVANCE FOR THIS REFRESHING OPPORTUNITY**

### Announcement

#### ONE DAY TAX CONFERENCE at Anand, Gujarat (6th September, 2014)

All India Federation of Tax Practitioners – Western Zone is pleased to announce One Day Tax Conference at Anand, Gujarat on Saturday, 6th September, 2014. The conference aims to cover the latest developments concerning Direct & Indirect Taxes, including the Post Budget scenario. The additional attraction will be visit to the world famous Amul Dairy - which is nearby - and also Madhuban Resort and Swaminarayan Temple, Vadtal.

The conference is jointly organised with

- (i) The Anand VAT Tax (Sales Tax) Bar Association
- (ii) Central Gujarat Chamber of Tax Consultants – Vadodara
- (iii) The Gujarat Sales Tax Bar Association
- (iv) All Gujarat Federation of Tax Consultants

The details of the programme will be announced soon.

**YOU ARE REQUESTED TO BLOCK THIS DATE FOR THIS UNIQUE OPPORTUNITY**



### JUSTICE DR. B. P. SARAF NATIONAL TAX MOOT COURT COMPETITION

It is our pleasure to inform all members of AIFTP that AIFTP (East Zone) is going to organise **Justice Dr. B. P. Saraf National Tax Moot Court Competition** in association with The West Bengal National University of Juridical Sciences (WBNUJS) on 16th and 17th of August, 2014 at the WBNUJS Campus, 12 LB, Salt Lake Sector III, Kolkata – 700 098 for the benefit of law students in India and to promote Moot in India. The subject is **Implications of section 263 of the Income-tax Act.**

We also invite your gracious presence in advance, at the National Tax Moot Court Competition to grace the occasion with other dignitaries. We request you to kindly block the dates to join the said national Moot Court at Kolkata. Please make your travel plan and inform us your arrival schedule. If you so desire we may make booking for Hotel or other accommodation near to the venue.

We request you to please contribute generously every year towards the fund for the National Tax Moot Court Competition.

#### Organising committee :

- i) Dr. Ashok Saraf, Senior Advocate, Taxation Advisor, Government of Tripura and Former Advocate General, Arunachal Pradesh (Co-Chairman)
- ii) Mr. Narayan P. Jain, Advocate Co-Chairman
- iii) Mr. Sheo Kumar Poddar, Advocate, Member

#### Ex-officio:

- i) Mr. Indu Chatrath, Zone Chairman  
09830495134
- ii) Mr. R.D. Kakra, Vice-Chairman
- iii) Mr. N. D. Saha, Zone Secretary 09830044321
- iv) Mr. Arvind Agarwal, Jt. Secretary
- v) Mr. Sandip Choraria, Member

## TWO DAY NATIONAL TAX CONFERENCE AT NAGPUR

ON 23RD AND 24TH AUGUST, 2014

**ORGANISED BY**

**ALL INDIA FEDERATION OF TAX PRACTITIONERS – WESTERN ZONE**

**JOINTLY WITH**

**THE SALES TAX PRACTITIONERS ASSOCIATION OF MAHARASHTRA, MUMBAI;  
SALES TAX BAR ASSOCIATION, NAGPUR &  
VIDARBHA TAX PRACTITIONERS ASSOCIATION, NAGPUR**

### Theme : Learn, Relax & Rejuvenate

All India Federation of Tax Practitioners (Western Zone) jointly with above organisations are pleased to announce Two Day National Tax Conference at Nagpur on 23rd and 24th August, 2014. The venue is "Suraburdi Meadows", which is a new and unique resort, spread over 35 acres, and is a lush green leisure destination with scenically located hillocks, winding roads and pristine lake water. This retreat destination having serene and tranquil atmosphere, is one of its kind in entire Central India. We strongly recommend all members not to miss this opportunity of learning with complete relaxation. In fact, we suggest all members to come with family one day in advance for total rejuvenation and have quality time with family (as no Idiot Box in rooms, so free from daily soaps)! We have negotiated attractive package for the delegates and their families.

Conference details are:

Days & Dates	:	Saturday, 23rd August, 2014 (Full Day) Sunday, 24th August, 2014 (Half Day) AIFTP - NEC Members - NEC Meeting on Friday 22nd Aug., 2014 - EVENING								
Venue	:	SURABURDI MEADOWS, Nagpur-Amravati Road, Near Suraburdi Lake, Waddhamna, Nagpur - 440 023 Maharashtra  Approx. 20 kms. from Nagpur Airport and also from Nagpur Railway Station (Nagpur is well connected with major cities by Air / Rail / Road. Details will be mailed to the requesting delegates)								
Delegate Fees	:	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"><b>Members of AIFTP, STPAM, STBA &amp; VTPA</b></td> <td style="width: 50%;"><b>Non-Members</b></td> </tr> <tr> <td>For Non-Residential Delegate – ₹ 3,000/- per person</td> <td>For Non-Residential Delegate – ₹ 4,000/- per person</td> </tr> <tr> <td>For Residential Delegate – ₹ 4,500/- per person</td> <td>For Residential Delegate – ₹ 5,500/- per person</td> </tr> <tr> <td colspan="2">For Accompanying Spouse / Family Member - ₹ 3,500/- per person. (Package deal inclusive of one night stay at the resort on twin sharing basis.)</td> </tr> </table>	<b>Members of AIFTP, STPAM, STBA &amp; VTPA</b>	<b>Non-Members</b>	For Non-Residential Delegate – ₹ 3,000/- per person	For Non-Residential Delegate – ₹ 4,000/- per person	For Residential Delegate – ₹ 4,500/- per person	For Residential Delegate – ₹ 5,500/- per person	For Accompanying Spouse / Family Member - ₹ 3,500/- per person. (Package deal inclusive of one night stay at the resort on twin sharing basis.)	
<b>Members of AIFTP, STPAM, STBA &amp; VTPA</b>	<b>Non-Members</b>									
For Non-Residential Delegate – ₹ 3,000/- per person	For Non-Residential Delegate – ₹ 4,000/- per person									
For Residential Delegate – ₹ 4,500/- per person	For Residential Delegate – ₹ 5,500/- per person									
For Accompanying Spouse / Family Member - ₹ 3,500/- per person. (Package deal inclusive of one night stay at the resort on twin sharing basis.)										

[The above rates are inclusive of two breakfast (23rd & 24th), two lunch (23rd & 24th) and gala dinner on 23rd night, along with Entertainment Evening. It also includes (for delegates) course material, tea & coffee during the Conference and delegate kit. For the spouses / family members, it includes sightseeing]

Delegates wishing to stay extra will get the same accommodation @ ₹ 1,500/- per person on twin sharing, excluding food charges.

The tentative schedule of the Conference is as under:-

#### DAY 1 – SATURDAY, 23RD AUGUST, 2014

9.30 a.m. to 10.00 a.m. –	Registration & Fellowship
10.00 a.m. to 10.45 a.m. –	Inaugural Session
10.45 a.m. to 12.00 noon –	<b>1st Technical Session</b>
Topic	– Service Tax Issues in Reverse Charge Mechanism & issues of CENVAT Credit under Service Tax
Paper Writer	– Mr. Jitendra Motwani, Advocate, Mumbai
Chairman	– Shri Bharat Ji Agrawal, Sr. Advocate, Allahabad

- 12.00 noon to 1.30 p.m.- **2nd Technical Session**  
Topic - Update on liability of Developers & Works Contractor  
Paper Writer - Shri Nitin S. Shah, Advocate, Pune  
Chairman - Shri Vinayak Patkar, Advocate, Mumbai
- 1.30 p.m. to 2.30 p.m.- Lunch Break**
- 2.30 p.m. to 3.45 p.m. - **3rd Technical Session**  
Topic - Issues of Inter-State Sales *vis-à-vis* Branch Transfer & practical difficulties & solutions  
Paper Writer - Shri H. C. Bhatia, Advocate, New Delhi  
Chairman - Shri P. C. Joshi, Advocate, Mumbai
- 3.45 p.m. to 4.00 p.m.- Tea Break**
- 4.00 p.m. to 5.15 p.m. - **4th Technical Session**  
Topic - Capital Gain *vis-à-vis* transactions in Immovable Property  
Paper Writer - CA. (Dr.) Girish Ahuja, New Delhi  
Chairman - Shri N. M. Ranka, Sr. Advocate, Jaipur
- ENTERTAINMENT PROGRAMME**
- 7.00 p.m. to 7.30 p.m. - Fellowship  
7.30 p.m. onwards - Musical Programme  
8.30 p.m. onwards - Gala Dinner

**DAY 2 – SUNDAY, 24TH AUGUST, 2014**

- 9.30 a.m. to 10.45 a.m. - **5th Technical Session**  
Topic - Deemed Income under sections 56(2), 68 & 69 of Income-tax Act, 1961  
Paper Writer - CA. Pradip Kapasi, Mumbai  
Chairman - CA. Jaydeep Shah, Nagpur, Past President, ICAI.
- 10.45 a.m. to 12.00 noon - **6th Technical Session**  
Topic - Input Tax Credit with special reference to Rules 53(6), 54(g) & 54(h)  
Paper Writer - CA. Kiran Garkar, Mumbai  
Chairman - CA. Ashok Chandak, Nagpur, Past President, ICAI.
- 12.00 noon to 12.15 p.m.- Tea Break**
- 12.15 p.m. to 1.30 p.m. - **Brains' Trust Session**  
Trustees - Shri Chandrakant J. Thakar, Advocate, Nagpur (Income Tax)  
- Shri S. K. Poddar, Advocate, Ranchi (Income Tax)  
- Shri Mukul Gupta, Advocate, Ghaziabad (Service Tax)  
- Smt. Nikita R. Badheka, Advocate, Mumbai (Sales Tax/CST)  
- Shri Vikram Nankani, Advocate, Mumbai (Service Tax, Excise)  
- Shri S. S. Gandhi, Advocate, Nagpur (Sales Tax/CST)
- 1.30 p.m. - Lunch**

**For further information, please contact the below Office Bearers:**

1. Vipul B. Joshi, Chairman, AIFTP - WZ (Mob.) 09820045569
2. Chirag S. Parekh, Vice Chairman, AIFTP - WZ (Mob.) 09821634128
3. Deepak R. Shah, Chairman, Education Committee, AIFTP - WZ (Mob.) 09820148536
4. Pravin R. Shah, Secretary, AIFTP - WZ (Mob.) 09821476817
5. Shailendra Jain, President, VTPA (Mob.) 09822720057
6. Mahesh Mundada, President, STBA, Nagpur (Mob.) 09423685325
7. Santosh Gupta, Chief Co-ordinator, Nagpur (Mob.) 09890033480
8. Sachin Gandhi, Vice President, STPAM (Mob.) 09821482020
9. Shashank Dhond, Hon. Secretary, STPAM (Mob.) 09821094250



## DIRECT TAXES

Ajay R. Singh, Rahul Hakani, Rahul Sarda and Ms. Neelam Jadhav  
Advocates, KSA Legal Chambers

### HIGH COURTS

#### 1. **S.2(47)(v): Transfer under a development agreement takes place on handing over possession – Capital gains are chargeable to tax even if no consideration is received by assessee**

In A.Y. 2003-04, the assessee entered into an agreement with Bhavya Constructions pursuant to which he agreed to transfer the land in consideration of the developer giving him four flats in the developed area. The assessee received a token advance and handed over possession of the land. The developer obtained the approval of the municipality to the plan for construction on the property. The AO held that the capital gains was assessable in A.Y. 2003-04 while the assessee claimed that the same was assessable in A.Y. 2004-05 when the consideration was received. The CIT(A) upheld the claim of the AO. The Tribunal held that as the assessee had handed over possession of the property to the developer, it was a clear case of transfer by exchange within the meaning of s.2(47)(v) r.w.s. 53A of the Transfer of Property Act. It was held that the fact that the consideration was received in a later year was not relevant.

Before the High Court the assessee's contention that no transfer takes place on the date of the agreement and handing over of possession if consideration is not received by the assessee is not acceptable because s. 53A of the Transfer of Property Act, 1882, which is engrafted in the definition of "transfer" in s. 2(47) of the Income-tax Act does not contemplate any payment of consideration. Payment of consideration on the date of agreement of sale is not required. It may be deferred for a future date. The element of factual possession and agreement are contemplated as transfer within the meaning of the aforesaid section. When the transfer is complete, automatically, consideration mentioned in the agreement for sale has to be taken into consideration for the purpose of assessment of income for the assessment year when the agreement was entered into and possession was given. The appellant is liable to pay tax on the capital gain for the said Assessment Year 2003-04.

*Potla Nageswara Rao v. DCIT (AP)(HC) (Source : itatonline.org)*

#### 2. **Expl. to s. 73: Speculation loss on transactions in derivatives can be set off against the gains of delivery shares**

In A.Y. 2005-06, The Assessee is a share broker, entered into derivatives in which it suffered losses, the said losses constituted "speculation loss" (prior to the

exclusion of derivatives from the ambit of speculative transactions under clause (d) of s. 43 (5) w.e.f. A.Y. 2006-07). The assessee claimed that the said speculation loss was eligible to be set-off against the income arising out of purchase and sale of shares. The Tribunal upheld the claim of the assessee.

The Hon'ble High Court in this case held that under the Explanation to s. 73 where any part of the business of a company consists in the purchase and sale of shares of other companies, such company shall, for the purposes of the section, be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares. Therefore, the entire transaction carried out by the assessee was within the ambit / umbrella of speculative transaction. There was, as such, no bar in setting off the loss arising out of derivatives from the income arising out of buying and selling of shares.

*CIT v. Baljeet Securities Pvt. Ltd (Cal.)(HC) (Source: www.itatonline.org)*

#### 3. **S. 271(1)(c): If in the assessment order, AO directs initiation of penalty on specific issues but not on others, he is not entitled to levy penalty on the other issues. [r.w.s. 271(1B)]**

S. 271(1)(c) empowers the AO, where he is satisfied in the course of any proceedings under the Act that the assessee had concealed the particulars of his income or furnished inaccurate particulars of such income, to direct the payment of penalty. Sub-section (1B) was inserted with retrospective effect from 1-4-1989 to provide that where any amount is added or disallowed in computing the total income or loss of an assessee and the assessment order contains a direction for initiation of penalty proceedings, such an order of assessment shall be deemed to constitute satisfaction of the AO for initiation of penalty proceedings under s. 271(1)(c). In order that the deeming fiction in sub-section (1B) must apply, two requirements must be fulfilled. The first requirement is that an amount must have been added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment. The second is that the order of assessment must contain a direction for the initiation of penalty proceedings under clause (c) of sub-section (1) of s. 271. Where both the conditions as aforesaid are fulfilled, the order of assessment must be deemed to constitute satisfaction of the AO for initiating penalty proceedings. In this case, it is abundantly clear that in respect of those heads where the AO considered it appropriate to initiate penalty proceedings u/s. 271(1)(c), he made a specific direction to that effect. In respect of the claim of

interest on the SDF loan, there is no direction by the AO. The absence of a reference to the initiation of proceedings u/s. 271(1)(c) is not an inadvertent omission since it is clear that in respect of several other heads, where the AO did consider it appropriate to initiate penalty proceedings, he made an observation to that effect. In fact, even in the concluding part of his order, the AO issued a direction for initiating penalty notice u/s. 271(1)(c) "as discussed above". The expression "as discussed above" is material because it refers to those heads in respect of which a specific direction was issued by him for initiating steps u/s. 271(1)(c). However, in the present case there is no direction whatsoever by the AO in respect of the specific head of interest on the SDF loan, on which the penalty was deleted by the Tribunal. This omission in the case of the SDF loan stands in sharp contrast to those items where the AO has specifically directed the initiation of penalty proceedings u/s 271(1)(c). The Hon'ble High Court held that penalty will not be levied u/s. 271(1)(c) in respect of the SDF loan.

*CIT v. Triveni Engineering & Industries Ltd (All.)(HC)*  
(Source:www.itatonline.org)

#### **4. S. 254: Order of the Appellate Tribunal – If a legal issue is raised (even for the first time) ITAT has the duty to deal with it and cannot remand it to lower authorities**

Before the Tribunal, the assessee raised an additional ground claiming that the penalty order was not valid as it had been passed on an assessee which was not in existence pursuant to an order of amalgamation. The Tribunal admitted the additional ground of appeal and held that as it had been raised for the first time, the matter should be remanded to the AO for fresh consideration. The assessee filed an appeal in the high Court claiming that as the issue was a legal one, the Tribunal ought to have decided the issue and not remanded it.

The Hon'ble High Court observed and held that the Tribunal should have answered the legal issue itself. The Tribunal was not prevented in any manner and in law from considering a purely legal issue for the first time, more so, if this legal issue goes to the root of the matter. The issue was an impact and legal effect of an order of amalgamation and winding up of the assessee thereto on the penalty proceedings have been initiated and were continuing. If they were initiated prior to the order of the winding up passed or the scheme of amalgamation being sanctioned, then, whether the subsequent act of an order sanctioning the scheme would permit continuation of the proceedings against an entity or company which is wound up and in terms of the provisions contained in the Act was, thus, a clear legal issue. It should have been answered by the Tribunal, particularly when it had admitted the question or ground and also the additional evidence filed by the assessee.

The Tribunal is a last fact finding Court and equally if it could have been approached by the assessee both on law and fact, then, in the given circumstances, the Tribunal should have answered this issue and its failure to do so can safely be termed as not performing its duty in law.

*Kansai Nerolac Paints Ltd. v. DCIT (Bom.)(HC)* (Source: www.itatonline.org)

#### **5. Assessee cannot be denied credit for TDS on the ground of Form 26AS mismatch because he is not at fault. Non-grant of TDS credit causes harassment, inconvenience & makes the assessee feel cheated. Dept. to pay interest + costs of ₹ 25,000**

The assessee filed a return in which he claimed a refund of ₹ 2.32 lakhs on account of excess TDS by the Government department. The return was processed by the Central Processing Centre (CPC) of the Income-tax Department at Bengaluru and a refund of only ₹ 43,740 was issued. No intimation was given to the assessee as to why the balance amount of ₹ 1.88,630 was not refundable. The assessee filed an application u/s 154 for rectification of the mistake and asked for refund of the balance amount. As there was no response from the department despite several reminders, the assessee filed a writ petition in the High Court.

The Hon'ble High Court held that:(i) the difficulty faced by the tax-payers relating to credit of TDS was considered directed to issue directions with regard to giving credit of unmatched and mismatched TDS certificates. Pursuant thereto, the CBDT issued Instruction No.5 of 2013 dated 8-7-2013 directing that where the assessee approaches the AO with requisite details and particulars in the form of TDS certificate as evidence against any mismatch amount the AO would verify whether or not the deductor had made payment of the TDS in the Government account and, in the event, the payment had been made, credit of the same would be given to the assessee.

(ii) On facts, no effort has been made by the AO to verify whether the deductor had made the payment of the TDS in the Government account. On the other hand, the IT department has shown helplessness in not refunding the amount on the sole ground that the details of the TDS did not match with the details shown in Form 26AS. There is a presumption that the deductor has deposited TDS amount in the Government account especially when the deductor is a Government department. By denying the benefit of TDS to the Petitioner because of the fault of the deductor causes not only harassment and inconvenience, but also makes the assessee feel cheated. There is no fault on the part of the Petitioner. The fault, if any, lay with the deductor. The mismatching is not attributable to the assessee. The department must refund the amount



with interest. The department must also pay costs of ₹ 25,000 to the Petitioner.

*Rakesh Kumar Gupta v. UOI (All.) (HC) (Source : www.itatonline.org)*

## TRIBUNALS

### **6. S.2(47)(v): Transfer in relation to Capital Assets : Despite handing over possession & receiving advance, development agreement is not a "transfer" for capital gains purposes if developer has not performed his part of the contract**

The assessee entered into a development agreement pursuant to which the developer agreed to develop the property according to the approved plan from the competent authority and deliver the owner 38% of the constructed area in the residential part to the assessee. The assessee also executed a power of attorney in favour of the developer and handed over vacant and peaceful possession of the entire land. The assessee received a refundable/adjustable advance from the developer. The developer also incurred an expenditure in building a boundary wall, etc. The AO held that the act of entering into the development agreement and handing over possession constituted a "transfer" u/s. 2(47)(v) and that the assessee was liable to capital gains u/s 45. This was upheld by the CIT(A).

The Hon'ble ITAT held that, A transaction is deemed to be a "transfer" u/s 2(47)(v) if the conditions of s. 53A of the Transfer of Property Act are satisfied. For s. 53A, 'willingness to perform' of the transferee is something more than a statement of intent; it is the unqualified and unconditional willingness on the part of the vendee to perform its obligations. Unless the party has performed or is willing to perform its obligations under the contract, and in the same sequence in which these are to be performed, it cannot be said that the provisions of s. 53A of the TOP Act will come into play. On facts, a reading of the 'Development Agreement-cum-General Power of Attorney' indicates that what was handed over by the assessee to the developer is only 'permissive possession'. The agreement specifically provides that the assessee has permitted the developer to develop the land and that the consideration receivable by the assessee from the developer is '38% of the residential part of the developed area'. That being so, it is only upon receipt of such consideration in the form of developed area by the assessee in terms of the development agreement, the capital gains becomes assessable in the hands of the assessee. Further, the facts show that even as on date, there was no developmental activity on the land. The process of construction has not been even initiated and no approval for the construction of the building is obtained. This is due to lapse on the part of the transferee. While the assessee has fulfilled its part

of the obligation under the development agreement, the developer has not done anything to discharge the obligations cast on it under the develop agreement. Mere receipt of refundable deposit cannot be termed as receipt of consideration. Consequently, s. 53A does not apply.

*Binjusaria Properties Pvt. Ltd v. ACIT (Hyd.)(Trib.) (Source : www.itatonline.org)*

### **7. S. 40(a)(ia) disallowance for failure to deduct TDS on payment if payee has offered amount to tax. Second Proviso to s. 40(a)(ia) inserted by Finance Act 2013 w.e.f. 1-4-2013 should be treated as curative and to have retrospective effect from 1-4-2005**

The assessee incurred expenditure on payment of interest on which TDS u/s 194A was not deducted. The AO applied s. 40(a)(ia) and disallowed the claim for deduction of the expenditure. And the same was confirmed by the CIT(A). Before the Tribunal the assessee argued that the second proviso to s. 40(a)(ia), inserted by the Finance Act 2012, should be treated as clarificatory & retrospective in nature and that as the recipients of the interest have already offered the interest to income, no disallowance u/s 40(a)(ia) could be made. The Hon'ble ITAT held that the scheme of s. 40(a)(ia) is aimed at ensuring that an expenditure should not be allowed as deduction in the hands of an assessee in a situation in which income embedded in such expenditure has remained untaxed due to tax withholding lapses by the assessee. It is not a penalty for tax withholding lapse but it is a sort of compensatory deduction restriction for an income going untaxed due to tax withholding lapse. S. 40(a)(ia), as it existed prior to insertion of second proviso thereto, went much beyond the obvious intentions of the lawmakers and created undue hardships even in cases in which the assessee's tax withholding lapses did not result in any loss to the exchequer. Now that the legislature has been compassionate enough to cure these shortcomings of provision, and thus obviate the unintended hardships, such an amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically, the insertion of second proviso must be given retrospective effect from the point of time when the related legal provision was introduced. Accordingly, it is held that the insertion of second proviso to section 40(a)(ia) is declaratory and curative in nature and it has retrospective effect from 1st April, 2005, being the date from which sub-clause (ia) of section 40(a) was inserted by the Finance.

*Rajeev Kumar Agarwal v. ACIT (Agra)(Trib.) (Source : www.itatonline.org)*



## INDIRECT TAXES

### SALES TAX

D. H. Joshi, Advocate

#### 1. INTERPRETATION OF STATUTES

In this case, the Apex Court was seized to interpret the scope and ambit of Section 4(2) of the Rajasthan Sales Tax Act, 1954, pertaining exemption of sales tax under the new incentive scheme for industries 1989, etc. While deciding the appeal against the judgment of the Rajasthan High Court, the Apex Court laid down the following legal principles :

##### A Rule of statutory construction

The specific governs the general is not absolute rule but is merely strong indication of statutory meaning that can be overcome by textual indications that point in the other direction. This rule is particularly applicable where the legislature has enacted comprehensive scheme and has deliberately targeted specific problems with specific solutions. A subject specific provision relating to a specific, defined and describable subject is regarded as an exception to and would prevail over a general provision relating to a broad subject.

##### B Interpretation of statutes

If in a Statutory Rule or Statutory Notification, there are two expressions used, one in general terms and the other in special words, under the rules of interpretations, it has to be understood that the special words were not meant to be included in the general expressions. Alternatively, it can be said that where a statute contains both a general provision as well as specific provision, the later must prevail. When a general law and special law dealing with some aspect dealt with by the general law are in question, the Rule adopted and applied is one of harmonious construction whereby the general law, to the extent dealt with by the special law, is impliedly repealed. This principle finds its origins in the latin maxim of "*Generalia specialibus non derogant*", i.e. general law yields to special law should they operate in the same field on same subject.

##### C Interpretation of statutes

The golden rule of interpretation is that words should be read in the ordinary, natural and grammatical meaning and the principle of harmonious construction merely applies the rule that where there is a general provision of law dealing with a subject, and a special provision dealing with the same subject, the special prevails over the general. If it is not construed in that way, the result would be that the special provision would be wholly defeated.

*CTO, Rajasthan v. Binani Cements Ltd. and Anr. (2014) 48 PHT 1 (SC)*

#### 2. JURISDICTION

It is a settled proposition of law that if the judgment is kept reserve for a long time, the deciding authority loses jurisdiction over the matter and there has to be a fresh hearing and adjudication of the issue involved.

*Pung Lloyds Ltd. v. State of Haryana (2014) 48 PHT 89 (HTT)*

#### 3. LIABILITY TO TAX

A. Implants of Stents or Valves used in surgical procedures like Angioplasty or heart surgery by Hospitals to Indoor patients – U.P. VAT Act, 2008 section 2(ac). Revenue emphasised that there was a contract between the patient and the hospital and it is a divisible contract where the sale element involving the "sale" of stent or valve to the patient was distinct from the surgical procedure. Against this backdrop, question before the HC was whether a "sale" within the meaning of section 2(ac) of the U.P. VAT Act, took place when a stent or valve was implanted in a patient in the course of surgical procedure in the hospital? On writ petition filed, High Court held "No, there was no sale element involved for the reason that in the Bill which was raised on the patient, the hospital recovers, apart from the cost of the surgery, charges towards drugs and other consumables would not render the transaction of the implantation of a stent or valve a "sale" within the meaning of section 2(ac). Reliance was placed on the Apex Court judgment in *BSNL v. UOI (2006) 3 SCC 1*. Accordingly, writ petition was allowed.

*International Hospital Pvt. Ltd. v. State of U.P. And 2 Ors. 2014 NTN (Vol. 55) 16 (All)*

B. 'Craft Board' – 'Craft Paper' question raised by Revisionist-Dept. whether Craft Board was covered by the entry of 'Paper of all kinds excluding newsprint' or 'Paper meant for writing, printing or packing purpose excluding newsprint. Held that dispute relates to 'Craft Board' and not that of 'Craft Paper'. Paper and Board are two different entities and the later cannot be included within the term 'Paper'.

*The Commissioner, C.T. v. Paswara Papers Ltd. (2014) NTN (Vol. 55) – 40 (All)*

#### 4. MASALA POWDER

The masala powder prepared after grinding and mixing of various spices and condiments in certain proportion is commercially a different commodity liable to be taxed.

*Kamala Enterprises v. Addl. Commr. of Commercial Taxes (2014) 48 PHT 98 (Kar.)*

## 5. PENALTY – IGNORANCE OF LAW

In this case, Himachal Pradesh Tax Tribunal was concerned with Sections 17(1), 17(3) and 17(4) pertaining to deduction of tax at source under H.P. Value Added Tax, 2005. While making payment to someone in respect of work done "Mens rea" to cause loss to the State Treasury was not proved. It is obligatory and failure to comply with it makes payer liable to be imposed with penalty u/s. 17(4) of the Act. The imposition of penalty being a quasi-criminal proceedings, the penalty can be imposed of the party liable to deduct the tax at source acted deliberately in defiance of law with conscious disregard of its obligation. When there is a technical or venial breach of law i.e. the provisions of the Act, by way of procedural lapse in complying with the section, the penalty leviable will be u/s 50 of the Act by way of fine of some amount. There is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement and there is no such maxim known in law. In particular situation, the above referred maxim may hold good, while in another, it may not.

*Akhnoor Hotel, Manali v. DETC-Cum-Appellate Authority, Mandi, H.P. (2014) 48 PHT 54 HPTT.*

## 6. PRE-DEPOSIT OF TAX

A. U/s 62(5) of the Punjab Value Added Tax Act, 2005, pre-deposit of 25% of the impugned additional demand prior to the initiation of the appeal before the Appellate Authority being obligatory, failure to deposit results in dismissal of the appeal without discussion on the merits of the case. The obligation, however, stands released where the assessment order appealed against is void *ab-initio* being time barred as per Section 29(4) of the Act, as no useful purpose would be served by insisting the assessee for making the prior payment of 25% before entertaining the appeal.

*Happy Industries v. State of Punjab (2014) 48 PHT 34 (PVT)*

B. Section 62(5) of the Punjab Value Added Tax Act, 2005 regarding pre-deposit of tax in peculiar circumstances i.e. the post of Punjab VAT Tribunal of Chairman lying vacant after retirement. Yet, payment of 25% deposit was insisted upon for hearing of appeal.

High Court in writ petition held that since the VAT Tribunal was not functioning after the retirement of its Chairman, the recovery of the same by coercive methods was stayed.

*P.K. & Company v. State of Punjab & Ors. (2014) 48 PHT 81 (P&S)*

## 7. PRE-DEPOSIT VIS-À-VIS ASSESSMENT TIME-BARRED

Section 62(5) of the PHT Act, 2005 r/w section 29(4A). The deposit of 25% of the demand created

before initiation of appeal before the First Appellate Authority. Held : No useful purpose would be served by requiring the assessee to first deposit 25% of the additional demand raised and then get the appeal decided declaring the assessment order being barred by limitation and without jurisdiction as per the provisions of Section 29(4A) of the Act. The assessment order being void *ab-initio*, the appellant-dealer was not required to comply with the mandatory provisions of Section 62(5) of the Punjab VAT Act, 2005.

*Josan Foods Pvt. Ltd. v. State of Punjab (2014) 48 PHT 111 (PVT)*

## 8. SALE AND WORKS CONTRACT – DISTINCTION

The Apex Court vide its Judgment dt. May 6, 2014 in the case of *Kone Elevator India Pvt. Ltd. v. State of Tamil Nadu & Ors.* by a majority judgment of 4 judges overruled its earlier judgment reported in (2005) 140 STC 222 (SC), while Justice Fakkir Mohamed Ibrahim Kalifulla, gave dissenting judgment. The majority judgment, in brief, held as under: -

- (i) A contract for manufacture supply and installation of lifts is a works contract and not a contract for sale.
- (ii) A lift has to be understood in the conceptual context of the manufacture and installation of a lift in a bldg. The lift basically comprises components like the lift car, motors, ropes, rails, etc.; having their own identity even prior to installation. Without installation, the lift cannot be mechanically functional because it is a permanent fixture of the bldg. having been so designed. Therefore, the installation of a lift in a building cannot be regarded as a transfer of a chattel or goods but a composite contract.
- (iii) There is a composite contract for the purchase and installation of the lift. The price quoted is a composite one for both. Various technical aspects go into the installation of the lift. There has to be a safety device. A lift is installed on certain norms and parameters keeping in view numerous factors. The installation requires considerable skill and experience. The labour and service element is obvious. The nature of the contracts clearly exposit that the contracts are for supply and installation of the lift where labour and service elements are involved. Individually manufactured goods such as the lift car, motors, ropes, rails, etc.; are components of the lift which are eventually installed at the site for the lift to operate in the building..... it would not be legally correct to make such a distinction in respect of lifts, for the contract itself profoundly speaks of the obligation to supply goods and materials as well as installation of the lifts, which obviously conveys performance of labour and service.

Hence, the fundamental characteristics of a works contract are satisfied.

- (iv) The 4 conceptual contexts of "works contract" are (a) the works contract is an indivisible contract but, by legal fiction, is divided into two parts, one for sale of goods, and the other for supply of labour and services; (b) the concept of "dominant nature test" or for that matter, "the degree of intention test" or "overwhelming test" for treating a contract as a works contract is not applicable; (c) the term "works contract" as used in clause (29A) of Article 366 of the Constitution takes in its sweep all genre of works contracts and is not to be narrowly construed to cover one species of contract to provide for labour and service alone; and (d) once the characteristics of a works contract are met in a contract entered

into between the parties, any additional obligation incorporated in the contract would not change the nature of the contract.

Simply put, contract for manufacture, supply and installation of lifts in a building is a "contract for sale of goods" or a "works contract". In case of the former, the entire sale consideration is taxable under the sales tax or value added tax enactments of the State Legislatures, whereas, in the latter case, the consideration payable or paid for the labour and service element is excluded from the total consideration received and sales tax or value added tax is chargeable on the balance amount.

*Kone Elevator India Pvt. Ltd. v. State of Tamil Nadu (2014) 71 VST 1 ST. Kone Elevator India Pvt. Ltd. v. State of Tamil Nadu (2014) 48 PHT 3 (Flash News)*



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