



All India Federation of Tax Practitioners

**Price ₹ 5/-**  
(For Members only)

# AIFTP TIMES

Volume 3 - No. 4

April, 2012

## FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
7, 8-4-2012	Two Day Conference on Taxation	Surat
14-4-2012	One Day Seminar on Taxation	Nellore
15-4-2012	One Day Seminar on Indirect Taxation	Meerut
12-5-2012	One Day Mega Seminar	Siliguri
1-6-2012	National Executive Committee Meeting	Kolhapur
2, 3-6-2012	National Tax Conference 2012	Kolhapur

## FEDERATION NEWS

Narayan P. Jain, Secretary General

### REPORT OF CENTRAL ZONE

#### SEMINAR ON INCOME TAX & CST AT INDORE

First half day seminar of the term 2012-13 of AIFTP (CZ) was organised on 7-1-2012 at Hotel Surya, Indore at 2 P.M. Mr. Jugal Satrawala, Vice Chairman, during his welcome speech informed that two days National Tax Conference may be organised in Chhattisgarh. Newly elected office bearers of the zone, National Executive Committee Member Shri Rajesh Joshi and the invited guests were welcomed by presenting flower bouquets by Shri B.L. Bansal, S. N. Ramnani, P. K. Dass, R. S. Goyal, P. R. Golecha, I. M. Sethiya, Dilip Patni, Vinod Jain, Rajeev Goyal, Pawan Jain and Mahesh Garg.

Shri S. C. Maheshwari (Chairman AIFTP, CZ) was the speaker on subject of section 40(a)(ia) of Income Tax Act and Shri R. S. Goyal was the speaker on subsequent sales u/s. 6(2) of C.S.T.

Vote of thanks was proposed by Shri Rajesh Mehta (Joint Secretary). Members from various parts S/Shri Paras Chhajed (Rajnandgao), I. M. Sethia (Chittodgar), P. R. Golecha (Raipur), Dilip Patni (Ratlam), K. S. Banthia (Bhopal), S. C. Goyal, P. K. Dass, Rajeev Goyal, Rajendra Sodani (Ujjain), M. C. Asawa, A. K. Mahajan (Dewas), S. N. Ramnani, Vinod Jain, Mahesh Garg, Rajesh Selot, Rajesh Gupta, Shweta Ajmera, Sanjay Vyas, Sunil Rakhecha from Indore were also present.

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

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## FELICITATION OF CCIT INDORE & DISCUSSION ON VARIOUS PROBLEMS

On the eve of new year 2012 members of All India Federation of Tax Practitioners (Central Zone) has welcomed Shri Surendra Kumar Mishra, Chief Commissioner of Income Tax, Indore on 2nd Jan. 2012 by presenting flower bouquets and informed him about various problems regarding mismatch of TDS data, pending application of rectification of mistakes, pending appeals, appeal effects, adjustment of old demands with current refunds, etc. Shri Mishra assured to solve the problems of the members. He also informed that C.P.C. Team from Bengaluru is coming in the month of Feb. 2012 which will solve major problematic issues.

## SEMINAR ON VAT ACT AT UJJAIN

All India Federation of Tax Practitioners (CZ) together with Tax Practitioners Association (T.P.A.), Ujjain has organised seminar under the Chairmanship of senior Advocate Shri R.L. Disawal (Chairman Study Circle Meeting T.P.A., Ujjain) on 3rd Feb., 2012 at Tax Bar Room, Bharatpuri, Ujjain.

Senior member of AIFTP, CA B.L. Bansal (Indore) was the speaker on subject "Input Tax (ITR), Purchase Tax & Tax on Building under M.P. VAT Act. Mr. Bansal discussed about various complications and penalties in case of wrong claim of Input Tax Rebate. National Executive Rajesh Joshi informed that looking to various problems (received from members) from the working of centralized processing centre, Bengaluru I have made complaints to CCIT, Indore as well as CBDT. In the last two meetings of Regional Direct Tax Advisory Committee at Indore, result of which Income Tax Department has organised one problem solving seminar on 10th February, 2012 at Indore. So please get benefit of the seminar by joining it.

Mr. Jugal Satrawala, Vice Chairman, M.P. requested all the members to join the 1st National Tax Conference 2012 organised at Guwahati on 17th and 18th March, 2012.

Vote of thanks was given by Mr. Jitendea Apte (Joint Secretary TPA, Ujjain). Mr. Vijay Navlakha, Rajendra Sodani, Rajesh Jain, P. K. Dass, Hemant Bhawalkar, Badruddin Lohawala, Deepak Shah, Subhash R. Maheshwari, Rajeev Goyal, S. C. Bansal were also attended the seminar.

## WORKSHOP ON CPC ISSUES ORGANISED BY INCOME TAX DEPT., INDORE

After noticing various complaints received from the members, Income Tax Department, Indore has organised one workshop on CPC issues 1st time in Madhya Pradesh by inviting Mr. Sanjay Verma C.I.T., CPC, Bengaluru & Mr. R.K. Mishra Additional CIT, CPC, Bengaluru on 10th February, 2012 at 2.30 P.M. at ICAI Bhawan, Indore.

On this occasion, CIT and Additional CIT, CPC were welcomed by presenting flower bouquet by Jugal Satrawala (Vice Chairman), Shri Rajesh Joshi (NEC Member), P. K. Dass, Anil Kumar Goyal, Dr. Rajesh K. Jain, Vijay Navlakha, B. L. Bansal and other members of the zone. Shri Rajesh Joshi has given memorandum of various common problems on CPC issues to CIT, CPC, Bengaluru. Many members of the zone from Indore, Ujjain, Ratlam, Shajapur, Dewas, Bhopal, Khargone, Khandwa, Neemuch solved their problems during query redressal session.



### SUBSCRIPTION RATES W.E.F. 1-4-2011

1.	Life Membership of the AIFTP				₹	2,500/-
	Subscription of AIFTP Journal (for 1 year)				₹	600/-
	Subscription of AIFTP Journal (for 3 years)				₹	1,500/-
2.	For Non-Members					
	Subscription of AIFTP Journal (for 1 year)				₹	800/-
	Subscription of AIFTP Journal (for 3 years)				₹	2,000/-
	Single copy of the AIFTP Journal				₹	50/-
3.	Corporate Membership					
	Nature of fees	Type I (5 Yrs.)	Type II (10 Yrs.)	Type III (15 Yrs.)	Type IV (20 Yrs.)	
		₹	₹	₹	₹	
	Admission	500/-	500/-	500/-	500/-	
	Subscription	5,000/-	7,500/-	11,500/-	15,000/-	
	Total	5,500/-	8,000/-	12,000/-	15,500/-	

Note: Members may download the membership form from the website of AIFTP, i.e., [www.aiftponline.org](http://www.aiftponline.org)

## ONE DAY SEMINAR ON INDIRECT TAXATION

Organised by  
**ALL INDIA FEDERATION OF TAX PRACTITIONERS - NORTHERN ZONE**

In association with  
**TAXATIO ACADEMIC & WELFARE FORUM ASSOCIATION WESTERN UTTAR PRADESH (REGD.)**

at  
WESTERN U.P. CHAMBER OF COMMERCE HALL BOMBAY BAZAR, MEERUT

On  
**15th April, 2012 (Sunday)**  
From 9.00 a.m. to 4.30 p.m.

- 9.00 a.m. to 10.00 a.m. : Breakfast & Registration
- 10.00 a.m. to 1.30 p.m. : Inaugural Session & First Session :
- Chief Guest : Hon'ble Mr. Justice Pankaj Mithal, Judge,  
Allahabad High Court
- Guest of Honour: Mr. A. H. Khan, H.J.S., President, Commercial Tax Tribunal  
UP, Lucknow
- President : Mr. Bharat Ji Agrawal, Sr. Advocate & Past President, AIFTP
- First Session : Procedural, Legal & Critical Analysis of Sec 6A of Central  
Sales Tax Act & appellate procedure for appeal before  
Central Appellate Authority under Central Sales Tax Act
- Chairman : Hon'ble Mr. Justice Pankaj Mithal, Judge,  
Allahabad High Court
- Co-Chairmen : Mr. A. H. Khan, H.J.S., President, Commercial Tax Tribunal,  
UP, Lucknow  
Mr. P. S Sarin, Advocate, Delhi
- Speakers : Smt. Nikita R. Badheka, Advocate, Mumbai  
Mr. H. C. Bhatia, Advocate, Delhi
- Summing up by Expert Commentator – Shri Bharat Ji Agarwal, Sr. Advocate  
Question & Answer  
Vote of thanks
- 1.30 p.m. to 2.30 p.m. : Lunch Break
- 2.30 p.m. to 4.30 p.m. : Second Session:  
Procedural & Legal aspect of Input Tax Credit under UP VAT Act
- Chairman : Hon'ble Mr. Justice Pankaj Mittal, Judge,  
Allahabad High Court
- Co-Chairman : Mr. Balram Sangal, Advocate, Delhi
- Speakers : Mr. Mukul Gupta, Advocate, Ghaziabad  
Mr. Piyush Agarwal, Advocate, Allahabad
- Summing up by Expert Commentator – Shri Sushil Verma, Advocate, Delhi  
Question & Answer  
Vote of thanks

**DELEGATE FEE : ₹ 500/-**

*For Details & Registration please contact :*

- Mr. N. K. Arora, Chairman – North Zone 9837033171  
Mr. V. P. Gupta, Chairman - Seminar & Education Committee (NZ) - 9810052890  
Mr. Rakesh Agrwal – Secretary (NZ) – 9811118109  
Mr. Arun Kumar Jain, Chief Convenor – Taxatio – Meerut – 9412061321  
Mr. Bharat G. Bhushan, General Secretary – Taxatio – Meerut – 9837060046  
Mr. K. M. Gupta, Convenor, Seminar – Taxatio – Ghaziabad – 9818168500

## TWO DAY NATIONAL TAX CONFERENCE

Organised by

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

and

**THE SALES TAX PRACTITIONERS ASSOCIATION OF MAHARASHTRA**

At Pavilion Hotel, Kolhapur on (Friday) 1st, (Saturday) 2nd & (Sunday) 3rd June, 2012

### PROGRAMME DETAILS

#### 1st June, 2012 (Friday)

- 3.30 p.m. to 4.30 p.m. : Tea & Registration  
4.30 p.m. to 5.15 p.m. : Inauguration of Conference  
5.15 p.m. to 6.15 p.m. : Intricate issues of Finance Bill, 2012 - Direct Taxes  
Mr. S. N. Inamdar, Sr. Advocate, Mumbai\*  
06.30 p.m. onwards : NEC Meeting followed by Dinner.

#### 2nd June, 2012 (Saturday)

- 8.30 a.m. to 9.30 a.m. : Breakfast  
9.30 a.m. to 11.00 a.m. : **1st Technical Session**  
Subject : Some intricate issues of TDS  
Chairman : Mr. Bharatji Agrawal, Sr. Advocate, Allahabad  
Keynote Speaker : Mr. N.P. Jain, Advocate, Kolkata  
Paper Writer : CA Harish Motiwalla, Mumbai  
11.00 a.m. to 12.30 p.m. : **2nd Technical Session**  
Subject : Recent Amendments in MVAT Act and Issue based audit  
Chairman : Mr. S. S. Gaitonde, Advocate, Mumbai  
Keynote Speaker : Dr. Ashok Saraf, Sr. Advocate, Guwahati  
Paper Writer : Mr. Deepak Bapat, Advocate, Mumbai  
12.30 p.m. to 1.30 p.m. : Lunch  
1.30 p.m. to 5.00 p.m. : **3rd Technical Session**  
**Construction Industry**  
*Important Issues under the CST Act and Issues relating to Construction Industry*  
Chairman : Mr. P.V. Surte, Advocate, Mumbai  
Paper Writer : Mr. Ashvin Acharya, Advocate, Mumbai  
*Issues under Income-tax Act*  
Chairman : Dr. K. Shivaram, Advocate, Mumbai  
Keynote Speaker : Dr. M.V.K. Murthy, Advocate, Hyderabad  
Paper Writer : Mr. Vipul Joshi, Advocate, Mumbai  
*Issues under Service Tax*  
Chairman : Mr. V. Sridharan, Sr. Advocate, Mumbai  
Keynote Speaker : Mr. M.L. Patodi, Advocate, Kota  
Paper Writer : C.A. Sagar Shah, Pune  
4.30 p.m. to 7.30 p.m. : Free time for shopping and sightseeing  
7.30 p.m. onwards : Cultural Programme followed by Dinner

#### 3rd June, 2012 (Sunday)

- 8.30 a.m. to 9.30 a.m. : Breakfast  
9.30 a.m. to 11.00 a.m. : **4th Technical Session (Service Tax)**  
Subject : Recent amendments under Service Tax  
Chairman : CA S.S. Gupta, Mumbai  
Paper Writer : CA Pranav Mehta, Mumbai  
11.00 a.m. to 1.00 p.m. : Brains' Trust Session  
Chief Co-ordinator : Mr. S. K. Poddar, Advocate, Ranchi  
Trustees : Mr. P. C. Joshi, Advocate, Mumbai; Mr. N. M. Ranka, Sr. Advocate, Jaipur; Mr. S. R. Wadhwa, Advocate, New Delhi; Mr. Vikram Nankani, Advocate, Mumbai; Mrs. N. R. Badheka, Advocate, Mumbai; Mrs. S. S. Rangnekar, Advocate, Mumbai; Mr. C. B. Thakar, Advocate, Mumbai  
1.00 p.m. to 2.00 p.m. : Lunch and Disburse

\* Subject to confirmation

**Note:** The subjects /issues covered may be varied keeping in mind the amendments proposed in Finance Bill.

**Delegate Fees:** ₹ 2,000/- for Members, ₹ 2,500/- for Others (includes material, two breakfasts & two Lunch)  
₹ 1,250/- for Accompanying Spouse (includes two breakfasts & two Lunch)

Cheque / Draft may be drawn in favour of "All India Federation of Tax Practitioners – Western Zone" payable at Mumbai. Outstation members are requested to pay the amount by DD only.

**For further details, please contact:**

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Mr. Raj Shah, Travel Arrangement Co-ordinator

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## ONE DAY SEMINAR ON TAXATION

*Organised by*

**ALL INDIA FEDERATION OF TAX PRACTITIONERS - SOUTHERN ZONE**

at HOTEL D.R. UTHAMA, NELLORE.

on **14th April, 2012 (Saturday)**

From 9.00 a.m. to 5.30 p.m.

9.00 a.m. to 9.30 a.m. : Breakfast & Registration

9.30 a.m. to 10.30 a.m. : **Inaugural Session**

Chief Guest : Hon'ble Justice Shri Gulam Mohammed, Judge, AP High Court

10.30 a.m. to 12 noon : **First Session**

Topic : Liability of Companies vis-à-vis Directors under Sales Tax & Income-tax Act

Speaker : Shri G. Lakshmi Prasad, Addl. Commissioner (CT), Hyderabad

Chairman : Shri J. V. Rao, Advocate, Hyderabad

12.00 noon to 12.15 p.m. : Tea Break

12.15 p.m. to 1.30 p.m. : **Second Session**

Topic : Amalgamation of companies and Tax implications and applicability of APVAT on SEZ units

Speaker : Dr. Anitha Sumanth, Advocate, Chennai

Chairman : Shri A. Md. Imtiaz, Dy. Commissioner (CT), Nellore.

1.30 p.m. to 2.30 p.m. : Lunch Break

2.30 p.m. to 4.00 p.m. : **Third Session**

Topic : Scope and levy of Service Tax on Works Contract and GTA Services with particular reference to SEZ

Speaker : CA T. R. Rajesh Kumar, Bengaluru

Chairman : Dr. M. V. K. Murthy, Advocate, Hyderabad

4.00 p.m. to 4.15 p.m. : Tea Break

4.15 p.m. to 5.30 p.m. : **Fourth Session**

Brains' Trust Session (APVAT & CST)

Shri G. Venkateswarlu, JC (CT), Shri A. Md. Imtiaz, DC (CT)

Shri Markandeya Sharma, DC (CT)

DELEGATE FEE : Corporate Delegates - ₹ 500/-

Non-corporate Members - ₹ 300/-

**For Registration please contact**

Shri M. P. Prasad - 9849056784 & 08612346888 • Shri Sahajananda Reddy - 9885777629

## ONE DAY MEGA SEMINAR

Organized by

**AIFTP (Eastern Zone)**

jointly with

**SILIGURI TAXATION BAR ASSOCIATION and SILIGURI BRANCH OF EIRC OF ICAI**

at Siliguri on Saturday, 12th May, 2012

Venue: ORBIT HOTEL, 3rd MILE, SEVOKE ROAD, SILIGURI

10.00 a.m. – 11.30 a.m. : Inauguration Session

11.30 a.m. – 1.30 p.m. : **1st Technical Session**

a) TDS, TCS and other key proposals in Union Budget, 2012

b) Section 271(1)(c) read with Section 132(4) of I.T. Act

2.30 p.m. – 4.00 p.m. : **2nd Technical Session**

VAT ON WORKS CONTRACT

4.30 p.m. – 6.00 p.m. : **3rd Technical Session**

SERVICE TAX ON CONSTRUCTION AND POINT OF TAXATION

Speakers include:

**Shri Bharatji Agrawal**, Sr. Advocate, Allahabad,

**Dr. Ashok Saraf**, Sr. Advocate, Guwahati;

**Shri Narayan P. Jain**, Advocate, Kolkata;

**CA S. Venkataramani**, Bengaluru;

**Shri Piyush Agrawal**, Advocate, Allahabad;

**Shri Sandeep Choraria**, Advocate, Kolkata;

**Shri Deepak Jain**, Advocate, Kolkata, etc.

**Delegate fee:** ₹ 500/- only (including KIT, Tea and Lunch)

*For Registration please contact:*

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### SILIGURI AT A GLANCE

Siliguri is known as gateway of North Eastern states and second to Kolkata. It is surrounded by lush green Area and rivers. One can visit the tourist place of Sikkim, Darjeeling, Kalimpong, Mirik, Jaldapara Wild sanctuary, Country of Bhutan and Nepal. One can witness beautiful SUNRISE at Darjeeling and wild life animals at Jaldapara Wild life sanctuary, Elephant ride through the dense forest of Jaldapara wild life sanctuary. It is well connected with Rail and Air.

<b>Name of Hotel</b>	<b>Rate Tariff</b>	<b>Telephone Nos.</b>
HOTEL SALUJA	₹ 250 to ₹ 750 Non-AC / ₹ 900 to ₹ 1,050 AC	2431684/2431689
RANJIT HOTEL	₹ 525 to ₹ 625 Non-AC / ₹ 780 to ₹ 880 AC	2431680/539/565/703
SALUJA RESIDENCY	₹ 1,400 to ₹ 1,600 AC	2431683/682/70

**DIRECT TAXES**

**Ajay R. Singh, Paras Savla, & Rahul Hakani**  
Advocates, KSA Legal

**SUPREME COURT**

**1. S. 9 : Income deemed to accrue or arise in India - Transfer of shares of foreign company-Offshore transaction tax authorities in India has no jurisdiction to split payment**

Pursuant to the judgment in *Vodafone International Holdings B.V. vs. UOI (2012) 341 ITR 1(SC)*, holding that Vodafone was not liable to pay capital gains on the transfer of shares, the Union of India filed a review petition in the Supreme Court seeking a review of the aforesaid judgment. Held by the Supreme Court dismissing the review petition:

"We have carefully gone through the review petition filed by the Union of India on 17th February, 2012. We find no merit in the review petition. The review petition is, accordingly, dismissed. Review Petition dismissed."

*UOI v. Vodafone International Holding (Review Petition)(SC) www.itatonline.org*

**2. 36(1)(vii) : Business expenditure - Bad debts - Banks are entitled to bad debts and provision for doubtful debts - Both deductions - S. 36(1)(viii)**

The clear legislative intent of Ss. 36(1)(vii) & 36(1)(viii) together with the circulars issued by the CBDT demonstrate that the deduction on account of provision for bad and doubtful debts u/s 36(1)(viii) is distinct and independent of s. 36(1)(vii) relating to allowance of bad debts. The legislative intent was to encourage rural advances and the making of provisions for bad debts in relation to such rural branches. The functioning of such banks is such that the rural branches were practically treated as a distinct business, though ultimately these advances would form part of the books of account of the head office. An interpretation which serves the legislative object and intent is to be preferred rather than one which subverts the same. The deduction u/s 36(1)(vii) cannot be negated by reading into it the limitations of s. 36(1)(viii) as it would frustrate the object of granting such deductions. The Revenue's argument that this would lead to double deduction is not correct in view of the Proviso to s. 36(1)(vii) which provides that in respect of rural advances, the deduction on account of the actual write off of bad debts would be limited to excess of the

amount written off over the amount of the provision which had already been allowed u/s 36(1)(viii)

*Catholic Syrian Bank Ltd. v. CIT (SC) www.itatonline.org*

**HIGH COURTS**

**3. S. 2(22)(e) : Dividend - Deemed dividend - Credit balances in the normal course of business cannot be assessed as deemed dividend**

Assessee has filed the confirmation and copies of accounts showing that the amounts representing in the accounts were receipts due to the appellant, in the normal course of business dealings with these companies. The court held that receipts from these companies cannot be treated as deemed dividend.

*CIT v. Francies Waczirag (2012) 66 DTR 453 (Delhi) (High Court)*

**4. S. 4 : Income - Capital or revenue receipt - Acquisition of land - Award - Interest received till date of award is capital receipt**

The assessee's land was taken by the agreement on October 31, 1998 and the award was passed on March, 29, 1992. The Assessing Officer took the view that interest was a revenue receipt. The Commissioner (Appeals) and Tribunal held that the interest was a capital receipt. On appeal to the High Court, the Court held that the interest paid, for the period 1-11-1998 up to 20-3-1992 must be treated as a capital receipt.

*CIT v. V. Subbaraju (2012) 341 ITR 584 (AP) (High Court)*

**5. S. 9(1) (vi) : Income deemed to accrue or arise in India - Royalties and fees for technical services - Non-resident - Production and distribution of films - As the assessee did not have any permanent establishment in India income arising outside Indian Territories could not be brought to tax as business income - DTAA-India-USA (Article 12).**

Assessee was a non-resident company having business in production and distribution of films. It entered into an agreement with an Indian company, WBPIPL whereby the assessee granted exclusive

rights of distribution of cinematographic films on payment of royalty. The assessee received certain sum as royalty. WBPIPL deducted the tax at source while remitting the amount. The assessee filed the return and claimed the refund of tax deducted at source. The Assessing Officer held that the royalty received was taxable as per Article 12(2), at 15%. The Commissioner (Appeals) held that royalty received was not taxable. The Tribunal held that assessee did not have any permanent establishment in India, income in question arising outside Indian Territories could not be brought to as business income. (A.Y. 2006-07)

*ADIT (International) v. Warner Brother Pictures Inc (2012) 49 SOT 438 (Mum.) (Trib.)*

**6. S. 14A : Business expenditure - Exempted income - Shipping business - Company - Book profit-Tonnage tax - When income is computed as per provisions of Chapter XII-G disallowance under section 14A cannot be made. (S. 115VP)**

Assessee is a company engaged in the business of hiring and operation of ships opted for assessing the income as per provisions of section 115VP. During the relevant year the assessee received the dividend income was claimed as exempt under section 10(34). Assessing Officer disallowed the expenditure by applying the provisions of section 14A read with Rule 8D. Tribunal held that when the income is computed in accordance with the provisions of Chapter XII-G, no separate disallowance can be made under section 14A. (A.Y. 2008-09)

*Varun Shipping Company Ltd. v. Addl. CIT (2012) 134 ITD 339/ 66 DTR 390/144 TTJ 286 (Mum.) (Trib.)*

**7. S. 23 : Income from house property - Annual value - Option of choosing property for claiming exemption is with assessee, Assessing Officer cannot thrust his choice on assessee**

The assessee was in occupation of three properties. In the return of income the assessee mentioned address of Malviya Nagar property as self occupied property. During assessment proceedings the assessee stated that Greater Kailash property was self occupied property. The Assessing Officer held that property at Greater Kailash was lying vacant for so many months hence he estimated the rent at ₹ 50,000 per month and estimated the annual value at ₹ 6 lakh. In Appeal the Commissioner (Appeals), confirmed the order of Assessing Officer. On appeal to the Tribunal, the Tribunal held that provisions of section 23(4), provide option to assessee to choose any one property mentioned in sub-section (2) of section 23 as self occupied property and no restrictions can be put on such option. The Assessing Officer cannot thrust upon his choice on assessee.

*Deepak Kapoor v. ITO (2012) 49 SOT 701 (Delhi) (Trib.)*

**8. S. 28(i) : Business loss - Loss on sale of properties - Loss on purchase and sale of properties is allowable as business loss**

The Tribunal held that the purchase and sale of land and flat are necessarily parts of the regular business carried on by the assessee, the loss arising out of sale of those assets should be considered as the loss incurred on its regular business hence allowable as business loss.

*ACIT v. Madeena Constructions (2012) 134 ITD 1/67 DTR 1/ 14 ITR 14/ 144 TTJ 137 (Chennai)(TM) (Trib)*



**LIST OF PUBLICATIONS**

Sr. No.	Name of Publication	Edition	Members	Price		Courier Charges
				Non-Members		
1.	Wills & Bequests - Strategies - 151 Questions & Answers with 6 Specimens	Jan., 2011	160.00	180.00		50.00
2.	Media & Entertainment Industry (Normal Bound)	Dec., 2009	280.00	315.00		80.00

**Notes:**

- The above publications are available for sale; those who desire to buy may contact the office of the Federation.
- Local/Outstation members not collecting from office are requested to add courier charges, as mentioned above.
- Please draw Cheque/Draft in favour of "All India Federation of Tax Practitioners" payable at Mumbai for above publications.



## INTERNATIONAL TAXATION

CA Dhanesh Bafna, CA Madhav Khandelwal, Sujeeth Karkal, *Advocate*

### SUPREME COURT

#### 1. Indirect transfer of shares – S. 9(1)(i) – Income-tax Act, 1961

The review petition filed by the Revenue before the Supreme Court, in the case of *Vodafone International B. V. vs. UOI (341 ITR 1)* has been dismissed by the Supreme Court stating as follows:

"We have carefully gone through the review petition filed by the Union of India on 17th February, 2012. We find no merit in the review petition. The review petition is, accordingly, dismissed."

*UOI v. Vodafone International Holdings (SC)*(source: itatonline.org)

### AUTHORITY FOR ADVANCE RULINGS

#### 2. Buy-back of shares – S. 46A r.w.s. 47(iv) – Income-tax Act, 1961

The Authority, for taxability of buy-back of shares by the Indian company from the Parent Company (appellant), a resident of Germany, ruled as follows:

- i. S. 46A, which deals with the capital gain taxability in the case of a buy-back, is a special provision and thus, it would prevail over S. 45. S. 47 overrides S. 45 but it does not override S. 46A. Therefore, the result is that even if the exemption in S. 47(iv) is held applicable, it does not override S. 46A and the applicant will be subject to capital gains in India.
- ii. For the purpose of S. 47(iv), which exempts a transfer of a capital asset by a company

to its subsidiary if "the parent company or its nominees hold the whole of the share capital of the subsidiary company", the shares held by the nominees of the assessee company cannot be considered as held by the assessee company. Furthermore, the nominees also cannot be regarded as trustees in view of S. 153 of the Companies Act. Thus, the result is that if the applicant does not hold 100% of the share capital of the subsidiary, the beneficial provisions of S. 47(iv) cannot be applied.

*RST, In re (2012-TII-12-ARA-Intl)*

### TRIBUNAL

#### 3. Proceedings against payer if payee not assessed – S. 201(1)/(1A) – Income-tax Act, 1961

The Tribunal held that no order under S. 201(l) or (1A) holding the payer to be an assessee in default can be passed if the Revenue has failed to take any action against the payee and also, the time limit for taking action against the payee under S. 147 has expired. Admittedly, in the present case, no assessment had been made in the hands of the payee in respect of the sums received from the assessee for Global Depository Receipts, and the time limit for issuing notice under S. 148 has also come to an end. Therefore, no lawful order can be passed against the assessee either under S. 201(1) or (1A).

*Crompton Greaves Ltd. v. DCIT (ITAT Mumbai)* (source: itatonline.org)



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**For ALL INDIA FEDERATION OF TAX PRACTITIONERS**

**HARISH N. MOTIWALLA**

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## An Appeal to Contribute to Ninth Palkhivala National Tax Moot Court Competition and Research on Tax

Dear Members,

Shri Palkhivala had immensely contributed for the development of tax laws. As a remembrance to him, the All India Federation of Tax Practitioners, in association with ITAT Bar Association and Government Law College, Mumbai have since the past eight years been organizing annually National Tax Moot Court Competition at Mumbai in the month of October. It is heartening to note that the Judiciary, Members of ITAT, Eminent Professionals are guiding the law students in the study of tax laws and development of tax practice. The Ninth Moot Court Competition is scheduled to be held in the month of September/October, 2012.

Palkhivala Memorial National Tax Moot Court Competition is one of the prestigious yearly educational activities of the Federation and ITAT Bar Association, Mumbai for the development of Tax Bar of our country.

We have started this yearly event in 2004. We have successfully organized these mega events with the help of members like you. Last year, 26 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 research paper on subject "Piercing the Corporate Veil in Taxation Matters (India & International Transactions with special reference to the Direct Tax Code" was published in October, 2011 issue of our Journal.

This year, we intend to send an invitation to 100 law colleges to contribute for Research Paper.

One of the unique advantage of this Moot Court Competition is that the law students have the privilege to arguing before the sitting members of ITAT in the court rooms. The performance of the students are judged by the Hon'ble High Court Judges and the Hon'ble members of ITAT. All participants are being presented the certificates and trophy to a winning team.

At the inaugural session and valedictory session of last year's Moot Court Competition, the Judges and many members desired that as a tribute and remembrance to Shri Nani A. Palkhivala, we should 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 ₹ 25,000/- each for two 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 two 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 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 two years.

The yearly expenditure for organising The National Tax Moot Court Competition and Research on Tax would be approximately ₹ 12 lakhs (Rupees Twelve lakhs). We appeal all members to contribute an amount of **at least ₹ 500/- and above** as their contribution, which would help for the development of tax bar and professional fraternity.

**For ALL INDIA FEDERATION OF TAX PRACTITIONERS**

**S. K. Poddar**  
National President

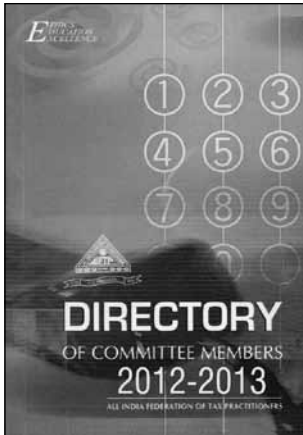
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This time the National Executive Committee has decided to publish AIFTP Directory of National/Zonal Committees with photographs of all members of National/ Zonal Committees.

The concerned members of National Executive Committee and the members of Zonal Managing Committees (through their respective Zonal Chairmen) are requested to send their colour passport size photograph to Mr. Ravindra Patade at the National Secretariat at Mumbai by 15th April, 2012 so that the Directory can be published without further delay. You may also email it to aiftp@vsnl.com.

Your co-operation is solicited in the matter.

Sd/-  
**NARAYAN JAIN**  
Secretary General

*Non-receipt of the Times must be notified within one month from the date of publication, which is 4th of every month.*

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