



All India Federation of Tax Practitioners

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AIFTP TIMES

Volume 3 - No. 2

February, 2012

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
4, 18-2-2012, 17, 31-3-2012	Workshop on MVAT & Allied Laws	Mumbai
3, 4-3-2012	Two Day Tax Conference	Surat
16-3-2012	National Executive Committee Meeting	Guwahati
17, 18-3-2012	Two Day National Tax Conference	Guwahati
2, 3-6-2012	National Tax Conference 2012	Kolhapur

FEDERATION NEWS

Narayan P. Jain, Secretary General

ALL INDIA FEDERATION OF TAX PRACTITIONERS (NORTHERN ZONE), VARANASI DIVISION

REPORT

Shri Prakash Gupta, Advocate, Varanasi

A first Study Circle for the new session 2012-13 of AIFTP (NZ) Varanasi Division was organized under the Chairmanship of Senior Advocate Shri Arvind Shukla, President, Income Tax Bar Association, Varanasi at Hotel Radisson, Varanasi on 7-1-2012 at 7.00 p.m followed by dinner.

On this occasion, first of all, the heartiest congratulations were given to Shri Om Prakash Shukla, Advocate and Shri Prakash Gupta, Advocate for their selection in Executive Committee of AIFTP. A token of love in form of bouquet given to Shri Om Prakash Shukla by Shri Ratan Chand Verma, Advocate, Ex-President of ITBA, Varanasi and to Shri Prakash Gupta by Shri Harsh Singh, Advocate Ex-Vice President of ITBA, Varanasi.

On this occasion Shri O.P. Shukla told that to increase the strength of the Federation we should try to organise at least one work shop in each month in our nearby places such as Mirzapur, Ghazipur, Azamgarh, Mau, Gorakhpur, Deoria, etc. so that life membership of Federation may be increased. At last he told that we should plan to organize a mega Tax Conference in the month of October 2013 with association of all the members of the Federation along with the various associations of Varanasi.

On this occasion Shri Prakash Gupta told that looking to the various changes in taxation matters we may sharpen our knowledge through organising the work shops, symposium and study circle by at least fortnightly and awareness of the Federation should be spread over nearby places. He also advised to prepare up to date

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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list of members who subscribed for journals and insure that they are getting journals and other informations regarding seminars, conference etc. organised by AIFTP from time to time which would ultimately strengthen our membership.

On this occasion, topic of the study was "Determination of Tax in Certain Special Cases". Tax on Short-term and Long Term Capital Gains in certain cases was discussed. A computation of Tax with example was put up by Shri Brij Gopal Das, Advocate. Sec. 111A and Sec. 112 of Income-tax Act was discussed.

At last, vote of thanks given by Shri S.K. Nigam Advocate Varanasi. On this occasion, Shri Asim Zafar, Shri Ashutosh Singh, Shri Ajay Kumar Singh and Shri Sanjay Kumar Verma were also present.

TWO DAY NATIONAL TAX CONFERENCE, 2012

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (EASTERN ZONE)

Jointly with

TAX BAR ASSOCIATION, GUWAHATI

"Globalisation-Emerging Opportunities in Corporate and Tax Laws"

16th March, 2012 (Friday)

Venue: Hotel Vishwaratna, A.T. Road, Guwahati

4:30 P.M.
6.00 P.M.

- Meeting of the National Office Bearers of the Federation.
- National Executive Committee Meeting.

17th March, 2012 (Saturday)

Venue : Pragjyoti ITA Centre, Machkhowa, Guwahati

- 8.30 a.m. to 9.30 a.m. - Registration and Breakfast
- 10.00 a.m. to 11.30 a.m. - Inaugural Session
- Chief Guest : Hon'ble Mr. Justice Altamas Kabir,
Judge, Supreme Court of India.
- Guest of Honour : 1. Hon'ble Mr. Justice Jasti Chelameswar
Judge, Supreme Court of India
2. Hon'ble Mr. Justice Adarsh Kumar Goel,
Chief Justice, Guwahati High Court.
- 11.45 a.m. to 1.15 p.m. - **1st Technical Session**
- Subject : Judicial Accountability vis-a-vis independence of Judiciary
- Chairman : Hon'ble Mr. Justice Altmas Kabir, Judge,
Supreme Court of India
- Key Note Speaker : Hon'ble Mr Justice Jasti Chelameswar Judge,
Supreme Court of India
- Speakers : 1. Hon'ble Mr. Justice Amitava Roy, Judge,
Guwahati High Court
2. Hon'ble Mr. Justice I.A. Ansari, Judge,
Guwahati High Court
3. Sri Nilay Dutta, Senior Advocate
- 1.15 p.m. to 2.15 p.m. - Lunch
- 2.15. p.m. 4.00 p.m. - **2nd Technical Session - DIRECT TAX**
- Subject : Survey under the Income-tax Act including marriage
related surveys
- Chairman : Dr. K. Shivaram, Advocate
- Key Note Speaker : Shri J. D. Nankani, Advocate
- Speaker : Shri Narayan Prasad Jain, Advocate
- Subject : Controversial issues in Income Tax search and seizure
- Speaker : Shri Subhash Agarwal, Advocate
- Question and Answer Session : For 15 Minutes.**

- 4.00 p.m. to 5.45 p.m. - **3rd Technical Session – INDIRECT TAX**
 Subject : Deficiencies in VAT Laws – Procedural and Legal
 Chairman : Shri P. C. Joshi, Advocate
 Key Note Speaker : Shri Bharatji Agarwal, Senior Advocate
 Speakers : 1. Smt. Nikita Badheka, Advocate
 2. Shri G. K. Joshi, Senior Advocate
 3. Shri P. S. Sarin, Advocate

Question and Answer Session : For 15 Minutes.

- 7.30 p.m. onwards Dinner and Cultural Programme at Hotel Vishwaratna

18th March, 2012 (Sunday)
Venue : Pragjyoti ITA Centre, Machkhowa, Guwahati

- 10.00 a.m. To 12.00 a.m. - **4th Technical Session**

Subject : Union Budget 2012-13
 Chairman : Shri N. M. Ranka, Senior Advocate
 Speakers : Shri S. R. Wadhwa, Advocate
 Shri Bharatji Agrawal, Senior Advocate
 Smt. Premlata Bansal, Senior Advocate
 Shri R. S. Joshi, President, FINER

- 12.00 Noon to 1.15 p.m. - **5th Technical Session**

Subject : Controversial Issues in Service Tax
 Chairman : Shri Sheoji Poddar, Advocate
 Speakers : Shri Rajashri Bharadwaj, Advocate
 Shri Pulak Saha, Chartered Accountant
 Shri Rahul Kaushik, Advocate

- 1.15 p.m. to 2.15 p.m. - Lunch Hours

- 2.15 p.m. to 3.30 p.m. - **Valedictory Session**

Subject : Natural Justice in Taxation Proceedings
 Chief Guest : Shri Altamas Kabir, Judge, Supreme Court of India
 Guest of Honour : Hon'ble Mr. Justice Jasti Chelameswar, Judge,
 Supreme Court of India.
 Hon'ble Mr. Justice Adarsh Kumar Goel, Chief Justice,
 Guwahati High Court.

**Executive Committee Meeting on 16th March, 2012 and
 Dinner on 17th March, 2012 will be held at Hotel Vishwaratna**

Registration charges for

Members ₹ 1,800; for Spouse ₹ 1,200; for Students ₹ 1,000 and for Corporates ₹ 2,500.

Cheque/Draft may be drawn in favour of

**"All India Federation of Tax Practitioners (EZ) – NTC 2012" payable at Guwahati
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HOTEL ACCOMMODATION AT GUWAHATI

Name of Hotel	Tariff	Distance from Venue
Vishwaratna Hotel A. T. Road, Guwahati Ph.: (0361) 2607712-5	Single	- ₹ 3,500/-
	Double	- ₹ 4,000/-
	Executive	- ₹ 4,000/-
Prag Continental Pan Bazar Guwahati Ph.: (0361) 2540850/1	Deluxe Single	- ₹ 1,700/-
	Deluxe Double	- ₹ 2,100/-
	Exec. Single	- ₹ 1,900/-
	Exec. Double	- ₹ 2,400/-
Hotel River View M. G. Road, Guwahati Ph. : +91 986420933	Single	- ₹ 650/-
	Double	- ₹ 1,200/-
Hotel Rituraj Kedar Road, Guwahati Ph.: (0361) 2543314	Basic Double	- ₹ 1,847/-
	Diplomatic	- ₹ 3,300/-
	Suite	- ₹ 5,200/-
Hotel Grand Starline G. S. Road Guwahati Ph. : (0361) 2341455/355	Sperior Single	- ₹ 2,000/-
	Sperior Double	- ₹ 2,500/-
	Junior Suite	- ₹ 3,600/-
	Deluxe Suit	- ₹ 4,000/-
Hotel Gateway Grandure G. S. Road, Guwahati Ph.: (0361) 6111000	Exc. Single	- ₹ 3,400/-
	Exc. Double	- ₹ 3,900/-
	Corp. Single	- ₹ 3,900/-
	Corp. Double	- ₹ 4,500/-
	Club Suite	- ₹ 5,000/-
Kiranshree Portico Paltan Bazar, Guwahati Ph. : (0361) 2735300	Single	- ₹ 4,600/-
	Double	- ₹ 5,300/-
	R.C. Single	- ₹ 6,000/-
	R.C. Double	- ₹ 6,800/-
Hotel Dynasty Lakhtokia, S. S. Road, Guwahati Ph.: (0361) 2516021/25	Executive	- ₹ 5,850/-
	Excellency	- ₹ 8,240/-
Hotel Landmark Stadium Road, Guwahati Ph.: +91 9864037906	Deluxe Single	- ₹ 2,136/-
	Deluxe Double	- ₹ 2,732/-
	Luxury Single	- ₹ 2,860/-
	Luxury Double	- ₹ 3,622/-
Hotel Nandan Paltan Bazar Guwahati Ph.: (0361) 2540855	Deluxe Single	- ₹ 2,670/-
	Deluxe Double	- ₹ 3,435/-
	Exec. Single	- ₹ 3,052/-
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Membership of AIFTP as on 20-1-2011

Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	746	22	3	771
Eastern	2	965	35	3	1005
Northern	0	843	17	0	860
Southern	0	762	13	3	778
Western	3	1599	32	15	1649
Total	5	4915	119	24	5063

DIRECT TAXES

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

SUPREME COURT**1. S. 9 : Income deemed to accrue and arise in India – Tax Deduction at Source – S. 195**

Transfer of shares of foreign company by non-resident to non-resident does not attract Indian tax even if object is to acquire Indian assets held by the foreign company

Vodafone International Holdings B.V. vs. UOI (Supreme Court) (Source: www.itatonline.org)

HIGH COURTS**2. S. 220(2) : Assessee deemed in default – Interest**

S. 220(2) provides for levy of interest if the demand is not paid within 30 days of the service of notice u/s 156. A distinction has to be drawn between a case where the assessee pays up the entire demand raised pursuant to the assessment order within the period specified in s. 156, wins in appeal and the amount is refunded and subsequently loses in further appeal and has to repay the taxes. In such a case, as the assessee is not in default in the first instance, no interest u/s 220(2) is payable for the period when the favourable verdict of the Appellate Authority was operative. However, if the assessee has not paid up the entire tax within the specified period, it is liable to pay interest u/s 220(2) from that date on the unpaid amount and any variation in the amount of the demand favourable to the assessee which was directed by any of the Appellate Authorities in the interregnum has no effect on the liability of the assessee to pay the interest.

Girnar Investment Ltd. vs. CIT (Delhi High Court) (Source : www.itatonline.org)

3. S. 9 – Income deemed to accrue and arise in India – S. 44D

Article 7(3) permits a deduction of expenditure "in accordance with and subject to limitations of the law" relating to tax in India including executive and general administrative expenses so incurred regardless whether they have incurred in India or elsewhere. The words "in accordance with and subject to limitation of the law relating to tax" applies not only to the "executive and general administrative expenses" but to all expenditure. The income received by the assessee, though not assessable as "fees for technical services"

under the DTAA, is "Fees for technical services" under Explanation 2 to s. 9(1)(vii) because it is for providing technical information and does not arise from a "project". Consequently, s. 44D, which provides that no deduction shall be admissible while computing income of the nature of "Fees for technical services" shall apply.

DIT vs. Rio Tinto Technical Services (Delhi High Court) (Source : www.itatonline.org)

4. S. 80-IB(10) – Deduction – Housing Project

S. 80-IB(10) allows deduction to an undertaking engaged in the business of developing and constructing housing projects. There is no requirement that the land must be owned by the assessee seeking the deduction. Under the development agreement, the assessee had undertaken the development of housing project at its own risk and cost. The land owner had accepted the full price of the land and had no responsibility. The entire risk of investment and expenditure was that of the assessee. Resultantly, profit and loss also accrued to the assessee alone. The assessee had total and complete control over the land and could put the land to the agreed use. It had full authority and responsibility to develop the housing project by not only putting up the construction but by carrying out various other activities including enrolling members, accepting members, carrying out modifications engaging professional agencies and so on. The risk element was entirely that of the assessee.

CIT vs. Radhe Developers (Gujarat High Court) (Source : www.itatonline.org)

TRIBUNALS**5. S. 72 : Carry forward and set off of business losses**

S. 72(1) allows brought forward business loss to be set-off against the "profits & gains of any business or profession" of the subsequent year. The expression "profits & gains of business" means income earned out of business carried on by the assessee and not just income connected in some way to the business or profession carried on by the assessee. The land and building were fixed and capital assets used by the assessee for its business purposes. The gains arising therefrom were assessable as capital gains and were not eligible for set-off against the brought forward business loss under section 72.

Nandi Steels Ltd. vs. ACIT (ITAT Bengaluru Special Bench) (Source : www.itatonline.org)

6. S. 271(1)(c) : Penalty – Concealment of income

Though the assessee owned the unaccounted transactions only after search action, when an assessee admits his mistake and that he has committed a wrong and offers the additional income to tax, it cannot be said that his statement is false or not *bona fide*. Neither the CIT(A) nor the Tribunal were completely clear about the exact amount of concealment and there was no conclusive evidence as some additions had been deleted. S. 271(1)(c) gives discretion to the AO to exonerate the assessee from levy of penalty even in case where the assessee has concealed the income or furnished incorrect particulars of income. Penalty should not be imposed merely because it is lawful to do so. The AO has to exercise his discretion judiciously. If an assessee files a revised return though at a later stage or discloses true income, penalty need not be levied. No doubt, merely offering additional income will not automatically protect the assessee from levy of penalty but in a given case where the assessee came forward with additional income though after detection because he was not in a position to explain the seized material properly and expresses remorse in his conduct unhesitatingly, the AO has to exercise the discretion in favour of such assessee as otherwise the expression 'may' in s. 271(1)(c) becomes redundant. In a case of admitted income, concealment penalty is not automatic. The discretion vested in the AO should be used not to levy penalty.

P.V. Ramana Reddy vs. ITO (ITAT Hyderabad)
(Source : www.itatonline.org)

7. S. 271(1)(c) : Penalty – Concealment of income

In view of the two decisions of the Supreme Court which held the field when the return was filed, the claim was patently disallowable. The claim was also not discernible on the face of the record and the details of expenses had to be gone into in order to decipher the claim. The argument that the assessee does not have expertise in taxation matters and so it relied on expert opinion is not acceptable because the opinion was furnished for accounting purposes. An accountant's view is not really material for deciding the deductibility or otherwise of an expenditure. The assessee knew about the problem at the time of filing of return, but still made the claim. Not only this, the claim was pursued even up to the level of the CIT(A) in gross disregard for the decision of the Supreme Court, which the assessee came to know at least after receiving the assessment order. Therefore, the claim was not only wrong but also false and it was persisted with for some time. The fact that the assessee did not even seek explanation from the tax auditor or the CA gave the impression that the whole thing was a sham.

Chadha Sugars Pvt. Ltd vs. ACIT (ITAT Delhi)
(Source : www.itatonline.org)

INTERNATIONAL TAXATION

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

HIGH COURTS

1. Sale of hardware and software – S. 9 and Article 13 – Income-tax Act, 1961 and India-Sweden DTAA

The High Court held as under:

- i. Once the goods (hardware) is supplied outside India, even with the existence of a composite contract, supply has to be segregated from installation for determining taxability u/s 9(1)(i) and therefore, not taxable in India.
- ii. Software loaded on the hardware does not have an independent existence. The software merely facilitates the functioning of the equipment and is an integral part in that respect.
- iii. No right mentioned in S. 14 of the Copyright Act, 1957 has been transferred in the present case. Distinction has to be made between the acquisition of a "copyright right" and a "copyrighted article". Even if the payment can be regarded as royalty as defined in Explanation 2 to S. 9(1)(vi), it can never

be royalty under Article 13(3) of the DTAA. Hence, no part of the sale can be classified as payment towards royalty.

DIT vs. Ericsson AB (2011-TII-46-HC-Intl)

2. Deduction of expenditure – S. 44D – Income-tax Act, 1961

The High Court held as under:

- i. The assessee, an Australian company, has earned income by rendering technical services for the evaluation of coal deposits and the execution of feasibility studies for transportation of iron ore through its permanent establishment ('PE') in India and therefore taxable as "business profits" under Article 7 of the India Australia Tax Treaty rather than "Fees for technical services" under Article 12.
- ii. Also, Article 7(3) permits a deduction of expenditure "in accordance with and subject to limitations of the law" relating to tax in India, including executive and general administrative expenses regardless of whether they have been incurred in India or elsewhere.

- iii. However, the income received by the assessee, though not assessable as "fees for technical services" under the DTAA, is assessable as "Fees for technical services" under Explanation 2 to s. 9(1)(vii) because it originates from the provision of technical information and does not arise from a "project".
- iv. Thus, the provisions of S. 44D would apply and no deduction of expenditure would be granted while computing income of the nature of fees for technical services.

DIT vs. Rio Tinto Technical Services (2012-TII-01-HC-Del.-Intl)

TRIBUNALS

3. Dependent Agent PE – Article 5(6) – India France DTAA

The Tribunal held as under:

- i. Under Article 5(6) of the India-French DTAA, even a wholly dependent agent is to be treated as an independent agent unless it is shown that the transactions between it and the enterprise are not at arm's length.
- ii. A negative finding about transactions with the dependent agent not being conducted at ALP is *sine qua non* for the existence of a Dependent Agent PE ("DAPE") under the India-France DTAA.
- iii. The onus is on the Revenue to demonstrate that the assessee had a PE.
- iv. The AO could not be granted further opportunity to make roving and fishing enquiries about the ALP nature of the transactions. Therefore, the assessee did not have a PE in India.

Delmas France vs. ADIT (Source: itatonline.org)

INDIRECT TAXES

P. C. Joshi, Advocate

Dealer – Devasthanam

The Madras High Court after considering the definition of the term "dealer" and "business" held that the auction by devasthanam, of various items offered by the devotees was not assessable to sales tax under the Tamil Nadu General Sales Tax Act.

Sri Velur Devasthanam Vaitheeswaran Koil vs. The State of Tamil Nadu 2011-12 (17) TN P. 117.

Liability of developers

The Karnataka High Court remanded the matter to the Tribunal for deciding as to whether a developer, undertaking construction of residential flats under a joint development agreement with a land owner in which the land owner would be given a portion of a constructed building and no consideration in cash, was liable under the provisions of the Karnataka Value Added Tax Act, 2003.

M/s. Vaswani Estates Developers Pvt. Ltd. vs. Commercial Tax Officer (Enf.) 2011-12 (16) KCTJ P.269.

News from Madhya Pradesh

The Government of Madhya Pradesh have published a Bill No. 45 of 2011 proposing to amend the Madhya Pradesh VAT Act, 2002. It is proposed to exempt from tax; cellular phone recharge vouchers from tax right from 1st April, 2006 by amending Schedule I to the Act and by inserting entry 88 therein. It is also proposed to extend the input tax credit available to the builders for the goods purchased by them before 1st April, 2011.

By yet another Bill bearing No. 46 of 2011, it is proposed to validate the exemption granted to fabrics

and sugar by notification dated 27th September, 2011 to be effective from 8th April, 2011.

Source : Sales Tax Judgments (2011) Pg. 66 to 68

News from Maharashtra

The Government of Maharashtra by notification dated 5th December, 2011 have amended the Maharashtra Value Added Tax Rules to be effective from 1st April, 2012. By the said amendment those who were not liable to submit audit report under section 61 as provided in clause B, C, or D of Rule 17 have to submit the details of sales and purchases for entire year in the prescribed format. Those dealers who were earlier furnishing annual return will have to submit 6 monthly return within the period of thirty days from 1st October and 1st April.

Source : Sales Tax Review. December, 2011. Part III, Page No. 133.

Transfer for Job Work

The assessee before the Allahabad High Court had challenged the levy of CST as deemed inter-State sale for want of Form F which could not be produced. The Hon'ble court referred to the Supreme Court judgment in the case of Ambika Steel Ltd and its own judgment in the case of ACPL Pvt. Ltd. The court directed the assessee to submit the reasons for inability of producing the declaration before the assessing/reassessing authority against levy of such tax. The authorities were also directed to consider the nature of the transaction and the circumstances for non production of F form. The Hon'ble Court set aside the levy of tax to the extent of its levy on transactions of job work with the above directions.

M/s. Super Plastronics Pvt. Ltd vs. State of U.P. & Ors 2011 NTN (Vol. 47) – 327.

Law applicable – Exemption

The Karnataka High Court held that the exemption granted to the registered dealer trading in arecanut and black pepper under the provisions of Karnataka Sales Tax Act was equally available after 1-4-2005 in the course of inter-State trade under VAT regime.

M/s. Vinu & Viju vs. Addl. Commissioner of Commercial Taxes 2011-12 (16) KCTJ P.284

Sale price

The Madras High Court held that the drawback received by the assessee under the Customs and Central Excise Duties drawback rules, were only incentives granted by the respective governments and cannot form part of the turnover for the purposes Tamil Nadu General Sales Tax Act, 1959.

The State of Tamil Nadu vs. Garware Wall Ropes 2011-12 (17) TNCTJ P. 133

LIST OF PUBLICATIONS

Sr. No.	Name of Publication	Edition	Members	Price Non-Members	Courier Charges
1.	155 Frequently Asked Questions & Answers - HUF	Dec., 2011	200.00	225.00	50.00
2.	Wills & Bequests - Strategies - 151 Questions & Answers with 6 Specimens	Jan., 2011	160.00	180.00	50.00
3.	Media & Entertainment Industry (Normal Bound)	Dec., 2009	280.00	315.00	80.00

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3. Please draw Cheque/Draft in favour of "All India Federation of Tax Practitioners" payable at Mumbai for above publications.

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