



All India Federation of Tax Practitioners

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(For Members only)

AIFTP TIMES

Volume 2 - No. 7 • July, 2011

| FORTHCOMING PROGRAMMES | |
|------------------------------|--------------------------------------------------------------------------------|
| Date & Month | Programme |
| 21st July, 2011 | Annual General Meeting of AIFTP (SZ) at Hyderabad |
| 23rd July, 2011 | Adjourned Annual General Meeting of AIFTP (NZ) at New Delhi |
| 23rd July, 2011 | Seminar at Dhanbad (EZ) |
| 19th & 20th August, 2011 | Two Day Workshop on Drafting of Agreements, Deeds and Documents at Mumbai (WZ) |
| 13th, 14th & 15th Oct., 2011 | 8th Nani Palkhivala Memorial National Tax Moot Court Competition |
| 11th November, 2011 | Celebration of Foundation Day at Delhi |
| 12th & 13th November, 2011 | Two Day National Tax Conference at Delhi (NZ) |
| 16th to 19th November, 2011 | AOTCA International Tax Conference at Bali, Indonesia. |
| 9th December, 2011 | National Executive Committee Meeting at Ranchi |
| 10th & 11th December, 2011 | Two Day National Tax Convention at Ranchi (EZ) |

FEDERATION NEWS

J. K. Ranka, Secretary General

AOTCA INTERNATIONAL TAX CONFERENCE AT BALI, INDONESIA

AOTCA Conference 2011 will be held from 16th to 19th November, 2011 at Hotel Melia, Bali, Indonesia. The following subjects will be discussed:-

1. "Update on MAP and APA in Indonesia" (Indonesia Tax Officials)
2. "Anti Tax Avoidance Rules from member countries" (Panel Discussion)
3. "Recent Tax Development in Europe" (Mr. Stephen Coleclough, President of CFE)
4. "Recent Developments in Transfer Pricing from member - Countries" (Panel Discussion)
5. "Update on Tax Payers' Right" (CFE and AOTCA)

Federation has worked out the cost for 7 days visit to Bali, which will be approx. ₹ 1 lakhs for single occupancy at Hotel Melia.

Delegate fee of US \$ 250 will have to be paid separately to AOTCA.

Those who desire to join the delegation may inform the office of the Federation for further detailed information.

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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| National President — M. L. Patodi, Adv. | 0744-2361179 | 2363637 | 9829035256 | patodiml@bsnl.in |
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ALL INDIA FEDERATION OF TAX PRACTITIONERS (EASTERN ZONE)

SEMINAR AT DHANBAD

You are cordially invited to a One Day Seminar organised by AIFTP (EZ) jointly with Dhanbad Income Tax Bar Association; Dhanbad Branch of CIRC of Institute of Chartered Accountants of India; Dhanbad Commercial Tax Advocates' Association on

'Recent changes in Income Tax & Indirect Tax Laws'

on

Saturday, the 23rd July, 2011 from 10 a.m.
at Hotel Siddhi Vinayak, Dhansar, Dhanbad

Dignitaries & Speakers

Hon'ble Mr. Justice R.K. Marethia, Jharkhand High Court* • Shri T.K. Singh, CCIT-I, Patna*

Smt. Alka Tiwari, Commissioner of Commercial Taxes, Jharkhand

Shri S.K. Poddar, Advocate & National Dy. President, AIFTP

Dr. Ashok Saraf, Sr. Advocate & National Vice President, AIFTP • Shri Narayan Jain, Advocate

Regn Fee ₹ 600 for Members; ₹ 800 for others; for students ₹ 300.

Kindly get your name registered. Please contact :

Shri Kuber Singh, Dhanbad 097080 36618/ 093340 10861 • E-mail : kubersingh4@gmail.com

Shri R.B. Goel 094317 22542 • Shri M.D. Kedia, Zone VP 098351 66266

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Shri C.K. Chatterjee, Zone Secretary 98304-95134 E-mail chirachatterjee@yahoo.com

Shri Arvind Agarwal, Chairman, Seminar Committee, 9831026660 E-mail gpa@cal.vsnl.net.in

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* Confirmation awaited

REPORT OF SEMINAR ON SEARCH & SURVEY UNDER INCOME TAX ACT

The Income Tax Investigation Wing is getting more than 50 tax evasion complaints but the search is ordered only in select cases after thoroughly examining its correctness and worth, said TBC Rozara, Director General of Income Tax (Investigation), Kolkata while addressing a Seminar on 'Income Tax Search & Seizure' organised by All India Federation Of Tax Practitioners (Eastern Zone) at Indian Council for Cultural Relations, Kolkata. However he stated that In England there are no legal provisions for Income Tax Search in England and many other countries. Soon there will be Directorates of Criminal Investigation in the Income Tax Investigation Wing, he added.

Mr. Narayan Jain, tax expert and Chairman of the organisation highlighted the provisions of Income Tax search. The presence of Advocates and tax consultants of the assessee should be allowed to avoid the difficulties in most of the cases due to lack of knowledge and sense of fear among the persons subjected to search, added Mr. Jain.

Speaking on the occasion Mr. S.K. Poddar, Advocate & National Deputy President, AIFTP, pointed out that jewellery seized 60 years back are also lying in the strong room of the department. There should be some rethinking on a time frame for expeditious settlement of search cases and release of seized articles, he said.

Mr. Paras Kochar, said that an income tax search can be done on any day and at any time. Mr. Indu Chatrath, Zone Vice Chairman (EZ), presided over the Seminar.

DIRECTORY OF AIFTP (EASTERN ZONE) RELEASED

Shri S.K. Poddar, National Dy President and Shri Narayan Jain, Chairman AIFTP (Eastern Zone) released the Members Directory with names of 944 members of the Eastern Zone on June, 25, 2011 at ICCR Hall, Kolkata. On this occasion Shri Jain appreciated the sincere efforts of Shri SC Garg (Chairman, Directory Committee). Shri Poddar complimented the Zone Chairman as the Eastern Zone is the only Zone who has its own Members Directory, Newsletter as well as Website. Those present on the occasion include Shri C.K. Chatterjee, Shri RD Sharma, Shri Indu Chatrath, Shri BN Mahapatra, Shri MD Kedia, Shri B. Panda (National Jt. Secretary), Mr. Sanjay Bajoria, Mrs. Mamta Binani and many office bearers and members of the Managing Committee. It was the 2nd edition of EZ Directory. First was published in 2009.

**TWO DAY WORKSHOP ON DRAFTING OF AGREEMENTS, DEEDS AND DOCUMENTS
(INCLUDING TAXATION OF REAL ESTATE TRANSACTION)**

A above mentioned two day workshop will be held on Friday & Saturday, 19th & 20th August, 2011 at Terrace Hall, West End Hotel, New Marine Lines, Mumbai – 400 020 from 9.00 a.m. to 5.00 p.m. organised by AIFTP (WZ) jointly with BCAS & CTC.

Delegate Fees (including Tea, Coffee, Lunch & Material) Rs. 2,100/- for Members & Rs. 2,500/- for Others.

Detailed programme has been published in our AIFTP Times & AIFTP Journal at page No. 2 & 69 respectively in the month of June, 2011 issue.

Note: Cheque/DD to be drawn in favour of "All India Federation of Tax Practitioners – Western Zone", payable at Mumbai. Outstation members are requested to make payment by DD only.

STOP PRESS

The Madras High Court in Writ Petition in W.P. M.P. No. 1 of 2011 in W.P. No. 12922 of 2011 dt. 26-6-2011 filed by Revenue Bar Association passed an interim injunction restraining the Ministry of Finance from compelling the member of the petitioner from registering themselves with the Service Tax authorities and collecting Service Tax from them until further orders.

**Renewal Subscription to AIFTP Journal and Voluntary Contribution to
Palkhivala National Tax Moot Court Competition and Research on Tax**

Dear Members,

We have posted bill for renewal subscription of AIFTP Journal and Palkhivala Foundation on 24th March, 2011. 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 and an appeal from our website; i.e., www.aiftponline.org and send us the subscription.

Thanking you,

For All India Federation of Tax Practitioners

J. K. RANKA

Secretary General

Note : Journal will not be posted to members, who have not paid the journal subscription for the year 2011-12 from July 2011 onwards.

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

| | | | | | | |
|----|--------------------------------------------------------|--------------------|----------------------|-----------------------|----------------------|---------|
| 1. | Life Membership of the AIFTP | | | | ₹ | 2,500/- |
| | Additional subscription of AIFTP Journal (for 1 year) | | | | ₹ | 600/- |
| | Additional 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

8TH NANI PALKHIVALA MEMORIAL NATIONAL TAX MOOT COURT COMPETITION

ORGANIZED BY
ALL INDIA FEDERATION OF TAX PRACTITIONERS
JOINTLY WITH
INCOME TAX APPELLATE TRIBUNAL BAR ASSOCIATION
IN ASSOCIATION WITH
GOVERNMENT LAW COLLEGE, MUMBAI

The dates for the National Tax Moot Court Competition are 13th, 14th & 15th October, 2011. The venue for the above function is as under:-

- i) Inauguration at Government Law College on 13th October, 2011 by the Hon'ble Judge of Bombay High Court, Hon'ble President and Hon'ble Vice President of ITAT from 5.30 p.m. onwards.
 - ii) Preliminary Rounds on 14th October, 2011 at ITAT, Mumbai (Competition will be judged by the Members of the ITAT, Mumbai & Professionals)
 - iii) Semi-finals on 15th October, 2011 at ITAT, Mumbai (Competition will be judged by the Member of ITAT, Mumbai)
 - iv) Final on 15th October, 2011 in evening at Rangaswar Hall, 4th Floor, Y. B. Chavan Pratisthan, Mumbai (Competition will be judged by the Hon'ble Judges of Bombay High Court) from 6.00 p.m. onwards.
- 30 law colleges across India are expected to participate in the competition.

NANI PALKHIVALA 7TH RESEARCH PAPER COMPETITION

The topic for this year's Research Paper is "Piercing the Corporate Veil in Taxation Matters (Indian & International Transactions with special reference to DTC)"

Invitation will be sent to 125 law colleges for participating in the competition.

ADJOURNED ANNUAL GENERAL MEETING

Notice is hereby given that the adjourned Annual General Meeting of the Members of All India Federation of Tax Practitioners (Northern Zone) will be held on Saturday, the 23rd July 2011, at York Hotel, Outer Circle Connaught Place New Delhi - 110 001 at 7 p.m. to transact the following business:

AGENDA

1. To consider and adopt the audited accounts of the Federation (NZ) for the year ended 31st March, 2011.
2. To transact any other business with the permission of the Chair.

New Delhi
June 29, 2011

Sd/-
(SANJAY SHARMA)
Jt. Secretary, AIFTP (NZ)

ANNUAL GENERAL MEETING

Notice is hereby given that the Annual General Meeting of the members of All India Federation of Tax Practitioners (South Zone) will be held on Thursday the 21st July, 2011 at 6.30 p.m at 4-1-999, Taj Mahal Hotel, Adibs Road, Hyderabad

AGENDA

1. To read and approve the minutes of the AGM held on 26th July, 2010
2. To receive and approve the Annual Report of the Southern Zone for the year 2010-11.
3. To consider and approve the audited accounts of the Federation (SZ) for the year ended 31st March, 2011
4. To appoint Auditors for the year 2011 - 2012 and fix their honorarium.
5. To transact any other business with the permission of the Chair.

Date: 23-6-2011
Place: Hyderabad

Yours faithfully,
for AIFTP-SZ

Sd/-
CS Ahalada Rao. V
Secretary

Note : The Meeting will be followed by dinner.

DIRECT TAXESAjay R. Singh, Paras Savla, Rahul Hakani & Renu Choudhari
Advocates**SUPREME COURT****1. S. 260A: Appeal to High Court – Condonation of delay – Long delay due to procedural reasons in filing Dept. appeals cannot be condoned**

The SLP challenging the order of the Bombay High Court declining to condone delay of 656 days in filing the appeal was dismissed on the basis that several facts such as non traceability of case records, procedural formalities involved in the Department and the papers are to be processed through different officers in rank for their comments, approval, etc. and then the preparation of the draft of appeal memo, paper book and the administrative difficulties such as shortage of staff does not make sufficient cause for condonation of delay.

CIT vs. Indian Hotels Co. Ltd. (Supreme Court) (www.itatonline.org)

HIGH COURTS**2. S. 2(22)(e): Deemed dividend is not assessable if recipient not shareholder**

Where assessee is not a shareholder of the paying company, the dividend is not assessable in its hands. The legal fiction in Section 2(22)(e) enlarges the definition of dividend but does not extend to, or broaden the concept of a "shareholder".

CIT vs Ankitech Pvt. Ltd. (Delhi) (High Court). www.itatonline.org.

3. S. 5: Income – Accrual – Interest on enhanced compensation of land

Interest on enhanced compensation of land is liable to be taxed once it was received.

Dy CIT vs. Gopal Ramnarayan Kasat (2011) 240 CTR 266/54 DTR 228(Bom.) (High Court).

4. S. 12AA: Charitable Trust-registration granted under section 12A cannot be withdrawn in s. 12AA(3)

Assessee trust got registration under section 12A in December 1974 and on that basis got exemption of income tax for the Asst. Years 1996-97 to 2005-06. DIT (Exemptions) denied exemption and cancelled registration under section 12AA(3) with effect from assessment year 2002-03. The court held that

registration granted under section 12A in December 1974 to assessee could not be withdrawn.

Director of Income Tax (Exemption) vs. Mool Chand Khairaiti Ram Trust (2011) 199 Taxman 1 (Delhi) (High Court).

5. S. 37(1): Business expenditure – Professional's heart surgery expense not deductible. (S. 31)

Expenditure incurred on heart operation was not deductible under section 31 as also 37(1) because of following reasons:

- 1) Heart cannot be considered plant as it did not have any mention in assessee's balance sheet under assets and its cost of acquisition could not be determined.
- 2) Deduction under section 37(1) cannot be granted as the expenditure incurred does not have any immediate or direct nexus between the expenses incurred on surgery and his efficiency in the professional field *per se*.

Shanti Bhushan vs CIT (Delhi) (High Court). www.itatonline.org.

6. S. 234B: Interest – Advance tax – Capital Gains – [S. 47(v), 139(9), 292B]

Assessee claiming exemption in respect of capital gains on sale of shares to holding company. Return found defective and assessee filed corrected return. By that time holding company was no longer holding company. The court held that no default at time of payment of advance tax. Interest for default not chargeable.

Prime Securities Ltd vs. Asst. CIT (2011) 333 ITR 464 (Bom) (High Court).

7. S. 254(2): Appellate Tribunal – Rectification of mistakes – Orders not cited – Tribunal entitled to do "own research" and rely on non-cited cases

Reliance and reference to reasons stated in another decision cannot be regarded as a mistake apparent from the record. It is not unusual or abnormal for Judges or adjudicators to refer and rely upon judgements/decisions after making their own research.

Geofin Investment (P) Ltd. vs. CIT (Delhi) (High Court).

TRIBUNALS

8. S. 12A: Charitable Trust – Registration as Public Trust not necessary for S. 12A “Charity” registration

Registration as a Public Trust is not a condition precedent for grant of registration under section 12A. There is no requirement in the Income-tax Act that the institution constituted for advancement of charity, must be registered as a trust under the Public Trusts Act.

Grameen Initiative for Women vs. DIT (E), (ITAT) (Mumbai) (www.itatonline.org)

9. S. 28 : Capital gains – Shares PMS fee, even if NAV based, is deductible in computing PMS capital gains – (S. 48)

In computing capital gains under section 48, payments are deductible in two ways, one by taking full value of consideration net of such payments and the other by deducting the same as “expenditure incurred wholly and exclusively in connection with the transfer”. The expression “full value of consideration” contemplates additions and deductions from the apparent value. It means the “real and effective consideration”, which can be arrived at only after allowing the deductible expenditure. The PMS fee, on profit sharing basis, was for the twin purposes of acquisition and sale of the securities. The fact that bifurcation between the two is not possible is

not relevant. Accounting Standard 13 (Accounting for Investments) issued by ICAI provides that brokerage, fees and duties have to added to the cost of investments.

KRA Holding & Trading P. Ltd. vs. DCIT (ITAT) (Mum) (www.itatonline.org)

10. S. 36 (1) (iii): Business expenditure- Interest on borrowed capital – Advance to sister concern – Mutual accommodations – Commercial expediency

When there is mutual accommodation by both parties in terms of lending and borrowing from each other, the assessee's claim of commercial expediency has to be accepted.

Ramkishin Textiles P. Ltd vs. ITO (2011) 9 ITR (Trib) 321 (Mumbai) (Trib).

11. S. 47(iv): Capital gains – Capital loss – Transfer of business and work-in-progress – 100 per cent subsidiary

Assessee transferred business and work-in-progress to hundred per cent subsidiary, which is Indian company. In view of provisions of section 47(iv), capital gains on such transfer of capital asset was not chargeable to tax. At the same time loss arising on transfer of business assets would also not be allowed as deduction.

Dy. CIT vs Mother Dairy Fruits & Veg. (P) Ltd (2011) 45 SOT 186 (Delhi) (Trib).



Hearty Congratulations

Hearty Congratulations to **Shri Rajesh Joshi**, Advocate, Member from Indore for being nominated as Member of Regional Direct Tax Advisory Committee, Indore on 10-5-2011.

We wish him all the success.

APPEAL TO MEMBERS

Dear Members,

The journal has become monthly from January, 2002. We desire that the journal should become self-sufficient. Hence, we request you to send us advertisements for the journal. The rates of advertisement are as under:

- | | |
|--------------------------------------------------------------|-----------|
| 1. Quarter Page | ₹ 600/- |
| 2. Ordinary Half Page | ₹ 1,000/- |
| 3. Ordinary Full Page | ₹ 2,000/- |
| 4. Second and Third Cover Page | ₹ 2,500/- |
| 5. Fourth Cover Page – Three fourth page (in four colour) | ₹ 3,500/- |

J. K. RANKA
Secretary General

**Membership of AIFTP
as on 10-06-2011**

| | Life Members | | | | Total |
|--------------|--------------|-------------|-------------|-----------|-------------|
| | Associate | Individual | Association | Corporate | |
| Central | 0 | 718 | 21 | 3 | 742 |
| Eastern | 2 | 906 | 33 | 0 | 941 |
| Northern | 0 | 823 | 17 | 0 | 840 |
| Southern | 0 | 751 | 13 | 3 | 767 |
| Western | 3 | 1575 | 32 | 14 | 1624 |
| Total | 5 | 4773 | 116 | 20 | 4914 |

INTERNATIONAL TAXATIONCA Dhanesh Bafna, CA Madhav Khandelwal, Sujeeth Karkal, *Advocate***AUTHORITY FOR ADVANCE RULING****1. Reimbursement of salary cost – Fees for Included Services – Article 12(4) – India-USA DTAA**

The applicant had entered into an Secondment Agreement with GTE Overseas Corporation, USA ('GTE-OC'), pursuant to which the salary cost of the expatriate employees were paid by GTE-OC and were subsequently reimbursed by the applicant at cost. The Authority ruled that:

- i. These employees would continue to get their salaries from GTE-OC as long as they remain in their employment. It follows that the managerial services performed by them are as employees of GTE-OC and not as employees of the applicant. Therefore, the sums that were remitted by the applicant accrue and arise to GTE-OC for providing services to the applicant. What accrues and arises to the employees is by virtue of their employment with GTE-OC.
- ii. The application of the income by GTE-OC while making payment of salaries to its employees has nothing to do with its accrual and the expenditure incurred by way of salaries to the employees cannot *ipso facto* determine the nature of the income which is to be brought to tax either under the Act or under the DTAA in the hands of GTE-OC. The amounts paid by the applicant to GTE-OC represent income in the hands of GTE-OC.
- iii. The services rendered by the expatriate employees are in the nature of managerial services and not technical services, therefore, the make available clause will not apply.
- iv. Thus, the payments made by the applicant are covered under "fees for included services" under Article 12(4) of the DTAA and also 'Fees for Technical Services' under Explanation 2 to section 9(1)(vii) of the Act.

Verizon Data Services India Pvt. (2011-TII-13-ARA-Intl.)

TRIBUNAL**2. Arms Length Price – Section 92(4) – Income-tax Act, 1961**

The tribunal, while deciding the transfer pricing issue against the assessee, made the following important observations:

- i. The burden of proving that the transactions with the associate enterprise are at arms' length is on the assessee.
- ii. Under section 92CA(3), the Transfer Pricing Officer is entitled to consider material in public domain which, though not available to the assessee at the time of the Transfer Pricing study, is relevant for the financial year.
- iii. While in principle, comparables having an abnormal difference of turnover and distorted operating profits have to be excluded for determining the ALP, however, unless and until it is brought on record that the turnover of such comparables had undue influence on the margins, it is not the general rule to exclude the same that too when the comparables are selected by the assessee itself.

Symantec software Solutions Pvt Ltd vs. ACIT (Source: itatonline.org)

3. Applicability of Transfer Pricing provisions for transactions with PE of the AE – Section 92B(1) – Income-tax Act, 1961

The assessee, a resident company in India, had entered into purchase transactions with the Permanent Establishment ('PE') of an associated enterprise ('AE'). The Tribunal accepted the revenue stand on the issue of applicability of transfer pricing provisions to such transactions and held that where a transaction is entered into by associated enterprises being a resident and a non-resident, the transaction shall amount to an international transaction falling under section 92B(1) of the Act. In other words, where either or both of the associated enterprises are non-resident, transaction entered into would amount to an international transaction within the meaning of section 92B(1) of the Act. That being so, it does not matter that the transactions in question are not 'cross border transactions'. In the present case, the AE of the assessee was a non-resident company and therefore, the requirement of section 92B(1) is amply met and thus, the transactions concerned are international transactions within the meaning of the said section.

Tianjin Tianshi India Pvt Ltd vs. ITO (2011-TII-55-ITAT-Del-TP)

4. S. 92C: Avoidance of tax – Transfer Pricing – Loss/High – Profit cost need not per se be excluded

The assessee rendered three services to its AE and while it received a mark-up for “application of technical development services” and “promoting the licensing of technology”, it did not receive any mark-up for “application research”. The argument that the three activities should be aggregated to determine the ALP is not acceptable because the entire benefit of the “application research” was retained by the AE and not shared with the assessee and so there was no justification for not compensating the assessee.

While in principle, it is correct that if loss making units are excluded, abnormal profit making units should also be excluded, on facts, the TPO had rightly rejected the loss making companies as not being comparable. In principle, neither loss making units nor high profit making units can be eliminated from the comparables unless, there are specific reasons for eliminating the same which is other than the general reason that a comparable has incurred loss or has made abnormal profits.

Exxon Mobil Company India Pvt. Ltd. vs. DCIT (ITAT) (Mum) (www.itatonline.org).



INDIRECT TAXES

P. C. Joshi, Advocate

1. Composition Scheme – Revision

After considering the case law on point the Punjab & Haryana High Court held that the notification revising the rate of tax with retrospective effect, was hit by Article 14 of the Constitution. The notification therefore was held to be applicable only from the date of issue of notification.

M/s Goel Brick Industries & Ors vs. State of Haryana & Ors. 2011 (2) GSTJ P.117.

2. Declared Goods – Piston Rings

The Punjab and Haryana High Court finding that the word ‘rings’ was specifically mentioned in Sec. 14 of the CST Act, held that the ‘piston ring’ though used as automobile parts were declared goods.

State of Punjab & Anr. vs. Federal Gogul Goetze (India) Ltd. (2011) 38 PHT 451 (P&H).

3. Delegated Legislation

The Punjab and Haryana High Court held that in absence of any reason for excluding damaged wheat from the scope of entry relating to animal feed retrospectively; cannot be sustained. The same was held to be arbitrary and beyond the competence of rule making authority exercising such power.

Shiv Shankar Industries vs. State of Haryana & Ors. (2011) 39 PHT 220 (P&H).

4. Discount

The Karnataka High Court held that the credit and debit notes for discount though not shown in the tax invoice but raised later on, was allowable as deduction.

M/s. T.V. Sundaram Iyengar & Sons Ltd vs. The State of Karnataka 2011-12 (16) KCTJ P.14.

5. Forfeiture

The Karnataka High Court held that before an order of forfeiture can be sustained under section 18 (AA)

of Karnataka Sales Tax Act, it was necessary to have material on record to show that there was an unjust enrichment. In other words, the forfeiture order cannot be passed on assumption that the sale bills were inclusive of tax or the tax was collected separately. Such an order passed on mere surmises and conjectures was quashed by the Hon’ble Court.

State of Karnataka vs. Anjana Zarda Agencies (2011) 18 STJ 549.

6. Entry Tax

The Punjab and Haryana High Court held that the Entry tax Act providing for levy of tax on entry at the rate not more than rate prescribed under the VAT Act, cannot be sustained as advance collection of VAT, in absence of charging provision to that effect. The Hon’ble High Court therefore granted interim relief while admitting the Writ Petition, subject to the liability of interest on the dues that may become payable on final decision.

Bhushan Power & Steel Ltd. Ludhiana vs. State of Punjab & Ors. (2011) 39 PHT 59 (P&H)

7. Exemption

The Calcutta High Court held that the benefit of exemption granted to a dealer, cannot be withdrawn with retrospective effect especially when it may lead to far reaching effect leading to inability of the dealer to recover the tax from third party.

The Court further observed that though the primary liability of recovering the tax from the buyer was that of the petitioner, he was an agent on behalf of the Government without any personal liability. The court in that connection referred to its earlier judgments reported at 122 STC 222 & 131 STC 290.

Assistant Commissioner of Sales Tax Special cell & Ors vs. Sethia Oils Ltd. (2011) 57 STA P.207.

8. Entries in Schedule

(A) Calcium Phosphate

The Karnataka High Court held that 'calcium phosphate' (animal grade) was animal feed supplement covered by Entry 5 of Schedule 1 of Karnataka VAT Act relating to 'animal feed and feed supplement.'

Godrej Agrovet Ltd. vs. Additional Commissioner of Commercial Taxes, Zone II, Bengaluru (2011) 18 STJ P.487.

(B) Surveying Instrument – Plant

The West Bengal Taxation Tribunal held that in the work of construction, the survey was integral part of the entire process and therefore the surveying instruments were covered by the meaning of 'plant' under Entry 54B of Schedule C Part 1 of the WB VAT Act 2003.

Lawrence & Mayo (India) Pvt. Ltd., vs. S.T.O. Bureau of Investigation & Ors. – (2011) 57 STA P.212

(C) Plastic Cover

The Kerala High Court held that the plastic cover for electronic choke, was an integral part that provide for ventilation, space for leads, for giving electric connection and attachments for fixing the choke to the tubelight frame. Referring to entry 174(1) (a) of List 'A' of Third Schedule of the KVAT Act, the Court held that it related to a specific item of 'plastic containers used to pack audio or video cassettes, cassette tapes and floppy discs' therefore, the plastic cover before it, was not covered by the said entry but the residency entry 103 liable to tax @ 12.5%.

Ajayakumar P.C. vs. Commissioner of Commercial Taxes – (2011) 19 KTR 295 (Ker).

(D) Clean Air Equipment

The Punjab and Haryana High Court held that the floor clean air equipment was covered by the Entry 16 of Schedule A under Haryana GST Act, 1973 relating to 'electrical appliances' especially when the equipment in question was operated only with the help of electric energy. The Hon'ble High Court also observed that while interpreting such an entry, no distinction can be made on the basis of its domestic or industrial use.

Thermadyne P. Ltd. vs. State of Haryana & Ors. (2011) 39 PHT 27 (P&H) (Since Reported at 40 VST 505)

(E) Paving Bricks

The Karnataka High Court held that "Paving Bricks" used for floor, ground, footpath, garden & car parking areas were covered by the entry 2 of Third Schedule described as "all kinds of bricks".

M/s. H.H. Cement Products vs. The Asst. Commissioner & Ors. 2011-12 (16) KCTJ Pg.7

9. Input Tax Credit

The Orissa High Court considering the language to rule 11(3) read with section 20(3) and its proviso (d), observed that when the constitutional validity of the said section as well as rule was not questioned, subordinate legislation framed by the State Government in exercise of its statutory power was justified. The Court rejected the contention of the Petitioners that the rule

was not applicable to a manufacturer who may have claimed input tax credit for raw materials used in the manufacturing process.

Bajrang Steel & Alloys Ltd. vs. State of Orissa – (2011) 18 STJ 541 (Ori)

10. Interest on Refund

In a very elaborate judgment, the Gujarat Value Added Tax Tribunal held that when the refund of an amount became due to the dealer on the basis of a *de novo* order of assessment u/s. 41 passed after setting aside of the earlier ex-parte order by the first Appellate Authority; any delay in grant of such refund was eligible to the interest as provided u/s. 54 of the Gujarat Sales Tax Act.

In the instant case the interest on refund was not granted by the authorities on the pretext that the refund was not as a result of the order of assessment but because of part payment made before the first Appellate Authority in appeal against the earlier ex-parte order.

Gujarat Tea Processors and Packers Ltd vs. State of Gujarat Vol. 50, Sales Tax Journal – May 2011 P.240.

11. Interest on Delayed Payment – CST

The matter before the Supreme Court related to the assessment years prior to 12th May, 2000, during which there was no provision for levy of interest for delayed payment of Central Sales Tax u/s 9 of the CST Act, 1956. By Finance Act 2000, section (9)(2B) was inserted with retrospective effect providing for such a levy from the date of 'tax due' at the rate prescribed under the general Sales Tax law. The judgment of the Allahabad High Court upholding the levy of interest for the past periods, was challenged before the Apex Court. The Supreme Court after considering the retrospective amendment referred to above, rejected the civil appeal holding that the interest in question was compensatory in nature for the loss sustained by the revenue during the interim period; from the date when the tax became due to the date of actual payment.

Indodan Industries Ltd. vs. State of U.P. & Ors. - (2011) 39 PHT 97 (SC)

12. Lease Rent – Purchase

In the case before Punjab & Haryana High Court the assessee had taken machinery on lease and utilised the same in executing the works in Haryana where from the rent was paid. Such a rent was held by the department to be representing the purchase price for the purchases effected in the State.

The Hon'ble High Court held that the case was squarely covered by section 4(2)(a) of the CST Act and local provisions cannot be made applicable merely because goods taken on rent, was used within the State. For the aforesaid purpose the High Court followed the judgment of the Supreme Court in the case of 20th Century Finance Corporation Ltd vs. State of Maharashtra (119 STC 182).

Sandan Vikas (India) Ltd., vs. State of Haryana & Ors (2011) 39 PHT 158 (P&H).

13. Limitation

The Punjab and Haryana High Court held that the extension of statutory period for framing the order of assessment contained in section 68 of the Punjab VAT Act, 2005 after the lapse of the period provided therein, was of no relevance and the assessment passed beyond the period of limitation cannot be sustained.

State of Punjab & Anr. vs. M/s. Punjab Power Products - (2011) 39 PHT 22 (P&H)

14. Profession Tax on Branches

The Karnataka High Court upheld the validity of Explanation 6 to the Schedule providing for every branch of any self employed assessee to be deemed to be a separate assessee for the purposes of professional tax. Accordingly the demand of ₹ 2,500/- per each branch of the bank, was held to be justified.

State Bank of Mysore vs. Asst. Commr. of Comml Taxes 2011-12 (16) KCTJ P.21.

15. Refund

The Kerala High Court held that the claim of refund cannot be rejected simply because cross verification could not be completed. The assessee in the instant case had submitted proof of payment of input tax by producing the bills and copies of demand draft for its payment. The Hon'ble Court in that connection observed that the authorities beyond that cannot ask for any further evidence like tax remittance certificate from the department.

Sadikali K. vs. Commercial Tax Officer (VAT) (2011) 19 KTR 323 (Ker).

16. Recovery of Tax - First Charge?

The Madras High Court after considering the provisions of section 29 of the State Financial Corporations Act, 1951 held that the order of attachment made by the Commercial tax department invoking the provisions of Revenue Recovery Act was not applicable when the assets were already secured with the Tamil Nadu Industrial Corporation which took possession of the

property of the defaulter for recovery of the outstanding loan and sold the assets by public auction.

T. Manikandan vs. Commercial Tax Officer, Dindigul & Ors. High Court of Madras - (2011) 18 STJ 553 Mad

17. Revision

The Karnataka High Court while referring to *suo motu* revision power u/s 64 of the Karnataka VAT Act. referred to the observations of the Supreme Court in the case of *Malabar Industrial Company (2000) 243 ITR 83* to the effect that the phrase "prejudicial to the interest of the revenue" have to be read with the earlier phrase "erroneous order". Therefore, every loss of revenue cannot be treated as covered by the said phrase especially when two views were possible, out of which one was adopted by the Assessing Officer. The Court also observed that simply because the revisional authority did not agree with the view taken by the Assessing authority; there was no justification for exercising his *suo motu* power.

Godrej Agrovet Ltd. vs. Additional Commissioner of Commercial Taxes, Zone II, Bengaluru - (2011) 18 STJ P.487.

18. Works Contract

i) Inter-State

The Allahabad High Court held that when a contractor registered in U.P. received certain material from its branch outside the State of U.P. for being used in the execution of a pre-existing works contract in the State of U.P., the nature of the transaction was squarely covered by Section 3 of the CST Act, 1956.

Commissioner, Trade Tax, U.P. vs. Advance Spectra Tee (P) Ltd. - (2011) 18 STJ 516 (All.)

ii) TDS

The Punjab and Haryana High Court after considering the fact that its earlier judgment that struck down the provisions had attained finality; section 10C in regard to deduction of tax at source, was no more valid. *Jatindra Construction Co. vs. Bharat Sanchar Nigam Ltd. & Ors. (2011) 38 PHT 450 (P&H).*



CBDT EXEMPTS INTEREST ON RECOGNISED PROVIDENT FUNDS

Deduction of tax at source on increased interest from 8.5% to 9.5% for the year ending 31st March, 2011 and payable to lakhs of employees participating in Recognized Provident Funds, will not be necessary. The Board has since issued, under Rule 6(b) of Part A of Fourth Schedule to Income-tax Act, 1961, Notification No. 24/2011 [F.NO. 142/14/2010-SO (TPL)], dated 13-5-2011 exempting such interest.

The matter was taken up on 31-3-2011 soon after this was brought to the notice of the AIFTP. The Notification was got issued by continuously pursuing the matter with the Board.

We request the members to bring such difficulties of a general nature affecting a large number of tax payers to the notice of Shri S.R. Wadhwa, Chairman - Direct Taxes Representation Committee, AIFTP (e-mail - wadhwasr@hotmail.com) so that they can be taken up with the Board or other Government authorities for appropriate resolution.

HOMAGE TO OUR REVERED SHRI MURLIDHAR D. SODANI, VICE PRESIDENT, AIFTP WHO HAS LEFT FOR HIS HEAVENLY ABODE



(5-2-1940 – 3-6-2011)

I was shocked to hear about the sad, sudden and untimely demise of Late Shri M. D. Sodani, Vice-President of All India Federation of Tax Practitioners. He was very simple, sweet spoken, dedicated and determined to serve the Society. During his life time he has stamped his name upon the heart of every member of the Federation. Apart from being a highly knowledgeable fellow, he was very humble, courteous and helping nature person. He has played a very vital role in spreading the message of the Federation in the capacity of Chairman, Central Zone and Vice-President, AIFTP.

He also organized the National Tax Conference at Indore in December, 2010 which was a memorable event to all.

He has passed away at a time when his services were needed both by the family and the Society as well, but as you know, man proposes and God disposes, we are quite helpless before the iron-will of God and have to accept his decision.

In this hour of grief, I, on my own behalf and on behalf of the All India Federation of Tax Practitioners convey our heartfelt condolences and pray to Almighty to grant peace to the departed soul and give strength and courage to the bereaved family to bear the irreparable loss.

Shri M. L. Patodi, National President, AIFTP

AIFTP regret to inform that our founder and very dynamic and energetic member Mr. Murlidhar Sodani passed away on 3rd June 2011 at Ujjain. He was acting Vice President AIFTP (CZ), since 2009. He had successfully organized National Tax Conferences, Seminars and foundation day celebration and many more activities of AIFTP and tax fraternity in central zone region.

He was born on 05.02.1940; obtained silver and gold medals on his graduation and post graduation. Completed Chartered Accountancy in 1966 and started his career in small place of Madhya Pradesh at Ujjain. He had wide experiences of Bank audits, public listed companies, and consultancy on Merger, De-merger and Acquisition. He was also associated with various educational, social and spiritual institutions.

Presented various papers in seminars, conferences on bank audits, accounting standards, taxation and allied laws. Chaired various session of AIFTP and ICAI of CIRC.

Federation pays heart felt condolences to the bereaved family. May almighty give courage and fortitude to the family members to sustain this irreparable loss.

His sudden departure has created a Vacuum not only in AIFTP but also in Chartered Accountants and Tax Professional fraternity of Ujjain and Indore which can never be filled.

Shri Suresh Ramnani, Jt. Secretary, AIFTP

I am shocked to learn about the sad, sudden and untime demise of my great friend and associate late Shri Murlidharji Sodani, a Senior, sincere Chartered Accountant and Vice-President of All India Federation of Tax Practitioners. He was simple, sincere, sweet tongued, devoted, dedicated and determined to serve the tax fraternity and the Society. During the past 20 years he made a respectable place in AIFTP apart from other organizations.

He was very humble, humane, humorous, helping and courteous apart from highly knowledgeable. He made a mark in accountancy and law profession. He played a vital role and spread message of All India Federation of Tax Practitioners in the Central Zone. He organized number of workshops, seminars and conferences successfully. Latest being at Indore in December, 2010. His demise has created a vacuum in the Central Zone of AIFTP. Lastly I had a telephonic talk in the month of April, 2011, after return from Jodhpur, where I missed him a lot.

I and my wife have many sweet memories of his hospitality and company. It is a big personal loss to us. We have lost for ever a family friend.

I and Mrs. Ranka express our heartfelt condolences and pray Lord Mahaveera to confer peace on the departed soul and to give strength to all members of the bereaved family, friends, associates, acquaintances and members of AIFTP and other organizations to bear the irreparable injury.

Shri N. M. Ranka, Past President, AIFTP

Shri M. D. Sodani was a noble human being. He has immensely contributed for the development of the profession and Federation. In his passing away, our association has lost his guiding spirit.

We shall always cherish his sweet memories.

I pray almighty to grant eternal peace to the departed soul and strength and courage to his family to bear this great loss.

Dr. K. Shivaram, Past President & Editor-in-Chief, AIFTP

It was a shock to me when a few days back in the early morning I received a message about the sudden departure of Shri. M. D. Sodani to his heavenly abode immediately thereafter I conveyed my condolences to his son.

Mr. Sodani was introduced to the federation by my friend Shri. S C. Goyal from Ujjain many years back having found him to be a dedicated member the federation was privilege to have him as a Chairman of the Central Zone during its initial period.

Mr. Sodani was a very enthusiastic and had many new ideas in regard to the spread of knowledge amongst younger generation of professionals. He himself ventured to be a faculty member for that purpose. He was methodical in his working and a man of discipline. He became a member of the larger family when he joined us in our visits to European Countries and thereafter U.S.A.

When we all met at Indore on the last occasion for the two days Seminar organised by him as a Chairman of the conference committee hardly anybody realised that Mr. Sodani will say good bye to all of us so soon.

Immediately after completion of the conference and as a vice president of the federation It was Mr. Sodani who set a very good precedent of contributing Rs.100/- per member attending the conference towards the fund of the federation. All other zones have followed that precedent.

The federation has become poorer by his sudden departure. We all shall cherish the sweet memories of his ever smiling nature. May God bestow eternal peace to the departed soul and enough strength to his son and his family to bear this sudden loss of parental figure.

Shri P. C. Joshi, Past President, AIFTP

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