



All India Federation of Tax Practitioners

Price ₹ 5/-
(For Members only)

AIFTP TIMES

Volume 3 - No. 3

March, 2012

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
17, 31-3-2012	Workshop on MVAT & Allied Laws	Mumbai
16-3-2012	National Executive Committee Meeting	Guwahati
17, 18-3-2012	Two Day National Tax Conference	Guwahati
7, 8-4-2012	Two Day Conference on Taxation	Surat
14-4-2012	One Day Seminar on Taxation	Nellore
1-6-2012	National Executive Committee Meeting	Kolhapur
2, 3-6-2012	National Tax Conference 2012	Kolhapur

FEDERATION NEWS

Narayan P. Jain, Secretary General

AIFTP DIRECTORY OF NATIONAL/ZONAL COMMITTEES



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 20th March, 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

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REPORT

Conference organized at Jodhpur on Saturday, February 11, 2012 at Rotary Club, Jodhpur

The Central Zone of All India Federation of Tax Practitioners organized one day Conference at Jodhpur and around 130 delegates were present.

Hon'ble Shri P.R. Ratnoo, Member Rajasthan Tax Board, Ajmer was the Chief Guest of the Conference, who inaugurated the Conference and the Hon'ble Shri J.R. Lohiya, Member Rajasthan Tax Board, Ajmer, Shri Ranjeet Joshi, President, Rajasthan High Court Bar Association were the Guests of Honour.

During the above conference, Shri S.C. Maheshwari, Chairman, AIFTP [CZ], has been felicitated.

During the conference, we have paid homage to the Hon'ble Mr. Justice, C.M. Lodha, Former Chief Justice of Guwahati High Court who left us for his heavenly abode.

The Conference was organized under the Chairmanship of Advocate P.M. Chopra, CA J.M. Lodha, Conference Secretary & and CA T.L. Jain, Convener.

There were many informative subjects on which eminent Advocates and Chartered Accountants delivered their speech, which are as follows:

Subject	Speaker
Multiple HUF Planning Minor Child's Income without clubbing u/s 64(1A) TDS provision & Provision of Sec. 40A	: CA S.C. Maheshwari, Raipur
Formation of Partnership firm into Company	: CA Pankaj Jain, Delhi
Capital Gain and Charitable Trust	CA Rajesh Mehta, Indore
Service Tax with reference to Residential Complexes & Latest amendment in Service Tax	: CA S.C. Maheshwari, Raipur
Latest suggestions to Paramarshdata Committee to Hon'ble Chief Minister	: Adv. P.M. Chopra
Representation submitted to Central Government on Direct Tax	: CA Sudhir Bhansali, Jaipur
Latest Decision of Supreme Court & High Court on Income Tax	: Adv. Dr. S.L. Jain, Jaipur

Senior Chartered Accountant Sumer Patwa extended Vote of Thanks

The news on the Conference was published in almost all newspapers in Jodhpur, Jaipur, Ganganagar and Pali editions apart from its telecast on ETV.

Book to be released

Selected Articles - Shri N.C. Mehta

on Tuesday, the 27th March, 2012 at 5.30 p.m. onwards
at Indian Merchants Chamber, Churchgate, Mumbai

Chief Guest

Shri Mohit S. Shah, Hon'ble Chief Justice, Bombay High Court

Guest of Honour

Shri Kamal Mehta, Hon'ble President, Gujarat Sales Tax Tribunal

All are cordially invited to attend the above function

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.

- Meeting of the National Office Bearers of the Federation.

6.00 p.m.

- 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.

Guests 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. Shri Nilay Dutta, Senior Advocate

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

2.15 p.m. to 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 Subash 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 noon - **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 Arun Kumar Agarwal, 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
Guests 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
Outstation members are requested to pay the amount by DD only.**

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TWO DAYS NATIONAL TAX CONFERENCE

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS – WESTERN ZONE
Jointly with
THE SALES TAX PRACTITIONERS ASSOCIATION OF MAHARASHTRA

At Pavilion Hotel, Kolhapur on (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 Budget, 2012 - Direct taxes
06.30 p.m. onwards	:	NEC Meeting followed by Dinner and Entertainment programme

2nd June, 2012 (Saturday)

8.30 a.m. to 9.30 a.m.	:	Breakfast
9.30 a.m. to 11.00 a.m.	:	2nd Technical Session (Income Tax) Chairman : Dr. K. Shivaram, Advocate, Mumbai Speaker : CA Harish Motiwalla, Mumbai Subject/Topic : Some intricate issues of TDS
11.00 a.m. to 12.30 p.m.	:	3rd Technical Session Chairman : Mr. S. R. Wadhwa, Advocate, New Delhi Speaker : Mr. Vipul Joshi, Advocate Mumbai Subject/Topic : Some intricate issues of HUF and Gifts
12.30 p.m. to 1.30 p.m.	:	Lunch
1.30 p.m. to 3.00 p.m.	:	4th Technical Session (VAT – Sales Tax) Chairman : Mr. S. S. Gaitonde, Advocate, Mumbai Speakers : Mr. Deepak Bapat, Advocate, Mumbai Subject/Topic : Recent State Budget and issues of ITC
3.00 p.m. to 3.15 p.m.	:	Tea Break
3.15 p.m. to 4.30 p.m.	:	5th Technical Session Chairman : Mr. V. Sridharan, Sr. Advocate, Mumbai Speaker : C.A. Sagar Shah, Pune Subject/Topic : Intricate issues arising from Recent amendments to Service Tax

3rd June, 2012 (Sunday)

8.30 a.m. to 9.30 a.m.	:	Breakfast
9.30 a.m. to 11.00 a.m.	:	6th Technical Session Chairperson : Mrs. Nikita R. Badheka, Advocate, Mumbai Speaker : Mr. Ashvin Acharya, Advocate, Mumbai Subject : Central Sales Tax Act
11.00 a.m. to 12.30 p.m.	:	7th Technical Session (Service Tax) Chairman : Mr. Vikram Nankani, Advocate, Mumbai Speaker : C.A. Pranav Mehta, Mumbai Topic : Intricate issues of Cenvat Credit
12.30 p.m. to 2.00 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. Bharatji Agrawal, Sr. Advocate, Allahabad; Mr. M. V. K. Murthy, Advocate, Hyderabad; Mr. S. N. Inamdar, Sr. Advocate, Mumbai Mrs. S. S. Rangnekar, Advocate, Mumbai Mr. C. B. Thakar, Advocate, Mumbai
2.00 p.m. to 3.00 p.m.	:	Lunch

**Delegate Fees: ₹ 2,000/- for Members, ₹ 2,500/- for Others
& (includes paper material, two breakfast & two Lunch)**

₹ 1250/- for Accompanying Spouse (includes two breakfast & 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.**

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ONE DAY SEMINAR ON TAXATION

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS - SOUTHERN ZONE
at HOTEL D.R. UTTAMA, 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 Acts
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

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	Associate	Individual	Association	Corporate	Total
Central	0	751	22	3	776
Eastern	2	966	35	3	1006
Northern	0	843	17	0	860
Southern	0	763	13	3	779
Western	3	1600	32	15	1650
Total	5	4923	119	24	5071

TWO DAYS CONFERENCE ON TAXATION

Organized by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WESTERN ZONE)

Jointly with

**THE SOUTHERN GUJARAT INCOME TAX BAR ASSOCIATION, SURAT &
THE SOUTHERN GUJARAT CHAMBER OF COMMERCE AND INDUSTRY, SURAT**

On (Saturday) 7th & (Sunday) 8th April, 2012

At Hotel Taj Gate Way, Surat

Theme: IN PURSUIT OF EXCELLENCE IN EMERGING TAX SCENARIO

PROGRAMME DETAILS

7th April, 2012 (Saturday)

08.30 am to 09.30 am	:	Breakfast & Registration
09.30 am to 11.00 am	:	Inaugural Session
11.00 am to 1.30 pm	:	1st Technical Session
	Chairman	: Mr. J. P. Shah, Advocate, Ahmedabad
	Speaker	: CA Tarun Ghia, Mumbai
	Topic	: Section 50C and 56(2) – Certain Emerging Issues
	Chairman	: Mr. K. H. Kaji, Advocate, Ahmedabad
	Speaker	: CA Ashvin C. Shah, Ahmedabad
	Topic	: Recovery & Stay Proceedings under the Income-tax Act, 1961
01.30 pm to 2.30 pm	:	Lunch
02.30 pm to 5.00 pm	:	2nd Technical Session
	Chairman	: CA S. S. Gupta, Mumbai *
	Speakers	: CA Ashit Shah, Mumbai
	Topic	: CENVAT Credit Rules under Service Tax
	Chairman	: CA A. R. Krishnan, Mumbai
	Speaker	: Mr. Naresh Thacker, Advocate, Mumbai
	Topic	: Service Tax on Real Estate and Developers

8th April, 2012 (Sunday)

09.00 am to 10.00 am	:	Breakfast
10.00 am to 1.00 pm	:	3rd Technical Session
	Chairman	: Mr. K. C. Patel, Advocate, Ahmedabad
	Speaker	: CA (Dr.) Girish Ahuja, New Delhi
	Topic	: Survey, Search & Seizure under Income Tax Act – Practical Aspects
	Chairman	: CA Dilip J. Thakkar, Mumbai *
	Speaker	: CA Paresh Shah, Mumbai *
	Topic	: NRI Taxation

- 01.00 pm to 2.00 pm : Lunch
- 02.00 pm to 4.30 pm : **4th Technical Session**
 Chairman : Mr. P. C. Joshi, Advocate, Mumbai
 Speaker : CA Kishor Gheewala, Surat
 Topic : GVAT Audit vis-à-vis Sec. 145A of the Income Tax Act
 Chairman : Mr. R. V. Desai , Sr. Advocate, Mumbai
 Speaker : CA Janak Vaghani. Mumbai
 Topic : Practical Issues under section 6(2) of the Central Sales Tax Act
- 4.30 pm to 5.30 pm : Valedictory Session

* *Subject to Confirmation*

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

**Delegate Fees: ₹ 1,500/- per person (includes paper material, two breakfast and two lunch)
 ₹ 1,000/- for accompanying spouse (includes two breakfast, 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.

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		₹	₹	₹	₹	
	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

DIRECT TAXESAjay R. Singh, Paras Savla, & Rahul Hakani
Advocates, KSA Legal**SUPREME COURT****1. S. 80HHC : Deduction – Export – Computation – Profits of business – DEPB sale proceeds is not “profits” – The face value of DEPB shall be deducted from the sale proceeds. [S. 28(iiid)]**

DEPB is “cash assistance” receivable against exports under the scheme of the Government. While the face value of the DEPB falls under clause (iiib) of section 28, the difference between the sale value and the face value of the DEPB (the “profit”) will fall under clause (iiid) of section 28. The High Court was not right in taking the view that the entire sale proceeds of the DEPB realized on transfer of the DEPB and not just the difference between the sale value and the face value of the DEPB represent profit on transfer of the DEPB. DEPB represents part of the cost incurred by a person for manufacture of the export product and hence even where the DEPB is not utilized by the exporter but is transferred to another person, the DEPB continues to remain as a cost to the exporter. When DEPB is transferred, the entire sum received on such transfer does not become his profits. It is only the amount that he receives in excess of the DEPB which represents his profits on transfer of the DEPB.

Topman Exports vs. CIT (SC) www.itatonline.org

2. S. 80HHC : Deduction – Export – Computation – Interest – Netting – Explanation (baa) to section 80HHC, refer netting of income from expenditure

Under Clause (1) of Explanation (baa) to section 80HHC, 90% of any receipts by way of brokerage, commission, etc. “included in any such profits” have to be deducted from the profits & gains of business. The expression “included any such profits” means such receipts by way of brokerage, commission, etc. included in the profits & gains. Therefore, if any quantum of receipts by way of brokerage, commission, etc. is allowed as expenses under section 30 to 44D and is not included in the profits of business, 90% of such quantum of receipts cannot be reduced under clause (1) of Explanation (baa) to section 80HHC. In other words, only 90% of the net amount of any receipt of the nature mentioned in clause (1) which is actually included in the profits of the assessee is to be deducted from the profits of the assessee for determining “profits of the business.”

ACG Associated Capsules Pvt. Ltd. vs. CIT (SC) www.itatonline.org

HIGH COURTS**3. S. 2(1A)(b)(ii) : Agricultural income – Conversion of raw peas into pea seeds**

Assessee who is engaged in cultivating and growing raw peas and also in the process of converting them into pea seeds so as to render them fit for sale and also selling seeds in the market and to various godowns. Income derived from pea seeds constituted agricultural income. (A. Y. 1997-98)

CIT vs. Rana Gurjit Singh (2012) 340 ITR 108 (P&H) (High Court)

4. S. 2(47)(v) : Transfer – Possession of immovable property – Transfer of Property Act, 1982. (S. 45)

Possession of the mill was transferred to the purchaser by way of lease and not in terms of the Transfer of Property Act. Therefore, there was neither actual transfer nor artificial transfer of title on account of the transfer of possession. Such transfer of title took place only on payment of the entire amount by the purchaser and only after the sale certificate was issued by the competent court. (A. Y. 1995-96)

Cauvery Spinning and weaving Mills Ltd. (In liquidation) vs. Dy. CIT (2012) 340 ITR 550 (Mad.) (High Court)

5. S. 37(1) : Business expenditure – Capital or revenue – Removal of encroachments

Expenditure towards removal of encroachments in and around technical area of airport for safety and security is merely for purpose of removal of disability hence allowable as revenue expenditure. (A. Y. 1998-99)

Airports Authority of India vs. CIT (2012) 340 ITR 407 (Delhi) (FB) (High Court)

6. S. 37(1) : Business expenditure – Capital or revenue – Software application – Improvement of leased premises

Expenditure incurred on purchase of software application is allowable as revenue expenditure. Expenditure incurred on improvements of lease hold premises viz. expenses of flooring, partition, wiring, false ceiling, roofing, air conditioning unit and duct, electric wiring laying network for setting up computers and on purchase of furniture on

improvement of leasehold premises allowable as revenue expenditure. (A.Ys. 2001-02, 2002-03)

CIT vs. Amway India Enterprises (2012) 65 DTR 313 (Delhi) (High Court)

7. S. 41(1) : Profits chargeable to tax – Income – Accrual – Remission or cessation of trading liability – Waiver of loan

For the application of section 41(1), the condition precedent is that there should be an allowance or deduction in the assessment for any year in respect of loss, expenditure or trading liability incurred by assessee hence the section 41(1) is not attracted to waiver of loan liability since no allowance or deduction was claimed in respect of the same. (A. Y. 2003-04)

CIT vs. Compaq Electric Ltd. (2012) 66 DTR 38 (Karn.) (High Court)

TRIBUNALS

8. S. 2(14) : Capital assets – Agricultural land – Barren land – Capital gains. (S. 45)

Assessee sold the land and claimed the exemption on the said transaction treating the same as agricultural land. Tribunal held that land in question was a barren land surrounded by rocky mountains and not fit for agricultural operations. Sale of the said land was not for agricultural purpose but for purpose of construction of flats, therefore the land in question is capital asset and liable to capital gains tax. (A.Ys. 2002-03 to 2007-08).

Suresh Kumar D. Shah vs. Dy. CIT (2012) 49 SOT 341 (Hyd.) (Trib.)

9. S. 4 : Income – Undisclosed income – Search and seizure – On money – Paper seized from third party – Professional income. (S. 132)

In the course of search and seizure action against third party, from the Director of the said company certain loose papers were seized which recorded the alleged payments to artists. One of the name was of the assessee. On the basis of said paper the assessment of the assessee was reopened. Assessing Officer treated the said amount of ₹ 20 lakhs as undisclosed income of assessee. In the course of cross examination the director of the company has stated that he did not recollect the year of payment either 1996 or 1999 nor the person to whom he has given the money. The Tribunal held that under the circumstances the statements given by Director no evidentiary value hence the addition could not be taxed in the assessment year 1999-2000. (A. Y. 1999-2000).

Saif Ali Khan Mansurali vs. ACIT (2012) 13 ITR 204 (Mum.) (Trib.)

10. S. 4 : Income – Capital receipt – TDR – Gains on housing society redevelopment is non-taxable capital receipt. [S. 2(24)]

The assessee was the member of a housing society. The housing society and its members entered into an agreement with a developer pursuant to which the developer demolished the building owned by the housing society and reconstructed a new multistoried building by using the FSI arising out of the property and the outside TDR available under Development Control Regulations. The assessee, as a member of the housing society, received a larger flat in the new building, displacement compensation of ₹ 6 lakhs (at ₹ 34,000/- p.m. for the period of construction of the new building) and additional compensation of ₹ 11.75 lakhs. The Assessing Officer and CIT(A) held that the said "additional compensation" was assessable as income in the assessee's hands. On appeal by the assessee, held allowing the appeal:

In principle, though the scope of "income" in section 2(24) is very wide, a capital receipt is not chargeable to tax as income unless there is a specific provision to that effect. As the residential flat owned by the assessee in the society's building was a capital asset in his hands, the compensation was a capital receipt. The department's argument that the cash compensation was a "share in profits earned by the developer" is not acceptable because it proceeds on the fallacy that the nature of payment in the hands of the payer determines the nature in the hands of the recipient. However, as the said receipt reduced the cost of acquisition of the new flat, it had to be taken into when computing the gains from a transfer thereof in the future.

Kushal K. Bangia vs. ITO (Mum.) (Trib.) www.itatonline.org

11. S. 4 : Income – Diversion by overriding title – Infrastructure fund

Assessee is a development authority created under the provisions of UP Urban Planning & Development Act, 1973. 90 per cent of the amounts collected by the assessee by way of development fees, conversion charges of land user, stamp duty and fees on regularization of colonies were retained in the infrastructure fund account. As per office memorandum assessee has been given power to collect the fees charges and functioning. The amount collected by office memorandum not being a separate independent entity of the assessee and the said memorandum having not created any overriding title of the State Government at source of collection of the specified fees / charges, which have to be applied towards fulfilment of assessee's object, there is no diversion of income by overriding title as regards the amounts credited to the infrastructure fund. (A.Y. 2006-07 & 2007-08)

Mussore Dehradun Development Authority vs. Addl. CIT (2012) 65 DTR 297 / 143 TTJ 395 (Delhi) (Trib.)

INDIRECT TAXES

P. C. Joshi, Advocate

1. ENTRIES TO SCHEDULE**a) Biology Instruments**

The Supreme Court while deciding the appeal against the Allahabad High Court Judgment held that the term 'biology instrument' related to the instrument used in the education of biology as a subject in the educational institution and cannot be equated with the words 'biological instruments' which included several articles required in hospital and medical colleges for various purposes including research. The exemption notification by the U.P. Government related to biology instrument and therefore the sale of biological instruments were not eligible to exemption.

Commissioner of Trade Tax vs. Kartos International (2011) 58 S.T.A. P. 274

b) Coconut Oil

The Guwahati High Court held that merely because majority of the people did not use coconut oil for cooking purposes or was used as hair oil, it did not make the coconut oil to be outside the scope of entry 24-I of Part I of Second Schedule relating to edible oil.

Shalimar Chemical Works Ltd vs. The State of Assam (2012) (3) GSTJ P. 19.

c) Coil Transfer Car

The Chhattisgarh High Court while disposing of an appeal under section 35G of the Central Excise Act, 1944 held that the item mentioned above was covered by heading 86.6 relating to "railway or tramway goods van or wagon".

Bhilai Engineering Corporation Ltd vs. The Commissioner Central Excise & Customs & Anr. 2012 (3) GSTJ P. 28.

d) Hair Band/Hair Clip

The West Bengal Taxation Tribunal held that the hair band, hair clip, pins made of plastic, were covered by the entry relating to imitation jewellery because such a jewellery can be made of any substance and not necessarily out of precious metal or stone.

The Secretary, Calcutta imitation Jewellery Dealers Association vs. The State of West Bengal & Ors. (2011) 58 S.T.A. Pg.292.

e) Masala Powder

The Karnataka High Court held that the masala powder need not be of only spices; it may contain some other ingredients used to prepare food products like cereal. The court also referred to the Government notification dated 19th December, 2006

to provide for the rate of tax to be 4% on masala powder.

M/s. Kamala Enterprises vs. Asst. Commissioner of Commercial Taxes (Enf. 6) 2011-12 (19) KCTJ P.295.

2. INSULATED WIRES AND CABLES

The Supreme Court held that the electric cables were neither parts nor specially designed devices necessary for manufacturing or running wind mills.

Uniflex Cables Ltd. vs. Commissioner, Central Excise (2011) NTN (Vol.47) - 278.

3. LIMITATION

The provisions of section 5 of the Limitation Act, 1963 cannot be applied to a special enactment containing period of limitation other than the one prescribed under the said Act. Section 14 of the 1963 Act, however can be made applicable for excluding the time during which the appellant was perusing a remedy before a wrong forum.

Ketan V. Parekh vs. Special Director, Directorate of Enforcement 2012 (275) ELT 3 (SC).

4. PRECEDENT

The Apex Court reiterated the well laid down principle of law that the Constitution Bench judgment was binding on all Benches of the Supreme Court. In case the Division Bench entertained any doubt about its correctness, it may refer the matter to a larger Bench.

Bharat Petroleum Corporation Ltd vs. Mumbai Shramik Sangha & Ors. (2012) 20 STJ 92 (SC).

5. PENALTY

The Supreme Court while disposing of an appeal u/s. 35-L(b) of the Central Excise Act, 1984 held that the imposition of penalty was not justified where the disputed issue was in relation to the quantum of tax; based on principles of interpretation.

Uniflex Cables Ltd. vs. Commissioner, Central Excise (2011) NTN (Vol.47) - 278.

6. REVISION

The West Bengal Taxation Tribunal set aside the action of 'revision' simply on the basis of the audit report in relation to non-maintenance of books and registers as prescribed u/s. 63 of the West Bengal VAT Act. That Act did not provide for any specific manner of maintaining the books of accounts and the register for the purpose of the Act.

Shri Pramod Mahapatra vs. S.T.O. Taltala Charge & Ors. (2011) 58 S.T.A. P. 298.

7. SALE BY SEZ UNIT

The Andhra Pradesh High Court held that the sales of goods by dealer to a unit in SEZ for the purpose of setting up operation, maintenance, manufacture, trading, production and processing was exempted from payment of VAT. Such a sale need not be by a registered dealer in view of the fact that the provisions provide for sale by a dealer simpliciter and therefore the word "registered" cannot be read therein.

Flowmore Ltd. & Anr. vs. Dy. Commercial Tax Officer (2011) 53 APSTJ P. 235.

8. TRANSFER OF RIGHT TO USE GOODS - ROYALTY

The Andhra Pradesh High Court after interpreting the inter se agreement by the assessee with the trademark holder, held that the royalty paid under the agreement amounted to consideration for use of trade mark which admittedly was goods of intangible nature. The court in that connection observed that the intention of the parties have to be gathered by reading the agreement as a whole and not any one clause in isolation.

Nutrine Confectionary Co. Pvt. Ltd. vs. State of Andhra Pradesh (2012) 20 KTR 38 (AP).

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

Printed by Kotecha Mitesh Ashwin Published by Kotecha Mitesh Ashwin on behalf of All India Federation of Tax Practitioners (name of owner) and Printed at Finesse Graphics & Prints Pvt. Ltd., 309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai - 400 013. (name of the printing press with address) and published at All India Federation of Tax Practitioners, 215 Rewa Chambers, 31, New Marine Lines, Mumbai - 400 020 (full address of the place of publication). Editor: Karkala Shivaram Kittanna.

To

Posted at Mumbai Patrika Channel Sorting Office - Mumbai 400 001.

Date of Posting : 3rd & 4th March, 2012

If undelivered, please return to :



ALL INDIA FEDERATION OF TAX PRACTITIONERS
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