



All India Federation of Tax Practitioners

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(For Members only)

AIFTP TIMES

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FORTHCOMING PROGRAMMES		
Date & Month	Programme	Place
13th, 14th & 15th Oct., 2011	8th Nani Palkhivala Memorial National Tax Moot Court Competition	Mumbai
15th October, 2011	National Executive Committee Meeting	Mumbai
4th November, 2011	Extraordinary General Body Meeting of AIFTP (SZ)	Hyderabad
11th November, 2011	Celebration of Foundation Day	Delhi
11th November, 2011	National Executive Committee Meeting	Delhi
12th & 13th November, 2011	Two Day National Tax Conference	Delhi
16th to 22nd November, 2011	AOTCA International Tax Conference	Indonesia
26th November, 2011	Full Day Seminar for Basic Course on Taxation of Non-Residents and Application of Tax Treaty	Mumbai
9th December, 2011	National Executive Committee Meeting and EGM	Ranchi
10th & 11th December, 2011	Two Days National Tax Convention	Ranchi

FEDERATION NEWS

J. K. Ranka, Secretary General

AOTCA INTERNATIONAL TAX CONFERENCE AT BALI, INDONESIA

AOTCA Conference 2011 will be held from 16th to 22nd 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 and Jhakarta, which will be approx. ₹ 1.25 lakh 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 and also contact for further detailed information.

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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**35TH FOUNDATION DAY CELEBRATION
&
NATIONAL TAX CONFERENCE – 2011**

**From 11th to 13th November, 2011
at Sri Sathya Sai International Centre, Opp Sai Temple, Lodhi Road, New Delhi**

Theme : A Vibrant India – Through Tax Reforms

PROGRAMME

Friday, 11th November, 2011

04:00 PM to 05:00 PM	Registration & Tea
05:00 PM to 07:00 PM	Inaugural Session: Presided by : Hon'ble Mr. Justice T. S. Thakur Judge, Supreme Court of India Inauguration by : Hon'ble Mr. Salman Khurshid, Union Minister for Law & Justice Guests of Honour : Mr. Goolam E. Vahanvati, Attorney General of India Mr. P. H. Parekh, President, SCBA National President : Mr. M. L. Patodi, Advocate, Kota Imm. Past President : Mr. Bharat Ji Agrawal, Sr. Advocate, Allahabad Felicitations of Past Presidents & other dignitaries
07:00 PM to 07:30 PM	Tea
07:30 PM to 08:30 PM	National Executive Meeting & Kavi Sammelan
08:30 PM onwards	Dinner

Saturday, 12th November, 2011

09:00 AM to 10:00 AM	Breakfast
10:00 AM to 11:30 AM	1st Technical Session : "Beyond the Statute - Constitutional Remedies" Chairman : Hon'ble Mr. Justice Rajeev Shakti, Judge, Delhi High Court Co-Chairman : Shri N. M. Ranka, Sr. Advocate and Past President, AIFTP, Jaipur Upcoming Speaker : Shri Rahul Aggarwal, Advocate, Allahabad Speaker : Mr. Gopal Subramaniam, Sr. Advocate, Former Solicitor General of India
11:30 AM to 11:45 AM	Tea
11:45 AM to 01:15 PM	2nd Technical Session "Resolving Conflicts with respect to Works Contracts - Under VAT & Service Tax" Chairman : Hon'ble Mr. Justice A. K. Sikri, Judge, Delhi High Court Co-Chairman : Shri P. S. Sarin, Advocate, Delhi Upcoming Speaker : Mr. Ruchir Bhatia, Advocate, Delhi Speaker : Mr. R. M. Ramani, Sr. Advocate, Chennai
01:15 PM to 02:15 PM	Lunch
02:15 PM to 03:45 PM	3rd Technical Session "Back Assessments - Reassessment & TDS Assessment u/s 201(3)" Chairman : Hon'ble Mr. Justice Valmiki Mehta, Judge, Delhi High Court

	Co-Chairman	: Shri S. K. Poddar, Advocate, Ranchi
	Upcoming Speaker	: Mr. Deepak Jain, Advocate, Kolkata
	Speaker	: Mr. M.S. Syali, Sr. Advocate, Delhi
03:45 PM to 04:00 PM	Tea	
04:00 PM to 05:30 PM	4th Technical Session	
	"Controversial Issues – Exemption of Subsequent Sales u/s 6(2) of Central Sales Tax Act"	
	Chairman	: Hon'ble Mr Justice V. K. Jain, Judge, Delhi High Court
	Co-Chairman	: Shri P. C. Joshi, Advocate and Past President, AIFTP, Mumbai
	Upcoming Speaker	: Mr. Anuj Bansal, Advocate, Delhi
	Speaker	: Mr. Bharat Ji Agrawal, Sr. Advocate and Past President, AIFTP, Allahabad
05:30 PM to 06:00 PM	Tea	
06:00 PM to 08:00 PM	Cultural Programme	
08:00 PM onwards	Dinner	

Sunday, 13th November, 2011

09:00 AM to 10:00 AM	Breakfast	
10:00 AM to 11:45 AM	5th Technical Session	
	"Intricate Issues – Real Estate Transactions & Section 50C of Income-tax Act"	
	Chairman	: Hon'ble Mr. Justice Manmohan, Judge, Delhi High Court
	Co-Chairman	: Dr. K. Shivaram, Advocate and Past President, AIFTP, Mumbai
	Upcoming Speaker	: Mr. Punit Rai, Advocate, Delhi
	Speaker	: Dr. Girish Ahuja, CA, Delhi
11:45 AM to 12:00 Noon	Tea	
12:00 Noon to 01:30 PM	Valedictory Session	
	"Fighting Corruption – A time for Self Retrospection"	
	Chief Guest	: Hon'ble Mr. Justice Kailash Gambhir, Judge, Delhi High Court
	Guests of Honour	: Hon'ble Mr. R. V. Eswar, President, ITAT Mr. Harish Salve, Former Solicitor General of India
	Conference Chairman	: Mr R. K. Batra, Advocate, Delhi
1:30 PM onwards	Lunch	

Delegate Fee (Kindly ✓) :

Members : ₹ 1,500/- • Spouse : ₹ 1,000/- • Corporate Member : ₹ 3,000/-

Convention Secretariat : 2nd Floor, Vyapar Bhawan, Indraprastha Estate, New Delhi – 110 002
Email : admin@aiftpnorthzone.com Website : www.aiftpnorthzone.com

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**FULL DAY SEMINAR FOR
BASIC COURSE ON TAXATION OF NON-RESIDENTS
AND APPLICATION OF TAX TREATY**

Organized by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WESTERN ZONE)

***This Programme
scheduled to be held
on 8th October, 2011
is postponed to
26th November, 2011.***

on
Saturday, 26th November, 2011
from 9.00 a.m. to 5.30 p.m.
at
M. C. Ghia Hall, Kalaghoda, Mumbai

***Enrolment
restricted to
75 participants
on first come
first served
basis***

PROGRAMME

9.00 am to 9.30 am	Registration and breakfast
9.30 am to 10.45 am	Nature of Income and its chargeability to tax for Non-Residents <i>Speaker</i> : CA Dhishat Mehta
10.45 am to 11.00 am	Tea break
11.00 am to 12.15 pm	Computation of Income of Non-Residents <i>Speaker</i> : CA Mayur Desai*
12.15 pm to 1.30 pm	Chargeability under IT Act and the provisions of the Tax Treaty <i>Speaker</i> : CA Harish Motiwalla
1.30 pm to 2.30 pm	Lunch break
2.30 pm to 4.00 pm	The Global Taxation of Residents – A Source and the Resident Rule <i>Speaker</i> : CA Paresh P. Shah
4.00 pm to 4.15 pm	Tea break
4.15 pm to 5.30 pm	Role of tax practitioners in International Taxation – A recent trend <i>Speaker</i> : CA Mayur Nayak

* *Subject to confirmation*

Delegate Fees :

**₹ 1,100 for Members and ₹ 1,300 for non-Members
(including seminar material, tea, snacks and 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 send DD only.*

H. N. MOTIWALLA
Chairman, AIFTP (WZ)

Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Andhra Pradesh Sales Tax Bar Association for the period 2011-13.

President	:	K. Raji Reddy
Vice President	:	T. V. Subba Rao
Secretary	:	V. Ganesh Bhujanga Rao
Joint Secretary	:	T. Vinod Kumar
Treasurer	:	R. R. Baldwa

We wish them all the success.

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:-

- 13-10-2011 Inauguration at Government Law College by the Hon'ble President Shri R.V. Easwar
5.30 p.m. onwards and Hon'ble Vice President Shri D. Manmohan of ITAT
- 14-10-2011 Preliminary Rounds at ITAT, Mumbai
(Competition will be judged by the Members of the ITAT, Mumbai & Professionals)
- 15-10-2011 Semi-finals at ITAT, Mumbai
(Competition will be judged by the Member of ITAT, Mumbai)
- 15-10-2011 Final at Rangaswar Hall, 4th Floor, Y. B. Chavan Pratisthan, Mumbai
6.00 p.m. onwards (Competition will be judged by the Hon'ble Judges of Bombay High Court
Chief Justice Mohit S. Shah, Justice D. Y. Chandrachud, Justice R. M. Savant)

30 law colleges across India are expected to participate in the competition.

Note: National Executive Committee Meeting will be held on 15th October, 2011 from 2.30 p.m. to 5.00 p.m. at Income Tax Appellate Tribunal Bar Association's Library, Room No. 445 Old CGO Building, 4th Floor, 101, Maharshi Karve Road, Mumbai - 400 020.

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)"

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

16TH NATIONAL CONVENTION 2011 AT RANCHI

Organized by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (EASTERN ZONE)

Jointly with

**JHARKHAND INCOME TAX BAR ASSOCIATION, RANCHI
JHARKHAND COMMERCIAL TAXES BAR ASSOCIATION, RANCHI
RANCHI BRANCH OF CIRC OF ICAI**

on

9th, 10th & 11th December, 2011

at

Hotel Radisson Blu, Main Road, Ranchi, Jharkhand

Theme : Professional's Role in Emerging Tax Laws

PROGRAMME

Friday, 9th December, 2011

Venue : Hotel Capitol Hill, Main Road, Ranchi

3.30 p.m. onwards : National Executive Committee Meeting 2010 and 2011
Extraordinary General Meeting 2011
Election of National Executive & Office Bearers 2012 and 2013
National Executive Committee Meeting 2012 and 2013
Followed by Dinner.

Saturday, 10th December, 2011

Venue : Hotel Radisson Blu, Main Road, Ranchi

8.30 a.m. – 10.00 a.m. : Registration & Breakfast
9.45 a.m. – 11.30 a.m. : Inauguration of Convention
12.00 Noon – 1.30 p.m. : 1st Technical Session
1.30 p.m. – 2.30 p.m. : Lunch Break
2.30 p.m. – 4.00 p.m. : 2nd Technical Session
4.00 p.m. – 4.20 p.m. : Tea Break
4.20 p.m. – 6.00 p.m. : 3rd Technical Session
7.30 p.m. onwards : Dinner at Ranchi Club

Sunday, 11th December, 2011

10.00 a.m. – 12.00 Noon : 4th Technical Session
12.00 Noon – 1.30 p.m. : 5th Technical Session
1.30 p.m. – 2.30 p.m. : Lunch Break
2.30 p.m. – 5.00 p.m. : Brain Trust & Valedictory High Tea

Payment Details: Member : ₹ 2,000.00
Spouse : ₹ 1,000.00
Corporate Member : ₹ 3,000.00
Student/Professional : ₹ 1,000.00 (Professional whose practice below 5 years)

**(Note : 10 per cent discount on Registration before 31-10-2011)
Registration fee includes Kit, 2 Breakfasts, 2 Lunches and 1 Dinner)**

Cheque/Draft may be drawn in favour of "AIFTP (EZ) Convention 2011" payable at Ranchi.

Correspondence address:

S. K. Poddar, Chairman, Hardutt Rai Lane, Upper Bazar, Ranchi – 834 001
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Contact Members:

Narayan P. Jain, Chairman, AIFTP (EZ) • **C. K. Chatterjee**, Secretary, AIFTP (EZ)
Sajjan Kumar Sultania, Treasurer, AIFTP (EZ)

Note: List of Hotels near the venue and Contact Members details are available in our website; i.e., www.aiftponline.org

NOTICE OF EGM OF AIFTP (SZ)

Notice is hereby given that the Extraordinary General Body Meeting of the Members of Southern Zone of AIFTP will be held at Hotel The Taj Deccan, Road Number 1, Banjara Hills, Hyderabad – 500 034 on Friday, the 4th November, 2011 at 5 p.m. to elect Members of the Managing Committee and thereafter to elect office bearers for the term 2012 & 2013 amongst the elected members.

Particulars of posts of Office Bearers:-

- | | |
|-------------------------------------|-------------------------------------|
| 1) Chairman..... 1 (One Post) | 2) Vice Chairman 1 (One Post) |
| 3) Secretary..... 1 (One Post) | 4) Treasurer..... 1 (One Post) |
| 5) Jt. Secretary 1 (One Post) | 6) Committee Members..... 25 Nos. |

ELECTION PROGRAMME

- (A) Last Date for receiving nomination Papers.....31-10-2011
(B) Last date for withdrawal02-11-2011
(C) Scrutiny of Nomination papers.....03-11-2011
(D) Date of Election04-11-2011

Note: (1) Address for sending Nomination papers and all other matters is V. Ahalada Rao, Secretary, SZ of AIFTP, Flat No. 113, Block – B, Sri Datta Sai Commercial Complex, Opp. Saphthagiri Theatre, RTC 'X' Roads, Hyderabad – 500 020, A.P. Ph. No. 040-66623101, (M) 09849027041.

(2) Members present in the General Body Meeting shall elect 30 members. The elected Members will then elect office bearers as noted above amongst themselves.

12th September, 2011
Hyderabad

CS. V. Ahalada Rao
Zonal Secretary

NOTICE OF EXTRAORDINARY GENERAL BODY MEETING OF THE FEDERATION TO BE HELD ON 9-12-2011 AT RANCHI

September 7, 2011

Dear Members,

An Extraordinary General Body Meeting as provided in Rule 10 of the Rules & Regulations of the Federation will be held on Friday, 9th December, 2011 at Hotel Capitol Hill, Main Road, Ranchi at 4.00 p.m. to transact the following agenda as prescribed in Rule 8.

A G E N D A

1. To confirm the proceedings of the previous EGM held on 18th December, 2009.
2. To elect 40 members to the Executive Committee for the term 1-1-2012 to 31-12-2013 in accordance with Rule 7(3).
3. To consider report of the Executive Committee for the period 1-1-2010 to 9-12-2011.
4. To consider suggestions from the members in respect of rendering better service to the members and for overall progress of the AIFTP.
5. To receive the report of the Chief Election Officer.
6. To transact any other business that may be raised with the permission of the chair.

For All India Federation of Tax Practitioners

J. K. Ranka
Secretary General

Notes:

1. Constitution, rules and regulations and specimen nomination form is printed in the May 2002 issue of the Journal and also available in our website i.e., www.aiftponline.org. Members are requested to read the same before filing the nomination.
2. Nominations are hereby invited for the membership of National Executive Committee from all eligible members in terms of Rules 10(1) and 14 subject to numerical limit as provided in Rule 7(3) for each Zone.
3. Nomination form duly proposed and seconded must reach the registered office of the Federation on or before 7th December, 2011 (Wednesday) before 6.00 p.m. or may be personally tendered to Chief Election Officer Shri P. C. Joshi at Ranchi before 12.00 noon on 9th December, 2011.
4. Candidate may withdraw the nomination on or before 9th December, 2011 (Friday) before actual commencement of Election process.
5. As per clause 10(3) of the constitution of the Federation, the Chairman of the respective zone shall be ex-officio member of the Executive Committee hence Chairman elect is not required to file the nomination for the National Executive Committee. A special request is hereby made to all the zones to hold the election of respective zone on or before 26th November, 2011 and convey the result to head office through e-mail followed by dispatch through speed post at the earliest.
6. As per the membership of respective zones as on 15th September, 2011 maximum number of candidates who can be elected as per rule 7(3) of the constitution are as under:-

Zones	Maximum to be elected	Members as on 7-9-2011
Western	13	1,636
Eastern	08	953
Southern	06	772
Central	06	747
Northern	07	851
Total	40	4,959

7. As per Rule 10, clause 6 of the constitution of the Federation, a member who is more than 5 years in practice and who has been a member of the Federation for at least two years can only file the nomination.
8. At the meeting held on 1-10-2005 at Mumbai it was decided unanimously that notice for Extraordinary General Meeting be published in the journal of the AIFTP or AIFTP Times as contemplated under rule 9 clause 3. Hence, no separate notice will be issued.
9. The National Executive Committee Meeting will be held once in three months at different places in the country, along with two days' Conference. The Executive Committee Members have to bear personally the expenses of travelling, stay and delegate fees of the Conference and also devote time for the welfare of the Federation. Persons of integrity and who can afford to spend time and money for the welfare of the profession are only requested to file the nomination.
10. The National Executive at its first meeting after election shall elect from amongst its members the following office bearers for two calendar years. (Rule 10 Clause 4 read with clause 6).
 1. **One President**
 2. **One Deputy President**
 3. **Five Vice Presidents (one from each zone)**
 4. **One Secretary General**
 5. **One Hon. Treasurer and**
 6. **Five Hon. Joint Secretaries (one from each zone)**
11. For further clarification the members may contact the Secretary General, Chairman of respective zone or Registered Office.
12. Nomination form are also available in our website. i.e. www.aiftponline.org.
13. At the last National Executive Committee Meeting held at Mumbai on 17th June, 2011, Shri P. C. Joshi was appointed as the Chief Election Officer.
14. The Nomination Forms would be scrutinized by the aforesaid officer and conduct the election if warranted at Ranchi at the time of EGM.

Note: All Zonal Chairmen are requested to hold the election of respective zones before 26th November, 2011.

DIRECT TAXES

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

SUPREME COURT**1. CBDT's low tax effect circular not applicable to matters having "cascading effect"**

In case where SLP was filed by the department against the decision of the High Court relying on CBDT's Instruction No. 3/2011 dated 9-2-2011, dismissing the department appeal as not maintainable on the ground that the tax effect is less than ₹ 10 lakhs, it was held that the liberty is given to the Department to move the High Court pointing out that the Circular dated 9th February, 2011, should not be applied *ipso facto*, particularly, when the matter has a cascading effect. There are cases under the Income-tax Act, 1961, in which a common principle may be involved in subsequent group of matters or large number of matters. In such cases if attention of the High Court is drawn, the High Court will not apply the Circular *ipso facto*. Liberty was granted to the Department to move the High Court in two weeks.

CIT vs. Surya Herbal Ltd. (Supreme Court) (www.itatonline.org)

HIGH COURTS**2. S. 28 : Business Income – Rent from Leave & Licence of office premises**

Applying the test laid down in *Universal Plast Ltd. 237 ITR 454 (SC)* as to when income from property is assessable as "business profits" and as "income from house property", it was held that the rental income has to be assessed as "business profits" because (i) all assets of the business were not rented out by the assessee and it continued the main business of dealing in scientific apparatus, etc, (ii) the property was being used for the Regional Office and was let out by way of exploitation of business assets for making profit, (iii) the assessee had not sold away the properties or abandoned its business activities. The transaction was a "commercial venture" taken in order to exploit business assets and for receiving higher income from commercial assets and therefore assessable as Business Profit.

The Scientific Instrument Co. Ltd. vs. CIT (Allahabad) (High Court) (www.itatonline.org)

3. S. 163 : Representative assessee – Chargeable to tax – Only if some connection with the income – No liability for unconnected income

The mere fact that a person is an agent or is to be treated as an agent u/s 163 and is assessable as "representative assessee" does not automatically mean that he is liable to pay taxes on behalf of the non-resident. U/s 161, a representative assessee is liable only "as regards the income in respect of which he is a representative assessee". Therefore, there must be some connection or concern between the representative assessee and the income.

General Electric Co. vs. DDIT (Delhi) (High Court) (www.itatonline.org)

5. S. 37 : Business expenditure – Deduction – While kidnapping is an offence, paying ransom is not – Bar in Explanation 1 to s. 37(1) not attracted

Where a payment is made by assessee as ransom to secure the release of a kidnapped person, it was held that such payment is not prohibited. The Explanation of s. 37(1) provides that expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business. It has to be seen whether the expenditure is incurred for any purpose which is an offence or prohibited by law. Accordingly, the Explanation of to s. 37(1) is not applicable and the ransom is deductible as business expenditure.

CIT vs. M/s Khemchand Motilal Jain (MP) (High Court) (www.itatonline.org)

TRIBUNALS**6. S. 145 : Books of account rejected – Income calculated on estimated basis – No further addition can be made**

In absence of complete books of account during the assessment proceedings, the books of account was rejected and the income of the assessee was estimated. The A.O. further made addition on account of unsecured loans, disallowance of depreciation, expenses, etc. It was held that once the books of account are rejected and total income of the assessee was finally assessed on estimated basis, no further addition can be made.

ITO vs. Naresh H. Shah, (Mumbai Tribunal) ITA No. 3187/M/2010, Bench "F" A.Y. 2005-06 dt. 15-7-2011

INDIRECT TAXES

P. C. Joshi, Advocate

1. CIRCULAR – CLARIFICATION

The Supreme Court reiterated the well established principle of law that the circulars, clarifications, and instructions issued by Central Board of Excise and customs were binding in law on the lower authorities, however it was not appropriate for a Tribunal or the court to enforce such a clarification in preference to the decision of a High Court or the Supreme Court.

Commissioner of Central Excise vs. Gurukripa Resins Pvt Ltd. 2011 (2) GSTJ P.145.

2. DEALER – TRANSPORTER

The Orissa High Court held that section 2(12) of the Orissa VAT Act has to be read in the light of entry 54 of List II of the Seventh Schedule. A co joint reading made it clear that a transporter exclusively engaged in the business of transporting goods from one place to another, was not a dealer under the VAT Act.

Prem Kumar & Co. vs. General Manager, East Coast Railway & Ors. (2011) 40 PHT 42 (Ori.).

3. DEDUCTION

The Punjab and Haryana High Court held that the selling dealer has to satisfy himself about the genuineness of the buyer and once such a buyer furnish genuine declaration issued by the department the deduction claimed had to be allowed because under the law the seller had no other means to ascertain the correctness of the declaration.

State of Haryana vs. Inalsa Limited & Anr. (2011) 19 STJ 240 (P & H).

4. EXPORT

The Karnataka High Court held that the goods delivered to Air India beyond the customs frontiers of India was not a transaction of export as there was no corresponding foreign importer. In other words the goods in question had no foreign destination but were to be consumed by the passengers during their journey.

State of Karnataka vs. Bacardi Martini India Ltd (2011) 19 KTR 416 (Karn.).

5. ENTRIES IN SCHEDULE

1) Margarine – Edible Oil

The Supreme Court held that the margarine was used for preparing bakery items which are consumed by human being and though one may not consume margarine directly or may not be used for normal

cooking it should be considered as edible oil having 80% fat and in the nature of oil.

Aluva Sugar Agency vs. State of Kerala Civil Appeal No. 7731 of 2011 decided on 7-9-2011.

2) Laminated panels

The Supreme Court after considering the placement of relevant headings under the Central Excise Tariff Act and the rules of interpretation containing the Act as well as on appreciation of the material on record held that the expression "Similar Laminated Wood" under chapter heading 44.08 was applicable to the panels after lamination became water resistant and brought about change in the name, usage and not a product classifiable under 44.06. In that regard the Supreme Court referred to the rule that if the product was capable of classification under two chapter headings then the classification must be under the heading which occurred last in the numerical order.

Commnr. of Central Excise, Noida vs. Kitply Industries Ltd. Civil Appeal No. 9736 of 2003 decided on 7-9-2011.

6. GOODS – SALE – ARTIFICIALLY CREATED LIGHT ENERGY

The Karnataka High Court while disposing of several appeals and Writ Petitions considered the impact of levying service tax vis-à-vis levy of VAT. All the petitioner assesseees were providing telecom services in the specified area by facilitating the subscribers in transmission of their voice or data through its network. The Hon'ble Court considered in detail the manner in which the signals were transmitted from the origin to the destination. It also considered the ratio of the Supreme Court Judgment in the case of *BSNL 145 STC 91 SC* and held that the artificially created Light Energy were not goods and the entire activity involved rendering of services and therefore did not attract the liability of VAT especially because the light energy was only a carrier in telecommunication service and there was no transfer of property in goods as was held by the Sales Tax Authorities.

M/s. Bharti Airtel Ltd vs. State of Karnataka 2011-12 (16) KCTJ P.77.

7. INTEREST

The Supreme Court held that section 8(1) of U.P. Trade Tax Act, 1948 create the liability of interest from the due date and not from the date of assessment order fixing the correct rate of tax.

Pepsico India Holdings Ltd vs. Commissioner of Trade Tax (2011) 19 KTR 439 (SC).

8. INTERPRETATION

The Andhra Pradesh High Court held that when the expressions appearing in the Act was deleted by the legislature, it was a conscious deletion as a deliberate Act.

Sree Manasa Enterprises vs. Commercial Tax Officer (2010) 18 KTR 488 (AP).

9. INPUT TAX CREDIT – COAL AND FURNACE OIL

The Orissa High Court quashed the notification denying the input tax credit on the above two items, though purchased on payment of tax within the State, from other registered dealer and used in the manufacture of goods which were also taxable.

Visa Steel Ltd. & Ors. vs. State of Orissa & Ors. (2011) 40 PHT 50 (Ori.).

10. MANUFACTURE

The Supreme Court held that the process of lifting of water with the help of power, constituted a process in or in relation to manufacture of goods with the aid of power. In the said case, the assessee had first lifted the water for filling up the storage tank at the ground level and then lifted it further to the overhead water tank with aid of electric motors. The entire process so conducted was held to be integrally connected to the ultimate manufacture of turpentine oil, in absence of which the manufacture would not have been possible.

Commissioner of Central Excise vs. Gurukripa Resins Pvt. Ltd. 2011 (2) GSTJ P. 145.

INTERNATIONAL TAXATION

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

HIGH COURT

1. Representative assessee – S. 163 – Income Tax Act, 1961

The mere fact that a person is an agent or is to be treated as an agent under S. 163, and is assessable as a “representative assessee”, does not automatically mean that he is liable to pay taxes on behalf of the non-resident. Under S. 161, a representative assessee is liable only “as regards the income in respect of which he is a representative assessee”. This means that there must be some connection or concern between the representative assessee and the income. Therefore, the proceedings under S. 163 seeking to assess Genpact India for the capital gains of General Electric, USA were invalid.

General Electric Co. vs. DDIT (2011-TII-32-HC-Del-Intl)

TRIBUNAL

2. Income from licence of software – No royalty – Article 12 – India-Israel Treaty

The Tribunal held that:

- i. Under Article 12 (3) of the India-Israel DTAA, “royalty” is defined inter alia to mean payments for the “use of” a “copyright” or a “process”. There is a distinction between “use of copyright” and “use of a copyrighted article”.
- ii. Following the decisions in the case of Motorola Inc (96 TTJ 1)(Del)(SB) and Asia Satellite Communication Co. Ltd. (332 ITR 340)(Del), it was held that the income from the licensing of software is not in the nature of royalty

income but in the nature of business income. In absence of any Permanent Establishment of the Assessee in India, this is not taxable.

- iii. The observations made by the Tribunal in the case of Gracemac Corporation (42 SOT 550) (Del), are obiter dicta and this tribunal is not bound by such observations. Therefore, the Tribunal is not required to refer the matter to a Special Bench.

ADIT vs. TII Team Telecom International Pvt. Ltd. (Source: itatonline.org)

(Note: Also refer to the decision of the Bangalore Tribunal in the case of ING Vysya Bank vs. DDIT (source: itatonline.org), in which the Tribunal considered the payment as royalty income)

3. Accreditation Fee – Royalty – Article 13 – India-UK DTAA

The accreditation fees paid by the assessee to the British Dental Health Foundation, UK (‘BDHF’) for the use of its name, did not constitute a “royalty” under Article 13 of the India-UK DTAA because it did not allow the accredited product to use, or have a right to use, a trademark, nor any information concerning industrial, commercial or scientific experience so as to fall within the definition of the term. The purpose of the accreditation by a reputed body was to give a certain comfort level to the end users of the product and to constitute the USP of the product. The amount constituted “business profits” and as the recipient did not have a Permanent Establishment in India, it was not taxable in India.

ACIT vs. Anchor Health and Beauty Care (Source: itatonline.org)

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