All India Federation of Tax Practitioners

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AIFTP TIMES

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FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
16-2-2013 2, 16, 30-3-2013	Workshop on MVAT & Service Tax – Year 2012-13 (WZ)	Mumbai
9-2-2013	Half Day Seminar on Scrutiny Assessment and Issues relating to Refund (EZ)	Kolkata
16-3-2013	One Day Tax Seminar (SZ)	Thirumalai, Tirupati
17-3-2013	National Executive Committee Meeting	Thirumalai, Tirupati

FEDERATION NEWS

Narayan P. Jain, *Secretary General*

HALF-DAY SEMINAR ON "SCRUTINY ASSESSMENT AND ISSUES RELATING TO REFUND"

ON 9TH FEBRUARY, 2013 Organised by AIFTP (Eastern Zone)

A Half-Day Seminar on "Scrutiny Assessment and Issues relating to Refund" will be held on Saturday, the 9th February, 2013 at 3.30 pm at Indian Council for Cultural Relations, 9A, Ho Chi Minh Sarani, 4th Floor, Kolkata – 700 071. The expert comments will be made by Shri S.K. Poddar, National President and Prof. Narayan Jain, Secretary General. The Speakers are FCA Purushottam Agarwalla and Shri Subash Agrawal, Advocate. Please attend positively. (There will be meeting of Managing Committee at the same Venue from 2.30 pm to 3.30 pm).

Indu Chatrath
Zone Chairman

N. D. Saha
Zone Secretary

Arvind Agarwal – Sumit Binani
Co-ordinators

ONE DAY TAX SEMINAR AT THIRUMALAI (TIRUPATI)

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (SZ)
Jointly with
TIRUPATI TAX BAR ASSOCIATION

on 16th March, 2013.

Detailed Programme has been published in our last issue of AIFTP Times and Journal and also been uploaded in our website www.aiftponline.org.

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

Name	Tel. (O)	Fax	Mobile	E-mail
National President — S. K. Poddar, *Adv.*	0651-2202787	2309407	9431115265	sheojipoddar40@gmail.com
Deputy President — J.D. Nankani, *Adv.*	022-22841717	22831717	9821034867	jagdish@nankanis.com
Secretary General — Narayan P. Jain, *Adv.*	033-22821100	22820180	9830951252	npjain@vsnl.com
Treasurer — CA. Harish N. Motiwalla	022-22002103	22094331	9819422300	hnmotiwalla.ca@gmail.com

WORKSHOP ON MVAT & SERVICE TAX

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WESTERN ZONE)

Jointly with

BOMBAY CHARTERED ACCOUNTANTS' SOCIETY,
THE CHAMBER OF TAX CONSULTANTS,
THE MALAD CHAMBER OF TAX CONSULTANTS AND
THE SALES TAX PRACTITIONERS' ASSOCIATION OF MAHARASHTRA

Venue : STPAM Library, 104, Vikrikar Bhavan, Mazgaon Mumbai – 400 010
Time : 2.30 p.m. to 5.30 p.m.
Fees : ₹ 1,500/- for Members & ₹ 2,000/- for Non-Members (Including Service Tax)

Sr. No.	Date	Day	Subject	Speakers
1(a)	09-02-2013	2nd Saturday	Issues in Applicability of MVAT to Builders & Developers – Legal Aspects	Shri Vinayak Patkar, Advocate
1(b)	09-02-2013	2nd Saturday	Issues in Applicability of MVAT to Builders & Developers – Practical Aspects	Shri Dinesh Tambde, Advocate
2	16.02.2013	3rd Saturday	Issues in CENVAT Credit Rules, 2004	Shri Naresh Thacker, Advocate
3(a)	23-02-2013	4th Saturday	Search & Seizure provisions under MVAT Act	Shri Deepak Bapat, Advocate
3(b)	23-02-2013	4th Saturday	Interest, Penalties and Prosecution under MVAT Act	Shri Ashvin Acharya, Advocate
4	02.03.2013	1st Saturday	Issues in Input Tax Credit under MVAT	Shri C. B. Thakar, Advocate
5	16.03.2013	3rd Saturday	Issues in Branch Transfer & Sales in transit under CST Act	Smt. Nikita Badheka, Advocate
6	30.03.2013	5th Saturday	Taxation of Hoteliers, Restaurants, Caterers, Franchisee, etc. under MVAT, Luxury Tax & Service Tax	CA Sujata Rangnekar – MVAT CA Manish Gadia – Serv. Tax

For further details contact

Pravin R. Shah, Hon. Secretary, AIFTP (WZ) • M : 9821476817
Tushar P. Joshi, Hon. Jt. Secretary, AIFTP (WZ) • M : 9821135246

Kindly issue the cheque in favour of
"All India Federation of Tax Practitioners – Western Zone" payable at Mumbai

Hearty Congratulations

We are glad to inform you that Mr. K. C. Kaushik, National Executive Committee Member of AIFTP has been appointed as "Additional Solicitor General of India".

Our Heartiest congratulations to him.

We are glad to inform you that Mr. Sandeep Goyal, Advocate, Vice Chairman Incharge of Punjab & Haryana, AIFTP (NZ) has been appointed as "Additional Advocate General of Punjab".

Our Heartiest congratulations to him.

DIRECT TAXES

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

SUPREME COURT

1. S. 32 : Depreciation-A "Financier" satisfies the "ownership" & "user" test for depreciation

The assessee, a NBFC, bought vehicles and leased it out to its customers. The vehicles were registered in the names of the customers. The AO held that as the vehicles were registered in the names of the customers and were used by them, the assessee was not eligible for depreciation u/s 32 as it was not the "owner" of the vehicles nor had it "used" the vehicles for purposes of business. The CIT(A) & Tribunal allowed the assessee's claim. However, the High Court reversed the Tribunal on the ground that the assessee was only a "financier" and not the "owner" of the vehicles and so was not eligible to claim depreciation. On appeal by the assessee to the Supreme Court, HELD reversing the High Court:

(i) S. 32 requires that the asset must be "owned, wholly or partly, by the assessee and used for the purposes of the business". The Department's argument that the assessee is not the "owner" of the vehicles is not acceptable because the lease agreement specifically provided that the assessee was the exclusive owner of the vehicle at all points of time and that it was empowered to repossess the vehicle (and not merely recover money) if the lessee committed a default. At the conclusion of the lease period, the lessee was obliged to return the vehicle to the assessee. Also, the assessee had the right of inspection of the vehicle at all times. As the assessee has a right to retain the legal title of the vehicle against the rest of the world, it would be the owner of the vehicle in the eyes of law. The fact that at the end of the lease period, the ownership of the vehicle is transferred to the lessee at a nominal value not exceeding 1% of the original cost of the vehicle does not make a difference. Also the fact that the Motor Vehicles Act deems the lessee to be the "owner" has no relevance;

(ii) The Department's argument that the assessee had not "used" the vehicles is also not acceptable because the vehicle was "used" by the assessee in its business of leasing. Once it is held that leasing out of the vehicles is one mode of doing business by the assessee and the income derived from leasing out is treated as business income it would be contradictory, in terms, to say that the vehicles are not used wholly for the purpose of the assessee's business. The physical user of the vehicles is not necessary (Shaan Finance 231 ITR 308 (SC) followed)

I.C.D.S. Ltd. v. CIT (Supreme Court) Civil Appeal No. 3282 of 2008

2. S.4 : Income – Principle of Mutuality – Interest earned by a mutual association from deposits placed with member banks is not exempt on the ground of "mutuality"

The assessee, a mutual association, claimed that the interest earned by it on fixed deposits kept with the bank (which was a corporate member) was not taxable on the basis of mutuality. The AO rejected the claim though the CIT(A) and Tribunal upheld the claim. The High Court reversed the Tribunal and upheld the stand of the AO. On appeal by the assessee to the Supreme Court, HELD dismissing the appeal:

For a receipt to be exempt on the principles of Mutuality, three conditions have to be satisfied. The first is that there must be a complete identity between the contributors and participators. The second is that the actions of the participators and contributors must be in furtherance of the mandate of the association. The third is that there must be no scope of profiteering by the contributors from a fund made by them which could only be expended or returned to themselves. On facts, though the interest was earned from banks which were corporate members of the club, it was not exempt on the ground of mutuality because (i) the arrangement lacks a complete identity between the contributors and participators. With the funds of the club, member banks engaged in commercial operations with third parties outside of the mutuality, rupturing the 'privity of mutuality', and consequently, violating the one to one identity between the contributors and participators, (ii) the surplus funds were not used in furtherance of the object of the club but were taken out of mutuality when the member banks placed the same at the disposal of third parties, thus, initiating an independent contract between the bank and the clients of the bank, a third party, not privy to the mutuality & (iii) The banks generated revenue by paying a lower rate of interest to the assessee-club and loaning the funds to third parties. The interest accrued on the surplus deposited by the club like in the case of any other deposit made by an account holder with the bank. A façade of a club cannot be constructed over commercial transactions to avoid liability to tax. Such set ups cannot be permitted to claim double benefit of mutuality.

M/s Bengaluru Club v. CIT (Supreme Court) Civil Appeal No. 124 of 2007

3. S. 158B : Block assessment – Undisclosed Income – Despite TDS & Advance-tax, income is "undisclosed" if ROI not filed by due date

A search u/s 132 was conducted on 23-2-1996 when it was detected that though the assessee had taxable

income for AY 1995-96 it had not filed a ROI and the due date (31-10-1995) had lapsed. The AO issued a s. 158BD notice directing the assessee to file a return for the block period. The assessee claimed that as it had paid advance tax on the income for AY 1995-96, the income could not be said to be "undisclosed". The AO rejected the claim though the Tribunal and High Court accepted the assessee's claim on the basis that payment of Advance Tax itself necessarily implies disclosure of the income on which the advance is paid. On appeal by the department to the Supreme Court, HELD reversing the Tribunal and High Court:

S. 158B(b) defines the expression "undisclosed income" to mean that income "which has not been or would not have been disclosed for the purposes of this Act". The only way of disclosing income on the part of an assessee is through filing of a return and therefore an "undisclosed income" signifies income not stated in the return filed. It cannot be said that payment of Advance Tax by an assessee *per se* is tantamount to disclosure of total income. There can be no generic rule as to the significance of payment of Advance Tax in construing intention of disclosure of income. This depends on the time at which the search is conducted in relation to the due date for filing return. If the search is conducted after the expiry of the due date for filing return, payment of Advance Tax is irrelevant in construing the intention of the assessee to disclose income because it is a case where income has clearly not been disclosed. The possibility of the intention to disclose does not arise since the opportunity of disclosure has lapsed. If search is conducted prior to the due date for filing return, the opportunity to disclose income by filing a return still persists. In such a case, payment of Advance Tax may be a material fact for construing whether an assessee intended to disclose. An assessee is entitled to make the legitimate claim that even though the search or the documents recovered show income earned by him, he has paid Advance Tax for the relevant assessment year and has an opportunity to declare the total income, in the return of income, which he would file by the due date. Hence, the fulcrum of such a decision is the due date for filing of return of income vis-à-vis date of search. Also, because Advance Tax is based on estimated income, it cannot result in the disclosure of the total income assessable and chargeable to tax. The proposition that payment of Advance Tax is tantamount to disclosure of income would be contrary to the very purpose of filing of return. On facts, as the assessee had not filed the ROI by the date of search and the due date had lapsed, the income found was "undisclosed" even though advance tax thereon had been paid. Similarly, as TDS is also computed on the estimated income of an assessee for the relevant FY, it does not amount to disclosure of income, nor does it indicate the intention to disclose income if the ROI is not filed.

ACIT v. M/s A. R. Enterprises (Supreme Court) Civil Appeal No. 2688 of 2006

4. S.11 : Trust – Payment by post-dated cheque relates back to date of handing over of cheque

In the year ended 31-3-2002, the assessee, a charitable trust eligible for exemption u/s 11, received a post-dated cheque dated 22-4-2002 from Apollo Tyres Ltd. for which it issued a receipt. The AO held that the post-dated cheque had been accepted by the assessee to do undue favour to Apollo Tyres, whose directors were trustees of the assessee and that there was a violation of s. 13(2)(d)(h), and that s. 11 exemption had to be denied. This was reversed by the Tribunal and the High Court on the ground that as the post dated cheque was given before 31-3-2002 and was duly honoured in April, 2002 when it was presented before the bank, the date of payment of the cheque should be treated as the date on which the cheque was received by the assessee. On appeal by the department to the Supreme Court, HELD dismissing the appeal:

Though the assessee trust issued a receipt in March 2002 when it received the cheque dated 22-4-2002, it was clearly stated in its record that the amount of donation was receivable in future and it was shown as donation receivable in the balance sheet as on 31-3-2002. Also Apollo Tyres Ltd. did not avail any advantage of the said donation during the FY 2001-02. When a post-dated cheque is issued, it will have to be presumed that the amount was paid on the date on which the cheque was given to the assessee and, therefore, it cannot be said that any undue favour was done by the assessee to Apollo Tyres Ltd. A cheque, unless dishonoured, is payment (Ogale Glass Works 25 ITR 529 (SC) followed)

CIT v. Raunaq Education Foundation (Supreme Court) Civil Appeal No. 90 of 2013.

HIGH COURTS

5. S.271(1)(c) : Penalty – Concealment – No penalty if income not offered to tax due to "bona fide mistake"

The assessee, a renowned professional international tennis player, received an award of ₹ 30 lakhs. This was disclosed in the statement of affairs filed with the ROI though not offered to tax. The AO accepted the ROI u/s 143(1). He later reopened the assessment u/s 147 at which stage the assessee offered the said amount to tax. The AO & CIT levied penalty u/s 271(1)(c) on the ground that the assessee had furnished inaccurate particulars of her income and concealed her income. However, the Tribunal cancelled the penalty on the ground that a "*bona fide* mistake" had been made on her behalf by her Advocate/Chartered Accountant and there was no concealment of income nor a furnishing of inaccurate particulars. On appeal by the department to the High Court, HELD dismissing the appeal:

There is nothing to suggest that the assessee acted in a manner such as to lead to the conclusion that she had concealed the particulars of her income or

had furnished inaccurate particulars of income. As the amount of ₹ 30,63,310 was shown by her in the return, it cannot be said that there was any concealment. As the amount was correctly mentioned, there is also nothing inaccurate in the particulars furnished by her. The only error that seems to have been committed was that it was not shown as a capital (sic) receipt. But as soon as this was pointed out, the error was accepted and the amount was surrendered to tax. This is not a fit case for imposition of penalty.

CIT v. Sania Mirza (Andhra Pradesh High Court) I.T.A. No. 526 of 2011

6. S.147 : Reopening – Even s. 143(1) Intimation cannot be reopened u/s 147 without "fresh material"

The assessee filed a ROI in which it claimed s. 80HHC deduction of ₹ 13.35 crores. The AO accepted the ROI u/s 143(1). He thereafter reopened the assessment u/s 147 on the ground that the sale proceeds of the quota was wrongly considered as export turnover and that it was business profits and 90% thereof had to be reduced u/s 80HHC. The assessee challenged the reopening on the ground that as there was no "fresh material", the AO had no jurisdiction to reopen the s. 143(1) Intimation. This was upheld by the Tribunal (order attached) by relying on Kelvinator of India 320 ITR 561 (SC). On appeal by the department to the High Court, HELD dismissing the appeal:

S.147 permits an assessment to be reopened if there is "reason to believe". It makes no distinction between an order u/s 143(3) or an Intimation u/s 143(1). Accordingly, it is not permissible to adopt different standards while interpreting the words "reason to believe" vis-à-vis s. 143(1) and s. 143(3). The department's argument that the same rigorous standards which are applicable in the interpretation of the expression when it is applied to the reopening of a s. 143(3) assessment cannot apply to a s. 143(1) Intimation is not acceptable because it would place an assessee whose return is processed u/s 143(1) in a more vulnerable position than an assessee in whose case there is a full-fledged s. scrutiny assessment u/s 143(3). Whether the return is put to scrutiny or is accepted without demur is not a matter which is within the control of assessee. An interpretation which makes a distinction between the meaning and content of the expression "reason to believe" between a case where a s. 143(3) assessment is made and one where an Intimation u/s 143(1) is made may lead to unintended mischief, be discriminatory & lead to absurd results. In Kelvinator 320 ITR 561 (SC) it was held that the term "reason to believe" means that there is "tangible material" and not merely a "change of opinion" and this principle will apply even to s. 143(1) Intimations. On facts, the AO reached the belief that there was escapement of income "on going through the ROI" filed by the assessee. This is nothing but a review of the earlier proceedings and an abuse of power by the AO. There is no whisper in the reasons recorded of any tangible material which came to the possession of the AO subsequent to the issue of the Intimation. It reflects an arbitrary exercise of the power conferred u/s 147 (Rajesh Jhaveri Stock Brokers 291 ITR 500 (SC) distinguished)

CIT v. Orient Craft Ltd. (Delhi High Court) ITA No. 555/2012, 12th December, 2012

7. S. 45 : Capital Gains – Gains on shares held in investment portfolio not assessable as business profits

The assessee was maintaining separate portfolios for shares in the trading account and for those in the investment account. This was accepted by the department in the earlier years. In AY 2007-08, the assessee sold all the shares in the investment portfolio and offered the gains to tax as long term and short-term capital gains. The AO held that as the volume (₹ 52 crores) and frequency of transactions was large, the LTCG & STCG were assessable to tax as business profits. The CIT(A) and Tribunal (order attached) reversed the AO by relying on CBDT Circular No. 4 of 2007 dated 15-6-2007 (291 ITR (Stat) 35). On appeal by the department to the High Court, HELD dismissing the appeal:

The intent and purport of Circular No. 4 of 2007 dated 15-6-2007 is to demonstrate that a tax payer could have two portfolios, namely, an investment portfolio and a trading portfolio. In other words, the assessee could own shares for the purposes of investment and/or for the purposes of trading. In the former case whenever the shares are sold and gains are made the gains would be capital gains and not profits of any business venture. In the latter case any gains would amount to profits in business. This has been made clear by the CBDT circular in the remaining portion of the circular itself. On facts, the finding of the CIT(A) & Tribunal that the short term capital gains and long term capital gains were out of the investment account and were not related to the trading account does not call for any interference

CIT v. Avinash Jain (Delhi High Court) ITA No.703/2012. Judgment delivered on : 9-1-2013

TRIBUNALS

8. S. 50C : Capital Gains – Full value of consideration – Does not apply to transfer of FSI & TDR

The assessee owned a plot of land admeasuring 2244.18 sq. mts. of which 2110 sq. mts. was acquired by the Municipality for development purposes. The assessee was entitled to receive TDR/ FSI in lieu of the land acquired. The assessee sold the development rights to the said property for ₹ 20 lakhs and computed capital gains on that basis. However, for purposes of

stamp duty, the property was valued at ₹ 1.19 crores. The AO held that the value of the property as adopted by the stamp duty authorities had to be taken as the consideration u/s 50C for purposes of capital gains. This was reversed by the CIT(A). On appeal by the department to the Tribunal, HELD:

S. 50C applies only to the transfer of "land or building" and not to the transfer of all "immovable property". Accordingly, though FSI and TDR is "immovable property" as held in Chedda Housing Development vs. Babijan Shekh Farid 2007 (3) MLJ 402 (Bom), it is not "land or building" and so cannot be the subject matter of s. 50C. The property acquired for development (in lieu of which the FSI/TDR was granted) also cannot be considered even though the property continues to stand in the assessee's name in the property records. The property should be valued by the DVO net of the land transferred to the Developer by the assessee after considering the acquisition made by the Govt. & the Municipal Corporation and also excluding the value of TDR or additional FSI included in the consideration shown in the Development Agreement

ITO v. Prem Rattan Gupta (ITAT, Mumbai), ITA No. 5803/Mum/2009

9. S.50C : Capital Gains – Full value of consideration – Does not apply to transfer of immovable property held through company

The assessee held shares in a company called Kamala Mansion Pvt. Ltd. The company owned flats in a building known as Om Vikas Apartments, Walkeshwar Road, Mumbai. The shares were sold by the assessee for ₹ 37.51 lakhs and capital gains were offered on that basis. The AO & CIT(A) held that by the sale of shares in the company, the assessee had effectively transferred the immovable property belonging to the assessee and that it was an indirect way of transferring the immovable properties being the flats in the building. He accordingly 'pierced the corporate veil', invoked s. 50C and computed the capital gains by adopting the stamp duty value of the flats. On appeal by the assessee to the Tribunal, HELD allowing the appeal:

S. 50C applies only to the transfer of a "capital asset, being land or building or both", "assessed" by any authority of a State Government for stamp duty purposes. The expression "transfer" has to be a direct transfer as defined u/s 2(47) which does not include the tax planning adopted by the assessee. S. 50C is a deeming provisions and has to be interpreted strictly in accordance with the spirit of the provision. On facts, the subject matter of transfer is shares in a company and not land or building or both. The assessee did not have full ownership on the flats which are owned by the company. The transfer of shares was never a part of the assessment of the Stamp duty Authorities of the State Government. Also, the company was deriving income which was taxable under the head 'income from property' for more than a decade. Consequently, the action of the AO & CIT(A) to invoke s. 50C to the tax planning adopted by the assessee is not proper and does not have the sanction of the provisions of the Act.

Irfan Abdul Kader Fazlani v. ACIT (ITAT Mumbai) – I.T.A. NO.8831/M/2011 (AY: 2007-2008) – I.T.A. No. 8832/M/2011 (AY: 2008-09)

10. S. 254(2A) : Appellate Tribunal – Power – Stay – Third proviso: Tribunal has the power to grant unlimited stay of demand

The assessee's appeal was not disposed of by the Tribunal as a similar issue was pending in the case of another assessee before the Supreme Court. The Tribunal had granted a stay on recovery of the demand. On the expiry of 365 days, the assessee filed an application seeking extension of the stay for a further period. The assessee relied on *Ronuk Industries 333 ITR 99 (Bom), Tata Communications Ltd. 138 TTJ 257 (Mum)(SB)* and *Qualcomm Incorporated (ITAT Del.)* where it had been held that despite the Third Proviso to s. 254(2A), the Tribunal had the power to grant stay of demand beyond 365 days if the assessee was not at fault. The Department opposed the application by relying on Ecom Gill Coffee Trading (K' Taka HC) where a contrary view was taken and on Dunlop India Ltd. 154 ITR 172 (SC). HELD by the Tribunal allowing the stay application:

The assessee is seeking extension of stay beyond 365 days. The assessee argued that on similar facts the matter is pending before the Supreme Court in case of Idea Cellular Ltd and Bharti Cellular Ltd wherein ad interim order had been passed. In CIT v. Ronuk Industries Ltd 333 ITR 99 (Bom.) & Tata Communications Ltd. 138 TTJ 257 (Mum.) (SB) it has been held that the Tribunal has power to extend the period of stay beyond 365 days under the Third Proviso to s. 254(2A) even if the delay in disposing of the appeal is not attributable to the assessee as there may be several other reasons for not disposing of the appeal by the ITAT. In Qualcomm Incorporated (ITAT, Del) it was held that as there was a cleavage of opinion between the Bombay High Court and the Karnataka High Court and there was no decision of the jurisdictional High Court on the issue, the view favourable to the assessee has to be adopted. Consequently, the stay has to be extended subject to certain conditions.

Vodafone West Ltd v. ACIT (ITAT Ahmedabad)

S.A. No. 86/Ahd/2012 (Arising out of ITA No.386/Ahd/2011) Assessment Year : 2008-09 &

S.A. No. 87/Ahd/2012(Arising out of ITA No.387/Ahd/2011) Assessment Year : 2009-10

INDIRECT TAXES

P. C. Joshi *Advocate*

1. Penalty – Burden

(i) The Allahabad High Court held that for imposing the penalty u/s. 10A of the CST Act read with clause (b) of section 10, the department must establish that the goods purchased on 'C form' were under 'false representation' i.e. consciously and deliberately; with full knowledge that the representation given in the declaration was not correct. In other words, the purchasing dealer should made such representation with guilty mind. In that connection, the Hon'ble court made apt distinction between 'wrong representation' and 'false representation'.

Commissioner, Trade Tax v. Project Technologist Pvt. Ltd. (2012) 20 KTR 593 (All).

(ii) The Uttarakhand High Court quashed the penalty u/s. 10A of the CST Act, imposed by the authorities on the basis of factually incorrect submissions by the assessee that it had effected the purchases of plant and machinery by mistake without applying for the same. In fact the plant and machinery was expressly included in the certificate itself. The Hon'ble High Court observed that no such penalty can be sustained when the assessee had committed no offence.

Atlas Laboratories & Pharmaceuticals Ltd. v. Commissioner, Commercial Tax. (2012) NTN Vol. 50-332.

2. Remand – Scope

The Orissa High Court held that when the assessee had challenged the short determination of input tax credit available to it; the remand by the tribunal for reassessment, was not an open remand but restricted to the extent to which the petitioners' claim for additional input tax credit was concerned. It was not open to the officer to reconsider the input tax already determined in original assessment.

M/s. Gupta Cables Pvt. Ltd. v. Asst. Commissioner of Sales Tax (2012) 43 PHT 384 (Ori).

3. Recovery

(i) When the State Financial Corporation sold the assets of the defaulter by auction, the purchaser cannot be held responsible for making the payment of arrears u/s. 9 of the 1954 Rajasthan Act because the purchaser according to the Rajasthan High Court, was not the transferee of the entire running business.

Vraj Tractors Industries v. State of Rajasthan & Anr. (2012) 21 STJ 535 (Raj).

(ii) The Allahabad High Court held that under the provision of UP Trade Tax Act, 1948, the State Government cannot have precedence over the right of the bank, who had advanced the funds required by the defaulter, upon mortgaging the title deeds of the property in favour of the bank – a secured creditor.

Smt. Urmila Devi & Ors. v. Debts Recovery Appellate Tribunal & Ors. (2012) NTN (Vol. 50) – 60.

(ii) The Allahabad High Court dealt the defaulter company with heavy hands by going behind the corporate veil, when it was brought on record that the directors had committed illegality and tried to evade the payment of tax and other statutory duties under the umbrella of BIFR and held that the recovery can be made from personal assets of the Directors. For the aforesaid purpose the Hon'ble Court referred to several Supreme Court decisions.

Jagbir Singh v. State of U. P. & Ors. (2012) NTN (Vol. 50) – 236.

(iv) The Allahabad High Court after considering the fact that the Judgment of the Supreme Court in the case of K. Raheja Development Corporation was already referred to a larger Bench in the case of Larsen & Toubro, granted the interim relief by providing that the assessment proceedings initiated may be completed by passing the order of assessment but the same should not be served; without seeking leave from the court, on the petitioner who undertook the construction of the building upon accepting advances from the prospective flat buyers.

Anupam Infrastructure & Land Development v. State of U. P. & Anr. (2012) NTN (Vol. 50) -270.

4. Sale

The West Bengal Taxation Tribunal held that there was no transaction of sale when the members' club supplied food and drink to its employees free of cost, as part of their service conditions.

The Saturday Club Ltd & Anr v. State of West Bengal & Ors. (2012) 60 S.T.A. P. 223

5. Sick Industrial Company

The Supreme Court after considering the provisions of Transfer of Property Act, BIFR and SICA held that Section 22 of SICA had overriding effect to the provision of transfer of property Act, on the footing that SICA was a special law while the transfer of Property Act was a general one. The apex court also observed that a Scheme of rehabilitation approved by BIFR should remain obstruction free. The aforesaid section 22 also enabled the Board, to issue directions in the interest of the company and for proper implementation of the Scheme. It can also monitor the proper implementation of the rehabilitation of the Scheme.

Raheja Universal Ltd v. NRC Ltd. & Ors. (2012) NTN (Vol.50) – 276.

R.N.I.No. MAHENG/2010/32910
Postal Regn. No. MH/MR/South-314/2013-15

HEARTY CONGRATULATIONS

Hearty Congratulations to the newly elected office bearers of Dhanbad Income Tax Bar Association, Dhanbad for the term 2012-13 & 2013-14.

President	:	CA K. K. Harodia
Vice President	:	CA R. B. Goel
Hon. Secretary	:	CA Rajesh Matalia
Hon. Jt. Secretaries	:	Shri Binod Agarwal, Advocate & Shri Manish Agarwal, Advocate
Treasurer	:	Shri Ashok Kr. Singh, Advocate

Hearty Congratulations to the newly elected office bearers of Income Tax Appellate Tribunal Bar Association, Mumbai for the term 2013-14.

President	:	Shri Arun P. Sathe, Advocate
Imm. Past President	:	Dr. K. Shivaram, Advocate
Vice Presidents	:	Shri S. N. Inamdar, Advocate Mrs. Arati Vissanji, Advocate
Hon. Secretarires	:	CA. Haresh P. Shah Shri K. Gopal, Advocate
Treasurer	:	Shri Vipul B. Joshi, Advocate

Membership of AIFTP as on 25-1-2013

Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	774	22	3	799
Eastern	2	1085	35	3	1125
Northern	0	890	17	0	907
Southern	0	824	13	3	840
Western	4	1646	32	15	1697
Total	**6**	**5219**	**119**	**24**	**5368**

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

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

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