All India Federation of Tax Practitioners

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FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
16, 30-3-2013	Workshop on MVAT & Service Tax – Year 2012-13 (WZ)	Mumbai
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*

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	16.03.2013	3rd Saturday	Issues in Branch Transfer & Sales in transit under CST Act	Smt. Nikita Badheka, Advocate
2	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
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Kindly issue the cheque in favour of "All India Federation of Tax Practitioners – Western Zone" payable at Mumbai

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 previous 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

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DIRECT TAXES

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Advocates, KSA Legal

SUPREME COURT

1. S. 4(1)(c): Deemed Gift – Taxability of a revocable transfer as deemed gift (Gift Tax Act)

The assessee owned 6,000 shares of Hero Cycles. On 20-2-1982, he executed a deed of revocable transfer in favour of M/s Yogesh Chandra. The deed permitted the assessee to, after completion of 74 months from the date of transfer but before the expiry of 82 months from the said date, exercise the power of revoking the gift. In other words, there was a window of 8 months within which the gift could be revoked. The deed of revocable transfer specifically stated that the gift shall not include any bonus shares or right shares received and/or accruing or coming to the transferee from Hero Cycles by virtue of ownership of the said shares. Effectively, therefore, only a gift of 6,000 equity shares was made by the assessee to the transferee. On 29-9-1982 & 31-5-1986, the company issued 4,000 and 10,000 bonus shares to the transferee. On 15-6-1988, the assessee revoked the gift with the result that the 6,000 shares gifted to the transferee came back to the assessee. However, the 14,000 bonus shares allotted to the transferee while it was the holder of the equity shares of the company continued with the transferee. It was held by the Hon'ble Supreme Court that the fundamental question is whether there was in fact a gift of 14,000 bonus shares made by the assessee to the transferee. The answer to this question lies in s. 4(1)(c) of the Gift-tax Act. On facts, the assessee had made a valid revocable gift of 6,000 equity shares in the company on 20-2-1982 to the transferee. The only event that took place in A.Y. 1989-90 was the revocation of the gift by the assessee on 15-6-1988. The question whether the revocation of the gift of the original shares in AY 1989-90 constitutes a gift of the bonus shares that were allotted to the transferee on 29-9-1982 and 31-5-1986 requires to be answered in the light of s. 4(1)(c). The question of applicability of Escorts Farms has to be decided after a finding is reached on the applicability of the first part of s. 4(1)(c), Hence the matter was remanded back.

Satya Nand Munjal v. CGT (Supreme Court)(www.itatonline.org)

HIGH COURT

2. S. 4: Capital Receipt – Compensation to CA Firm – Loss of referral work – Held non-taxable capital receipt

The assessee, a firm of Chartered Accountants, was one of the "associate members" of Deloitte Haskins & Sells for 13 years pursuant to which it was entitled to practice in that name. Deloitte desired to merge all the associate members into one firm. As this was not acceptable to the assessee, it withdrew from the membership and received consideration of ₹ 1.15 crores from Deloitte. The said amount was credited to the partners' capital accounts & claimed to be a non-taxable capital receipt by the assessee. It was held that there is a distinction between the compensation received for injury to trading operations arising from breach of contract and compensation received as solatium for loss of office. The compensation received for loss of an asset of enduring value would be regarded as capital. If the receipt represents compensation for the loss of a source of income, it would be capital and it matters little that the assessee continues to be in receipt of income from its other similar operations. In the instant case, the arrangement with DHS was in vogue for a fairly long period of time 13 years and had acquired a kind of permanency as a source of income. When that source was unexpectedly terminated, it amounted to the impairment of the profit-making structure or apparatus of the assessee. It is for that loss of the source of income that the compensation was calculated and paid to the assessee. The compensation was thus a substitute for the source and the Tribunal was wrong in treating the receipt as being revenue in nature.

Note: Best & Co. 60 ITR 11 (SC) distinguished).

Khanna & Annadhanam v. CIT (Del.) (High) (Court) (www.itatonline.org)

3. S. 54/54F: Capital gain – Exemption – Several independent units can constitute a residential house – Deduction allowed

The assessee entered into a development agreement pursuant to which the developer demolished the property and constructed a new building comprising three floors. In consideration of granting the development rights, the assessee received ₹ 4 crores and two floors of the new building. The AO held that in computing capital gains, the cost of construction of ₹ 3.43 crores incurred by the developer on the development of the property had to be added to the sum of ₹ 4 crores received by the assessee. The assessee claimed that as the said capital gains was invested in the said two floors, she was eligible for exemption u/s 54. The AO rejected the claim on the basis that the units on the said floors were independent & self-contained and not "a residential house" and granted exemption for only one unit. It was held by the Hon'ble High Court that the phrase "a" residential house would mean "one" residential house is not correct. The expression "a" residential house should be understood in a sense that building

should be of residential in nature and "a" should not be understood to indicate a singular number. Also, s. 54/54F uses the expression "a residential house" and not "a residential unit". S. 54/54F requires the assessee to acquire a "residential house" and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to consist of several units which can, if the need arises, be conveniently and independently used as an independent residence, the requirement of the section should be taken to have been satisfied. There is nothing in these sections which require the residential house to be constructed in a particular manner. The only requirement is that it should be for the residential use and not for commercial use. If there is nothing in the section which requires that the residential house should be built in a particular manner, it seems to us that the income tax authorities cannot insist upon that requirement. The fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction u/s 54/54F. It is neither expressly nor by necessary implication prohibited.

CIT v. Gita Duggal (Del.)(High Court) (www.itatonline.org)

4. S. 271(1)(c): Admission of quantum appeal by High Court shows issue is debatable

In the instant case, AO levied penalty u/s 271(1)(c) in respect of disallowance made u/s 14A. The CIT(A) and the ITAT set aside the penalty levied u/s 271(1)(c) on the ground that the issue of deduction u/s 14A was a debatable issue. It was held that when assessee preferred an appeal in High Court against the quantum assessment and the appeal is admitted and substantial question of law framed then, this itself shows that the issue is debatable. Hence, there cannot be any substantial question of law in penalty appeal.

CIT v. Liquid Investment and Trading Co. (Del)(High Court)(www.itatonline.org)

TRIBUNAL

5. S. 2(22): Definition – Deemed dividend – Loans and advances – Non-encashment of cheque – Amount credited back to company's account – Held amount not deemed dividend

In the instant case, the assessee was running a proprietorship concern which was converted into private limited company. There was credit balance in capital account of the assessee in proprietorship concern against which payment was made by proprietorship concern to the assessee. However, because of conversion, cheque could not be encashed and same was returned to company which was credited to the assessee's account by company. Subsequently money was withdrawn by the assessee. It was held that the said amount could not be treated as deemed dividend. (A.Y. 2008-09)

Dy. CIT v. Radhe Shyam Jain (2013) 140 ITR 244 (Chandigarh)(Trib.)

6. S. 14A: Expenditure disallowance – Exempt income – Expense specifically relatable to taxable income cannot be disallowed (R&D)

Once it is found that an expense is specifically relatable to a taxable income, no portion of such an expense can be disallowed u/s 14A. The allocation of general expenses vis-à-vis tax exempt income and taxable income can only be made in respect of expenditure which cannot either be wholly allocated to taxable income, then or which cannot be wholly allocated to tax exempt income; the allocation can be made, even on the basis of formula set out in Rule 6D(iii) (should be Rule 8D(2)(iii)), in respect of such expenses which do not fall within any of these categories.

JCIT v. Pilani Investments & Industries Corporation Ltd. (Kol.) (Trib) (www.itatonline.org)

7. S. 35AB: Business income – Technical know-how expenditure – Acquired prior to 1-4-1998 – Payment made after 1-4-1998 – In view of harmonious interpretation – Deduction allowed

In the instant case, the assessee acquired the technical know-how from a foreign company as per the terms of Joint Venture Agreement dt. 25-11-1994. However, the payment for the same was made in installments during the periods 1998-99 to 2001-02. The assessee claimed deduction in respect of the know-how fee under S. 35AB. It was held that in view of harmonious interpretation of the provisions of S. 32(1)(ii) and section 35AB, in respect of technical know-how acquired prior to 1-4-1998, deduction u/s 35AB will be allowed even if payment is made after 1-4-1998. (A.Y. 2002-03 to 2004-05)

Hindustan Colas Ltd. v. ACIT (2013) 140 ITD 277 (Mum.) (Trib)

8. S. 80IB: Deduction – Profits and gains from industrial undertaking and other infrastructure development undertakings – Claim of deduction made retrospectively at the time of filing grounds before CIT(A) for earlier years not allowed

In the instant case, assessee did not make a claim of deduction in A.Y. 2003-04 and 2004-05, rather made the claim for the first time before CIT(A) by filing an additional ground. It was held that the provisions of S. 80-IB(5) inserted by Finance Act, 2009 which are applicable retrospectively from A.Y. 2003-04, clearly provides that in case assessee fails to make a claim in the return of income, the claim could not be allowed. The provision was applicable for A.Y. 2003-04 and 2004-05. Therefore, in the view of these provisions which are quiet unambiguous and clear, claim of assessee cannot be allowed. (A.Ys. 2002-03 to 2004-05)

Hindustan Colas Ltd. v. ACIT (2013) 140 ITD 277 (Mum) (Trib.)

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A BOOK REVIEW

The Third Edition of Income Tax Pleading and Practice of S/Shri Narayan Jain, Advocate and Dilip Loyalka Chartered Accountant has been published by Book Corporation, Kolkata. Hon'ble Mr. Justice Kalyan Jyoti Sen Gupta has written a Foreword for the said book. The book is in two volumes containing 130 Chapters and 11 Annexures having a price of ₹ 1,595/- only for a full set.

The important feature of the book is it contains all the amendments of the Finance Act, 2012 along with latest important judgments of Apex Courts, High Courts, Tribunals and Authority for Advance Rulings. The book has been presented in a simple and lucid language to make the law easy to understand. The book also contains specimen replies to various notices which may be issued by the Income Tax Authorities, which would help the tax professionals in day-to-day their practice.

Further, the book also contains valuable suggestions as to how assessee should arrange their affairs so they may always remain on the right side of the law and simultaneously ensure that they do not shovel out their earnings to the State more than what is legally due for payment by them on account of tax.

Great kudos to the authors for bringing out Third Edition of this important publication. Those who are concerned with direct tax including the corporate assessees should have this book in their library, so that they can save valuable time in finding salutation to their queries and problems.

Membership of AIFTP as on 10-2-2013

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	Associate	Individual	Association	Corporate	Total
Central	0	775	22	3	800
Eastern	3	1085	35	3	1126
Northern	0	892	17	0	909
Southern	0	824	13	3	840
Western	4	1646	32	15	1697
Total	**7**	**5221**	**119**	**24**	**5371**

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