

AIFTP TIMES

Volume 5 - No. 12 | December 2014

*We wish all our members and readers
Merry Christmas and Happy New Year !*

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
20-12-2014	ITAT Bar Association's Co-ordination Committee Meeting	Jaipur
20-12-2014	National Executive Committee Meeting	Jaipur
20, 21-12-2014	National Tax Conference (Central Zone)	Jaipur
10, 11-1-2015	Two Days Seminar (Western Zone)	Gandhidham

REPORT OF FOUNDATION DAY CELEBRATION AT NOIDA, NCR-DELHI ORGANISED BY AIFTP – NORTHERN ZONE

The Northern Zone of 'All India Federation of Tax Practitioners' celebrated the 39th Foundation Day in the newly built IFA Hall, NOIDA. The motto of the Federation 'Ethics, Education and Excellence' was the central theme of the discussion. Dr. O. P. Sharma, eminent scholar from Gayatri Parivar, Shantikunj, Haridwar was the key note speaker on the topic of 'Ethics, Education & Excellence in Tax Professional's Life in the Changing Scenario'. The programme started with the lightning of the lamp by dignitaries on stage – Mr. Justice Rajesh Bindal, Judge Punjab & Haryana High Court, Dr. O. P. Sharma, key note speaker, Shantikunj, Shri N. M. Ranka & Shri Bharatji Agarwal, both Senior Advocates and former National Presidents, Shri M. L. Patodi, Advocate and former National President, Shri Mukul Gupta, National Vice President–NZ, Shri Arvind Shukla, Chairman, NZ and Shri S. R. Wadhwa, Past Vice President–NZ. The singers rendered melodious Ganesh Pratharna and Saraswati Ahwan in the background.

After felicitation of the guests, Shri Mukul Gupta gave welcome address and provided brief history of the AIFTP as well as introduced the motto 'Ethics, Education and Excellence'. Under curtain raiser he stressed the importance of the subject of discussion and how this Foundation Day Celebration was envisaged as a mix of intellectual discussion and celebration in presence of gracious ladies.

Acknowledging the tremendous contribution to bring Northern Zone of AIFTP to this grand level, all the Past National Vice Presidents and Chairmen of Northern Zone Shri Balram Sangal, Shri P. S. Sarin,

FOR ANY QUERIES MEMBERS MAY CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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Shri S.R. Wadhwa, Shri H. C. Bhatia, Mrs. Prem Lata Bansal and Shri N. K. Arora were honoured in the special ceremony by the three Past National Presidents of AIFTP.

Shri Bharatji Agrawal stressed that excellence is necessary for providing guidance to the clients as well as pleadings before the Government or Judicial Authorities. He expressed satisfaction on education provided by AIFTP by conducting regular seminars. He called upon the tax professionals to prepare themselves for the changing world and stressed that they must give advice to clients according to law and to be never part of unlawful planning. Shri N.M. Ranka said that if the tax practitioner is not ethical then he is not professional. He asked the gathering to decide how they want to be remembered and called upon to act accordingly.

The Guest Speaker Dr. O. P. Sharma, eminent scholar from Shantikunj, Haridwar mentioned that appropriate behaviour is the ethics, the consideration and performance of rule of law are essential. He has mentioned that we must understand the aim of our life which is not just getting educational degrees, collection of money or social fame, while a true tax professional should come out from all the impediment like lust (kama), anger (krodha), greed (lobha), passion (moha), pride (mada), envy (matsarya). If we come out of these limitations the negative emotions will not over power us and we would be able to place God in our heart & mind which will provide us strength to excel and adopt ethical practices.

He has also stressed the need to keep the body and soul pure which will support every tax professional in leading an excellent and ethical life. He has also stressed need of positive thinking to inculcate the constructive habits for leading a fulfilled and contented life. Dr. O. P. Sharma mentioned, if body is not fit then heart & mind will also not work properly and person would not be able to practice ethical behaviour. The sensitivity of the tax professional should not negatively react, but should take well thought of decision. Every human being must find time for analysing good thoughts and must work for accordingly. This is best educational and ethical practice which provides excellence and happiness in life.

Chief Guest Justice Mr. Rajesh Bindal praised the presentation of Dr. O. P. Sharma as very exhaustive and thought provoking. He said that tax professionals should not only ensure payment of due tax by assesseees but should also watch that taxes collected by the Government are spent properly. He appealed AIFTP to take lead in this respect. He said that self discipline is necessary for a professional and one should be conscious of his duties and not of only his rights. He expressed concern that Bar Councils are not offering continuous education programmes for the Tax Advocates. AIFTP is doing commendable work by providing platform for the tax professional to adopt its motto 'Ethics, Education and Excellence'. Shri M. L. Patodi and Shri S.R. Wadhwa also addressed the gathering. Shri Wadhwa gave brief introduction of IFA and offered the auditorium facilities to AIFTP for future programmes. The 39th Foundation Day was attended by approx. 200 participants, prominent among them are Shri Balram Sangal, Mrs. Prem Lata Bansal, Shri V. P. Gupta, Shri K. C. Kaushik, Shri Sudhir Sangal, Shri Alok Jain, CA Shri H. P. Singh, CA Shri Anil Sriwastawa, CA Shri Naveen Garg, Shri Arvind Sharma, Shri O.P. Shukla, Shri Anuj Bansal, Shri Aniruddha Kumar, Shri Arvind Kumar Mishra, Shri A.K. Pandey, Shri Sandeep Sharma, Shri Anupam Jain, Shri M.M. Bhasin, CA Shri Rahul Garg, CA Shri Prashant Raizada as well as Presidents & Secretaries of Delhi, Ghaziabad, Noida, Faridabad, Gurgaon and Greater Noida Tax Bar Associations. The Vice President and the senior executive members of the UP Tax Bar Association and UP Tax Advocate Welfare Association have also graced the celebrations. The programme was conducted by Shri Ajay Sinha, General Secretary-NZ and concluded by 'Melodies from Golden-Era' as well as delicious chaat and dinner providing wonderful opportunity of bond among the families of the AIFTP members.



ANNOUNCEMENT

This is to inform you that Book Corporation of Kolkata has graciously expressed to our members, discount of 40% on the following publications:

1. "International Taxation – A Basic Study" authored by P. V. S. S. Prasad & Sampath Raghunathan. The price of the said publication is ₹ 695/-.
2. "Commentary on Hindu Undivided Family" authored by N. M. Ranka & R. K. Patodia. The price of the said publication is ₹ 675/-.

**REPORT OF FOUNDATION DAY CELEBRATION AT MUMBAI
ORGANISED BY AIFTP-WESTERN ZONE**

The Western Zone of AIFTP celebrated the 39th Foundation Day of AIFTP at a function held on 15.11.2014 at Navinbhai Thakkar Auditorium, Shraddhanand Road, Vile Parle (E), Mumbai. This function was organized jointly with The Sales Tax Practitioners' Association of Maharashtra, which association also celebrating its foundation day. Mr. Punjab Singh from Patna was the key note speaker, who enthralled the audience with his very interactive and lively talk on "Attitude, A Key to Happiness". Mr. Singh presented live examples / incidents on the aspect of keys to remain happy. The talk was very illuminating and was very well received. The Chief Guest for the function was Hon'ble Shri V. V. Guthe, Member, Maharashtra Sales Tax Tribunal.

The highlight of the function was felicitation of the Past Western Zone Chairmen, at the hands of Shri P. C. Joshi, Past National President of AIFTP. He also cut the 'birthday' cake in celebration of the Foundation Day. Dr. K. Shivaram, Past National President of AIFTP also graced the occasion and gave his blessings. Both the Past Presidents recounted their association with AIFTP and shared their memories and experience concerning AIFTP. The Past Zone Chairmen also shared their sentiments. The Past Zone Chairmen who were felicitated are:

- (i) Shri K. K. Ramani (1997 - 1999)
- (ii) Shri Pranay H. Marfatia (2000 - 2002)
- (iii) Shri J. D. Nankani (2003 - 2005)
- (iv) Shri Keshav B. Bhujle (2006 & 2007)
- (v) Smt. Nikita R. Badheka (2008 & 2009)
- (vi) Shri Harish N. Motiwalla (2010 & 2011)
- (vii) Shri Vinayak Patkar (2012 & 2013)

Each of the above dignitaries was presented with a shawl, a coconut and a memento.

Shri Vipul Joshi, Chairman, AIFTP (WZ), gave welcome address and Shri J. D. Nankani, National President of AIFTP delivered introduction speech. Shri Chirag Parekh, Vice Chairman, AIFTP (WZ) introduced the Guest of Honour - Shri P. C. Joshi and Shri Pravin Shah, Hon. Joint Secretary, delivered Vote of Thanks. Master of Ceremony was Shri Ashwin Acharya, who ably presented introduction of each Past Zone Chairman. The function was also attended by other office bearers of NEC, namely, Shri Kishor Vanjara, Vice President, Shri Janak Vagani, Treasurer and Shri Samir Jani, Jt. Secretary, among others. Representatives of other sister organizations, namely, Bombay Chartered Accountants Society and The Chamber of Tax Consultants, also graced the occasion.

The function was followed by a lively musical night and dinner.



**Advertisement Tariff
for AIFTP Journal
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Particulars	Per Insertion
1. Quarter page	₹ 1,500/-
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4. Third cover page	₹ 7,500/-
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**Membership of AIFTP
as on 25-11-2014**

	Life Members				Total
	Associate	Individual	Association	Corporate	
Central	0	797	23	3	823
Eastern	3	1169	35	3	1210
Northern	0	963	17	0	980
Southern	1	903	13	7	924
Western	4	1723	33	16	1776
Total	8	5555	121	29	5713

NATIONAL TAX CONFERENCE, JAIPUR – 2014

Jointly organised by

**ALL INDIA FEDERATION OF TAX PRACTITIONERS • RAJASTHAN TAX CONSULTANTS ASSOCIATION
TAX CONSULTANTS ASSOCIATION, JAIPUR • JAIPUR TAX BAR ASSOCIATION**

on 20th and 21st December, 2014

at B. M. Birla Auditorium, Statue Circle, Jaipur

**THEME : Make in India – Role of Tax Professionals
PROGRAMME**

DAY 1 - SATURDAY, 20TH DECEMBER, 2014

8.30 am to 9.30 am	Breakfast and Registration
9.30 am to 11.30 am	Inaugural Session Chief Guest – Hon'ble Justice R. K. Agarwal, Judge, Supreme Court of India Presided by Hon'ble Mr. Justice Sunil Ambwani, Acting Chief Justice, Rajasthan High Court
11.30 am to 11.45 am	Tea Break
11.45 am to 1.15 pm	First Technical Session – Income Tax Chief Guest – Hon'ble Mr. Justice Ajay Rastogi, Administrative Judge, Rajasthan High Court Chairman – Shri Bharat Ji Agarwal, Sr. Advocate, Allahabad Key Speaker – Shri Kapil Goel, Advocate, New Delhi Speaker – CA. Gupta, Jaipur
1.15 pm to 2.00 pm	Lunch
2.00 pm to 3.30 pm	Second Technical Session – Panel Discussion on Companies Act Chief Guest – Hon'ble Mr. Justice Rajesh Bindal, Judge, P&H High Court Key Note Speaker – Mr. Nesar Ahmed, Past President, ICSI, New Delhi Panellists – Industry Representative – Mr. Gopal Gupta Expert – 1 – CA. H. N. Motiwalla, Mumbai Expert – 2 – CA. Anil Mathur, Jaipur Moderator – CA. Rajeev Sogani, Jaipur
3.30 pm to 4.45 pm	Third Technical Session – Service Tax Chief Guest – Shri S. S. Lenka, Chief Commissioner, Central Excise Chairman – Shri N. K. Gupta, Chairman, Manglam Group, Jaipur Key Speaker – Shri Atul Gupta, (Member, Central Council, ICAI), New Delhi
4.45 pm to 5.00 pm	High Tea
5.00 pm to 7.30 pm	National Executive Meeting of AIFTP at Hotel Clarks Amer
7.45 pm to 9.00 pm	Musical Programme
9.00 pm onwards	Gala Dinner

DAY 2 – SUNDAY 21ST DECEMBER, 2014

9.00 am to 9.30 am	Breakfast
9.30 am to 12.00 noon	Fourth Technical Session – Panel Discussion on issues of Income Tax, VAT, Service Tax and Stamp Duty on Real Estate Transactions Chief Guest – Shri Rajpal Singh Shekhawat, Cabinet Minister (UDH), Govt. of Rajasthan Presided by – Shri O. P. Agrawal, Conference Chairman Chairman – Dr. K. Shivaram, Sr. Advocate, Mumbai Panellists – Industry Representative – Shri Atma Ram Gupta Income Tax – Shri V. P. Gupta, Advocate New Delhi Income Tax – Dr. Anita Sumanth, Advocate, Chennai Service Tax – CA. Ashok Chandak, Nagpur VAT – Shri H. C. Bhatia, Advocate, New Delhi VAT – Shri Vinayak Patkar, Advocate, Mumbai Stamp Duty – Shri Mahaveer Swami, Jaipur Moderators – Direct Tax – CA. Prakash Parwal, Jaipur Indirect Tax – Shri Pankaj Ghiya, Advocate, Jaipur

12 noon to 1.00 pm	Fifth Technical Session Advance Law of Attraction and its Application Key Note Speaker –Mr. Govind Babu (Chief Trainer & Management Guru)
1.00 pm to 1.45 pm	Lunch
1.45 pm to 3.15 pm	Sixth Technical Session Works Contract and Overlapping issue of Service Tax/VAT Chief Guest – Hon'ble Mr. Justice J. K. Ranka, Judge, Rajasthan High Court Chairman – Shri Ashok Saraf, Sr. Advocate, Guwahati Key Speaker – CA. N. Venkatramani, Bengaluru Speaker – Shri Deepak Bapat, Advocate, Mumbai
3.15 pm to 5.30 pm	Brains' Trust Session Chairman – Shri N. M. Ranka, Sr. Advocate, Jaipur 1. Shri S. K. Poddar, Advocate, Ranchi 2. Smt. Prem Lata Bansal, Sr. Advocate, New Delhi 3. Shri M. L. Patodi, Advocate, Kota 4. CA. O. P. Agrawal, Jaipur 5. Shri K. L. Goyal, Sr. Advocate, Chandigarh 6. Shri Mukul Gupta, Advocate, Ghaziabad 7. Dr. M.V.K. Moorthy, Advocate, Hyderabad 8. CA. Sanjay Jhanwar, Jaipur 9. Mrs. Nikita Badheka, Advocate Mumbai Followed by High Tea

Delegate Fees :- For Members/Spouse – ₹ 1,600/- (up to 30th November, 2014 and then ₹ 2,100/-)
For Corporates/Others – ₹ 2,500/- (up to 30th November 2014 and then ₹ 3,000/-)

Kindly issue DD/Cheque at par in favour of "NATIONAL TAX CONFERENCE 2014" payable at Jaipur. If you wish you can make payment online by depositing cheque or demand draft or by RTGS in the name of National Tax Conference 2014 Account Number: 50200008290443 in HDFC Bank, Ashok Marg, C-Scheme Branch. IFSC Code: HDFC0000054.

Invitation and Request by

J.D. NANKANI National President AIFTP 9821034867	PANKAJ GHIYA Vice President, AIFTP-CZ 9829013626	VIKRAM GOGRA President, JTBA 9829060406	AVINASH KHANDELWAL President, TCA 9414240851	O. P. AGARWAL Conference Chairman 9829017765	SATISH GUPTA President, RTCA 9828012935
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Conference Secretariat

RTCA Association Bldg., B-145 /13, Mangal Marg, Bapu Nagar, Jaipur • Tel.: 0141 - 2704697
e-mail: ntcj2014@gmail.com

Hotel Accommodation

Hotel Name	Rate @ Double Occupancy	Remarks
Hotel Clarks Amer (5 Star)	₹ 4,000.00 + Taxes	Special Negotiated Rates inclusive of Breakfast

VOLUNTEERS FOR DIGESTING THE CASE LAWS FOR AIFTP JOURNAL

We invite our members who desire to digest the case laws for AIFTP Journal to please e-mail us at aiftp@vsnl.com

DIRECT TAXES

Ajay R. Singh, Rahul Hakani, Rahul Sarda and Ms. Neelam Jadhav
Advocates, KSA Legal Chambers

HIGH COURTS

1. S. 9(1)(vi) : Payment made by a race club for live telecast of horse races is not covered u/s. 9(1)(vi) and said amount, as such not being royalty, TDS was not required to be deducted

The assessee was engaged in the business of conducting horse races and derived income from betting, commission, entry fee, etc. and had made payment to other centres whose races were displayed in Delhi.

The broadcast/live telecast is not a work within the definition of 2(y) of the Copyright Act and also that broadcast/live telecast doesn't fall within the ambit of section 13 of the Copyright Act. It would suffice to state that a live telecast/broadcast would have no 'copyright'.

The clause (v) to Explanation 2 to clause (vi) or sub-section (1) of section 9 would relate to work which includes films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting. The clause is an inclusive provision for films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting.

The 'scientific work' has not been defined in the Act nor in the Copyright Act. It is not necessary that because the live telecast of an event is being done at a distant place, the same would be a 'scientific work'. Therefore, live telecast of horse races is not covered under section 9(1)(vi) and said amount, as such not being royalty, TDS was not required to be deducted.

CIT v. Delhi Race Club (1940) Ltd. IT Appeal Nos. 6 & 241 of 2014 Dated 18-11-2014 (HC)(Del.), Source : taxmann.com

2. S. 149 : Time limit for issuance of notice – Income escaping assessment notice u/s. 148 not sustainable (r.w.s. 148)

Where assessee did not have any asset outside India and therefore, there was no question of having any income in relation to such an asset, there is no reasoning indicated as to how S. 149(1)(c) has been invoked other than simply reproducing the contents of S. 149(1)(c). Furthermore, neither the letter nor the impugned order and nor the counter affidavit filed by the respondent before the court controvert the statement made by the petitioner that it has no asset located outside India. Therefore, the question of deriving an income from any such asset also does not arise. The assessee does not have any asset outside India and, therefore, the question of having any income in relation to such an asset would not arise. The condition precedent for issuing a notice u/s. 148 r.w.s. 149(1)(c) invoking the extended period of limitation of six years is that the income which has escaped assessment must have relation to any asset located outside India. This precondition is not satisfied. Therefore, there is a complete bar to the issuance of such a notice beyond the period of four years. In such a case, notice issued u/s. 148 after expiry of six years

from end of relevant year relying upon provisions of section 149(1)(c) was not sustainable (A.Y. 2006-07).

Deccan Digital Networks (P.) Ltd. v. ITO W.P. (C) No. 1226 of 2014 CM No. 2558 of 2014 dated 28-8-2014 source : taxmann.com

3. 80P(2)(a)(i) : Interest earned on providing credit facility to its customer assessable as 'income from other sources' and, not eligible for deduction u/s. 80P(2)(a)(i) (r.w.s. 56)

The assessee, co-operative thrift and credit society, was engaged in the activity of providing credit facilities to its members.

As per the bye-laws of the society, only 50 per cent of the thrift mobilised/collected from the members could be given as credit to the members, and the balance had to be kept in FDRs or other income earning avenues. It was submitted that the alleged surplus in fact formed the corpus and therefore interest earned was exempted.

Provisions of sections 11 to 13 have no application in determining exemption under section 80P or in determining whether interest income was taxable under the head 'income from business' or 'income from other sources'. Such differentiation between corpus or non-corpus funds is not mandated and stipulated in section 80P and for determining the head of income; 'income from business or profession' or 'income from other sources'. There is a clear finding that the interest was earned by way of investment of surplus funds in FDRs with banks. The assessee itself indicates and predicates that interest was earned by investing surplus funds in fixed deposits.

S. 80P provides partial exemption, restricted to the specified 'earning' or 'incomes' in sub-section (2) and not the entire income. For the purpose of the present appeal, section 80P(2) clause (a)(i) is material. The interest earned from the aforesaid funds as would fall under section 56 and would be taxable under the head 'income from other sources'.

Mantola Co-operative Thrift & Credit Society Ltd. v. CIT IT Appeal No. 569 of 2013, dtd. 27-8-2014, Source : taxmann.com (HC)(Del.)

TRIBUNAL

4. S. 253 : Appeal – Appellate Tribunal – Instruction No. 5 dated 10-7-2014 – Applicable to pending appeals also

As per Instruction No. 5 dated 10-7-2014, issued by the CBDT, no appeal should be filed where tax effect of the disputed issue was less than ₹ 4 lakhs. Held this circular is applicable also to pending appeals. As the tax effect in the case under consideration was ₹ 3.06 lakhs i.e. less than the monetary-limit prescribed by the Board.

DDIT (IT) v. Shinhan Bank, ITA No. 4549/M/2013 dated 23-9-2014, (ITAT, Mumbai)

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INDIRECT TAXES

SALES TAX

D. H. Joshi, Advocate

1 Appeal

Dismissing the appeal on the ground of non-appearance of the petitioner where notice for date of hearing was sent on wrong address. In the circumstances, whether dismissal of appeal for non-appearance of the petitioner was justified. The High Court ruled in the negative and direction was given to the Appellate Authority for hearing of appeal on merits.

Braja Gopal Saha v. STO, Salt Lake Charge and Ors. (2014) STA Vol. 64 Part-4 Page 255 (Cal. H.C.)

2. Assessment

Section 15 of the Haryana VAT Act, 2003, pertained to assessment. In the present case, on suppressed sales demand created on account of under pricing on the value of the goods i.e. 'Sand' and the interest and penalty was imposed thereon. The A.O. on the basis of the assessment of the inspection case of the Excise and Taxation officer, Sonipath, Smt. Satya Bala for the first quarter of the year assessed the appellant on a rate of ₹ 8/- per Cubic Feet (CFT) and accordingly added the difference of value to the turnover and imposed tax and penalty for suppression of sale. As against this, it was pointed out that Smt. Satya Bala made the assessment of the first quarter of the year as an inspection case and determined the value of the 'Sand' at ₹ 5/- per CFT, whereas the subsequent assessment authority determined the value of the 'Sand' at ₹ 8 /- per CFT for the second, third and fourth quarter of the year and finalized the assessment accordingly. It transpired that there was no additional material with the subsequent assessing authority to up scale the rate of 'Sand' from ₹ 5/- to 8/- per CFT. As per the settled law, the assessment of the first quarter has been accepted as correct by the Dept. Therefore, the assessment of the remaining three quarters cannot be made on different parameters. It is also observed that the assessment of the first quarter was not challenged by the Department and as such it reached finality. The same view was already taken by the Tribunal in the case of *Shree Cement Ltd., Gurgaon, (2011) 38 PHT 331 (HTT) (FB)*. Following the same impugned orders became legally unsustainable and were accordingly set-aside.

Hari Singh Chaudhary, Sonipath v. State of Haryana (2014) 49 PHT 207 (HTT)

3. Attempt to evade Tax

It is a settled position in law that in case of inter-State sales, tax is payable to the State from which the transaction emanates and not the destination State. As in the instant case, there was no liability to pay tax in the State of Himachal Pradesh, there could obviously be no attempt to evade tax and, accordingly, penalty u/s. 34(7) could not be imposed and the same was set-aside.

C&S Electric Ltd. v. Assessing Authority, Solan (H.P.) (2014) 49 PHT 212 (HPTT)

4. Brand Product – "Ujala Supreme"

The product "Ujala Supreme" was sold as "Ujala Supreme", having a distinct identity, and brand market, the sale was not of 'Acid Violet Paste', rather it was a sale of brand product. It is an end product for the use of end users and not an industrial input and thereby fell under the residuary entry and liable to VAT @ 13.75%.

Jyothy Laboratories Ltd., P.O. Baddi v. Excise And Taxation Inspector, M. P. Barrier, H.P. (2014) 49 PHT 191 (H.P.T.T.)

5. Condonation of delay

The cardinal principle of justice contemplate that nobody should be condemned unheard. This principle was applied in the present case for condonation of delay of 805 days after the dispatch of the order of the First Appellate Authority on 8-3-2011 by RPAD at the address with the Dept. but which was not received. After waiting for the receipt, the Counsel for the appellant approached the court and copy could be obtained of the Order on 17-5-2013. As a result, the appeal before the Tribunal was filed along with the application for condonation of delay. The Tribunal, in the interest of justice and fair play condoned the delay observing as stated above and directed the Department to hear the appeal on merits. At the same time, the Department was compensated in terms of cost awarded ₹ 5,000/-.

Bajaj Consumer Care Ltd., Mohali v. State of Punjab (2014) 49 PHT 226 (PVT)

6. Exercise of powers 'from time-to-time' – Meaning and scope – Promissory Estoppel

A. By virtue of sections 1(4) and 21 of the General Clauses Act, 1987, when a power is conferred on an authority to do a particular act, such power can be exercised from time to time and carries with it the power to withdraw, modify, amend or cancel the notifications earlier issued, to be exercised in the like manner and subject to like conditions, if any, attached with the exercise of the power. In other words, subordinate legislation made by a delegate could not have retrospective effect unless the rule making power in the concerned statute expressly or by necessary implication confers power in that behalf.

B. Promissory Estoppel – Principle of promissory estoppel whether could be applicable to a case where concessions / rebates given by a statutory notification were subsequently withdrawn by another statutory notification. Held, that the action is as per law in view of Section 14 of the General Clauses Act, any power conferred by the Central enactment may be exercised from time to time as occasion arises, unless different intention appears in the Act.

State of Rajasthan & Ors. v. M/s. Basant Agrotech (I) Ltd. And Ors. (2014) 49 PHT 153 (SC)

7. Penalty and garnishee proceeding

Imposition of penalty and initiation of garnishee proceeding without allowing opportunity of hearing whether justified? The Tribunal after verifying the Order Sheet produced by the Respondents held, as not justified. Accordingly, the Tribunal set-aside the Order of penalty issued by the Dy. Commissioner and also quashed the initiation of garnishee proceeding.

Shakuntala Jaiswal v. D. C. ST, Burtala Charge (2014) STA Vol. 64 Part-4 Page 248 (W.B.T.T.)

8. Rate of tax

A Refractory materials – Advance ruling of the Commissioner holding that VAT @ 12.5% was payable on the said material without examining the nature and use of all those products. The question was whether the advance ruling was justified. According to WBTT, such a conclusion was erroneous and petitioner's statement that other dealers selling similar goods of products were paying VAT @ 4% as per Notification No. 1216 dated June 10, 2005. In the circumstances, it was held that the petitioner claimed the disputed goods to be refractory materials, it was necessary to determine the nature of those goods before asking the petitioner to pay VAT @ 12.5%. Further, it was held that it was not possible for an Assessing Officer to make the final determination without obtaining opinion of the experts or of the industries using the said materials. Hence, the Tribunal directed the A.O. to take his independent decision without being guided or influenced by the decision of the Commissioner. Accordingly, the matter was decided.

Metaflux Co. (P) Ltd. v. CST, W. B. and Ors. (2014) STA Vol. 64 Part-4 Page 252 (WBTT)

B The Karnata Value Added Tax Act, 2003, contained notification pertaining to IT products liable to tax at 4%. The question for answer before the HC was: "Whether portable hand held electronic ticketing machine was an IT product and fell under heading and sub-heading No. 8471 so as to be eligible for tax at 4%?" Under the Central Excise Tariff Act, this ticket issuing machines were expressly included in Entry No. 8470, by any stretch of imagination, the Court cannot hold that it falls under item 8471 especially when it specifically states that "not elsewhere specified or included." The notification under sub-heading No. 8471 did not include this ticketing machine. That was precisely what the authorities had concurrently held. Therefore, the HC did not see any error in the orders passed by any of the authorities. Accordingly, the question of law was answered in favour of the revenue and against the assessee.

M/s. MicroFx, Bangalore v. The State of Karnataka (2014-15) (19) ACTJ 173 (Kar.)

9. Suo motu adjournments and non-appearance of the petitioner

Non-appearance of the petitioner on the date of hearing before the lower authorities. Whether authorities ought to have granted *suo motu* adjournment or should have granted on the prayer of the petitioners. Also, there was a denial of the benefit of concessional rate of tax as well as the waiver due to non-production of Forms 'C' and 'H' at the lower stages which had been submitted subsequently. In the circumstances, under writ jurisdiction, the Calcutta HC held that the petitioners ought to have been granted time for proving their case on merit and decided in accordance with law.

Wellman Wacoma Ltd. v. Dy. Commr. CT, (2014) STA Vol. 64 Part-4 Page 243 (Cal. H.C.)

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Associate Editor of AIFTP Times : Mr. Deepak R. Shah

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