



AIFTP TIMES

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We wish all our members and readers a Prosperous New Year 2015

FORTHCOMING PROGRAMMES	Date & Month	Programme	Place
	17-1-2015	Full Day Seminar on Appellate Procedures under Income-tax, MVAT and Service Tax	Mumbai
	17-4-2015	National Executive Committee Meeting	Darjeeling
	18, 19-4-2015	Two Days National Tax Conference	Darjeeling

REPORT OF NATIONAL TAX CONFERENCE – 2014 HELD AT B. M. BIRLA AUDITORIUM ON 20TH- 21ST DECEMBER, 2014 AT JAIPUR

By
PANKAJ GHIYA, National Vice President

“National Tax Conference, 2014” organised by All India Federation of Tax Practitioners, Rajasthan Tax Consultants’ Association, Tax Consultants’ Association and Jaipur Tax Bar Association at Birla Auditorium, on December 20–21, 2014 was a grand success and was attended by over 900 delegates and other invitees etc.

The National Tax Conference was inaugurated by Hon’ble Mr. Justice R. K. Agarwal, Judge, Supreme Court of India. The guest of honour was Hon’ble Mr. Justice Ajay Rastogi, Administrative Judge, Rajasthan High Court and Key Note Speaker was Mr. Ashok Sharma, CFO, GreenLam Industries Ltd. The inaugural function was attended by more than 1,200 persons including invitees. The audience included other Hon’ble High Court Judges, Hon’ble members of ITAT, Officer of the Income Tax, Commercial Tax and Excise and Service Tax Department, Leading Businessmen, etc.

The Conference was unique in itself as it was being webcasted live through internet and was being watched across world on a real time basis. Apart from it it was live on twitter. Special website was created as “nationaltaxconference.com” which contained all the details of the Conference including the technical programmes etc.

In the Inaugural session after lighting of lamp and inauguration of Conference by the guests welcome speech was delivered by Shri Satish Gupta, President, RTCA. He welcomed all the delegates coming from all parts of India and all Districts of Rajasthan and thanked them for attending this Conference in a large number. Conference Chairman Shri O. P. Agarwal informed about the technical sessions of the Conference and welcomed the guests. He also informed that similar Conference was held earlier also with the same grandeur. Shri J. D. Nankani, National President, AIFTP also welcomed all the delegates and expressed his gratitude

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

Name	Mobile	Tel. (O)	Fax	E-mail
National President – J. D. Nankani, Adv.	9821034867	022-22841717	22831717	jagdish@nankanis.com
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for such a large gathering of professionals. Shri N. M. Ranka, Patron of the Conference informed about the working of all the organising associations and also give his blessing.

Mr. Ashok Sharma, CFO, M/s. Greenlam Industries Ltd. delivered his Key Note address and talked about the importance of “Make in India” concept. He stated that the Prime Minister, Shri Narendra Modi has correctly realised the importance of manufacturing sector in the progress of the country.

Hon’ble Mr. Justice Ajay Rastogi, Administrative Judge, Rajasthan High Court in his address informed about the importance of mediation in the legal proceedings and said that because of mediation large number of cases can be decided out of court. He also emphasised the requirement of updating of legal knowledge.

Hon’ble Mr. Justice R. K. Agarwal, Judge Supreme Court of India in his address blessed the Conference and discussed about the role of the Tax professional in the current scenario. He informed that with the coming of GST and the direct tax code and the improvement in compliance due to computerisation of the taxation system there would be new opportunity for the tax professional. He emphasised the role of continue education in the professional life.

In the inaugural session six books were released by the Hon’ble Chief guest and the guest of honour namely –

- (i) RTCA Hand Book for Professionals 2014-15, edited by Shri Rajnish Singhvi, FCA.
- (ii) Selected decisions of Rajasthan High Court of Income-tax by Shri Mahendra Gargiya, Advocate.
- (iii) Constitutional Perception of Fundamental Duties by Shri N. M. Ranka, Senior Advocate.
- (iv) Rajasthan VAT Law and Practice by Shri Pankaj Ghiya, Advocate.
- (v) Basic questions and answers on Foreign Exchange Management Act, Non-Resident Taxation etc., authored by S/Shri Sujeeth Karkala, Rahul K. Hakani, Rahul R. Sarda and Dilli R. Bhatta, Advocates and edited by CA. Dilip J. Thakkar and Dr. K. Shivaram, Senior Advocate (AIFTP’s publication).
- (vi) Guidelines for claiming Incentives on Investment in Industries and Service Sector in Rajasthan by Mrs. Ritu G. P. Das and Ms. Ishu Jain, Chartered Accountants.

It is important to note that first four books were distributed free of cost to all the delegates.

Apart from it the delegates was also given a trolley suitcase and other gifts also.

Mr. Pankaj Ghiya, National Vice President (CZ), AIFTP gave vote of thanks to all the guests and delegates.

After the inaugural session the First Technical Session was held on the subject of Income Tax. Shri Bharatji Agarwal, Senior Advocate was the Chairman of the session and Shri Kapil Goel, Advocate from New Delhi was the Key Speaker. The audience was benefited by the knowledge of the Chairman and the Speaker and various queries was answered in the session.

A special feature of the Conference was “Dialogue with authorities” in which the guest was Shri Vaibhav Galriya, Commissioner, Commercial Tax Department, Rajasthan and Shri Satish Sharma, Commissioner, Income Tax Department. Both the departmental heads discussed about the vision of the department and also replied to the queries and problems and assured that all representations given to the associations would be considered.

In the Second Technical Session a panel discussion was held on the new Companies Act provision in a new format. The Chief Guest of the session was Hon’ble Mr. Justice Rajesh Bindal, Judge, P&H High Court. On a special request he has agreed to come and people was enthralled with his knowledge. The main speaker was Mr. Nisar Ahmed, Past President, ICSI and the panel experts were CA. H.M. Singhvi, CA. H.N. Motiwalla, CA. Anil Mathur. The session was moderated by CA. Rajeev Sogani.

The Third Technical Session was relating to the service tax which was chaired by Shri K. C. Kaushik, Advocate, New Delhi. The main speaker was CA. Atul Gupta, Central Council Member, ICAI. He discussed about the various aspects of service tax. Another speaker in the session was CA. Puneet Agarwal, from Delhi who also discussed the recent controversies relating to service tax.

The Technical session was followed by the meeting of the National Executive Committee of AIFTP and also the ITAT Bar Associations' Co-ordination Committee.

In the evening a cultural programme was organised and it was attended by the delegates and their family members. It was followed by dinner which was free of cost for all family members.

The second day started with a session on Real Estate Transactions. The Chief guest was Shri Rajpal Singh Shekhawat, Cabinet Minister, UDH, Govt. of Rajasthan and it was partnered by CREDAI & TODAR. (Leading Builders Association).

It was a fantastic session with the panel experts from all fields and it was chaired by Dr. K. Shivaram, Sr. Advocate, Mumbai and moderated by Shri Pankaj Ghiya and Shri Prakash Parwal. The panel expert included

1. Shri Atma Ram Gupta, Industry Representative
2. Shri V. P. Gupta, Advocate, New Delhi
3. Shri S. K. Poddar, Advocate, Ranchi
4. CA. Sunil Goyal, Jaipur (Past President ICAI)
5. CA. Ashok Chandak, Nagpur (Past President ICAI)
6. Shri H. C. Bhatia, Advocate, New Delhi
7. Shri Vinayak Patkar, Advocate, Mumbai
8. Shri Mahaveer Swami, Jaipur

Shri Rajpal Singh Shekhawat, the chief guest of the session delivered a fascinating speech and covered all aspects including the importance of taxation and also the importance of economic parameters etc. He conveyed a message of giving money for charity. The session was appreciated by one and all.

The Fifth Technical Session was on the advance law of attraction and was given by Mr. Govind Babu from Hyderabad. Shri Ratan Goyal, Chartered Accountant moderated in the session and delivered a great and informative speech.

The Sixth Technical Session was on Works Contract and overlapping issue of service tax/VAT and the chief guest of the session was Hon'ble Mr. Justice J. K. Ranka, Judge, Rajasthan High Court. The Key Speaker in the session was Mr. N. Venkatramani from Bengaluru and Shri Deepak Bapat from Mumbai. The delegates were enthralled by the speech of Shri N.Venkatramani and it was a very informative session.

The last session was of Brains' Trust session and it was chaired by Senior Advocate Shri N. M. Ranka. The queries of the participants was addressed by the panel experts which included :

1. Dr. Anita Sumanth, Advocate, Chennai
2. Shri M. L. Patodi, Advocate, Kota
3. CA. O. P. Agrawal, Jaipur
4. Shri K. L. Goyal, Sr. Advocate, Chandigarh
5. Shri Mukul Gupta, Advocate, Ghaziabad

It was a fantastical Conference and the credit also goes to the food arrangements. Delicious foods was served including breakfast, lunch and dinner and it was liked by one and all. Delegates appreciated the quality and variety of food. Apart from it there was many displaced stalls at the Conference for the benefit of the delegates.

In the end we can simply say that the people who missed the Conference missed a lot of things.



NATIONAL TAX CONFERENCE, DARJEELING, 2015

Organised by

ALL INDIA TAX FEDERATION OF TAX PRACTITIONERS (EZ)

In Association with

**NORTH BENGAL TAX ADVOCATES ASSOCIATION &
SILIGURI TAX ADVOCATES BAR ASSOCIATION**

Venue: Ranga Mancha, Bhanu Bhawan, Mall Road, Darjeeling

Dates: 18th & 19th April, 2015

Theme: Learn, Relax & Enjoy The Natural Beauty

NEC Meeting : 17th April, 2015 from 5 p.m. to 7 p.m.

Delegate Fees: ₹ 1,600/- Up to 28-2-2015 and ₹ 2,100/- After 28-2-2015

PROGRAMME AT A GLANCE

18th April, 2015 (Saturday)

08.30 a.m. to 09.30 a.m.	: Breakfast
09.30 a.m. to 10.45 a.m.	: Inauguration
11.00 a.m. to 12.15 p.m.	: First Technical Session: Income Tax
12.15 p.m. to 01.30 p.m.	: Second Technical Session: Service Tax
01.30 p.m. to 02.30 p.m.	: Lunch
02.30 p.m. to 04.00 p.m.	: Third Technical Session: GST
04.00 p.m. to 04.30 p.m.	: High Tea
04.30 p.m. to 05.30 p.m.	: Question Session
05.30 p.m. to 07.00 p.m.	: Cultural Programme
07.00 p.m. onwards	: Gala Dinner

19th April, 2015 (Sunday)

09.00 a.m. to 10.00 a.m.	: Breakfast
10.00 a.m. to 12.00 Noon	: Fourth Technical Session: CST
12.00 Noon to 01.30 p.m.	: Validictory Session
01.30 p.m. Onwards	: Lunch

(Sayonara)

Place of Visit

Sunrise at Tiger Hill/Zoo/Mountaineering Institute/Mahakal Temple/Telescope View of Kanchanjunga Peak/
Buddhist Monasteries/Rock Garden/Ropeway etc. etc.

Communication

Airport: Bagdogra, **Railway:** New Jalpaiguri (NJP)/Siliguri Jn.

2.30 Hours Journey from Bagdogra/NJP/Siliguri to Darjeeling

Taxies are available at ₹ 2,000/- to ₹ 3,000/- which accommodate 5 to 7 persons

Our members will be at Railway Stations and Airport to receive delegates with the taxi as per schedule
supplied to us on 17-4-2015

Nearest Hotels located to venue (Twin Sharing) excluding taxes

Please Book your hotels through online

Name of Hotel		Tariff
R.J. Resort	Negotiated Rate (10 Room)	₹ 5,000/-
Litte Tebet	Negotiated Rates	₹ 5,500/-
Mayfair Resort		₹ 9,000/- to ₹ 11,000/-
Gymkhana Resort		₹ 7,000/- onwards
Central Nirvana	Negotiated Rates	₹ 5,000/- onwards
Central Hotel Fortune Resort, Robertson Road – Negotiated		₹ 4,500/-
Hotel Sunflower		₹ 3,000/- onwards
Hotel Main Olde Balleve Heritage		₹ 4,000/- onwards
Dreamland – Online Booking is Not Available		₹ 2,000 to ₹ 3,000/-

Hotels located at 10 to 15 minutes walk to venue (Twin Sharing) excluding taxes

Name of Hotel	Tariff
Hotel Mohit	₹ 3,000/-
Hotel Seven Eleven	₹ 3,000/-
Hotel Central Heritage	₹ 3,000/-

Economic Hotels are also available at the distance of 15 to 20 minutes walk @ ₹ 2,000/-. On advance payment of 50%. Our Bank is Punjab National Bank, Siliguri, IFCS Code: punb0044400, Savings Account No.0444000100151525. in the Name of Siliguri Tax Advocates Bar Association.

Contact: Hotel Booking

D.K. Agarwal, NEC Member, 9474380665, dk2ita@yahoo.co.in, Mr. S. P. Sharma – 9434984560
Transport: Mr. Nirmalaya Chakraborty – 9434152144 & Mr. Vinit Agarwal – 98320065666

Reception Committee

Shri Anand Kumar Pasari (Jharkhand), Nitu Hawelia (Assam), Shri M. K. Singh (Bihar),
Shri N. P. Jain, Shri S. M. Surana, Shri Subash Chandra Agarwal, Shri N. R. Chakraborty, Shri H. C. Singhal,
Shri G. S. Agarwal, Shri Gajanand Agarwal & Shri Apuba Saha

Indu Chatrath
Chairman (EZ)

Sujit Basu
Chairman, Conference Committee

B.N. Mahapatra
Vice President (EZ)

**FULL DAY SEMINAR ON APPELLATE PROCEDURES UNDER
INCOME TAX, MVAT AND SERVICE TAX**

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)

Jointly with

**TAX PRACTITIONERS' ASSOCIATION, THANE,
SALES TAX PRACTITIONERS ASSOCIATION OF MAHARASHTRA, MUMBAI
AND
TAX FRIENDS, MUMBAI**

With the recent surge in the litigations under various tax regulations, it has become of prime importance to understand the criticality of the provisions concerning appeals and the procedures for filing appeals at various stages under various taxation laws.

With a view to help the Members, All India Federation of Tax Practitioners (WZ) jointly with the Tax Practitioners Association, Thane, Sales Tax Practitioners Association of Maharashtra, Mumbai and Tax Friends, Mumbai has arranged a full day seminar on Appellate Procedures under Income Tax, MVAT and Service Tax on Saturday, 17th January, 2015 from 9.15 a.m. to 5.30 p.m. at Satkar Grande, Wagle Estate, near Mulund Check Naka, Thane – 400 604.

Topics	Speakers
Appellate Procedures under Income-tax Act, 1961	Adv. K. Gopal
Appellate Procedures under MVAT Act, 2002	CA. Sujata Rangnekar
Appellate Procedures under Service Tax	Adv. Shailesh Sheth

Delegate fee (including Breakfast, Lunch, Tea & Course Material)

₹ 1,250/- for Members, ₹ 1,500/- for Others

(Early Bird Discount of ₹ 150/- for registration received up to 7th January, 2015)

All members are requested to take advantage of this unique opportunity and enrol early to avoid disappointment.

Members wishing to enrol can contact the following:

AIFTP Office : 22006342 / 43

Co-ordinators :

CA. Avinash Lalwani, Chairman, Membership Committee

CA. Vijay Kewalramani, Co-Chairman, Law and Representation Committee

DIRECT TAXES

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

HIGH COURTS

1. S. 4 : Transfer Fees received by Co-op. Hsg. Soc. from incoming & outgoing members (even in excess of limits) is exempt on the ground of mutuality

The assessee, a Co-operative Housing Society, received a sum on account of transfer of flat and garage and credited it to 'general amenities fund' as well as 'repair fund'. The assessee claimed that the said receipt is exempted from tax on the ground of mutuality. AO held that the principles of mutuality will not apply. However, the CIT(A) and Tribunal allowed the assessee's claim.

The High Court held that, the underlying principle and of a co-operative movement has been completely overlooked by the Revenue. The Revenue seems to be of the view that a Co-operative Housing Society makes profit, if it receives something beyond amount. It have been credited to the fund and with a view to demonstrate that it is nothing but a voluntarily contribution or donation to the Society, but still it constitutes its income. However, for rendering such a conclusive finding there has to be material brought by the Revenue on record. It has been received at the time of a transfer of the flat and credited to such a fund will not be enough to displace the principle laid down in the decision of Sind Co-operative Housing Society. The attempt of the Revenue is nothing but overcoming the binding judgment of this Court. It is a typical relationship between the member of the Co-operative Society and particularly a Housing Society and the Society which is a body Corporate and a legal entity by itself that is forming the basis of the principle laid down by the Division Bench. Co-operative movement is a socio-economic and a moral movement. It has now been recognised by Article 43A of the Constitution of India. It is to foster and encourage the spirit of brotherhood and co-operation that the Government encourages formation of Co-operative Societies. The members may be owning individually the flats or immovable properties but enjoying, in common, the amenities, advantages and benefits. The Society as a legal entity owns the building but the amenities are provided and that is how the terms "flat" and

the "housing society" are defined in the statute in question. Therefore there is no finding of any reason to deviate from the principle laid down in Sind Co-operative Housing Society's case and which followed a Supreme Court judgment.

CIT vs. Darbhanga Mansion CHS Ltd. (Bombay High Court) Income Tax Appeal No. 1474 of 2012 dated 18-12-2014

2. S. 254(2) : ITAT must adopt a justice oriented approach and not defeat the legitimate rights on the altar of procedures and technicalities

It is a settled position in law that every authority exercising quasi-judicial powers has inherent/incidental power in discharging of its functions to ensure that justice is done between parties i.e. no prejudice is caused to any of the parties. This power has not to be traced to any provision of the Act but inheres in every quasi-judicial authority. The aforesaid principle of law should have been adopted by the Tribunal. It is expected from the Tribunal to adopt a justice oriented approach and not defeat the legitimate rights on the altar of procedures and technicalities. This is particularly so when there is no specific bar in the Act to correct an order passed on rectification.

The fundamental principle of law that no party should be prejudiced on account of any mistake in the order of the Tribunal. Though not necessary for the disposal of this Petition, S. 254(2) of the Act are meant only for rectifying the mistakes of the Tribunal and not of the parties. The Tribunal and the parties are not adversarial to each other. In fact, the Tribunal and the parties normally represented by Advocates/ Chartered Accountants are comrades in arms to achieve justice. Therefore, a mistake from any source be it the parties or the Tribunal so long as it becomes a part of the record, would require examination by the Tribunal under S. 254(2) of the Act. It cannot be dismissed at the threshold on the above ground.

Supreme Industries Ltd. vs. ACIT (Bombay High Court) Source : www.itatonline.org.

TRIBUNALS

3. **S. 194-I : Lease premium and additional Floor Space Index (FSI) charges paid to MMRDA is not “rent” for TDS**

The amount charged by MMRDA as lease premium is equal to the rate prevailing as per the stamp duty ready reckoner for the acquisition of commercial premises. There is no provision in the lease agreement for termination of the lease at the instance of the lessee and, hence, for refund of lease premium under regular circumstances. Even the additional floor space index (FSI), given for additional space, is as per the ready reckoner rate only. The whole transaction is thus for grant of leasehold rights, and only a transfer of property; the lease premium being the consideration for the leasehold rights, which comprise a bundle of rights, including the right of possession, exploitation and its long-term enjoyment. The charges for FSI also partake the character of a capital asset in the form of Transferable Development Rights (TDRs), so that the owner (of land) had transferred the rights of development and exploitation of land, which are again capital in nature. The restrictive covenants toward excavation seek to retain the right of the State to any minerals from land. Excavation is permitted for the purpose of construction of the foundation of the building, or for executing any work in pursuance of the terms of lease. Similarly, restriction with regard to erection beyond building line was only in conformity with DC Rules, civil aviation rules, BMC and coastal regulations, etc., i.e., are regulatory, and do not define the character of the transaction *per se*. The Tribunal has in fact taken a consistent view for similar transactions with MMRD Ltd.

ACIT vs. Oil and Natural Gas Corporation Ltd. (ITAT Mumbai)

4. **S. 37(1) : Premium paid to buyback shares of recalcitrant shareholders is to facilitate smooth running of business and is allowable as revenue business expenditure**

It is amply clear that while accepting the compromise or settlement between the two warring groups, for a proceeding under ss. 397 and 398 of the Companies Act, 1956, the Court will keep in mind the prime interest of the company as well as public interest. Therefore, the interest of only two warring groups has been kept in

mind is not correct. The settlement in this regard, was that as a result of the compromise the assessee acquired the shares and the share capital was reduced. Merely represented the mode of settlement and it cannot, therefore, be the test to be applied to determine the question whether the assessee derived any benefit on capital account. It is necessary to consider whether the enduring advantage consisted merely facilitating the assessee's operation or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, then such expenditure would be on revenue account. The amount paid for this purpose was on revenue account. The position is clear that by getting rid of the minority shareholders, the company could not be said to have acquired any enduring benefit. Secondly, even if it is assumed that an enduring benefit has been obtained, even then such enduring benefit is not relatable to fixed capital structure of the company because it has neither increased the assessee's assets nor the company could be said to have acquired any right of income yielding nature. The act of writing off of share capital by way of reduction, may, on the first blush, suggest that the capital structure of the company has been affected, but it is not so if the facts are examined a little more closely. The reduction of the share capital was merely a consequence of the agreement which has to be given effect to, that too by an order of the Court where the interest of the company as well as of the public has to be necessarily kept in mind. Thus writing off of share capital by way of reduction as per the terms of consent decree merely was a consequential action and did not itself represent any effect on the capital structure or the acquisition of any right yielding income or advantage on capital account. Therefore, the expenditure which was incurred in order to facilitate the smooth running of the business by getting rid of the recalcitrant group of shareholders, was an expenditure incurred out of business expediency and, therefore, wholly and exclusively incurred in the course of carrying on of the business.

DCIT vs. Bramha Corp. Hotels & Resorts Ltd. (ITAT Pune). Source : www. itatonline.org.

5. **S. 40(a)(ia) : Disallowance of depository charges paid was not for technical services therefore provisions of Sec. 194C/194J were not applicable**

The assessee is engaged in the business of share and stock broking. It debited a sum to the Profit &

Loss Account under the head 'depository charges' which are payable on account of services provided with regard to transactions in securities through Stock Exchange. According to the AO assessee ought to have deducted tax at source, u/s. 194C of the Act, with reference to payments made to the contractor. According to the assessee there is no need to deduct tax on payments because these are not for technical services/for execution of work. AO, in the reassessment proceedings, was of the opinion that the payments made to the Stock Exchange, by whatever name called, are technical service falling within the purview of sections 194J and 194C and the assessee having not deducted tax he invoked provisions of section 40(a)(ia) of the Act.

Reopening of assessment on same set of disallowance, which was made in the original assessment proceedings would amount to change of opinion, which is not permissible under law, depository charges do not fall under the head 'Technical services' so as to invoke section 40(a)(ia) since it is only a contract between the assessee and the party who has to participate in execution of work, and even otherwise amount having been paid by the assessee, this being the first year where amount were sought to be disallowed, section 40(a)(ia) comes into play only in the case of amount payable and not with

reference to amount paid. Reopening is based upon change of opinion and even otherwise there is no case for making a disallowance under section 40(a)(ia) both on merit as well as on the issue that the said section is applicable only when the amount is payable and not after payment is made. The Hon'ble ITAT held that s. 40(a)(ia) is not applicable with reference to payments already made since the expression 'payable' has to be satisfied for invoking provisions of s. 40(a)(ia). Also held that it is clear that until and unless the decision of Marilyn Shipping & Transport is reversed by the Court, it is binding on all the benches of the Tribunal. Judicial discipline mandates that the decision of the Special Bench has to be followed by other benches. Reverting to the facts on hand, the Tax Authorities had not disputed the fact that the assessee paid depository charges without deducting the tax and taxes are already paid by the recipient. Since the amount was already paid and the taxes are paid by the recipient, the decision of the Special Bench in the case of Marilyn Shipping & Transports (supra) is applicable and by following the decision of the same provisions of s. 40(a)(ia) is not applicable to the assessee.

M/s. Arcadia Share & Stock Brokers Pvt. Ltd. ITA No. 1871/Mum/2013 dated 22-12-2014



INDIRECT TAXES

SALES TAX

D. H. Joshi, Advocate

1. Attempt to evade tax – Reuse of invoice

Section 51(7)(c) of the PVAT Act, 2005. In this case, mere non-production of Form XXXVI at the time of detention of goods whether is sufficient to say that there was an attempt to evade tax. Inadvertently, the driver may have forgotten to produce this form along with other documents before the detaining officer. However, this form was produced before the detaining officer shortly after detention of the goods. Hence, it was not the case that there were discrepancies in the documents accompanying the goods. The appeal was therefore accepted and the orders passed below were set aside.

Sri Rama Steel Ltd., Barotiwala, Dist. Solan (H.P.) v. State of Punjab (2014) 49 PHT 261 (PVT).

2. Condonation of delay

There was a delay of 17 days in filing First Appeal under the HVAT Act, 2003. As per Limitation Act Section 5 r/w Section 36 of the local Act, the First Appellate Authority rejected the appeal on the ground of delay in ex parte Order. Dealer filed Second Appeal but with delay. Tribunal also rejected the appeal on account of delay. Dealer filed Revision Appln. contending sufficient cause. HC, relying on the judgment of the Apex Court in the case of *M/s Apteck Engineers, Gurgaon v. State of Haryana And Ors. (2014) (2) PLR 102*, and held that authorities below erred in refusing to condone the delay in filing the appeals. Accordingly, the matter was remitted to the Jt. Commr. (Appeals) to adjudicate the dispute on merits in accordance with law.

Standard Steels Faridabad v. State of Haryana 2014 NTN (Vol. 56) – 312.

3. Legal validity

Section 49(A) of KGST Act, 1963 and Section 79A of the KVAT Act, 2003. In this case in the context of Garnishee orders issued by Civil Courts against the dealers, attaching amounts collected by dealers under the KGST / KVAT Acts and placing the amount at the disposal of civil courts was against the provisions of Section 49(A) and Section 79A of the KGST Act and KVAT Act, respectively. HC Registry was therefore directed to issue instructive communication in the form of circulars to all civil courts about the aforesaid provisions. Further, Office of the Advocate General was also requested to pass on the relevant information for the guidance of Govt. pleaders in District/Sub-ordinate courts.

Bharat Petroleum Corporation Ltd. v. State of Kerala (2014) 22 KTR 179 (Ker.)

4. Online Lotteries

Online lotteries – prohibition of – whether definition of “lottery” u/s 2(b) of the Lotteries (Regulation) Act, 1998 include “Online lotteries” organised by State of Sikkim. HC held that if State permits “paper lotteries” organised by it within the State, then, the said State could not have issued Notification prohibiting “online lotteries” for another State. In the circumstances, appeal disposed of without expressing any opinion on the Order passed by the HC in the light of Karnataka being a “Lottery Free Zone” as defined u/s 2(b) Lotteries (Regulation) Act, 1998.

State of Karnataka & Others v. State of Sikkim & Ors. (2014) 22 KTR 584 (SC).

5. Penalty vis-a-vis issue of Form ‘C’

A. ‘Hut Material’ item not specifically mentioned in the CST RC of the dealer. Applicability of Sections 10A and 10(b) of the CST Act, 1956. Dealer, a contractor, under a *bona fide* belief that the questioned goods is covered in a broader expression of “etc.” used after and as ‘stores material, consumables, etc.’ issued Form ‘C’ for ex-up purchase made against Form ‘C’. AO levied penalty under the provision of Section 10A of the CST Act. First Appellate Authority reduced the quantum of penalty. Both Dept. and dealer filed Second Appeal before the Tribunal. Tribunal sustained the Penalty Order of the Assessing Authority. On revision being filed, HC following its earlier judgments, held – finding of “mens rea” was necessary for levy of penalty u/s 10(b) r/w section 10A of the

Act. Accordingly, the Order of the Tribunal was set aside.

Yundai Engineering & Construction Co. Ltd. v. CTT, U.P. (2014) NTN (Vol. 56) – 325

B. In the present case, ‘Double Mazza’ (Pan Masala with Tobacco) – the question raised was goods already suffered additional excise duty in lieu of sales tax, whether State Govt. was competent to impose sales tax / trade tax on the same goods. HC held in the affirmative, following *Kothari Products v. Govt. of A.P. STI 2000 SC 165*.

2. Stock transfer of “Double Mazza” from *Noida (U.P.) to Haldwani (Uttarakhand)*. The First Appellate Authority and Tribunal confirmed the penalty imposed earlier. HC distinguished the judgment of the Apex Court (*supra*) relating to sales tax provisions in the State of A.P. but under the facts, it was not applicable to the State of U.P. and Uttarakhand because the State has vested powers to impose tax on questioned goods. Therefore, Revision Appln. dismissed.

Dharmpal Satyapal Ltd. v. State of Uttarakhand and Anr. 2014 NTN (Vol. 56) Page 330

6. Pre Deposit of Tax

Appellant was asked to deposit ₹ 2 lakhs for hearing of appeal on merit. Appellant deposited the said amount in installments, leaving a balance of ₹ 60,000. However, the case was dismissed for non-deposit of requisite amount. Hence, the appellant filed Review before the HC and also deposited the balance amount before hearing of the case fixed for 21-2-2014. Appellant pleaded before the HC that he had closed and stopped the business activities and Person-in-Charge was an old man more than 85 years of age. Court relying in favour of the appellant accepted lapse and default in depositing ₹ 2 lakhs within the time limit permitted. HC held that in case appeal is not heard and decided on merits, appellant would be burdened with huge liability, which, keeping in view the old age and financial position, the company may not be able to meet and the person-in-charge is faced penurious situation. On the facts so stated, court directed appellant to deposit another ₹ 50,000 out of the challenged amount of ₹ 39,40,971 and be present before the Tribunal on the date fixed by the Tribunal, for hearing on merits.

Rosa Traders Pvt. Ltd. v. Commr. of VAT, Delhi (2014) 49 PHT 535 (Del).

7. Rectification of mistakes

Kerala Luxuries Tax Act, 1976. Petitioner filing rectification appln. u/s 6(6) of the Act. The said section mandates that the exercise of power under the said section shall be only for the purpose of rectifying errors “apparent on the face of the record”. Therefore, only mistakes apparent on the face of the records can be corrected under this provision. That ‘wrong decision’ taken by Tribunal in this case could not be corrected under the provision. One could not seek rehearing from any Assessing Authority / Appellate Authority in the guise of Rectification u/s 6(6). ‘Wrong decision’ taken by the Tribunal could be corrected only by the HC in its revisional jurisdiction.

Kairali Ayurvedic Health Resort Pvt. Ltd. v. CTO, Kerala (2014) 22 KTR 168 (Ker).

8. Repeal of Act

Section 61 of the HVAT Act, 2006. Repeal whether evaporates the liability incurred under the old Act. It was pointed out that subsequently the State Legislature amended Section 61 of the HVAT Act, 2006 with retrospective effect from 1-4-2003 and saved the previous operation of the repealed HGST Act or anything done or suffered thereunder including any right, title, obligation or liability acquired, accrued or incurred under the said Act.

2. Appellant herein was a catering contractor with the Indian Railways at Ambala Cantt. During the relevant period was supplying cooked food / drinks to the passengers of the Shatabdi Express Trains to and from in the State of Haryana – A.A. Ambala whether had jurisdiction to assessee the contractor. Tribunal noticing the amendments retrospectively as above, held that after the repeal of the HGST Act, the liability incurred under that Act did not evaporate and could well be enforced even after 1-4-2003.

Pee Kay Associates, Ambala v. State of Haryana (2014) 49 PHT 263 (HTT)

9. Schedule Entries

J & K VAT Act, 2005, Schedule ‘C’ Entries 88 and 102 concerning plastic footwear. The appellant herein was in business of footwear and was manufacturing and selling different kinds of

footwear all over India including the State of J & K. During the period of 3rd and 4th quarter of 2006-07, CTO treated the “plastic footwear” sold by the assessee under the category of “other footwear”, liable to tax at 12.5% instead of 4%. CTO also relied upon a clarification No. 12 of 2005 dt. 21-5-2005 issued by the Commissioner of Taxes, J & K, whereby he had allegedly clarified the term “plastic footwear”. This controversy brought the parties before the court. Earlier, Sales Tax Appellate Tribunal after going through the schedule entries in the Act, held in favour of the appellant that the term “plastic footwear” and “moulded plastic footwear” are two different and distinct commodities under both the schedules of tax. However, the rates of taxes under both the schedules are the same i.e. @ 4%. It further held that the clarification issued by the Learned Commr. of Taxes is not a clarification in real legal sense and issued without following the procedure laid down in Section 87 of the J & K VAT Act. Under the garb of clarifying an entry, the Learned Commr. has modified the entry. This action amounted to gross violation of rule of law and principles of natural justice accordingly the appeal was allowed and orders of the authorities down below were quashed.

Liberty Shoes Ltd., Jammu v. Dy. Commr. CT (Appeals) Jammu (2014) 49 PHT 552 (J & K STAT)

10. Tax evasion – Natural justice

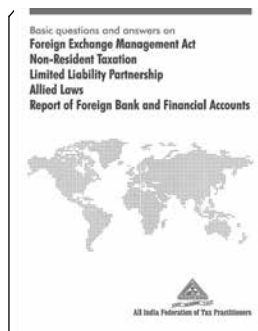
Section 25 of the Kerala VAT Act, 2003. Dealer regularly effecting purchases from another registered dealer (Orient Timbers) through an agent. AO unearthed 12 purchase transactions from the turnover said to have been from Orient Timbers. Dealers stating that those purchases were made by the agent using TIN No. of the dealer. No opportunity offered to established dealer’s stand. Hence, failure of principles of natural justice argued out was proper. Authorities ought to have paid attention to the contention raised by the dealer. The dealer had lodged the complaint against the agent alleging ‘Fraud and Cheating’. Therefore, looking to the complaint, conclusion arrived by the AO defective, and, hence, the order was set aside, directing the AO to decide the matter afresh after giving opportunity to the dealer.

Madeena Timber Industries v. State of Kerala (2014) 22 KTR 182 (Ker.)



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