

# AIFTP TIMES

Volume 5 - No. 8 | August 2014

## FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
16, 17-8-2014	Justice Dr. B. P. Saraf National Tax Moot Court Competition (Eastern Zone)	Kolkata
22-8-2014	National Executive Committee Meeting	Nagpur
23, 24-8-2014	National Tax Conference (Western Zone)	Nagpur
6-9-2014	One Day Tax Conference (Western Zone)	Anand

## JUSTICE DR. B. P. SARAF NATIONAL TAX MOOT COURT COMPETITION

It is our pleasure to inform all members of AIFTP that AIFTP (Eastern Zone) has organised **Justice Dr. B. P. Saraf National Tax Moot Court Competition** in association with The West Bengal National University of Juridical Sciences (WBNUJS) on 16th and 17th of August, 2014 at the WBNUJS Campus, 12 LB, Salt Lake Sector III, Kolkata – 700 098 for the benefit of law students in India and to promote Moot in India. The subject is **Implications of section 263 of the Income-tax Act**.

We also invite your gracious presence in advance, at the National Tax Moot Court Competition to grace the occasion with other dignitaries. We request you to kindly block the dates to join the said National Moot Court at Kolkata. Please make your travel plan and inform us your arrival schedule. If you so desire, we may make booking for Hotel or other accommodation near to the venue.

We request you to please contribute generously every year towards the fund for the National Tax Moot Court Competition.

### Organising committee

- i) Dr. Ashok Saraf, Senior Advocate, Taxation Advisor, Government of Tripura and Former Advocate General, Arunachal Pradesh (Co-Chairman)
- ii) Mr. Narayan P. Jain, Advocate Co-Chairman
- iii) Mr. Sheo Kumar Poddar, Advocate, Member

### Ex-officio

- i) Mr. Indu Chatrath, Zone Chairman  
09830495134
- ii) Mr. R. D. Kakra, Vice-Chairman
- iii) Mr. N. D. Saha, Zone Secretary 09830044321
- iv) Mr. Arvind Agarwal, Jt. Secretary
- v) Mr. Sandip Choraria, Member

## VOLUNTERS 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](mailto:aiftp@vsnl.com)

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

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## **REPORT ON “AN INTERACTIVE PANEL DISCUSSION ON AMENDMENTS IN SERVICE TAX & INCOME TAX THROUGH UNION BUDGET 2014”**

*By*  
**Mukul Gupta, Vice President, AIFTP**

All India Federation of Tax Practitioners (NZ) as Knowledge Partner organized “An Interactive Panel Discussion on Amendments in Service Tax & Income Tax through Union Budget 2014” on 19th July, 2014 at Dinesh Chand Garg Sabhagar (Hindi Bhawan) Lohia Nagar, Ghaziabad.

Shri Bharat ji Agarwal, Senior Advocate from Allahabad and Past National President AIFTP as Chief Guest and Dr. M.V.K. Moorthy, Advocate from Hyderabad and Deputy National President of AIFTP as well as Adv Arvind Shukla, Chairman AIFTP-NZ as Guest of Honour were present in this programme. The Executive Members and Life Members of AIFTP as well as members of the Tax Bars of Ghaziabad, Delhi and Noida including members of ICAI at Ghaziabad & Noida were also be present in the programme alongwith some business leaders from National Capital Region.

This programme in the new format & shape of Panel Discussion was extremely successful due to its rich and in-depth deliberations on the newly introduced Provisions of Income Tax & Service Tax. More than 220 delegates were present who participated in the panel discussion and open house thereafter. The Queries on the Subject were clarified by the eminent panelists. All the panelists are the esteemed members of AIFTP-North Zone. This programme provided a large platform for the members to get their queries answered with full opportunity of clarification.

A Book titled “Finance Bill 2014-An Analysis & Interpretation” as written by Adv Mukul Gupta, National Vice President-AIFTP alongwith CA Vipin Garg, was launched in the presence of Shri Bharatji Agarwal, Dr MVK Moorthy, Shri Arvind Shukla, as well as the panelists Shri SR Wadhwa, Dr Rakesh Gupta, Adv Sujit Ghosh, CA Atul Gupta, Adv Balram Sangal and another eminent dignitaries.

It is matter of pride for every member of AIFTP that the large Auditorium and Venue of this programme i.e. Dinesh Chand Garg Sabhagar (Hindi Bhawan) Lohia Nagar, Ghaziabad has been recently named by the Ghaziabad Municipal Corporation in memory of one of our own member CA Dinesh Chand Garg who was also the Mayor of Ghaziabad for more than 10 years. CA Dinesh Chand Garg was also facilitated for his distinguished services to the tax profession in Varanasi Conference by AIFTP in the year 2009.

AIFTP-North Zone also had its AGM after this panel discussion which provided opportunity to large number of members to attend the AGM. Fruitful discussions were held in the presence of senior members of AIFTP including the Past President and the Deputy National President.

## **REPORT VISHLESHAN ON 17th July, 2014 “Seminar - Analysis of Finance (No. 2) Bill – 2014”**

*By Ajay Sinha, Secretary, AIFTP (NZ)*

That a Seminar on Finance (No. 2) Bill held on 17th July, 2014 (Thursday) at I.T.S. College, Mohan Nagar, Opp. Narinder Mohan Hospital, Ghaziabad organized by GHAZIABAD TAX BAR ASSOCIATION jointly with ALL INDIA FEDERATION OF TAX PRACTITIONERS (N.Z) – as knowledge Partner.

FCA K. Sampat and FCA Anil Kumar Srivastava were the speakers on the amendment of Income Tax in the Ist Session followed by Adv. Bipin Garg on Service Tax in the IInd Session. The seminar was inaugurated by Mr. G.D Agarwal (Vice President ITAT-Delhi Zone) and he appreciated the efforts of AIFTP. All speakers are the senior member of AIFTP. The programme was conducted by Mr. Ajay Sinha Adv. as General Secretary of AIFTP who is also holding the charge of Chairman of Seminar Committee of GTBA. The members of GTBA were benefited with rich knowledge & experience from luminaries of Tax Laws. The arrangement of the seminar and dinner made by GTBA was superb.

## TWO DAY NATIONAL TAX CONFERENCE AT NAGPUR

Two Day National Tax Conference on 23rd & 24th August, 2014 organised by All India Federation of Tax Practitioners (Western Zone) jointly with The Sales Tax Practitioners Association of Maharashtra, Mumbai, Sales Tax Bar Association, Nagpur & Vidarbha Tax Practitioners Association, Nagpur at Suraburdi Meadows, Nagpur-Amravati Road, Near Suraburdi Lake, Waddhamna, Nagpur-440 023.

We are pleased to announce that due to overwhelming response, the enrolment for the conference is closed. The delegates who have already enrolled can download the latest circular from our website i.e. [www.aiftponline.org](http://www.aiftponline.org) or refer our earlier AIFTP Times for the month of June and July, 2014 issues.

In addition to the earlier circular, please note the following details as under:-

1. Fees for children  
up to 4 years - NIL  
5 years to 10 years - ₹ 2,000/-  
Above 10 years - ₹ 3,000/-
2. Please intimate your travel plans. We have made arrangements for airport / station pick up and drop at ₹ 200/- (one way) per person.
3. Due to late monsoon, we recommend the delegates to carry raingear / umbrella.
4. Please intimate your food preference (Jain / Non-Jain) as well as your choice of room partner.



### **For further information, please contact the below Office Bearers:**

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4. Pravin R. Shah, Secretary, AIFTP - WZ (Mob.) 09821476817
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## Announcement

### **ONE DAY TAX CONFERENCE at Anand, Gujarat (6th September, 2014)**

All India Federation of Tax Practitioners - Western Zone is pleased to announce One Day Tax Conference at Anand, Gujarat on Saturday, 6th September, 2014. The conference aims to cover the latest developments concerning Direct & Indirect Taxes, including the Post Budget scenario. The additional attraction will be visit to the world famous Amul Dairy - which is nearby - and also Madhuban Resort and Swaminarayan Temple, Vadtal.

The conference is jointly organised with

- (i) The Anand VAT Tax (Sales Tax) Bar Association
- (ii) Central Gujarat Chamber of Tax Consultants - Vadodara
- (iii) The Gujarat Sales Tax Bar Association
- (iv) All Gujarat Federation of Tax Consultants

The details of the programme will be announced soon.



**YOU ARE REQUESTED TO BLOCK THIS DATE FOR THIS UNIQUE OPPORTUNITY**

## **Hearty Congratulations**

Hearty Congratulations to the newly elected office bearers of Bombay Chartered Accountants' Society, Mumbai for the period 2014-15.

President : CA Nitin P. Shingala  
Vice President : CA Raman H. Jokhakar  
Hon. Jt. Secretaries : CA Narayan R. Pasari & CA Sunil Gabhawalla  
Treasurer : CA Mukesh G. Trivedi

We wish them all the success.

Hearty Congratulations to the newly elected office bearers of The Chamber of Tax Consultants, Mumbai for the period 2014-15.

President : CA Paras K. Savla  
Vice President : CA Avinash Lalwani  
Hon. Jt. Secretaries : CA Hinesh R. Doshi & Shri Ajay R. Singh, Advocate  
Treasurer : CA Hitesh R. Shah

We wish them all the success.

Hearty Congratulations to the newly elected office bearers of The Sales Tax Practitioners' Association of Maharashtra, Mumbai for the period 2014-15.

President : Shri Sachin R. Gandhi  
Vice President : Shri Vjay M. Sachiv  
Hon. Jt. Secretaries : Shri Pranav P. Kapadia & Shri Dinesh M. Tambde  
Treasurer : Dr. Shashank S. Dhond

We wish them all the success.

Hearty Congratulations to the newly elected office bearers of The Andhra Pradesh Tax Bar Association, Hyderabad for the period 2014-15.

President : CA Venkatram  
Vice President : Shri K. Nagesh, Advocate  
Secretary : CA Murali Manohar Palod  
Treasurer : Shri K. V. Ramana Reddy, Tax Practitioner  
Joint Secretary : Shri M. Murad Mohiddin, Advocate

We wish them all the success.

## SUMMARY OF TWO DAY NATIONAL TAX CONFERENCE

HELD ON 28TH & 29TH JUNE, 2014 AT CHENNAI

by Shri V. S. Jayakumar, Advocate, Chennai

Two-day conference was organised under the banners of AIFTP (SZ) along with Society of Auditors, Revenue Bar Association, Chartered Accountants Study Circle, Association of Chartered Accountants, International Chambers of Indirect Tax Professionals at Park Sheraton, Chennai on June 28, 2014.

The inaugural function started precisely at 8.55 a.m. Mrs. Gayathri Venkataragavan, rendered a melodious invocation to Lord and gave a good beginning. She sang Muthusamy Dishathar's kirithi.

Dr. Anita Sumanth gave a welcome address and explained it from the website of IT department that the policy governing tax is like that of sun drawing water from earth and give the earth back in abundance in return. She also opined that there is a debate between aggressive taxation versus progressive taxation policy of the Government of India. Dynamic changes have to be witnessed in the future in the field of tax jurisprudence and there is a clear balance in this regard which is the challenge of the future. She explained that the topics are chosen with that point of view. She also stated that the number of delegates registered were nearly 340 in number.

Dr. M. V. K. Murthy, Deputy President, AIFTP, then addressed the gathering, as Mr. Nankani could not be present due to personal reasons. He said that this conference is the second one conducted in the year 2014 and he said that this seminar is conducted in the memory of Late V. Ramachandran, Past President of AIFTP.

Mr. T. N. Seetharaman, the Chairman of Conference Committee, explained the format for the benefit of the delegates.

The acting Chief Justice of Madras High Court was then invited to deliver his special address. The Acting Chief Justice Hon'ble Mr. Satish Agnihotri in his speech started saying welcome in Tamil. He quoted Justice Holmes "Tax is the price one pays for civilization" and ended his speech quoting from his guru and said that "Taxpayer should get what he wants out of paying taxes through tax planning". He also stated that in UK unitary system is practiced whereas in India we should expect how and when to levy tax, collect in a proper manner. He also quoted **Kalidasa** and stated that the main criticism is that the money collected as taxes are spent away on ostentatious Governmental expenditure. His focus was on ethics, tax culture and the tax advisors should follow the nuances of tax culture

and comply with all tax laws. His Lordship stated that taxation as such has not failed but there is a lot of scope for improvement. Social progress is not commensurate with the tax evasion which is very rampant.

Mr. S. Gurusurthy, CA. then spoke. He compared the concept of modernity with that of contemporary challenges. He gave examples of individuals honesty in the form of loss wallet and loss of cell phones and the return of the same and highlighted that individual honesty as against State is noticed all over the world. He compared India with other countries. He traced legislation from Prof. Kaldar to others and stated that modernity disregards beliefs. The larger aspects in taxation should be from savings, black money curbing overview from intellectual assessment from macro level to micro analysis. He quoted from a leading author by name Paul that reverence is forgotten to virtue.

Thereafter, the solemn release of Conference souvenir was performed. Hon'ble Mr. Justice C. Nagappan, Judge of the Supreme Court released the same.

The Hon'ble Mr. Justice C. Nagappan gave the Chief Guest's address. His Lordship traced the road map of tax laws from Adam Smith's dictum and highlighted 4 maxims. HIS Lordship, in his speech touched upon the OECD regulations, MUTUAL agreement procedure, application of GARR, and other challenges like multiple taxation, cross border transactions, transfer pricing, applicability of e-commerce, application of internet, computerization in the matter of transfer pricing comparisons cases/options. These issues are bound to create modern challenges apart from advance transfer pricing mechanisms. His Lordship also emphasized that AAR's role and a devise mechanism like Mutual agreement procedure in order to avoid any differences between assesses and the tax departments or in the alternative should be minimized. Deliberations on vital roles played by economists, lawyers, administrators, and discussions with tax payers on ground level would alone meet the modern challenges. The concept of retrospective amendments have created more complications in the matter of compliances and regulations. Benjamin Franklin was quoted His Lordship I quote "Law is like a traveler always ready for tomorrow's travel". "Law's system should be stable and not a standstill". In the end His Lordship said that taxation without representation and representation without taxation is not good and both have to be balanced.

The 1st Technical Session was on Direct Tax – Income-tax and the topic was “Reassessments, revision, and rectification” Chaired by Hon’ble Mr. Justice. R. V. Easwar, Former Judge of the Delhi High Court and the speaker was Mr. K. K. Chaitanya, Advocate, Bengaluru. The points raised covered all aspects of reassessments versus rectification was discussed and the revisional jurisdiction was explained. Mr. Chaitanya dealt with the topic in a lucid manner. He explained the practical difficulties faced by both the assessee and the tax department. Hon’ble Mr. Justice R. V. Easwar summed up the session by saying that in war and love there is no fairness, so also in tax matters in certain circumstances.

The 2nd Technical Session was on Indirect Tax – Viz. the Service tax and VAT - Overlapping issues in Service Tax and VAT. The Chairman of the session was Mr. C. Natarajan, Senior Advocate as Mr. Bharat Ji Agrawal, Senior Advocate, Allahabad could not come to Chennai due to personal reasons. The paper writer was Mr. Deepak Bapat, Advocate Mumbai on VAT and the paper on Service Tax was presented by Mr. M. V. J. Kumar, Advocate from Hyderabad. The paper writers had outlined their respective areas of topics allotted to them and specifically mentioned the core issues which needed immediate action from Government to avoid future tax disputes. The Chairman conducted the session with a clear outlook and underlined the core issues which arose due to the overlapping of these two important enactments which puts the tax litigants in a quandary. The concept of double taxation how far would apply has been explained considering the concurrent jurisdiction.

Dr. C. L. Ramakrishnan, IPS retired, Chennai presented himself during the luncheon session dealt with the topic of Bhagwat Gita and Management. The topic was very well appreciated and timely. In this nuclear age of our existence, the concepts outlined in Bagawat Gita are very much applicable in full force despite the distance of age and time. The illustrations given by the speaker were very apt and fitting.

A Panel discussion on Companies Act 2013, was chaired by Mr. Arvind P. Datar, Senior Advocate, Supreme Court of India who was also the moderator. In the panel we had Mr. Arvind Pandian, Senior Advocate, Chennai, Ms. Savithri Parekh, Company Secretary, Pidilite (India) Mumbai along with Dr. B. Ravi, Company Secretary. It was Winston Churchill who said: “If you have 10000 regulations you destroy all respect for the law”. Mr. Datar in his inimitable style and grace handled the sessions by highlighting the salient features of the new

Company Law 2013. Value addition by Dr. Ravi (more on tantrums of badly drafted legislation and definitions) and Mr. Arvind Pandian who explained the nuances and nuisances in understanding and misunderstanding this piece of legislation which is in the infant stage. There were as many as 658 Sections in 1956 Act, while 470 sections in 2013 Act, Schedules and clarifications apart from CLB rulings, and not to speak of Court judgements past and present to keep abreast of this branch of law. It is so simple to read the Companies Act 2013, yet so complicated of its practical applications as compared to any of the Direct Tax and Indirect Tax enactments which have the unique distinction of being the most complicated laws in India.

On day two, The 1st Technical session was on accounting standards and the Chairman was CA. P. R. Ramesh, Hyderabad, and the speaker was CA. M. P. Vijayakumar, Chennai. The session was lively and the importance of accounting standards on different scenario was highlighted. The mandatory nature of International accounting as well as Domestic Accounting Standards were identified. Issues on practical side of these Standards in the light of corporate governance were also touched upon.

The 2nd Technical session was on Taxation of Intellectual Property Rights under Indirect and Direct Taxes. The session was chaired by Mrs. Pushya Sitaraman, Advocate, Chennai. The speakers were Mr. N Venkataraman, Senior Advocate, Delhi, who dedicated his lecture to the memory of Senior Advocate Shri V. Ramachandran and Mr. Ajay Vohra, Advocate, Delhi. The taxation of intangibles were succinctly explained and the scope for ironing out the creases in the matter of interpretation of fiscal laws vis-à-vis the laws relating to the Intellectual property in the modern context were explained. The globalization and internet connectivity opened out the e-commerce taxation – both under the Direct and Indirect laws invited many rulings from AAR, Tribunals, High Courts and Supreme Court. The Legislature also played its role in bringing out retrospective amendments to protect the interest of revenue.

At the final stage of Part 2 of the seminar, Brains Trust session was chaired by Mr. S Rajarathinam, Tax Management Consultant, Chennai. The Trustees were Ms. Prem Lata Bansal, Senior Advocate, Delhi, Ms. Nikita Badekha, Advocate, Mumbai, Mr. K. Vaitheeswaran Advocate, Chennai and CA. P. Rajendra Kumar, Chennai. The Questions and Answers session were of high standard. All the aspects of the questions were dealt with, without leaving any loose ends.



## RAJASTHAN STATE BUDGET – IMPACT 2014-15

**M. L. Patodi, Advocate, Kota**

The Chief Minister (Finance Minister) presented Rajasthan State budget in the State Assembly on 14-7-2014 and the impact of the same is summarised as under :

1. The Settlement Board has been dissolved.
2. The provision has been made to file only one single application for registration under RVAT, CST, Entry Tax and Luxury Tax instead of making separate applications for registration under the above Acts.
3. Rule 18 has been amended and now ITC will be allowed only on deposit of tax by the seller.
4. The threshold limit for registration as a manufacturers under RVAT Act has been enhanced from ₹ 2, lakhs to ₹ 5 lakhs.
5. Earlier in Sec. 25 of the RVAT Act there was no time limit for issuing notice to the assessee. Now the time limit has been prescribed under the Act and no notice shall be issued after expiry of 5 years after the end of the assessment year.
6. Earlier in Sec. 27 of the RVAT Act there was no time limit for issuing notice to the assessee. Now the time limit has been prescribed and no notice shall be issued after expiry of 5 years and no assessment under this section shall be made after expiry of 8 years after the end of the assessment year.
7. Earlier the interest on refundable amount under the RVAT Act was allowed after 30 days from the date on which it become due. Now it has been changed and interest will be payable with effect from 1st April of the order immediately following the year.
8. The late fee provision under Rule 19(A) for late submission of the Return has been reduced.
9. Time limit for submission of the Annual Return i.e. VAT-10A has been reduced 10 months to 9 months and for VAT-11 the time limit has been extended from 3 months to 9 months.
10. TDS provision on government purchases has been abolished.
11. Rule 22(A) has been amended for arriving at taxable turnover under Works Contract.
12. Composition Scheme for Developers, Builders who work as a works contractor, has been introduced.
13. The Exemption Fee under Works Contract has been amended and new Exemption Fee has been introduced. The rate of Exemption Fee on total value of the contract has been reduced from the earlier Exemption Fee but the restriction has been made to purchase the goods from the registered dealers within the State of Rajasthan. In case the purchases are from URD or from outside Rajasthan, the Purchase Tax will be applicable.
14. In case there is pending demand due to non-submission of declaration forms upto the A.Y. 2009-10 and Purchase Tax on Marble, the interest will be waived off if the pending tax amount is deposited on or before 31-10-2014.
15. The interest on tax payable will now be charged on compounded basis.
16. Following Composition Schemes have been rescinded :
  - i. Composition Scheme for Gems Stones.
  - ii. Composition Scheme for Sarafa.
  - iii. Composition Scheme for Mini Cement Plants.
  - iv. Composition Scheme for Dhaba & Bhojanalaya.
  - v. Composition Scheme for Petroleum Dealers.
  - vi. Composition Scheme for Foreign Liquor.
  - vii. Composition Scheme for Indian made Foreign Liquor, Beer.

In place of the above, now new Composition Schemes have been launched and the condition for late payment has been amended.
17. Option to contractor has been given to deposit advance Works Contract Tax instead of deduction of TDS by the Awarder.
18. REDUCTION/INCREASE IN RATE OF TAX
  - i. In Schedule V, certain items have been notified for levy of tax @ 14%.
  - ii. Spices including cumin seed, aniseed, turmeric, dry chillies, dhaniya, methi, ajwain, suwa, amchoor, asaliya, kathodi, hing (asafoetida) and sonth will be taxable @ 5% when sold in unmixed and in powder or in crushed or in paste form whether loose or in package. Earlier they were exempt from tax.
  - iii. Tools including power tools and parts thereof shall be taxable @ 5%.
  - iv. Printing ink, excluding cartridge but including toner, aluminium plate, graphic art film and plaster film shall be taxable @ 5%.
  - v. The bodies of Desert coolers, Room coolers shall be taxable @ 5%.
  - vi. Stainless steel wire and stainless steel wire rod shall be taxable @ 5%.
  - vii. Cooked food except when sold in the restaurants and hotels categorized as three star and above and heritage hotels categorised as `Classic` and `Grand by Government of India or categorised as equivalent to the categories mentioned above, by a committee constituted for this purpose by the State Govt. shall be taxable @ 5%.

- viii. All types of handicrafts including blue pottery and puppets having sale price more than ₹ 1,000/- item shall be taxable @ 5%.
- ix. Textile furnishings having sale price of more than ₹ 100/- per metre or per piece or per set, as the case may be, other than handloom furnishings shall be taxable @ 5%.
- x. Textile shirtings and suitings having sale price of more than ₹ 500/- per meter shall be taxable @ 5%.
- xi. All types of used motor vehicles is taxable @ 2.5%.
- xii. The rate of tax on Oil Seeds has been reduced from 5% to 3%.
- xiii. The tax on Marble shall be payable on Sq. ft basis.
- xiv. The rate of tax on UPS increased from 5% to 14%.

**19. EXEMPTION FROM TAX**

Following items have been exempt from tax:

- Books, Workbooks prescribed by any Board of School Education or University or used for educational purpose, periodicals and journals including maps, charts and globe (subject to the provisions of Sec. 97A of the Act).
- Textile and fabric on which additional excise duty was leviable but exempted by the Govt. of India which was subsequently omitted by Finance Act, 2011 (Central Act No. 8 of 2011) from Schedule I of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 except goods mentioned in Entry Nos. 204 & 205 of Schedule IV of this Act.
- Handicrafts including blue pottery and puppets up to ₹ 1,000/- per item.
- De-oiled rice bran (subject to the provisions of Sec. 97A of the Act)
- Bio-gas.
- Reetha and Shikakai.

**20. ENTRY TAX**

- New Rule called as a Rajasthan Tax on Entry of Goods into Local Area Rules, 2014 shall come into force w.e.f. 1-10-2014.
- The rate of Entry Tax has been increased equal to rate of tax under RVAT Act on most of the items.
- All kinds of fuel including petrol, gas line, High Speed Diesel Oil, Light Speed Diesel Oil, Superior Kerosene Oil, LPG (including toluene, propene, butylenes, butadiene,

ethylene, oxylene, mix-xylene, benzene),, ATF (Aviation turbine fuel), Furnace Oil, Hexane, (solvent Oil), Naphtha, Natural gas, petroleum jelly (including Vaseline), Paraffin wax (including chlorinated paraffin was), LSHS (low sulpher high stocks), CBFS (carbon black feed stock), Petroleum coke in any form, Mineral turpentine oil, Heavy Alkylate, Methyl Acetate, Remax, Revive, C-9 known by whatever name are taxable @ 5% instead of 3%.

- The rate of Entry Tax on LNG has been increased from 3.5% to 5%.
- The raw material which is used for manufacture of Wind Mill is exempt from Entry Tax.

21. Earlier the rate of tax under CST Act, applicable to Micro and Small Enterprises for the units set up 14-2-2008, was @ 0.25% against `C` form. Now the rate of tax has been changed to 1% against `C` form and restricted for 10 years from the date of commencement of the commercial production.

**22. ENTERTAINMENT TAX**

- i. Entertainment Tax has been levied @30% on Multiplex Cinemas & Cinema Hall w.e.f. 1-8-2014, but exemption has been given to Cinema Hall (excluding Multiplex) where the admission ticket is less than ₹ 75/-; OR Cinema Hall (excluding multiplex cinema) situated in the municipal town or cities having population not more than 1 lakh as per censul of 2011.
- ii. The Entertainment Tax has been levied @ 10% on Video Game Parlours w.e.f. 1-8-2014.
- iii. Entertainment Tax has been levied @ 10% on DTH services and Cable Services w.e.f. 1-8-2014.
- iv. A new Sec. 34 has been inserted and provision has been made for refund in Entertainment Tax Act.

**23. LUXURY TAX**

- Luxury Tax has been increased for Heritage Hotel of branch category and equivalent.
- Off Season discount in whole area of Rajasthan excluding the notified area of Mount Abu has been reduced to 50%.

**24. STAMP DUTY**

- The DLC rates are to be revised.
- Stamp duty on sale of flats in certain time period has been reduced.
- In case of a lady owner, the stamp duty has been reduced by 1%.
- Developers' agreements amalgamation, demerger are liable to Stamp Duty.





## DIRECT TAXES

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

### SUPREME COURT

**1. Ss. 2(47)/ 54: Agreement to sell is entered – transfer of some rights in favour of the vendee. Sale deed could not be executed within the time limit owing to supervening problem is not a bar for s. 54 exemption**

The execution of the agreement to sell are very clear and they are to the effect that the appellants could not have sold the property to someone else. In practical life, there are events when a person, even after executing an agreement to sell an immovable property in favour of one person, tries to sell the property to another. In our opinion, such an act would not be in accordance with law because once an agreement to sell is executed in favour of one person, the said person gets a right to get the property transferred in his favour by filing a suit for specific performance and therefore, without hesitation we can say that some right, in respect of the said property, belonging to the appellants had been extinguished and some right had been created in favour of the vendee/transferee, when the agreement to sell had been executed. A right in respect of the capital asset, viz., the property in question had been transferred by the appellants in favour of the vendee/transferee. The sale deed could not be executed for the reason that the appellants had been prevented from dealing with the residential house by an order of a competent court, which they could not have violated. A purposive interpretation of the provisions of the Act should be given while considering a claim for exemption from tax and one can very well interpret the provisions of S. 54 r.w.s 2(47) of the Act, i.e. definition of "transfer", which would enable the appellants to get the benefit u/s. 54.

*Sanjeev Lal v. CIT (Supreme Court), Source : [www.itatonline.org](http://www.itatonline.org)*

### HIGH COURTS

**2. S. 14A: No Disallowance of interest paid on borrowings if assessee's own funds and non-interest bearing funds exceeds investment in tax-free securities**

The assessee's own funds were more than its borrowed funds, the investments in tax-free securities had to be regarded as being made out of the own funds and no disallowance u/s. 14A for the interest on the borrowed funds could be made.

In principle, if there are funds available, both interest-free and over draft and/or loans taken, then a presumption would arise that investments would be out of the interest-free funds generated or available with the company if the interest-free funds were sufficient to meet the investment. The assessee's own funds and other non-interest bearing funds were more than the investment in the tax free securities. Then there was no basis for deeming that the assessee had used borrowed funds for investment in tax free securities.

*CIT v. HDFC Bank Ltd. (Bombay High Court), Source : [www.itatonline.org](http://www.itatonline.org)*

**3. S. 28 (r.w.s. 145) : Loss on account of depreciation in value of securities held as stock is not notional & is allowable as a deduction**

A method of accounting adopted by the taxpayer consistently and regularly cannot be discarded by the Departmental authorities on the view that he should have adopted a different method of keeping the accounts or on valuation. Financial institutions like banks, are expected to maintain accounts in terms of the RBI Act and its regulations. The form in which, accounts have to be maintained is prescribed under the aforesaid legislation. Therefore, the account had to be in conformity with the said requirements. The RBI Act or the Companies Act do not deal with the permissible deductions or exclusion under the Income-tax Act. For the purpose of the Income-tax Act, the method of valuation followed by the assessee was to value the investments at cost or market value whichever was lower. The assessee was entitled to claim a deduction for the depreciation in the value of the securities held by it.

*CIT v. HDFC Bank Ltd. (Bombay High Court), Source : [www.itatonline.org](http://www.itatonline.org)*

### TRIBUNAL

**4. S. 9(1)(vi) : Fee received for "foreign exchange deal matching system services" constitutes "royalty" under Article 12 of India-UK DTAA & s. 9(1)(vi)**

The assessee is facilitating its clients to use its system and application programming interface which is subscriber interface for use with the related services including Auto quote service. The assessee is also providing the equipment with pre-loaded software to its subscribers and network used for

provision of the services. The assessee grants subscribers limited licence of software to install and use at the site. The said licence can be sub-licensed by the subscriber. The subscriber/user can also view, manipulate and create the derived data from information for their individual use. Further the subscriber can store information, manipulate information for its use and also distribute or redistribute information and drive data to anyone to a limited extent so far as it is not done in a systematic manner. The subscribers are allowed to use the information and even to manipulate and drive the data to anyone for their individual use. Thus it is clear that it is subscribers who are using the information and system of the assessee for their commercial/business purposes. The information is made available by the assessee through its system and other equipments installed at the site of the subscriber to facilitate the connectivity with the assessee's system/reuter located in Geneva. The platform of transacting the purchase and sale is commercial equipment allowed to be used by clients/subscribers for commercial purposes. The nature of service rendered by the assessee includes the information concerning commercial use by the subscriber. Further the entire system of the assessee

including the equipments and connectivity facility is provided at the site of the subscriber. Therefore, the assessee is providing the service in the form of information and solution to the needs of the subscribers by providing the matching party. Also, the Indian subscribers have been granted a licence to use the software for their internal business, which can be sub-licensed by them. The Indian clients are paying for use and right to use of equipment (scientific, commercial) along with software for which licence was granted by assessee. It is not a case of simplicitor payment for access to the portal by use of normal computer and internal facility but the access is given only by use of computer system and software system provided by the assessee under licence. Accordingly, by allowing the use of software and computer system to have access to the portal of the assessee for finding relevant information and matching their request for purchase and sale of foreign exchange amount to imparting of information concerning technical, industrial, commercial or scientific equipment work and payment made in this respect constitutes royalty.

*Reuters Transaction Services Ltd. v. DDIT (ITAT Mumbai), Source : www. itatonline.org*

## INDIRECT TAXES

### SALES TAX

*D. H. Joshi, Advocate*

#### 1. Entries in Schedule

I) "Road Roller" whether it was covered by the Entry of Motor parts or Machinery? Tribunal held "Road Roller" to fall under the category of "Motor vehicle". High Court by following the ratio of the Apex Court in the case of *Bose Abraham etc. v. State of Kerala 2001 NTN (Vol. 18) 197* held : relating to nature of goods, the specific entry shall prevail over the general entry, hence, "Road Roller" was rightly covered by the entry of motor vehicles as held by the Tribunal and the revision appln. filed by the Commissioner was dismissed.

*Commr. Trade Tax, U.P. Lucknow v. J.P. Reva.. Plant 2014 NTN (Vol. 55) 154 (All).*

II) Surgical cotton vis-à-vis cotton - liability to tax under Entry No. 16 of Notification dt. 4-3-1992 of the Rajasthan ST Act, 1994. "Surgical Cotton" would be taxable as a separate new commercial commodity different from "cotton" purchased while for the assessment year 1993-94 to 1998-99 since an amendment in Entry No. 16 has been made and "absorbent cotton wool-I.P." has been included in the definition of cotton, hence, it would not be taxable as a new commercial commodity as in open market "surgical cotton" was also known by the name of "absorbent cotton wool-I.P." and its commercial end used was also identical. Apex Court thus allowed the appeal partly.

*Mamta Surgical Cotton Industries v. Asstt, Commr., Bhilwara 2014 NTN (Vol. 55) 184 (SC).*

III) "Road Marking Paints" - whether falls under the category of "Plastic Granules" taxable at 4% or "Finished Product" taxable at 12.5% u/s 4(1)(b) of the KVAT Act, 2003. In an elaborate judgment, delivered by the Karnataka High Court it was held that "Road Marking Paints" would fall under the category of "Finished Product" and would be liable to tax at 12.5%.

*State of Karnataka v. Asian Paints Ltd. 2014-15 (19) KCTJ - 59*

#### 2. Entry Tax

Railway siding being covered in the local area, and, therefore entry of goods into the local area was liable for entry tax, as has been held in the case of *Simical Engg. (2004) 4 STJ 519 (M.P.-BD)* and *Larsen & Toubro Ltd. (2002) 35 VKN 50 (M.P.-BD)*

*Bridge and Roof (India) Ltd. v. C.C.T. (2014) 24 STJ 781 (CG-Trib.)*

#### 3. ITC cannot be reduced twice

The Gujarat Tribunal following its earlier judgment in *Reliance Industries* which was affirmed by the Gujarat High Court, held that ITC cannot be reduced twice on the raw material used as a fuel and again on

the goods transferred to branch outside the State of Gujarat.

*M/s. Remi Metal Gujarat Ltd. v. State of Gujarat (2014) STJ 53 P 187*

#### 4. Reassessment

I) Stock transfer of SIM Cards and Smart Cards on obtaining Form 'F' under the CST Act, 1956. U/s 21(2) of the U.P. Trade Tax Act, 1948, the assessing authority accepted stock transfer but subsequently issued notice for reassessment. Notice challenged in writ petition. Allahabad High Court placed reliance on the judgment of the Apex Court in the case of *IDEA Mobile Communications Ltd. v. Commissioner of Central Excise & Customs (2011) 43 VST 1 and the A.P. High Court in State of A.P. v. BSNL 2012 NTN (Vol. 48) 310* and held : Since no trade tax in the instant case was leviable on supply of SIM cards, the question of reopening the assessment proceedings did not arise. Accordingly, impugned notices were quashed and writ petition allowed.

*Schlumberger Measurement And Systems India Ltd. v. State of U.P. And Ors. 2014 NTN (Vol. 55) 148 (All).*

II) In reassessment proceedings "reason to belief" expression used in Section 21(1) of the U.P. Trade Tax Act, 1948 is similar to expression used in Income Tax Act, 1922. The words "reason to belief" as used in Section 21(1) of the Act has not to be based on surmises and conjectures, rather it is to be based on objective.

*Ascent Construction Pvt. Ltd. v. State of U.P. & Ors. 2014 NTN (Vol. 55) 155 (All).*

#### 5. Reverse Input Tax-credit

In this case, the issue was claim of ITC on purchases of item given as gift. Dealer gave certain item as "gift" to his customer on purchase of main items. Dealer claimed the cost of item given as "gift" was included in the cost of "main item". Assessing Authority made RITC on the basis of gross profit of the assessee in the previous year. On consideration of the issue, Tribunal held that RITC was to be restricted to the amount of VAT paid on purchases of such "gift" items by the dealer. Accordingly, appeal was allowed partly.

*Super System, Agra v. C.C.T. (2014) NTN (Vol. 55) Tribunal-25*

#### 6. Reversal of Input Tax-credit

Section 27(2) of the Tamil Nadu VAT Act, 2006 whereunder reversal of input tax-credit was challenged before the High Court in Writ Petitions. The question was whether the requirement to afford an opportunity of personal hearing was different from issuing a show-cause notice?

The court held that even though the impugned orders were quashed, this Court, taking into consideration the demand notices issued by the first respondent are still valid, the effect of quashing the assessment orders will

not totally take away the right of the first respondent to proceed further in the matter. Further, taking note of the fact that the transaction reported by the petitioner is huge, pertaining to foreign sale, which according to the petitioner is totally exempted, the question of deposit of any amount would not arise. At the same time, in the impugned orders of assessment, it has been clearly stated that the certain documents have been produced in Forms 'C' and 'F' in which there were lot of differences. Hence, an argument was advanced by the Learned Advocate General in this regard. A feeble attempt was made by the Learned Sr. Counsel for the petitioners that the payment of tax relating to ₹ 14 crore alone may be due in respect of the above variation. At the same time, the revenue also has to be safeguarded to some extent. In that view of the matter, out of the demand of ₹ 2,400 crores made by the revenue in the impugned assessment orders, the petitioner is directed to deposit 10% of the tax amount within a period of 8 weeks. Simultaneously, the petitioner was directed to submit all the documentary evidence for the consideration of the first respondent.

*Nokia India Pvt. Ltd. v. D.C.C.T. And Ors. 2014-15 (20) TNCTJ 13.*

#### 7. Sales Tax Returns and Statements, whether confidential documents?

The Apex Court in the context of the phrase "any person" u/s 71 of the MVAT Act, 2002, section 64 of the BST Act, 1959 and Arbitration and Conciliation Act, 1996, sections 25(c), 27(2)(c) and Arbitration Act, 1940, section 43.

In the context of the above legal provisions under the said Acts, the question arose as to whether sales tax returns and statement were confidential documents, held in the affirmative. Further, whether Court can direct Government or Government servants for production of value added tax / sales tax documents of party? Held, in the negative. Thereafter, the question was whether Arbitral Tribunal has power to get such evidence from any third person or from a party to proceedings itself? Held, yes and no bar from directing a party to proceedings to produce such documents. Substitution of phrase - "parties and witnesses" by phrase "any person makes any difference"?

Held, No.

The Apex Court expanded on the above that if we look the word in Section 71 of the MVAT Act, 2002 and Section 64 of the BST Act, 1959, they very clearly state that particulars contained in any return or statement made by party, or document produced along therewith are confidential, and no Court shall pass any order requiring the Government or a Govt. servant to produce any such statement, document or return. It is a settled principle of law that the words used in a statute are to be read as they are used, to the extent possible, to ascertain the meaning thereof. Both these provisions contained a bar only against the Government officers for producing the documents

mentioned therein. There is no bar therein against a party to produce any such documents.

*Delta's Distilleries Ltd. v. United Spirits Ltd. And Anr. Sales Tax Advices Vol. 63 Part 5 257 (SC).*

**8. Seizure of goods – Transportation within state**

In this case, the Tribunal was seized with the transportation within the State of stock transfer of Tyres, Tubes and Flaps. The goods were found less than declared in the invoice. Transporter's Bilty (copy) tampered. No branch was found upon verification. Hence, goods were seized, the JC (SIB) confirmed seizure order. Tribunal on appeal held that goods were properly accounted for in the books, therefore, *prima facie*, there was no irregularity found and intention to evade tax was not reflected. Accordingly, the appeal was allowed and seizure order set-aside,

with a direction to release goods without demanding security.

*Birla Tyres, Kanpur v. C.C.T. U.P. (2014) NTN (Vol. 55) 49*

**9. Stock enhanced at 100% during spot visit by the CTO**

The Gujarat Tribunal in Second Appeal accepted the contention that the method of calculating stock adopted by the appellant was on quantity basis and the same should not be calculated on price basis as calculated by the Dept. The Tribunal, therefore, held that the Learned Government Agent could not show any adverse remark against the appellant during spot visit in the Panchanama made. Hence, enhancement of 100% made in the stock difference was removed.

*M/s. Taj Ply Boards Pvt. Ltd. v. State of Gujarat (2014) STJ 53 P 190.*



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