

All India Federation of Tax Practitioners



AIFTP TIMES

Volume 6 – No. 4 • April 2015

FORTHCOMING PROGRAMMES	Date & Month	Programme	Place
	4-4-2015 to 4-7-2015	Workshop on MVAT Act, Service Tax & Allied Laws	Mumbai
	17-4-2015	National Executive Committee Meeting	Darjeeling
	18, 19-4-2015	Two Day National Tax Conference (EZ)	Darjeeling
	13-6-2015	National Executive Committee Meeting	Bengaluru
	13, 14-6-2015	National Tax Conference (SZ)	Bengaluru
	20, 21-6-2015	Two Day Tax Conference	Pune
	11-7-2015	ITAT Bar Associations' Co-ordination Committee Meeting	Ahmedabad
	11-7-2015	National Executive Committee Meeting	Ahmedabad
	11, 12-7-2015	National Tax Conference (WZ)	Ahmedabad

AIFTP JOURNAL SUBSCRIPTION 2015-16

Dear Members,

The AIFTP Journal is the mouthpiece of the All India Federation of Tax Practitioners and it is also a source of information for updating our subscribers with the latest developments on Direct and Indirect Taxes.

The unique feature of our Journal is that every quarter, we publish the gist of important case laws reported in more than 30 tax magazines. We publish opinions of eminent professionals, thought provoking speeches of Hon'ble Judges of Apex Court and High Courts, important articles on Direct and Indirect Taxes, articles on Wealth Management and answers by eminent professionals on various controversial issues. We are sure that in the era of information technology, our journal would definitely help you to update your knowledge on latest case laws and development of law.

Please note that AIFTP Journal subscription for the year 1st April, 2015 to 31st March, 2016 falls due for payment on 1st April, 2015.

Life Member: Members are requested to remit the amount of either ₹ 800/- for one year or ₹ 2,100/- for three years by Cheque/Demand Draft by **30th April, 2015**. You are also requested to fill in all the details in the attached Renewal Notice.

Non-Member: Non-members are requested to remit the amount of either ₹ 1,000/- for one year or ₹ 3,000/- for three years by Cheque/Demand Draft by **30th April, 2015**.

JANAK VAGHANI

Treasurer

Note:

1. Payment should be made by Account Payee Cheque/Demand Draft in favour of "ALL INDIA FEDERATION OF TAX PRACTITIONERS".
2. OUTSTATION MEMBERS are requested to send payments only by either at par cheque or Demand Draft payable at Mumbai drawn in favour of "ALL INDIA FEDERATION OF TAX PRACTITIONERS".
3. An early payment of the subscription would be highly appreciated.
4. AIFTP Journal subscription form can be downloaded from our website, i.e., www.aiftponline.org.
5. Please write your name on the reverse of Cheque/D.D.

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

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NATIONAL TAX CONFERENCE, DARJEELING, 2015

Organised by

ALL INDIA 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

Delegate Fees: Adult ₹ 2,100/- & Spouse ₹ 1,600/-

Registration Counter will be open from 17-4-2015 so delegates are requested to please contact the registration counter on 17-4-2015 to avoid rush on 18-4-2015

PROGRAMME AT A GLANCE

18th April, 2015 (Saturday)

- 08.30 a.m. to 09.30 a.m. : Breakfast
- 09.30 a.m. to 11.00 a.m. : Inaugural Session
Chief Guest : Hon'ble Mr. Justice A. K. Sikri, Judge, Supreme Court of India
Guest of Honour : Shri S. S. Ahluwalia, M.P. Darjeeling
Guest of Honour Administration : Shri Bimal Gurung, Chief of Gorkha Territorial
- 11.00 a.m. to 12.30 p.m. : **FIRST TECHNICAL SESSION : INCOME TAX & UNION BUDGET, 2015**
Chairman : Dr. K. Shivaram, Sr. Advocate (Mumbai)
Speaker : Dr. Anita Sumanth, Advocate (Chennai)
Speaker : Shri N. P. Jain, Advocate (Kolkata)
- 12.30 p.m. to 01.30 p.m. : **SECOND TECHNICAL SESSION : TAXABILITY ON IMPORT OF GOODS USED IN THE WORKS CONTRACT UNDER VAT & CST**
Chairman : Shri P. Purushottam, Advocate (Chennai)
Speaker : Shri Sujit Ghosh, Advocate, (Delhi)
- 01.30 p.m. to 02.30 p.m. : Lunch
- 02.30 p.m. to 04.00 p.m. : **THIRD TECHNICAL SESSION : TAXABILITY ON BRANCH TRANSFER AND SALE PRECEDING TO EXPORT**
Chairman : Shri M. L. Patodi, Advocate (Kota)
Speaker : CA S. Venkataramani, (Bengaluru)
- 04.00 p.m. to 05.30 p.m. : **FOURTH TECHNICAL SESSION : GOODS & SERVICE TAX**
Chairman : Shri P. C. Joshi, Advocate (Mumbai)
Speaker : Shri Mukul Gupta, Advocate (Delhi)
Speaker : Shri Jagabandu Sahoo, Sr. Advocate (Orissa)
- 05.30 p.m. to 06.00 p.m. : High Tea
- 06.00 p.m. to 07.30 p.m. : Cultural Programme
- 07.30 p.m. to 09.00 p.m. : Gala Dinner

19th April, 2015 (Sunday)

09.00 a.m. to 10.00 a.m. : Breakfast

10.00 a.m. to 11.15 a.m. : **FIFTH TECHNICAL SESSION: AMENDMENT IN SERVICE TAX IN UNION BUDGET 2015 & SERVICE ON HOTEL, RESTAURANT & CATERING**

Chairman : Shri K. C. Kaushik, Former Additional Solicitor General of India
New Delhi

Speaker : Shri Pankaj Ghiya, Advocate, (Jaipur)
CA. Arun Agarwal (Kolkata)

11.15 a.m. to 12.30 p.m. : **SIXTH TECHNICAL SESSION: SEARCH & SEIZURE UNDER I.T. AND PENALTY U/S. 271AAB)**

Chairman : Shri S. K. Poddar, Advocate (Ranchi)

Speaker : Smt. Premlata Bansal, Sr. Advocate, (Delhi)

Speaker : Shri V. P. Gupta, Advocate, (Delhi)

12.30 p.m. to 01.30 p.m. : Valedictory & Brains' Trust

Shri S.K.Poddar, Dr. M.V.K. Moorthy, Shri B.N. Mahapatra, Shri Indu Chatrath, Shri N.D. Saha, Shri Mukul Gupta, Shri V.P. Gupta, Smt. Premlata Bansal, Dr. Anita Sumanth, Shri K.L. Goyal, Shri S. Venkatramani, Shri R.D. Kakra, Shri Sujit Basu, Shri H.C. Singhal, Shri Gajanand Agarwal, Shri Sandip Choraria

01.30 p.m. onwards : Lunch

SAYONARA

Co-ordinator Conference Committee:

Shri D. K. Agarwal, Co-Chairman Conference Committee, 9474380665, dk2ita@yahoo.co.in,
Mr. S. P. Sharma – 9434984560, E-mail: spsha_rma@rediffmail.com

Transport Chairman

Airport: Adv. Nirmalaya Chakraborty, 9434152144 & Adv. Santosh Verma, 9832097973
Railway: Adv. B.K.Thakur, 9434743394, Adv. Akul Kr. Tikadar, 9832066319

Reception Committee

Shri Anand Kumar Pasari (Jharkhand), Ms. Medha Lila Gope (Assam), Shri M. K. Chawdhary (Bihar),
Shri R. N. Pal (Odisha), Shri N. D. Saha, Shri S. C. Garg, Shri Vivek Agarwal, Shri Aditya Bubna,
Shri Arvind Agarwal, Shri R. D. Kakra, Shri Sandip Choraria, Shri N. R. Chakraborty, Shri H. C. Singhal,
Shri Gajanand Agarwal, Shri Partha Pritam Saha, Shri Kunal Pal, Miss Soma Pal,
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Vice President (EZ)
09337110348

Sujit Basu
Chairman, Conference Committee
09800883008

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Secretary (EZ)
09830044321

PLACE OF VISIT

SUNRISE AT TIGER HILL/ZOO/MOUNTAINEERING INSTITUTE/MAHAKAL TEMPLE/TELESCOPE VIEW
OF KANCHANJUNGA PEAK/BUDDHIST MONASTERIES/ROCK GARDEN/ROPEWAY etc.

RED PANDA/SNOW LEOPARD KEPT ONLY IN THIS ZOO IN INDIA

ALL MATERIALS USED BY FIRST CLIMBER OF MT. EVEREST MR. TENSING NORGAY

For local sight seeing hotel will provide services and it will be beneficial for delegate.

COMMUNICATION

AIRPORT: BAGDOGRA, RAILWAY: NEW JALPAIGURI (NJP)/SILIGURI JN
2.30 HOURS JOURNEY FROM BAGDOGRA/NJP/SILIGURI TO DARJEELING
TAXIES ARE AVAILABLE at ₹ 3,000/- WHICH ACCOMMODATES 5 TO 7 PERSONS

Prepaid Taxi are also available at Railway & Airport

NEAREST HOTELS LOCATED TO VENUE (TWIN SHARING) EXCLUDING TAXES) PLEASE BOOK YOUR HOTELS THROUGH ONLINE

NAME OF HOTEL	TARIFF
Mayfair Resort	₹ 9,000/- to ₹ 11,000/-
Central Nirvana	₹ 5,000/- onwards
Central Hotel Fortune Resort	₹ 5,500/-

Our bank is Punjab National Bank, Siliguri, IFCS CODE: PUNB0044400, Savings Account No.0444000100151525, in the name of SILIGURI TAX ADVOCATES BAR ASSOCIATION.

ANNOUNCEMENT

TWO DAY TAX CONFERENCE

at Pune

(Saturday, 20th & Sunday, 21st June, 2015)

All India Federation of Tax Practitioners – Western Zone is pleased to announce Two Day Tax Conference at Aurora Towers, 9, Moledina Road, Pune – 411 001 Maharashtra on Saturday, 20th & Sunday, 21st June, 2015. The Conference aims to cover the latest developments concerning Direct & Indirect Taxes, including the Post Budget scenario. Various complex and practical issues will be addressed by eminent faculty.

The Conference is jointly organised with

- (i) The Sales Tax Practitioners' Association of Maharashtra, Mumbai
- (ii) Maharashtra Chamber of Commerce, Agriculture and Industry, Pune
- (iii) MCM of The Western Maharashtra Tax Practitioners Association, Pune

The details of the programme will be announced soon.

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

Workshop on MVAT Act, Service Tax & Allied Laws

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)
Jointly with
BCAS, CTC, MCTC, STPAM & WIRC OF ICAI

We are happy to announce “Workshop on MVAT Act, Service Tax & Allied Laws” jointly with BCAS, CTC, MCTC, STPAM and WIRC of ICAI to be held from 4th April, 2015 to 4th July, 2015.

The object of Workshop is to share the essence of professional experience and expertise of the faculties which they have gained over the years. Here, the delegates will get an opportunity to gain knowledge and wisdom by interacting with seniors.

The topics selected for Workshop are issue based and will cover MVAT Act, 2002, CST Act, 1956, Service tax provisions and introduction to GST. These topics are of immense importance and will be of enormous help and use to professionals practising in Indirect Taxes.

The Scheduled List containing the dates, topics, and names of faculties is given hereinbelow (subject to confirmation and availability). “Jugalbandi Lectures” have been arranged on topics where both VAT & Service Tax provisions are applicable.

The enrolment is restricted. Enrolment will be made on first-come-first-serve basis. The fees for the Workshop are ₹ 2,000/- for members of the above Associations and ₹ 2,500/- for non-members.

Kindly enrol yourself at the earliest to avoid disappointment.

You are requested to enroll at the earliest to enable us to make proper arrangement.

Vipul Joshi
Chairman, AIFTP (WZ)

Pravin R. Shah
Secretary, AIFTP (WZ)

Timing	For Single Lecture – 2.30 pm to 5.30 pm & Jugalbandi lecture – 2.00 pm to 5.30 pm	
Venue	STPAM Library Hall, 1st Floor, R.No. 104, Vikrikar Bhavan, Mazgaon, Mumbai – 400 010.	
(Saturdays) Date	Subject	Speaker
04-04-2015	Issues in Refunds, Audits, Assessments under MVAT and CST Acts.	Shri C. B. Thakar, Adv.
11-04-2015	Issues in Taxation of Builders and Developers under MVAT Act.	Shri Deepak Bapat, Adv.
	Issues in Taxation of Builders and Developers under Service Tax.	CA. Manish Gadia
18-04-2015	Issues in Input Tax Credit w.r.t. Rules 53 and 54 under MVAT Act.	CA. Kiran Garkar
25-04-2015	Issues in Works Contract Transactions under MVAT & CST Acts.	CA. Mayur Parekh
	Issues in Works Contract Services, Erection & Commissioning Services, etc. under Service Tax.	CA. Vikram Mehta
02-05-2015	Issues in Taxation of Intangible Goods & Leasing/Franchisee Transactions under MVAT and CST Acts.	CA. Sujata Rangnekar
	Issues in Taxation of Intangible Goods & Leasing/Franchisee Transactions under Service Tax.	CA. Bharat Shemlani
09-05-2015	Issues in Branch Transfers, Sales in Transit and High Seas Sales under CST Act.	CA. Rajat Talati
06-06-2015	Issues in Interest, Penalties and Show Cause Notices under MVAT and CST Acts.	Shri Ashvin Acharya, Adv.
	Issues in Interest, Penalties and Show Cause Notices under Service Tax.	CA. Jayesh Gogri
13-06-2015	Issues in Definition of Services, Exempt & Declared Services.	CA. Sunil Gabhawalla
	Issues in Valuation of Services, Abatement & Reverse Charge Mechanism.	CA. Ashit Shah
20-06-2015	Issues in Place of Provision of Service Rules, 2012.	CA. Girish Raman
	Issues in Point of Taxation Rules, 2011.	CA. Rajiv Luthia
27-06-2015	Issues in CENVAT Credit Rules under Service Tax.	CA. Naresh Sheth
04-07-2015	Constitutional Amendments & Overview of GST Act.	Eminent Speaker
	Inter-State Transactions under GST	Eminent Speaker

Report on 'Financial Budget, 2015'
an analysis meeting held at Hyderabad on 4th March, 2015

by
Dr. M. V. K. MOORTHY
National Deputy President, AIFTP

The auspicious aegis of AIFTP, South Zone in collaboration with local Bar Associations namely, A.P. Sales Tax Bar Association, A.P. Tax Bar Association and Telangana Tax Practitioners Association held meeting on 4-3-2015 at Hotel Sidhartha, Abids, Hyderabad. Since I happened to be in the station, I have an opportunity of attending the meeting and also chairing the first session namely 'Analysis of Direct Taxes Proposals'. The speaker is none other than the former Chairman of South Zone, C.A. P.V.S.S. Prasad, a reputed and seasoned speaker in various interaction meetings or seminars or conferences in several parts of the country and he is to a larger extent related to expert in domestic transfer pricing under the Income-tax Act, 1961. As usual, Mr. Prasad has highlighted the various proposals on direct taxation and explained the pros and cons, implications and effective consequences flowing from the proposals. As he explained to the audience, the Finance Minister in order to bring a clarity mostly to the minds of assessing authority and in favour of assessee taxpayers, almost all regularised the ratio decidendi flowing from various judicial decisions on various questions of interpretation in the form of a law. For example if a judgment of Gujarat High Court is there on an issue concerning the TDS or investment allowance or depreciation or status of charitable institutions, in view of the territorial limitations governing the applicability of the judgment of the Gujarat High Court in the State of Gujarat and all the Assessing Officers in other parts of the country not inclining to follow the dicta of Gujarat High Court. Now the position has been set at rest by regularizing all the judicial decisions of various High Courts mostly in favour of the taxpayers by roping them into the Act. This is a very good welcoming feature.

Mr. Prasad has also dealt with other issues on investments in Sukanya Samridhi Account Scheme which provides for triple exemption benefit i.e., at the time of investment on interest earned on such deposits invested and subsequently on withdrawal from the scheme, in all the three stages tax exemption has been envisaged. National Pension Scheme and its object has been highlighted inhering the deduction under Section 80CCD. The extension of exemption under Section 80G to donations for Swachh Bharat Kosh and Clean Ganga Fund as also National Fund for Control of Drug Abuse showing that this exemption of tax benefit as it is the dream project of the Hon'ble Prime Minister. One of the important and significant but salient features of the Bill is that the amendment proposed to Section 255(3) of the Income-tax Act by which it has been proposed to increase the income limit involved in appeals before Tribunal for disposal by a Single Member. I am sure that this is one of the points suggested in the representation of ITAT Bar Association, Mumbai, a constituent of AIFTP and we really congratulate the Bar Association for this wonderful proposal. The proposal to enlarge the expression of 'erroneous' in so far as it is prejudicial to the interests of revenue in Section 253 of the Income-tax Act providing for *suo motu* revision by the Commissioner is also a welcoming feature. The levy of wealth tax has been proposed to be abolished in view of the high cost factor in administration of the provisions in relation to collection of the tax.

The second session is on Indirect Taxes mainly touching upon the promised GST regime by the Hon'ble Finance Minister from 1-4-2016. The salient features of the Bill relating to the Service Tax and Central Excise and Customs have been very lucidly and elaborately explained by the learned speaker C.A. Amit Fitkariwal, Sr. Manager (Indirect Taxation) who is in Deloitte Company at Hyderabad. Though the speaker is a young Chartered Accountant, he has explained the proposed provisions to the easy and clear understanding and appreciation of the audience.

It is to be informed that the attendance of the delegates has crossed 150 and it is a meeting of 4 hrs. in the evening and it is hoped that from the point of professional fraternity, it is the first Budget meeting in the Twin Cities after the introduction of Finance Bill in Parliament on 28-2-2015.

At the end of the session, we have invited question as also any suggestions from the audience on the floor and on behalf of the Federation. I have also requested the audience to give their suggestions in writing so that the Federation would be enabled to consolidate all its post budget proposals for being incorporated wherever necessary in the Bill to become Finance Act on having been voted in the Parliament.

I request you to ascertain from other Zones also as to the status of meetings and the response from the audience from out of such meetings from all suggestions received thereof we can prepare a comprehensive representation voicing our suggestions for being considered and incorporated in the bill.

**Report on Study Circle Meeting of AIFTP (SZ)
held at Thiruvananthapuram on 26th March, 2015**

by
A, Retnakumar, Treasurer, AIFTP (SZ)

Third Study Circle Meeting of AIFTP Thiruvananthapuram for the year 2015 was held on 26-3-2015 at Hospitality Centre, Trivandrum Club at 6 PM.

There were fifteen participants including seven non members.

Meeting started with a silent prayer.

S. Padmanabhan, Member, Governing Council (SZ) welcomed the Participants.

Topic for discussion was Finance Bill – 2015 w.r.t. Direct Taxes – Clause by clause discussion.

Discussion was led by

CA. Rema Sarma

CA. Shyam Krishnan

CA. Sundar

CA. C. Hari

CA. Nikhil R Kumar

CA. S Padmanabhan

CA. Retnakumar

There was good interaction throughout the session.

Meeting concluded at 9 PM.

Decided to meet again on 28-4-2015.

Members dispersed after Dinner.

Activity of AIFTP – CZ

1. During the Tax Board Camp in the month of January, we had felicitated the Hon'ble member Shri Manohar Puri, Rajasthan Tax Board, Ajmer.
2. We had given a representation for extending the date for quarterly – December VAT Return and Annual VAT Return. The request was accepted by the by Mr. Vabhav Galaria Commissioner Commercial Taxes Departement, Rajasthan.
3. On behalf of Central Zone, we had given representation for GST to Government of Rajasthan. Also, Mr. P. M. Chopra has been nominated as a member of GST Committee on behalf of Central Zone AIFTP.
4. On behalf of Central Zone AIFTP, Dr. S.L. Jain (Advocate) and Mr. P. M. Chopra (Advocate) attended and participated at the State Level Tax Advisory Committee Meeting with Chief & Finance Minister. During the meeting we had submitted suggestions in Rajasthan State VAT Laws. The Hon'ble Finance Minister had accepted the suggestion in the State budget.
5. On behalf of Central Zone AIFTP, Dr. S. L. Jain (Advocate), Mr. P. M. Chopra (Advocate), Mr. D. C. Mali (Advocate), Mr. Ashok Jangid (Advocate) attended the meeting.
6. On behalf of Central Zone AIFTP, CA. Sudhir Bhansali attended the GST State level committee meeting on 13 Februray, 2015.
7. The members of Central Zone AIFTP had given representation for Amnesty Scheme under VAT and entry tax and the same was introduced by Government of Rajasthan.
8. On behalf of Central Zone, we also attended the meeting with D.G. Vigilece, he came from Mumbai near about with 5 members and welcomed by garlanding and discussed the problems.
9. We had given representation to CBDT to abolish the system of sending IT receipt to CPC, Bangalore and the same process has been started under CBDT.
10. Discussed state and central budget on 09 March 2015 with Member of Central Committee in which Mr. Ashok Jangid (Advocate), Mr. D. C. Mali (Advocate), Mr. Rajendra Lodha (Advocate), CA. Mahendra Rathi, CA. K. K. Modi and Mr. R. S. Jain (Advocate), Mr. K. K. Gehlot (Advocate), Mr. P. M. Chopra (Advocate) & Mr. S. L. Jain (Advocate) were present.
11. In addition to above, all the representation submitted to government was published in all the newspapers in Jodhpur, Jaipur, Raipur, Bikaner, Udaipur, Indore etc.

Dr. S. L. JAIN
Chairman, CZ

RAJESH MEHTA
Secretary, CZ

P. M. CHOPRA
Conf. Chairman

Date: 25 March, 2015

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. 37(1): Expenditure on aborted capital project is revenue expenditure – claimed as deduction in year of abandoning the project

Expenditure incurred on construction/acquisition of new facility subsequently abandoned at the work-in-progress stage is allowable as incurred wholly or exclusively for the purpose of assessee's business. It is revenue expenditure as it does not result in the acquisition of an asset or an advantage of an enduring nature. The expenditure has to be claimed in the year in which the decision is taken to abandon the project. There would have been no occasion to claim the deduction if the work-in-progress had completed its course. Because the project was abandoned the work-in-progress did not proceed any further.

Binani Cement Ltd v. CIT (Cal.)(HC) ITA No. 265 of 2009 dated 23-3-2015 Source : itatonline.org

2. S. 12AA: Non-disposal of an application for registration before the expiry of six months as provided u/s. 12AA(2) would not result in deemed grant of registration

The use of the expression 'shall' in section 12AA(2) is, by itself, not dispositive of whether the period of six months is mandatory. The legislature has not imposed a stipulation to the effect that after the expiry of a period of six months, the Commissioner would be functus disabled from exercising his powers. Therefore, registration cannot be regarded as deemed to be granted, if it is not disposed of within six months.

CIT v. Muzafar Nagar Development Authority (All.)(HC) (Full Bench) Source : itatonline.org

3. S. 271(1)(c): Penalty does not apply if claim of assessee is bona fide and not in defiance of the law

The fact that the explanation of assessee is not accepted in quantum proceedings would not *ipso facto* visit the assessee with penalty in the absence of the claim being held to be not *bona fide*.

It is not the case of revenue that the claim made by the petitioner was not on the basis of *bona fide* view.

The Tribunal also noted that there was letter which accompanied the return of income wherein all facts relating to impugned receipt was indicated including the fact that an amount of ₹ 54 lakhs originally paid. Therefore, penalty could not be levied.

CIT v. M/s. S. M. Construction (Bombay High Court) : Source : itatonline.org

TRIBUNALS

4. S. 271D/271E: No Penalty if violation of S. 269SS/269 is deemed bona fide

In Assessment Year 2003-04 cash loans were obtained and in A.Y. 2004-05 they were repaid. According to the plea of assessee, the persons who have advanced these loans to the assessee are relatives of a salesman who reside in a village and were having no bank account. Such contention of the assessee has not been discarded or disproved. It is also not mentioned in the penalty order that the aforementioned amount taken by the assessee in violation of section 269SS and repayment thereof in violation of section 269T was not *bona fide* transaction and the same was made with a view to evade tax. In the absence of any finding recorded in the assessment order or in the penalty order to the effect that the repayment of loan/deposit was not a *bona fide* transaction and was made with a view to evade tax, the cause shown by the assessee was a reasonable cause and penalty could not be levied.

Chemfert Traders (Bombay) Pvt. Ltd v. ACIT (Mum.) (Trib.) Source : itatonline.org

5. S. 32: Depreciation on motor car expenses allowed even if a motor car purchased by assessee company but registered in the individual name of director

The motor car was in the name of individual director for sake of convenience and not in the name of assessee company. It is not disputed that the vehicle on which depreciation has been disallowed is standing in the balance sheet of the assessee. Depreciation could not be disallowed to the assessee company.

Javeri Fiscal Services Ltd. ITA No. 6046/Mum/2013 dated 11-3-2015.



INDIRECT TAXES

SALES TAX

D. H. Joshi, Advocate

1. Best Judgment Assessment

In this case, survey was conducted at the place of business of the dealer and no books of account were found at the place. Therefore, Best Judgment assessment was made on an estimated turnover of sales. First Appellate Authority, on appeal, partly allowed the same by making a reduction in tax imposed. On Second Appeal, the Tribunal upheld the order of the First Appellate Authority. Being aggrieved

revision was filed in the High Court. High Court by placing reliance on the judgment in the case of *New Plaza Restaurant v. ITO 309 ITR 259 (HP)* and other cases held that estimation of turnover is a question of fact and therefore no question of law involved. Accordingly, revision petition was dismissed.

Jai Ambe Traders v. Commissioner, Trade Tax, U.P. 2015 NTN (Vol. 57) P 149 (All)

2. Clarification and Advance Rulings issued by the C.C.T., Tamil Nadu

Sl. No.	Citation	Product / Goods	Clarification ratio
1	AC AAR 9 / 2013-14 5-6-2013	Milk powder converted into milk and sold as milk	No specific clarification is given in view of section 48A.
2	AC AAR 10 / 2013-14 4-10-2013	Window model laminated paper envelop	The product sold by the dealer fits into the description given under Entry 60 of Part-B of IVth Schedule and, hence, 'Laminated Paper Envelops' are exempted under the said entry.
3	AC AAR 11 / 2013-14 2-12-2013	Idli Wet Maavu etc.	Idli Wet Maavu (Batter), Dosai Wet Maavu, Vadai Wet Maavu and Addai Wet Maavu sold in loose condition are taxable at 5% under Entry 51 of Part-B of the First Schedule provided such goods are not branded.
4	AC AAR 12 / 2013-14 2-12-2013	LPG	The authority decided that the request of the applicant is not capable of compliance.
5	AC AAR 13 / 2013-14 2-12-2013	Cable tie	The product sold by the dealer would be classified as a residuary item only in the absence of any specific description about the product in any of the schedules to the Act. Hence, taxable at 4.5%.
6	AC AAR 14 / 2013-14 5-6-2013	Surgical Water Bed	'Surgical Water Bed' sold with names 'Unicare' and 'Medcure' are considered to be used for ailing patients for prevention of bed sore and the connected problems. Therefore, they would fall under the entry medical equipments / devices and implants under Entry No. 81 of Part-B of first Schedule.
7	AC AAR 18 / 2013-14 2-12-2013	Wheat grass powder	It is used to strengthen the immune system, helps to increase the hemoglobin, helps to overcome skin disorders etc. There is no entry for the said product, hence, it would fall under residuary entry liable to tax at 14.5%.
8	AC AAR 19 / 2013-14 6-3-2014	Service tax component (indicated in the invoice)	Whether service tax component @4.94% on 40% of the cost of the food served in AC Restaurants would form part of the price of such goods and liable to tax. It is not eligible to be entertained and disposed of accordingly.

2014-15 (20) TNCTJ 289 onwards.

3. Dealer – Tax liability

(A) Official liquidator effected sale of company's assets during winding up proceedings was a dealer and, therefore, liable to pay sales tax in respect of the sale of goods so effected. The Apex Court in this case held

that official liquidator steps into the shoes of the Directors of the company for discharging the statutory functions. Person managing business on behalf of the dealer would therefore be liable to sales tax, in the same manner, as it would have been leviable upon the dealer itself. Therefore, auction purchaser of Company's assets would not be liable to purchase tax u/s. 5A, since the transaction was exigible to tax u/s. 5(1) of the KGST Act, r/w Company's Act and Rules.

Asstt. Commissioner, Ekm v. Hindustan Urban Infrastructure Ltd. & Ors. (2015) 23 KTR 107 (SC)

(B) Dealer entered into agreement with finance companies to raise funds. Invoices were raised for sale-cum-lease back of its "Oakwood Barrels and Vats" with finance companies. It was only a "Financial Arrangement" entered into between the dealer and the financier to raise funds. Therefore, transaction was not a genuine sale and therefore not liable to sales tax under Karnataka Sales Tax Act, 1957.

State of Karnataka v. Khoday India Ltd. And Ors. (2015) 23 KTR 133 (Kar.)

4. Entries in Schedule

Manufacture of "concrete cover blocks" used in between the steel rods and the concrete support was taxable at 4% under Entry 18(5) of third Schedule under "cement bricks" which takes care of "cement blocks". Nature of product indicated that it was not a "pre-fabricated structural component falling under Entry 10(3)(a)" of SRO 82 / 2006. Clarification issued by the Dept. classifying the product under Entry No. 10(3) as SRO 82 / 2006 was therefore set aside. Section 94 KVT Act, 2003, Entry 10(3)(a) of SRO 82 / 2006; Entry 18(5) of third Schedule of KVT Act, 2003 was under the consideration of the High Court.

ABS Industries v. Authority to issue clarification (2015) 23 KTR 157 (Ker.)

5. Liability to pay debts

Limitation – Issuance of 'C' form under CST Act, whether constituted an acknowledgement of the subsisting liabilities as well as the jural relationship of debtor and creditor of giving fresh life of limitation u/s. 18 of the Limitation Act, 1963. Held, 'No'. Whether petition should be dismissed, held 'Yes' under the Companies Act, 1956 r/w Section 433(e) of the Limitation Act, 1963 and Section 18 of CST Act, 1956.

2. The present matter, on facts, could be viewed from another angle as well. The petitioner-creditor had grossly suppressed the fact that subsequently an agreement was entered into between the parties whereunder it was agreed that a sum of ₹ 29 lakhs, if paid by the company, would satisfy the outstanding dues. Admittedly, the said sum of ₹ 29 lakhs had been paid by the company. A further sum of ₹ 8.5 lakhs was withheld in terms of the said agreement

and whether the same was withheld illegally is a matter of evidence which could not be gone into in a proceedings for winding up. Therefore, the court did not find that the company should be wound up and, therefore, ordered that the company petition shall remain permanently stayed.

Zion Steel Ltd. v. Subteleweigh Electric (I) Pvt. Ltd. (2015) STA (Vol. 65) 17 (Cal HC)

6. Penalty

In the present case of penalty, Tribunal set aside the impugned order of penalty on the ground that intention to evade tax was necessary for imposing penalty. Revision filed by the Revenue in High Court. High Court relied on the judgment in the case of *Mascot Footcare, Ghaziabad v. C.T.T. U.P. 2011 NTN (Vol. 47) P 47* wherein it was held that penalty could be imposed for technical violation of the provisions of the Act and Rules and that intention to evade tax is only a factor to be taken into consideration for the purposes of quantification of the penalty. Accordingly, the order of the Tribunal was set aside and revision allowed and restored to the Tribunal.

C.C.T. v. Banwari Lal Lalit Babu 2015 NTN (Vol. 57) P 148

7. Registration

Registration for cancellation u/s. 17(11)(b) under the U.P. VAT Act, 2008 for non transaction of any business or discontinuation of business. On conducting the survey at dealer's place no business activity was noticed. Therefore, Assessing Authority cancelled the Registration Certificate of the assessee. On appeal, First Appellate Authority as well as the Tribunal by the Order impugned upheld the Order of the Assessing Authority. In the course of hearing, assessee raised various questions of law. High Court held that the candid admission of the assessee of the fact that no business took place after 2006 was good enough for invoking the provision. Further, at no stage assessee could establish even any remote possibility of re-starting his business. The cancellation so made was right and revision was dismissed.

Atul Iron v. C.T.T. 2015 NTN (Vol. 57) P 151 (All)

8. Writ petition

Assessee filed writ petition against appellate order. The same was not allowed by the HC on the ground that there was a remedy to be pursued before the Tribunal. Tribunal to consider the amount paid as a condition for stay against proceedings, at the time of entertaining the appeal. Recovery of amounts covered by assessment / appeal order to be kept in abeyance till orders passed by the Tribunal.

Ramco Cements Ltd. v. AC (Assessment) (2015) 23 KTR 128 (Ker.)



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