All India Federation of Tax Practitioners

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AIFTP TIMES

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FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
17-4-2015	National Executive Committee Meeting	Darjeeling
18, 19-4-2015	Two Days National Tax Conference	Darjeeling

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

PROGRAMME AT A GLANCE

18th April, 2015 (Saturday)

08.30 a.m. to 09.30 a.m : Breakfast & Registration:

09.30 a.m. to 11.00 a.m : Inauguration Session

11.00 a.m. to 12.30 p.m. : **FIRST TECHNICAL SESSION : INCOME TAX & FINANCE BILL, 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. Purushottama, 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)

FOR ANY QUERIES MEMBERS MAY CONTACT ANY OF THE FOLLOWING OFFICE BEARERS				
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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)
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: (SEARCH & SEIZURE UNDER I.T. AND PENALTY U/S 271AAB)**
Chairman : Shri S. K. Poddar, Advocate (Ranchi)
Speaker : Shri V. P. Gupta, Advocate, (Delhi)
Speaker : Shri Jagabandu Sahoo, Advocate (Odisha)
11.15 a.m. to 12.30 p.m. : **SIXTH TECHNICAL SESSION: AMENDMENT IN SERVICE TAX IN UNION BUDGET 2015 & SERVICE ON HOTEL, RESTAURANT & CATERING**
Speaker : Shri Pankaj Ghiya, Advocate, (Jaipur)
Speaker : CA. Arun Agarwal (Kolkata)
12.30 p.m. to 02.00 p.m : Valedictory & Brains' Trust Session
02.00 p.m. onwards : Lunch

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

Contact

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09831048516	09337110348	09800883008	09830044321

PLACE OF VISIT

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

RED PANDA/SNOW LEOPARD KEPT ONLY IN THIS ZOO INDIA

ALL MATERIAL USED BY FIRST CLIMBER OF MT. EVEREST MR. TENSING NORGEY

We are arranging sharing vehicle for Sight seeing from 10.00 a.m. to 4 p.m. from 16th April to 19th April, 2015 with guide and per head charges will be ₹ 500/-, interested person may enroll their names with remittance so that vehicle can be placed as per schedule received. Morning sight seeing is not included in this Package.

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

OUR MEMBERS WILL BE AT RAILWAY STATIONS AND AIRPORT TO RECEIVE DELEGATES ON 17TH APRIL 2015 WITH THE TAXI AS PER SCHEDULE SUPPLIED TO US

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/-
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/-

Economic hotels are also available at the distance of 15 to 20 minutes walk @ ₹ 2,000/- per day 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.

TRANSPORT: Mr. Nirmalaya Chakraborty – 9434152144

STATEMENT AS PER PRESS AND REGISTRATION OF BOOKS ACT
FORM IV
[See Rule 8]

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I, Shri Kotecha Mitesh Ashwin, hereby, declare that the particulars given above are true to the best of my knowledge and belief.

KOTECHA MITESH ASHWIN
Signature of the Publisher

Date : 28-1-2015.

Advertisement Tariff for AIFTP Journal
(W.e.f. 15th July, 2013)

	Particulars	Per Insertion
1.	Quarter page	₹ 1,500/-
2.	Ordinary half page	₹ 2,500/-
3.	Ordinary full page	₹ 5,000/-
4.	Third cover page	₹ 7,500/-
5.	Fourth cover page	₹ 10,000/-
There shall be Discounts on bulk advertisements.		

Membership of AIFTP as on 27-1-2015
Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	801	23	3	827
Eastern	3	1171	35	3	1212
Northern	0	965	17	0	982
Southern	1	910	14	7	932
Western	4	1741	33	17	1795
Total	8	5588	122	30	5748

DIRECT TAXES

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

HIGH COURTS

1. S. 2(22)(e) : If assessee is not a shareholder of lending co., s. 2(22)(e) does not apply even if funds are ultimately paid by Co. in which assessee is a share holder.

The assessee received loan from X Company. The Revenue seeks to tax this loan as deemed dividend. The case of the Revenue was that Y Company had advanced money to X Company who in turn advanced money to the assessee. The assessee a 50% share holder of Y Company and in view thereof, loan advanced by X to the assessee is to be treated as a dividend in the hands of the assessee. It is the admitted position that the assesee is not a share holder in X Company. The AO brought to tax the amount of loan received by the assesee from X as deemed dividend under S. 2 (22)(e) and the same was deleted by the CIT(A) and the Tribunal. The Revenue before High Court submitted that one has to look at the substance of the transaction and that if one looks at the substance, then the assessee would be chargeable to tax. The Hon'ble High Court held that this is not acceptable as fiscal status have to be interpreted strictly. S. 2 (22) (e) creates a fiction by bringing to tax an amount as dividend when the amount so received is otherwise then dividend. On a strict interpretation of S. 2(22)(e), unless the assessee is the share holder of the company lending him money, no occasion to apply.

CIT v. Jignesh P. Shah (Bom)(HC) source : www.itatonline.org

2. S. 45 : Capital Gain – Cost of acquisition – Sale of Transferable Development Rights – No cost of acquisition – No capital gains chargeable

Assessee a registered Co-operative Housing Society occupied by tenants and shopkeepers was formed in year 1988. The land was convey to the society in year 1986 The society planned a reconstruction of the building in 1994. In the year 1995, the construction of new building was in execution, wherein the Society was eligible for a F.S.I. of 2. The construction was carried out and completed around year 2000. Thus, the total area available for construction was exhausted by the society. Thereafter, FSI of 0.5 was generated by the society's property/plot which the society was not able to consume therefore and the society decided to sell the FSI. The society received the 0.5 FSI in form of TDR in year 2006 which was sold during the relevant year. The A.O. taxed the consideration received as income chargeable under Long Term Capital Gains in the hands of the assessee. The Assessing officer arrived at the cost on proportionate basis. This view of the A.O. was affirmed by CIT(A).

The Hon'ble Bombay High Court, in the present case, observed that additional FSI/TDR is generated by change in the Development Control Rules. A specific insertion would, therefore, be necessary so as to ascertain its cost for computing the capital gains. Therefore, the Tribunal was in no error in concluding that the TDR which was generated by the plot/property/land and came to be transferred under a document in favour of the purchaser would not result in the gains being assessed to capital gains. The Bombay High Court referred to the decision of Hon'ble Supreme Court in the case of *Union of India v. Cadell Weaving Mill Co. P. Ltd. and Anr.* and connected Appeals reported in (2005) 273 ITR 3 and the Supreme Court decision in the case of *B. C. Srinivasa Shetty 128 ITR 294,* wherein it was held that that an asset must be capable of being acquired at a cost or that has to be ascertainable to be chargeable under the head 'Capital Gains'. Hon'ble High Court, further observed that the Tribunal has concluded that the assessee had not incurred any cost of acquisition in respect of the right which emanated from D.C Rules, 1991 making the assessee eligible to additional FSI. The land and building earlier in the possession of the assessee continued to remain with it. Even after the transfer of the right or the additional FSI, the position did not undergo any change. The revenue could not point out any asset as specified in sub-section (2) of section 55 for the cost of TDR and ,therefore, High Court dismissed the appeal of the Department.

Thus as per the above decision an asset which is capable of acquisition at a cost would be included within the provisions pertaining to the head "Capital gains" as opposed to assets in the acquisition of which no cost at all can be conceived. In the above case as well, the situation was that the FSI / TDR was generated by the plot itself. There was no cost of acquisition, which has been determined and on the basis of which the Assessing Office could have proceeded to levy and assess the gains derived as capital gains.

CIT v. Sambhaji Nagar Co-op. Hsg. Society Ltd., ITA No. 1356 of 2012 dated 11-12-2014, A.Y. 2007-08 (Bom)(HC)

3. S. 264: Revision – Retrospective amendment – Whether revision permissible

The Petitioner filed his return of income for A.Y. 2003-04 on 25 November 2003 declaring total income of ₹ 48,22,312/- along with Form No. 10CCAC for deduction under Section 80HHC of the Act. The return was processed under Section 143(1) on 29 December, 2003. Around that time, the availability of the benefit under Section 80HHC to assessees like the Petitioner was a

matter of controversy and there was lack of clarity on the subject. The Taxation Laws Amendment Act, 2005 brought an amendment in Sections 28 and 80HHC with retrospective effect from 1st April 1998. By this amendment, the profit derived on sale of DEPB licence was to be considered for proportionate increase of profit derived from export. The Petitioner assessee qualified for this exemption. The Petitioner, therefore, filed a revision application under Section 264 of the Act before the Commissioner. The Commissioner rejected the revision on the ground that the assessment order had been passed in accordance with the law prevailing as on the date of the assessment, i.e. 21st October, 2005; and that therefore, there was no error or mistake in the order which could be corrected under Section 264 of the Act.

Held, retrospective amendment to the Act, makes the amended provisions a part of the record on the date when the order sought to be revised is passed. Therefore, if the applicable law has undergone any change with retrospective effect, then full effect must be given to the statutory fiction subject to limitation as found in the Act. The order passed does exhibit an error on the face of such record, when the order is examined. Hence, the Commissioner was not only entitled but was duty bound to correct the assessment in revision. Hence, the order u/s 264 refusing to revise the order was set aside for the matter to be considered afresh on merits.

Kalpesh M. Nagda v. CIT, WP No. 1123 of 2007 dt. 22-12-2014 (Bom.)(HC)

TRIBUNALS

4. S. 2(15) : Fees or consideration received for rendition of a service to business, trade or commerce will not attract the disability under first proviso to s. 2(15) if such service is subservient to the charitable cause and is not in the nature of business itself

Though the assessee is not engaged in an activity in the nature of trade, commerce or business, it is claimed by the AO that the assessee has rendered services "in relation to trade, commerce or business" for a consideration, and it is for this reason that the first proviso to S. 2(15) is attracted on the facts of this case. Undoubtedly once an assessee is found to be "rendering any services in relation to any trade, commerce or business, for a cess or a fee or any other consideration", and irrespective of what he does to the income generated by such an activity, the assessee cannot be said to be pursuing charitable activities.

National Horticulture Board v. ACIT (Del.)(Trib.)

5. S. 12AA : Cancellation of Registration – Charitable purpose

Section 12AA(3) has no retrospective effect as it is neither explanatory nor clarificatory in nature and the CIT has no power to rescind the order passed by the CIT prior to 1st Oct., 2004. Now there is an amendment to s. 12AA(3) by the Finance Act, 2010, which has inserted the phrase "or has obtained registration at any time u/s. 12A" after the words "sub-s. (1)" as appearing in s. 12AA(3). This amendment has been made applicable and effective from 1st June, 2010. The ratio laid down by the Hon'ble High Court the amendment of s. 12AA(3) by the Finance Act, 2010 w.e.f. 1st June, 2010, it is amply clear that s.12AA(3) is prospective in nature and if any trust/ institution has been registered prior to 1st Oct., 2004 either u/s 12A or 12AA, the CIT has no power to cancel the registration u/s 12AA(3).

For the cancellation of registration u/s 12AA(3), the Commissioner should record a satisfaction that the activities of the Trust or Institution are not genuine or that the activities are not being carried on in accordance with the objects of the Trust. In the absence of such a finding registration granted u/s 12A or u/s. 12AA cannot be cancelled. Cancellation of registration of a charitable Trust, in a given case, is permissible, only under the circumstances stated u/s 12AA(3) of the Act.

For an assessee to be classified as charitable under the residuary category i.e. "advancement of any other object of general public utility" u/s 2(15) of the Act, the following four factors have to be satisfied, i. Activity should be for advancement of 'general public utility', ii. Activity should not involve any activity in the nature of trade, commerce and business, iii. Activity should not involve rendering of services in relation to any trade, commerce or business, iv. Activities in Clauses b and c above, should not be for a fees, cess or other consideration, the aggregate value of which should not exceed the amount specified in the Second Proviso to S. 2(15).

Delhi & District Cricket Association v. DIT (E) (ITAT Delhi) dtd. 21-1-2015

6. S. 45 : Capital Gain v. Business Income: The holding period of the transactions of shares cannot be decided that assessee is a trader

The issue arising in this appeal is the treatment of the profits and gains on the purchase and sale of shares. Assessee has returned it as short term capital gain whereas the Revenue insists business income, assessable u/s. 28.

The issue cannot depend solely upon one particular fact, or merely on or by counting the number of facts and circumstances, pro and con, or upon application of any abstract rule, principle or formula, but must depend upon the total impression and effect of all the relevant facts and circumstances established in a particular case. In fact, repetition or continuity of the similar transactions is not necessary to constitute a transaction as an adventure in the nature of trade. However, moved principally by the fact that the A.O. had himself considered the gain arising on the sale of the shares, held for over 12 months, as long term capital gain, proving the intent of holding the shares as investment. The gain, therefore, where the holding of the shares falls below 12 months, should qualify to be STCG. The assessee's investments, on which had returned the impugned gain, spans over 16 companies, and which could not be considered as large by any

standard. In other words, the said treatment would qualify the assessee to be an investor *qua* the said shares. The assessee's investment (which is self-financed) spreads over 16 companies, and which could not be considered as large, 94% of the STCG is on shares held for more than 30 days. The assessee's earning by way of dividend cannot be considered as minimal. The view of the Tribunal was the holding period of the transactions of shares cannot be decided that assessee is a Traders.

ACIT v. Sumitra Gautam Trivedi I.T.A. No. 2963/Mum/2012 dtd. 8-1-2015 (Mum)(Trib)

7. S. 45 : Capital Gain – The Long Term holding period transactions of shares cannot be treated as business transaction. Principle of consistency requires to be followed

The assessee had shown long term capital gains in his capital account which had been claimed as exempt from tax under section 10(38) of the Income- tax Act. The assessee had also shown income from share trading. The AO observed that the assessee was not maintaining any balance sheet in spite of the fact that the assessee was liable to get his books of account audited. Though the assessee had claimed that he was maintaining two types of portfolios i.e. trading and investment, however, there was nothing on record to show that the assessee was maintaining such separate portfolios for shares kept as stock- in-trade and shares held as investment. The AO, taking into consideration the voluminous magnitude of transactions, treated income as business income against the assessee's claim of same being long term capital gains. Before the CIT(A) the assessee submitted the various details of the transactions and showed that during the year under consideration the assessee had earned only long term capital gains in investment account.

The Tribunal held that all the shares held in investment account during the year were having holding period of more than 12 months and in many cases even more than 2 to 3 years. Last so many years the assessee had been showing separate statements giving complete details as shares held by him in investment account and trading account. On the basis of which the claim of the assessee had been consistently accepted by the department. In the earlier assessment years and even in scrutiny assessment the claim of the assessee has been accepted. Even in subsequent years the claim of the assessee was accepted. The assessee had been earning substantial income by way of dividend. The principle of *res judicata* is not applicable in income tax proceedings but the principle of consistency requires to be followed.

ITO v. Shri Ved Mitter N. Puri , ITA No.1504/M/2012, dtd. 14-1-2015

INDIRECT TAXES

SALES TAX

D. H. Joshi, Advocate

1. Attempt to evade tax

Attempt to evade tax u/s. 34(7) of the HPVAT Act, 2005. There was a delay of five minutes on the part of the assessee to produce documents before the check-post officer. Such default was not with intention to evade tax, the breach did not travel beyond technical breach, for which it was not compulsorily to impose a penalty. It was clear that penalty was leviable on grounds of possibility of evasion of tax, which did not exist.

M/s Kunal Aluminium Co. v. The Addl. Excise and Taxation Officer (Flying Squad) (2015) 50 PHT 79 (HPTT).

2. Cross examination

Principles of natural justice – Cross Examination – Quasi-judicial proceedings. A fundamental principle that governs all quasi-judicial determinations was strict adherence to the said principles of natural justice. Therefore, assessing authority was bound to accede to the request of the dealer for cross examination of the third party from whom material / information was gathered for passing adverse order against him.

State of Haryana v. M/s. Hari Kewal Vanaspati Mills, Hisar (2015) 50 PHT 67 (P&H).

3. Deduction on account of discount

Section 2(34) r/w Rule 3(2)(c) of the Karnataka VAT Act & Rules, 2005. The appellant-assessee was engaged in the manufacture of home appliances. The assessee claimed that as per their regular trade practice, they allowed discounts such as scheme discount/quantity discount to its distributors and claimed the same as deduction from total turnover while arriving at taxable turnover. The Assessing Authority has disallowed the quantity discount accorded by the appellant to its distributors on the ground that such discounts were not relatable to the sales effected by the relevant tax invoices as per provisions of Rule 3(2)(c) of the Karnataka VAT Rules.

Maya Appliances (P) Ltd. v. Addl. CCT, Zone-I, Bengaluru (2015) 23 KTR 38 (Kar.).

4. Incidence of taxation

Private university imparting education to students and providing boarding, lodging facilities, within its complex when served food articles in mess, then, it was not liable to tax, but, if the food articles such as kurkure, biscuits, cold drinks, etc. were sold in canteen, then provisions of section 4(6) of HPVAT Act were attracted and liable the university to pay tax when it exceeded the taxable quantum of sale.

Jaypee University of Information Technology, Dist. Solan v. Addl. Excise & Taxation Commissioner-cum-Appellate Authority, SZ, Shimla (2015) 50 PHT 70 (HPTT).

5. Search and Seizure

It is now well settled that strong suspicions, strange coincidences and grave doubts cannot take place of legal proof. Courts of law have to judge the evidence before them by applying well recognised test of basic human probabilities. *Prima facie* public servants must be presumed and honestly and conscientiously and their evidence has to be assessed on its intrinsic work and cannot be discarded merely on the ground that being public servants they are interested in the success of their case. To establish the charges against the assessee, it is essential to establish that the secret books of accounts seized from the place of assessee related to the business transactions carried on by assessee and none else. It may well be that the secret accounts are false and other accounts are true. In the instant case, there was absolutely no evidence to prove that secret books seized were recovered from business premises of the assessee or that they were in their exclusive possession and control. That apart, no cogent and convincing proof was produced to establish that the secret books of account were maintained by the assessee or they had any link or connection with them. There was witness to testify that the secret books did not contain entry relating to business of other dealer. Though there were certain entries in the secret books which tally in certain respects with the entries produced by assessee before the inspecting officers. Though this raises a strong suspicion against the assessee, but that alone is not sufficient to warrant conviction of the respondents for the offences.

2. No attempt or steps seems to have been made or taken in that behalf by the prosecution. The connection of the assessee with the entries in the secret books of account could also have been established by producing some of the customers whose names are admittedly to be found in the secret books of account to testify that the deals evidenced by the entries were transacted by them with the Kllupalm Lad's Jewellery Mart of which the assessee were the proprietors. As the prosecution has failed to resort to any of these methods, the assessee had to thank themselves for the result of the prosecution upon which it seems to have had launch without seeking expert legal assistance. The decision of this court in *Girdharilal Gupta v. D.N. Mehta, Collector of Customs (1971) 3 SCR 748* which was heavily relied upon by the Learned Counsel for the State of Kerala was of no assistance to the State. Accordingly, we did not find ourselves in a position to differ from the conclusions arrived at by the Additional Sessions Judge and the High Court. In the result, the appeals fail and dismissed.

State of Kerala v. M.M. Mathew And Anr. (2015) 26 STJ 6 (SC).

6. Service of notice

Notice sent by speed post to respondents neither acknowledgement nor undelivered cover had been received back. On facts, HC held that the service of notices on the respondents to be deemed sufficient.

CCT, U.P., Lucknow v. Baburam Rajendra Kumar Adhti, Bulandshar (2014) NTN (Vol. 56) 435 (All.)

7. Stock transfer – Form 'F'

Stock transfer of goods was made by a dealer either to his another place of business or to a place of business of his agent or principal.

2. In the present case the HC held that the other place of business was not of a stranger but his own place of business of his agent/principal's place of business. Therefore, a dealer cannot escape his liability to tax in the circumstances that Form 'F' has not been obtained by his branch or agent from the prescribed authority under the CST Act or the form itself was forged, bogus or fabricated. In such cases, even the question of receiving it bonafidely from his own branch or agent, would not arise at all as his branch is not a separate legal entity and agent is his own extended hand.

3. Therefore, in the facts and circumstances of the case, Forms 'F' in question were not valid forms, and, therefore, not valid declarations u/s. 6A of the CST Act. Hence, the impugned order of the Tribunal did not suffer any infirmity. Accordingly, the petitioner's Revision Appln. was dismissed.

Kung Bihari Lal Radheyshyam v. CCT, U.P., Lucknow (2014) NTN (Vol. 56) P 377 (All.)

8. Tamil Nadu VAT Act, 2006. Section 42 – Payment and Recovery of Tax, Penalty etc.

In this interesting case, the question arose for the consideration of the Division Bench, whether the Learned Single Judge was correct in permitting the assessee to pay the amount in installments?

2. Briefly stated, after considering the scheme of the aforesaid Act and in particular sections 42 and 43 of the said Act, the Learned Single Judge quashed the coercive proceedings initiated against the assessee for recovery of tax arrears to the tune of ₹ 25,25,40,568 and permitted the assessee to pay the amount in installments. The assessee was selling Indian Made Foreign Liquor through Tamil Nadu State Marketing Corporation (TASMAC). The assessee was in arrears to the Commercial Tax Department, originally, to the tune of ₹ 20,18,42,722. The Dept. issued Demand Notice in Form 'U' demanding a sum of ₹ 26,77,03,167. Since the Dept. initiated a coercive action for the recovery of the above demand, the assessee filed writ petition challenging the notices, with a request to grant installments to enable it to pay the tax. The Learned Single Judge after hearing Govt. Pleader (Taxes) set aside the notices and directed the petitioner-assessee to pay initially, a sum of ₹ 5 crores, within a period of 6 weeks and the remaining amount in 8 equal monthly installments. Being aggrieved by the said order, the revenue moved the Division Bench to set-aside the impugned order to enable the Dept. to recover the arrears, forthwith.

3. The Division Bench, after analysing the facts of the case and the provisions of the law came to the conclusion that the Order passed by the Single Judge is perfectly legal and no interference is necessary, in the light of section 42 of the Act. Hence, the intra-court appeal and connected miscellaneous petition was closed.

The Commissioner of Commercial Taxes, Tamil Nadu, Chennai v. Imperial Spirits and Wine Pvt. Ltd. 2014-15 (20) TNCTJ 193.

R.N.I.No. MAHENG/2010/32910
Postal Regn. No. MH/MR/South-314/2013-15

9. Tax on admission to entertainments

The Karnataka Entertainments Tax Act, 1958 – Section 3. Whether tax is attracted on the tickets of ₹ 25 and ₹ 49 printed on the face value in order to just avoid payment of tax and are treated on par with ₹ 1,650 tickets? Held, in the facts and circumstances of the case, the Tribunal was justified in deleting levy of tax on the said tickets.

2. The High Court with reference to proviso of section 3 came to the conclusion that if no amount is mentioned in the said complimentary ticket, the tax is payable u/s 3 depending upon the class of seat which was offered to him, but if the value of a ticket is less than ₹ 50, section 3 is not attracted. If such ticket is given complimentary, even them, section 3 is not attracted. Probably taking advantage of this loophole in the legislation, the assessee got printed the tickets of ₹ 25 and ₹ 49 got pre-stamped by the authorities and issued the said tickets to VVIP guests and members of the Association as the case of the assessee did not fall within section 3 even if the intention of the assessee was to avoid payment of tax. Looking at the statute and charging provision, if the assessee arranges his affairs in such a manner so as to attract no tax, no fault would be found with the assessee. Accordingly, Revision petitions were dismissed. However, HC clarified that the present judgment would not be a precedent for the A.Y. 2011 and onwards.

State of Karnataka v. M/s Royal Challengers Sports Pvt. Ltd. 2014-15 (19) KCTJ 225 (Kar)

10. Words and Phrases – 'Glassware'

A. Whether the expression "all types of glass and glass sheet covers Glassware ?" Held, No. Notification providing reduction in the rate of tax on all types of glass and glass sheets whether glassware is covered by the said notification. Held, No. "Type" and "Form" – explained. Whether the judgment and order of the High Court allowing reduced rate of tax on "Glassware" valid ? Held, No. Central Sales Tax Act, 1956, Section 8(5) (b) bearing No. S.O. 25 dt. June 25, 2001 was considered.

2. In the present case decided by the Apex Court, it held that it is settled law that in taxing statutes the terms and expressions must be seen in their common and popular parlance and not be attributed to their scientific and technical meanings. In common parlance, the two words "type" and "form" were not the same import. According to Oxford Dictionary, whereas the meaning of the expression "types" was "Kind, class, breed, group, family, genus"; the meaning of the word "form" was "visible shape or configuration of something" or the "style, design and arrangement in an artistic work as distinct from its content", etc. After giving elaborate reasoning, the Apex Court held that we could not sustain the impugned judgment and order passed by the HC.

State of Jharkhand And Ors v. La Opala R. G. Ltd. 2014-15 Vol. 64 P. 296 (SC).

B. The words "from time to time" used in section 16 of the Rajasthan Finance Act, 2008 had a futuristic tenor and had no potentiality to operate from a previous date. In this case retrospective levy of environment and health cess on mineral rights i.e. 'Rock Phosphate' under notification issued u/s. 16 of the Act was held as unconstitutional on the ground that subordinate legislation could be given retrospective effect only if that power was contained in the Principal Act.

State of Rajasthan & Ors. v. Basant Agrotech (India) Ltd. & Ors. (2015) 23 KTR 1 (SC).

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