



AIFTP TIMES

Volume 6 – No. 3 • March 2015

FORTHCOMING PROGRAMMES	Date & Month	Programme	Place
	20-3-2015	Full Day Seminar	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
	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

NATIONAL TAX CONFERENCE, DARJEELING, 2015

Organised by

ALL INDIA TAX FEDERATION OF TAX PRACTITIONERS (EZ)

In Association with

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

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

Dates: 18th & 19th April, 2015

Theme: Learn, Relax & Enjoy The Natural Beauty

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

Delegate Fees: ₹ 1,600/- & Spouse ₹ 1,100/- Up to 15-3-2015 and ₹ 2,100/- After 15-3-2015
For Adult and ₹ 1,600/- for spouse

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	: Inauguration Session
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)

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

Name	Mobile	Tel. (O)	Fax	E-mail
National President – J. D. Nankani, Adv.	9821034867	022-22841717	22831717	jagdish@nankanis.com
Deputy President – Dr. M. V. K. Moorthy, Adv.	9849004423	040-23228474	23261667	mvkmoorthy59@gmail.com
Secretary General – CA. Harish N. Motiwalla	9819422300	022-22002103	22094331	hnmotiwalla.ca@gmail.com
Treasurer – CA. Janak K. Vaghani	9324680306	022-22821978	—	janak.vaghani@gmail.com

- 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 (Jaipur)
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)
- 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 01.30 p.m. : Valedictory & Brains' Trust
- 01.30 p.m. onwards : Lunch

Contact

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

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, Shri Kalyan Saha, Miss Soma Pal,
Shri Akul Tikadar, Shri Chetan Jain, Shri Rakesh Mishra, (W.B.)

Indu Chatrath
Chairman (EZ)
09831048516

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Vice President (EZ)
09337110348

Sujit Basu
Chairman, Conference Committee
09800883008

N. D. SAHA
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 NORGEY

For local sight seen 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
OUR MEMBERS WILL BE AT RAILWAY STATIONS AND AIRPORT TO RECEIVE DELEGATES WITH THE
TAXI AS PER SCHEDULE SUPPLIED TO US ON 17-4-2015

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

NAME OF HOTEL	TARIFF
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

One Day Workshop on

**MAINTENANCE OF BOOKS OF ACCOUNTS & RECORDS
AND EFFECTS OF VIOLATION
UNDER INCOME TAX, SERVICE TAX & MVAT**

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)

Jointly with

**THE SALES TAX PRACTITIONERS ASSOCIATION OF MAHARASHTRA &
MAHARASHTRA CHAMBER OF COMMERCE, INDUSTRY & AGRICULTURE**

at

Dahanukar Hall, Maharashtra Chamber of Commerce, Industry & Agriculture,
Kala Ghoda, Mumbai – 400 001

on

20th March, 2015 at 10.00 am to 5.30 pm

FACULTIES

C.A. Rajesh Kothari	–	Income Tax
Mr. Nitin Mehta, Advocate	–	Service Tax
Mrs. Nikita Badheka, Advocate	–	MVAT

Delegate Fees : ₹ 1,250/- Per Participant (Including Study Material, Lunch, Hi- Tea & Snacks)

Kindly issue DD/Cheque at par in favour of “All India Federation of Tax Practitioners – Western Zone” payable at Mumbai.

DIRECT TAXES

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

HIGH COURTS

1. S. 260A : Appeal – High Court – Entire law on condonation of delay explained

The issue which falls for consideration is whether the applicant has shown sufficient cause so as to become entitled for condonation of delay of five years in preferring the appeal against the order dated 31-10-2008 passed by the Tribunal. Admittedly at the relevant time the applicant had accepted the orders passed by the Tribunal on the ground that three Authorities have decided against it. The applicant was completely conscious of the fact that there was no decision of the Jurisdictional High Court in regard to the said issue. This was more a reason for the applicant to pursue the proceedings. The applicant, however, accepted the orders passed by the Tribunal and decided not to pursue the proceedings. In the meantime this Court had decided the same in favour of the applicant in the case of “Sind Co-operative Housing Society Ltd.” 317 ITR 47 and “Mittal Co-operative Society Ltd.” 320 ITR 414.

The Tribunal applying the law laid down in these decisions decided in favour of the applicant by an order dated 11-1-2013 passed for the A.Y. 2007-08. The Tribunal deciding in favour of the applicant for the subsequent years, applying the decisions of this Court, would not enure to the benefit of the applicant to reopen the issue concluded by the Orders dated 31-10-2008 passed by the Tribunal and accepted by the applicant. The delay is inordinate.

The reasons as shown by the applicant cannot fall within the parameters of sufficient cause so as to confer a benefit of condonation to the applicant. This is for the reason that the applicant had taken a well considered decision not to move further proceedings against the order dated 31-10-2008. Applying the test of a prudent litigant it cannot be held that once the applicant by his own volition had decided to accept a judicial order, the applicant can at any time assail the same may be for the reason that subsequently new decisions are rendered on that issue. S. 5 of the Limitation Act cannot be stretched to bring about a situation of unsettling judicial decisions which stood accepted by the parties. The legislative mandate in stipulating a limitation to file an appeal within the prescribed limitation cannot be permitted to be defeated when a litigant has taken a decision not to pursue further proceedings. A new ruling is no ground for reviewing a previous judgment.

Somerset Place Co-operative Housing Society Ltd vs. ITO (Mum)(HC) Source : www.itatonline.org

2. S. 69C : Unaccounted sales cannot be assessed as undisclosed income – If the purchases have been accounted for – Only the Net Profit on such unaccounted sales can be taken as income

In a survey conducted u/s. 133A, it was noticed that the assessee has not accounted some of the sales in the total turnover, statement recorded at the time of survey, the assessee declared a sum of ₹ 35 lakhs should be offered to tax. Thereafter, the assessee explained the statement on the basis that the director was not aware of the intricacies and implications of the statement made by him. The AO rejected the assessee’s explanation and assessed ₹ 35 lakhs, the CIT(A) held that the entire ₹ 35 lakhs cannot be assessed as income but only 4% thereof, being the profit earned on sales of ₹ 35 lakhs, could be added to the net profit. This was upheld by the Tribunal. Before the High Court, the department relied on S. 69C and argued that the entire amount of undisclosed sales had to be brought to tax. High Court dismissing the appeal held that, how S. 69C which speaks of unexplained expenditure is all at relevant for this appeal, not concerned with any unexplained expenditure in this case. The CIT(A) and Tribunal have come to the concurrent finding that the purchases have been recorded and only some of the sales are unaccounted. Thus, both the authorities held that it is not the entire sales consideration which is to be brought to tax but only the profit attributable on the total unrecorded sales consideration which alone can be subject to income tax.

CIT v. Hariram Bhambhani (Bom.)(HC) source : www.itatonline.org

TRIBUNALS

3. S. 45 : Capital Gain – Business income – Transaction within less than 30 days – Holding period is only one of the factors to be considered, but not the only factor that would decide the nature of transaction

The assessee is an individual, declared short term capital gain of ₹ 5,19,057/- and long-term capital gain of ₹ 8,19,486/- out of purchase and sale of shares. The AO assessed the entire amount of short term capital gain of ₹ 5,19,057/- as business income on the reasoning that the volume of transactions of purchase and sale are huge and the shares have been held for shorter period of less than 30 days. In the appellate proceedings, the learned CIT(A) noticed that the assessee has

applied shares under Initial Public Offer (IPO) and upon allotment of shares, he has sold them. The profit earned to the extent of ₹ 1,37,751/- was accepted by the learned CIT(A) as short-term capital gain, profit of ₹ 23,914/- out of intraday transactions was assessed as business profits. Out of the remaining amount of profit, the learned CIT(A) noticed that a sum of ₹ 2,29,311/- was earned out of transactions of shares held for less than 30 days. The learned CIT(A) held that the same is to be considered as business income. The Hon'ble ITAT held that it is a settled proposition that the question, whether the nature of transaction falls in the category of business activity or investment activity would depend upon the facts and circumstances of each case. It is also well settled proposition that a person can act both as trader and investor in respect of share transactions. The intention of the assessee at the time of purchase of shares is more relevant here. If the intention of the assessee was not clear, then have to apply the various criteria listed out by the Courts as well as by the CBDT in its circular to the activities of the assessee and based upon that, the question as to whether the assessee was an investor or trader is required to be answered. In the instant case, the assessee has purchased shares through IPO also, which activity is normally carried on by the Investors only, because normally, the mind of a trader would not accept the long waiting period for allotment of shares under IPO. Further the learned CIT(A) was guided by a single fact that the profit to the extent of ₹ 2,29,311/- was earned out of share transactions, where the holding period was less than 30 days. The holding period is only one of the factors to be considered, but not, the only factor that would decide the nature of transaction. The A.O. has accepted the assessee as an Investor and accordingly assessed the Capital gain arising on sale of shares in previous years. Further, it is noticed that the assessee has also applied shares in IPO and the shares allotted have been sold, which activity is normally carried out by Investors. The assessee does not have any borrowings and his own capital is available to the extent of ₹ 10.05 crores. The investment pattern shows that the assessee is making investments in safer zone only, since the investment in shares constitutes a miniscule portion of his capital, whereas the investment in Bonds and Mutual fund is to the extent of 70% of his capital. Hence, the assessee should be considered as Investor only and not as trader. (A.Y. 2007-08)

Mukund N. Shah vs. Addl. CIT (I.T.A. No. 5428/Mum/2011) dtd. 5-1-2015

4. S. 54EC : Property introduced by a partner into firm – Asset of the firm – Depreciable asset – investment in s. 54EC bonds is made in the names of the partners, the firm is eligible for exemption

S. 239 of the Indian Contract Act and s. 14 of the Indian Partnership Act, for the purpose of bringing the

separate properties of a partner into the stock of the firm it is not necessary to have recourse to any written document at all, that as soon as a partner intends that his separate properties should become partnership properties and they are treated as such, then by virtue of the provisions of the Contract Act and the Partnership Act, the properties become the properties of the firm and that this result is not prohibited by any provision in the Transfer of Property Act or the Indian Registration Act. The legal position, therefore, appears to be that no written or registered document is necessary for an individual to contribute any land or immovable property as a contribution against his share of the capital of a new partnership business. Consequently, the capital gain on sale of the property is assessable in the hands of the firm.

The firm is eligible for exemption u/s. 54EC for the investment made by two partners in their individual names, the assessee firm was on 2-4-2008 and before the dissolution the professional assets i.e. hospital building and land were sold out. As per the well settled law, partnership is not a legal entity in strict sense and in all the movable and immovable assets which are held by the partnership, there is an interest of every partner though not specifically defined in terms of their shares. On perusal of the language used in Sec. 54EC, it is provided that the assessee has to make the investment within a period of six months in the notified securities after the date of transfer of capital asset. The words used in Sec. 54EC are – “the assessee has invested the whole or any part of capital gains in the long-term specified asset”. The property which was sold out, it was property of the assessee firm and hence, the capital gain is taxable in the hands of the assessee firm. At the same time even though the bonds are purchased on the names of the two partners, it can be said that irrespective of the way, how the sale consideration was credited to the bank accounts of two partners, but the benefit of Sec. 54EC cannot be deprived to the assessee firm. As admittedly, even on the dissolution of the firm the assessee as a partner has a right to get back their capital as per the final valuation done on the date of dissolution or otherwise.

The assessee firm has claimed depreciation on the hospital building and hence, Sec. 50 is applicable. In terms of Sec. 50 whatever Capital Gain is worked out on the depreciable asset then the same is treated as Short Term Capital Gain. The next question is whether the assessee firm can claim the benefit of Sec. 54EC which is specified for the benefit of Long Term Capital Gain. This issue is decided in favour of the assessee by the Hon'ble High Court of Bombay in the case ACE Builders (P) Ltd. 281 ITR 210. even though the assessee firm has claimed the depreciation on the hospital building but benefit of Sec. 54EC can be given following the legal principles laid down by the Hon'ble Bombay High Court in the case of ACE Builders (P) Ltd.

M/s. Chakrabarty Medical Centre v. TRO (ITAT-Pune) ITA No. 2277/Pn/ 2012 dtd. 30-1-2015



INDIRECT TAXES

SALES TAX

D. H. Joshi, Advocate

1. Advance Ruling on “Electronic Yarn Clearer”

The authority for clarification and advance ruling vide its Order No. ACAAR No. 006 / 2012-13 (Acts Cell-II/7371/2014 dated 5-12-2014) gave the following clarification sought for review in respect of rate of tax on “Electronic Yarn Clearer”. Finally it is re-clarified as detailed below:

“The Electronic Yarn Clearer, though normally taxable @14.5% under residual entry 69 of Part C of the 1st Schedule of the TNVAT Act, 2006, as clarified earlier vide the proceedings of the authority dated 5-10-2013 is liable to tax at the reduced rate of 5% as integral part of Automatic Cone Winding Machine-Autoconer, the textile machinery, under Entry in Sl. No. 23 in the list of goods notified as taxable at the reduced rate of 5% under Notification No. II(1) CTR / 12 (R-20) / 2011 – G.O. No. 78, CT & R (82) Department dated 11-7-2011.”

Source: 2014-15 (20) TNCTJ P. 266 to 272.

2. Capital Goods – Plant and Machinery

U/s. 2(f) of the Delhi VAT Act, 2005, capital goods i.e. plant and machinery whether restricted only to mechanical processes or apparatus? Held, “No” by the Delhi HC. According to High Court, plant would include any article or object fixed or movable, live or dead, used by businessman for carrying on his business and it was not necessarily confined to an apparatus which was used for mechanical operations or processes or was employed in mechanical or industrial business. However, in order to qualify as plant, the article must have some degree have durability. The test to be applied for such determination was: Did the article fulfil the function of a plant in the assessee’s trading activity? Was it a tool of his trade with which he carries on his business? If answer was in affirmative, it would be plant.

2. Another point decided was sale of used motor vehicle and cars by the appellants in business of manufacture and trader in goods, other than motor vehicles, whether turnover of such vehicles liable to be included in sale price for the purpose of levy of VAT. Held, in the negative.

Meena Bazar & Ors. v. Commissioner of Trade and Taxes, New Delhi (2015) 50 PHT 153 (Del.)

3. Central Excise Duty whether part of turnover under CST Act, 1956

Central Excise duty paid by petitioner would form part of the turnover. And, therefore, liable to sales tax on turnover which would include Central Excise Duty.

Dealer disputed the liability to pay sales tax on Central Excise duty component. At no point of time such liability was admitted by dealer. Therefore, it was a case where dealer bonafidely disputed the liability to pay Central Excise and, therefore, did not admit liability to pay tax on excise duty. In the factual circumstances, Revenue was only entitled for interest u/s. 8(1B) of the Act and not u/s. 8(1) of the CST Act, 1956.

Indian Oil Corporation Ltd. v. CTT, U.P. (2015) 23 KTR 98 (All)

4. Circular issued by the C.C.T.

Circular No. 54 / 2014 dated 14-11-2014 has been issued by the O/o Principal Secretary / Commissioner of Commercial Taxes, Chennai – 600 005 concerning the provisions pertaining to works contract tax deduction and issue of Form ‘S’ under the Tamil Nadu VAT Act / Rules 2007, which runs into nearly 36 pages. The circular being very important may be read in detail.

Source: 2014-15 (20) TNCTJ Pp. 229 to 265

5. Declaration Forms ‘C’ and ‘E-1’ under the CST Act

Applying decisions in *Gujarat Ambuja Cement (2005) 7 STJ 565 (SC)*, *BHEL (2005) 5 STJ 383 (M.P)* and *Punjab Star Industries (2007) 11 STJ 576 (MP-Bd)*, Appellate Board allowed the appellant to submit ‘C’ and ‘E-1’ forms which could not be submitted till First Appeal and photocopies of which were produced before the appellate board. Case was remanded to assessing authority to accept said declarations after required verification.

M.D. Engineering, Indore v. Commissioner, C.T., M.P. (2015) 26 STJ 191 (MP-Bd).

6. Ex-parte appeal orders and no communication of IT

In this case, decided by the Tribunal, it was held that the Appellate Authority was competent to decide the case ex-parte or passed any other order as it deemed fit and it was not under any obligation to communicate the order passed by it. Rule 59(9) PGHT Rules, 1949, moreover, impliedly conveyed that the party if wanted the copy of the order, then on application, the same could be supplied free of cost to the dealer i.e. the appellant.

Sharma Engg. Works v. State of Punjab (2015) 50 PHT 194 (PVT)

7. Input Tax Credit

Use of coke in the process of manufacturing pig iron – whether benefit of input tax credit could be allowed? Held, in the negative as petitioner have had not dealt in and carried on business of coke – West Bengal Value Added Tax Act, 2003, Sections 2(5), 2(11), 22(4), 22(12), Negative list item No. 12(2).

2. Reasons: Coke is a brittle grayish – black porous solid consisting of the residue of carbon and ash after destructive distillation, most commonly used as smokeless fuel. Coke directly derived from coal is primarily used as fuel. In terms of provision of sub-section 4 of section 22, the input tax credit or input tax rebate shall be allowed to the extent of the amount of the tax paid or payable by the purchasing dealer on his purchase of taxable goods, other than such taxable goods as specified in the negative list appended to this section. Unlike coal, use of coke as raw material will not entitle the petitioner to have the benefit of input-tax credit. Coke being fuel comes in the negative list, irrespective of its use. It is true that the word ‘Coke’ has not been specifically incorporated in the negative list. However, fuel does come in the negative list. Coke as a fuel, thus, to be treated in the negative list.

KIC Metaliks Ltd. v. STO, Bureau of Investigation & Ors. (2015) 65 S.T.A. 37 (W.B.T.T.)

8. Pre-deposit – Time barred assessment

A. In this case, under the PVAT Act, 2005 u/s. 62(5), whether the question was pre-deposit was essential where time barred assessment was challenged? Assessee for A.Y. 2005-06 filed its return on 20-11-2006, which was liable to be assessed by 20-11-2009. Assessment however was framed on 30-7-2010 creating demand against the assessee. Assessee filed appeal before DETC (A), who refused to entertain without pre-deposit of 25% of the amount for hearing on merit. The decision of the DETC(A) was challenged before the Tribunal. In the course of hearing, the Tribunal after going through the judgment of National Sales Corporation (2012) 42 PHT 371 (P&H), noticed that the appeal was dismissed in limine without deciding the effect of the assessment, which was apparently time barred. Whereas, the judgment passed in M/s Malwa Cotton Spinning Mills Ltd. (2010) 35 PHT 582 (P&H) was applicable to the facts of the present case. In the circumstances, the appeal was accepted impugned Order was set aside and the assessing authority was directed to decide the appeal afresh without calling deposit of 25% of the amount of tax, penalty and interest. Accordingly, the appeal was allowed.

Samrat Plywood Ltd. v. State of Punjab (2015) 50 PHT 187 (PVT)

B. Pre-deposit

When the demand raised by the Dept. was apparently perverse and void, then, u/s. 62(5) deposit of 25% of additional demand would seriously act as a detriment

to the rights of the appellant which he wanted to be legitimately decided by the Appellate Authority. Therefore, Appellate Authority should take note of the fact while directing the deposit of 25% of the additional demand, if the orders was perverse or void *ab initio* or the case was quite arguable. The authority should not press for deposit because such order if passed would land the party into harassment.

Sunil Flour Mills v. State of Punjab (2015) 50 PHT 199 (PVT)

9. Words and phrases – “Tax Due”

“Tax Due” in section 27(1) of Delhi Sales Tax Act, 1975 was to be read in relation to the provisions of section 21(3) i.e. furnishing of a return. Tax which was set to be due u/s. 27(1) of the Act must be the tax due “according to a return”. If no return was filed, then, there could be no “tax due” within the meaning of section 27(1) r/w section 21(3) of the Act. The tax which was ultimately assessed was the tax which became due on assessment and if the tax so assessed was not paid even after the demand was raised, then, the dealer was deemed to be in default and liable to pay interest u/s 27(2) of the Act. But till such tax was assessed, no interest could be levied on such a dealer, who had not filed a return u/s. 27(1) of the Act.

Pure Drinks (New Delhi) Ltd. v. The Members Sales Tax Tribunal (2015) 50 PHT 169 (Del.)

10. Works Contract

Appellant undertaking construction through Registered sub-contractor. Materials supplied by the appellant free of cost. Appellant selling furnished apartments to prospective buyers by execution of ‘sale deeds’. Levy of tax on estimated sales based on turnover of purchase price plus gross profit. Buyers making payment in installments as set out in the agreement. Agreement entered into before construction was complete. Meantime, Commissioner clarifying that the transaction of appellant amounted to “works contract” and that materials were taxable on its “Transfer value”. Held, it was proper subject to section 62. The clarification of Commissioner was final and binding on the appellant. Appeal filed against clarification, was therefore, had no basis in the light of Raheja case (2005) 141 STC 298 SC. Raheja laid down the correct law and the same was affirmed in *L & T Ltd. case (2014) 22 KTR 1 (SC)*. Facts indicated that before sale took place, advance received by the appellant and subsequent payments were also made before the construction. Transaction of the appellant was therefore, nothing but “works contract” and not sale of flats simpliciter. Appellant came within the definition of ‘dealer’. Applied sections 2(xv), 2(Iv), 25 and 94 of Kerala VAT Act, 2003 r/w Rules 11(2)(B) and Article 366(29A) of Constitution of India.

DLF Home Developers v. State of Kerala (2015) 23 KTR 78 (Tri.)



LIST OF PUBLICATION AVAILABLE FOR SALE

Name of Publication	Edition	Rates		
		Members	Non Members	Courier Charges
Basic questions and answers on FEMA, Non-Resident Taxation, LLP, Allied Laws & Report of Foreign Bank and Financial Accounts	Dec., 2014	200.00	225.00	60.00

- Notes: 1. The above publications are available for sale; those who desire to buy may contact the office of the Federation.
2. Local/Outstation members not collecting from office are requested to add courier charges, as mentioned above.
3. Please draw Cheque/Draft in favour of "All India Federation of Tax Practitioners" payable at Mumbai.

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(W.e.f. 15th July, 2013)**

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2.	Ordinary half page	₹ 2,500/-
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5.	Fourth cover page	₹ 10,000/-

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as on 26-2-2015
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	Associate	Individual	Association	Corporate	Total
Central	0	804	23	3	830
Eastern	3	1172	35	3	1213
Northern	0	965	17	0	982
Southern	1	910	14	7	932
Western	4	1752	33	18	1807
Total	8	5602	122	31	5764

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