

All India Federation of Tax Practitioners



# AIFTPT TIMES

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FORTHCOMING PROGRAMMES	Date & Month	Programme	Place
	5,19-12-2015; 16,30-1-2015; 6,20-2-2016; 5,18-3-2016; 2,16,30-4-2016	Workshop on MVAT Act	Mumbai
	19, 20-12-2015	Interactive Residential Conference	Palghar
	25-12-2015	Last National Executive Committee Meeting for 2014 & 2015	Hyderabad
	25-12-2015	Ordinary General Body Meeting	Hyderabad
	25-12-2015	First National Executive Committee Meeting for 2016 & 2017	Hyderabad
	26, 27-12-2015	18th National Convention 2015	Hyderabad
	8, 9-1-2016	TAXCON 2015	Mumbai



We wish all our members and readers  
**Merry Christmas and Happy New Year**



**STOP PRESS**

**MANN KI BAAT** in a bid to give a push to the stalled GST Bill, PM Modi reached out to the Opposition and tried to assuage concerns over intolerance. He later met Sonia Gandhi and Manmohan Singh to break the ice, raising hopes of a deal on the key reform Bill

## A Teaspoon of Vigour for GST as Modi, Sonia Have Charcha



Congress will discuss the issue within the party and get back... two sides may establish fresh contact soon  
**Arun Jaitley, Finance Minister**

We have our differences but we want the GST Bill to be passed. We want to put a cap on tax.  
**Rahul Gandhi, Congress Vice-President**

### ITAT has no power to stay tax prosecutions: Punjab & Haryana HC

The Punjab and Haryana High Court has said the Income Tax Appellate Tribunal (ITAT) doesn't have the power to stay tax prosecutions. It was hearing a case involving Jindal Steel & Power (JSPL).

[Courtesy: Economic Times, dt. 28-11-2015]

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

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

## HUMBLE APPEAL – ELECTIONS

God almighty has given you good senses to become a life member of the unique and prestigious All India Federation of Tax Practitioners, Mumbai, and has provided you an opportunity to serve the tax fraternity. Elections to the National and Zonal Committees are being held for the term 2016-2017 under the leadership of the Past-President and Founder Secretary General, Shri P. C. Joshi and others. Avail of this golden opportunity.

Dr. K. Shivaram, late Shri V. Ramachandran and Shri Bharat Ji Agrawal, Senior Advocates and eminent in the profession served as Presidents of this great institution for three / two years, though are awfully busy in their profession, but having seeds to serve fellow brethren. Now the tenure continues to be for two years commencing from January, 2016, but the President's tenure would be only one year, which is inadequate as the Federation's membership is around 6,000 spread in over 22 States of great India. Hence the incoming president would have to be on the toe for all the 365 days, in managing the activities, expanding membership, enhancing its stature and building it as the best at the national level. It would be possible, only if like minded and large hearted persons, with seeds to serve, intention to devote sufficient time and energy following past conventions. Come forward at the ensuing elections.

I suggest those who are awfully busy or have no time or inclination to actively associate with the activities of the Federation, not to contest in the election and spoil a seat meant for a social server.

I humbly appeal all such life members to take over and materialise dream of the founders and past presidents. I also appeal the incoming executive to give due respect to those who have assisted and built up the Federation, brick by brick.

With Best Wishes & Diwali Greetings.

Jaipur,  
11-11-2015

**N. M. RANKA**  
*Senior Advocate*

## ACTIVITY REPORT OF AIFTP (CZ)

One day tax conference has been organised on occasion of Federation Day at Hotel Niki International, Ratanada, Jodhpur (Raj.) on 21st November 2015. Conference was inaugurated by Chief Guest Shri K. L. Goyal, IRS, Ex-Commissioner, Central Excise & Custom and Guest of Honour Shri Pokar Ram Jakhar, Appellate Authority, Commercial Taxes Department, Jodhpur & Shri Ranjeet Joshi, President, Rajasthan High Court Advocates Association, Jodhpur.

Welcome address by Shri P.M. Chopra, Conference Chairman and Member G.S.T. Committee and Dr. S. L. Jain, Chairman spoke about activities of AIFTP and need of Federation in the present scenario.

After that welcome of Shri Ravi Holani, FCA, Ex-Central Council Member, Gwalior, and Shri J.R. Lohiya, Ex-Member, Rajasthan Tax Board by garlanding.

Shri K. L. Goyal addressed on upcoming GST and Scope of Advocates & Chartered Accountants under GST.

Shri Ravi Holani addressed that how to handle with departmental proceedings in service tax & practical difficulties.

Dr. S. L. Jain delivered speech on provisions of Capital Gain & TDS under the Income Tax Act.

Shri J. R. Lohiya delivered speech on Spot VAT Audit u/s. 27 by Commercial Taxes Department & Burning Problems under VAT.

Shri D. R. Bohra delivered speech, which documents should be kept at the time of Spot Vat Audit.

Shri P. M. Chopra delivered speech on problems regarding Export Refund, Tax Exemption (Entitlement) of KVIC Units, Late Fees, Hard Copy etc.

The Technical Chairman of Session was Shri Sumer Patwa and Co-Chairman Shri Suresh Ojha.

After that mementos were presented to Hon'ble Chief Guest, Guest of Honours and the speakers followed by vote of thanks by Shri T. L. Jain, Joint Secretary.

This conference was covered by electronic media & published in various newspapers. This conference was attended & participated by the delegates from Jalore, Barmer, Sumerpur, Pali, Jaipur, Nagaur, Bikaner, Makrana, Delhi, Gwalior & many other places and by the representatives of Trade, Industries, Chamber & Laghu Udyog Bharti.

Programme was concluded by National Anthem.

**Dr. S. L. Jain**  
*Chairman*  
9351451866

**P. M. Chopra**  
*Conf. Chairman*  
93144-20004

**T. L. Jain**  
*Jt. Secretary*  
9414294803

**Ashok Jangid**  
*Treasurer*  
9829030166

## REPORT OF FOUNDATION DAY CELEBRATIONS MEETING AIFTP (SZ), THIRUVANANTHAPURAM

By A. Retnakumar

AIFTP Foundation Day celebrations was held at Thiruvananthapuram on 20-11-2015 at Kallarackkal Hall, Trivandrum Tennis Club, Thiruvananthapuram, at 6 p.m.

Our Vice President Shri M. Srinivasa Rao was kind enough to join us in the celebrations.

Meeting started with a silent prayer.

CA. Ramakrishnan H. welcomed the participants.

CA. Hari C. spoke about the Federation, its formation and its activities and with special reference to Thiruvananthapuram area activities.

Special Cake was cut to mark the occasion, led by Vice President Shri Srinivasa Rao, Vice Chairman, Kerala Shri Bala Gopal and CA. Shivraman, the first Member in Thiruvananthapuram.

Mr. Srinivasa Rao spoke about the Recent Developments in AIFTP.

He informed the members about the National Convention at Hyderabad. Brochures were also distributed. He requested the members to attend the convention which is to take place on 26-12-2015 & 27-12-2015 in large numbers and to reap the benefits.

CA. Bala Gopal and CA Jose Zachariah, chairman, TVM branch of ICAI, also spoke on the occasion.

CA. Rema N. proposed vote of thanks.

Three more applications have been received for Membership.

## 18TH NATIONAL CONVENTION AT HYDERABAD

*Organised by*

**ALL INDIA FEDERATION OF TAX PRACTITIONERS**

*Jointly with*

**TELANGANA TAX PRACTITIONERS ASSOCIATION, THE ANDHRA PRADESH SALES TAX BAR ASSOCIATION  
AND**

**AP TAX PRACTITIONERS AND CONSULTANTS ASSOCIATION**

**Venue : Jalavihar, Necklace Road, Hyderabad**

**Dates : 26th and 27th December, 2015**

**Theme : Learn More for More Matured Contentment**

### PROGRAMME

#### 26TH DECEMBER, 2015 (SATURDAY)

8.30 am to 10.00 am	Registration, fellowship & breakfast
10.00 am to 11.30 am	Inaugural Session
	Chief Guest : Hon'ble Union Minister for Finance Mr. Arun Jaitley*
11.30 am to 11.45 am	Tea break
11.45 am to 1.15 pm	GST : Issues and Updates
	Chairman : Mr. V. Bhaskar, IAS (Retd.), Former Special Chief Secretary (Finance), Govt. of AP & Joint Secretary 13th Finance Commission
	Speaker : Mr. Prashant Raizada, Partner, Indirect Taxes, BDO LLP, Gurgaon, Haryana
1.15 pm to 2 pm	Lunch
2.00 pm to 3.30 pm	Income Tax : Controversies in Direct Taxes
	Chairman : Mr. N. M. Ranka, Senior Advocate, Jaipur
	Speaker : Mr. Ajay Vohra, Senior Advocate, New Delhi
3.30 pm to 3.45 pm	Tea break
3.45 pm to 5.15 pm	Service Tax : Import and Export of Service – The Place of Provision of Services Rules, 2012
	Chairperson : Smt. Prem Lata Bansal, Senior Advocate, New Delhi
	Speaker : Mr. K. Vaitheeswaran, Advocate, Chennai

\* Subject to confirmation

**27TH DECEMBER, 2015 (SUNDAY)**

9.00 am to 10.00 am	Breakfast	
10.00 am to 11.30 am	CST	: Inter-State Works Contract
	Chairman	: Mr. M. L. Patodi, Advocate, Kota, Rajasthan
	Speaker	: Mr. H. C. Bhatia, Advocate, New Delhi
11.30 am to 11.45 am	Tea Break	
11.45 am to 1.15 pm	Company Law	
	Chairman	: Hon'ble Mr. Justice Challa Kodandaram, Judge, Telangana & Andhra Pradesh High Court
	Speaker	: CSD Hanumantha Raju, Hyderabad
1.15 pm to 2.00 pm	Lunch	
2.00 pm to 3.30 pm	Labour Laws	: Contract Labour
	Chairman	: Mr. C. Niranjana Rao, Advocate, Hyderabad
	Speaker	: Mr. K. S. Anand, Management Consultant, Hyderabad
3.30 pm to 3.45 pm	Tea break	
3.45 pm to 5.15 pm	Interaction on VAT	
	Chairman	: Mr. K. Raji Reddy, Advocate, Hyderabad Mr. N. Srinivasa Rao, DC (CT) Vijayanagaram, AP Mr. S. Dwarakanath, Advocate, Hyderabad

**Fee and Charges**

S. No.	Particulars	
01	For Members	₹ 2,500 (Fee Rupees 300 + Rupees 2,200 for Food and Kit)
02	Accompanying Spouse	₹ 1,500 (Charges for Food)
	Cheque/DD in favour of 'All India Federation of Tax Practitioners' payable at Hyderabad	

**For hotel accommodation please contact:**

1. Mr. V. Nagendra Prasad, NEC Member, AIFTP, Mob: 09246367913, e-mail: vnprasadtax@yahoo.com
2. Mr. D. Amarnath, MC Member AIFTP-SZ, Mob: 09440470185, e-mail: dasoju\_amar@yahoo.co.in

**National Convention Committee**

**Mr. P. V. Subba Rao**  
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**CA Harish N. Motiwalla**  
Secretary General, AIFTP

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National President, AIFTP

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Secretary, ATPCA  
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## TAXCON 2015

### Theme : “Conflicts and Convergence in Tax Laws”

Due to unavoidable circumstances, the TAXCON 2015 has been postponed to 8th & 9th January 2016, a unique joint endeavour of all leading Associations of Tax Professionals of Mumbai and Western India. This joint effort of **AIFTP (WZ), BCAS, CTC, STPAM and WIRC of ICAI** is a symbol of spirit of comradeship amongst all Five Associations and aims at showcasing a seminar with unique features and topics, which are of interest to all tax practitioners, whether practising direct taxes or indirect taxes, and gives a not-to-miss opportunity to all concerned.

The details are as under:-

<b>Days &amp; Dates</b>	: Friday & Saturday, 8th & 9th January, 2016
<b>Time</b>	: 10 a.m. to 6.00 p.m. (Friday); 9.30 a.m. to 4.30 p.m. (Saturday)
<b>Venue</b>	: Khimji Kunverji Vikamsey Auditorium, ICAI Towers, Gr. Floor, G Block, Next to Standard Chartered Bank, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051
<b>Fees</b>	: ₹ 2,950/- (inclusive of Conference Materials, breakfast, lunch and tea on both days)

<b>PROGRAMME SCHEDULE</b>	
<b>Friday, 8th January, 2016</b>	
<b>Inauguration and Keynote Address: Eminent Personality</b>	
Subjects	Faculties
<b>Sale, Service or Works Contract (Inclusive EPC Contracts)</b>	
i) Service Tax & VAT	CA. Sunil Gabhawalla, Mumbai
ii) Income Tax	Eminent Faculty
<b>Update on GST</b>	Shri Dilip Dixit, Pune
<b>Intricate issues of Business Restructuring</b>	
i) Income Tax	CA. Anup Shah, Mumbai
ii) VAT & Service Tax	Eminent Faculty
<b>Saturday, 9th January, 2016</b>	
<b>ICDS - Unsettling Settled Laws?</b>	CA. Pinakin D. Desai, Mumbai
<b>Panel Discussion – Controversies in Real Estate Transactions</b>	
Moderator	CA. Yogesh Thar, Mumbai
Panellists –	Eminent Faculty
i) Income Tax	Shri P. C. Joshi, Adv., Mumbai
ii) VAT	Shri Shailesh Sheth, Adv., Mumbai
iii) Service Tax	
<b>Brains' Trust Session</b>	
Trustees -	
i) Income Tax	Shri Hiro Rai, Adv., Mumbai
ii) Service Tax	Shri Vikram Nankani, Sr. Adv., Mumbai*
iii) VAT	Shri Vinayak Patkar, Adv., Mumbai

\* Subject to confirmation

Please send your enrolment along with a cheque / demand draft of ₹ 2,950/- in favour of “**All India Federation of Tax Practitioners – Western Zone**”.

- Note:-
- 1) Only 250 participants will be enrolled on first come first served basis.
  - 2) Delegates are requested to send queries for Brains' Trust / Technical sessions by 21st December, 2015 by email at [taxcon2015@yahoo.in](mailto:taxcon2015@yahoo.in)

<b>Chairman: Kishor Vanjara</b> (Mob.: 9820186480)	<b>CONFERENCE COMMITTEE</b> <b>Co-Chairman: Deepak R. Shah</b> (Mob.: 9820148536)	<b>Convenor: Ashok Manghnani</b> (Mob.: 9820395195)
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#### Members

Harsh Bajaj, Narayan Pasari, Nikita R. Badheka, Parimal Parikh, Pradip Kapadia,  
Pranay H. Marfatia, Shardul Shah

## WORKSHOP ON MVAT ACT, SERVICE TAX & ALLIED LAWS Jointly with BCAS, CTC, MCTC, STPAM and WIRC OF ICAI

We are happy to announce “Workshop on MVAT Act, Service Tax & Allied Laws” jointly with CTC, BCAS, , MCTC, STPAM, and WIRC of ICAI to be held from 5th Dec, 2015 to 30th April, 2016.

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.

- Day & Date** : Saturdays  
**Timing** : For Single Lecture Time - 2.30 pm to 5.30 pm & for Two Lectures Time – 2.00 pm. to 5.30 pm  
**Venue** : STPAM Library Hall, 1st Floor, R. No. 104, Vikrikar Bhavan, Mazgaon, Mumbai-400 010.  
**Delegates Fees** : Members ₹ 2,280/- (incl. of Service Tax), for the members of AIFTP (WZ), BCAS, CTC, MCTC, STPAM, WIRC of ICAI,  
 Non-Member ₹ 2,850/- (incl. of Service Tax)  
 (The fees includes cost of Service Tax, Study Material if any, Refreshments)

Enrolment will be made on first-come-first-serve basis.

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

Interested Members may download the “Form” from AIFTP’s website [www.aiftponline.org](http://www.aiftponline.org) or may collect it from The AIFTP’s office and send it along with the cheque in favour of “All India Federation of Tax Practitioners-Western Zone”. Outstation members are requested to send the DD/At Par cheque.

Day & Dates (Saturdays)	Subject	Speakers
5-12-2015	Issues in Refunds, Audits, Assessments under MVAT and CST Acts	Mr C. B. Thakar, Adv
19-12-2015	Issues in Taxation of Builders and Developers under MVAT Act	Mr Deepak Bapat, Adv
	Issues in Taxation of Builders and Developers under Service Tax	CA. Manish Gadia
16-1-2016	Issues in Input Tax Credit w.r.t. Rules 53 and 54 under MVAT Act	CA. Kiran Garkar
30-1-2016	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
6-2-2016	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
20-2-2016	Issues in Branch Transfers, Sales in Transit and High Seas Sales under CST Act	CA. Rajat Talati
5-3-2016	Issues in Interest, Penalties and Show Cause Notices under MVAT and CST Acts	Mr. Ashvin Acharya, Adv
	Drafting of appeal under MVAT/ CST	CA. Jayesh Gogri
19-3-2016	Issues in Definition of Services, Exempt & Declared Services	CA. Sunil Gabhawalla
	Issues in Valuation of Services, Abatement & Reverse Charge Mechanism	CA. Ashit Shah
2-4-2016	Issues in Place of Provision of Service Rules, 2012	CA. Girish Raman
	Issues in Point of Taxation Rules, 2011	CA. Rajiv Luthia
16-4-2016	Issues in CENVAT Credit Rules under Service Tax	CA. Naresh Sheth
30-4-2016	Constitutional Amendments & Overview of GST Act	Eminent Speaker
	Inter-State Transactions under GST	Eminent Speaker

## TWO DAYS INTERACTIVE RESIDENTIAL CONFERENCE WITH DIFFERENT PROFESSIONALS ON LAW APPLICABLE TO REAL ESTATE AND REDEVELOPMENT

All India Federation of Tax Practitioners (WZ) jointly with The Chamber of Tax Consultants and J. B. Nagar CPE Study Circle of WIRC of ICAI has organised “Two Days Interactive Conference with Different Professionals on Real Estate & Redevelopment.”

### About Conference

**Objective :** Real Estate and Redevelopment is one of the areas where number of allied laws including the Direct and Indirect laws are applicable.

Shelter is a basic human need, which has become a major challenge in the country, which is fast urbanising. In such situations Redevelopment proves to be a win-win situation. With the property rates appreciating day by day and availability of open plot getting scarce, builders today are looking at redevelopment of housing societies and unlocking the potential of unused FSI. This residential refresher course aims to give the participants a clear picture of the different aspects involved in the Real Estate Development including redevelopment.

<b>DAYS 1-2</b>	
<b>Days, Dates &amp; Times</b>	: Saturday, 19th December, 2015, 10.30 a.m. to 5.00 p.m. Sunday, 20th December, 2015, 8.30 a.m. to 6.00 p.m.
<b>Venue</b>	: Silent Hill Resort, National Highway No. 8, Vaitarna River Bridge, Manor, Palghar-401 403. Tel.: 077-09004680/4679
<b>Fees</b>	₹ 6,000/- for Members (AIFTP (WZ), CTC, JBNSC) ₹ 7,000/- for Non Members (Fees include Stay on Twin Sharing basis, All Meals, Course Material and Service Tax)

### SATURDAY, 19-12-2015

	<b>Speakers</b>
Inauguration & Keynote Address	Eminent Faculty
<b>Session I</b>	
<b>Overview of Laws relating to Real Estate Development</b> Maharashtra Ownership Flat Act, 1963. Maharashtra Housing Area and Development Authority, 1976 Maharashtra Apartment Ownership Act, 1970 Slum Rehabilitation Act, 1995 Land Acquisition Act – Recent Trends Consumer Laws – Immovable Property Transfer of Property Act, 1882	Shri Sanjay Buch, Advocate & Solicitor
<b>Session II</b>	
<b>Indirect Tax</b> <b>Service Tax on Construction Industry (Issues and Controversy)</b>	CA. Rajiv Luthia

### SUNDAY 20-12-2015

<b>Session III</b>	
<b>a. Direct Tax (Issues and Controversies) on Real Estate</b> <ol style="list-style-type: none"> <li>i. Redevelopment Tax implications on (Tenant, Ownership, CHS)</li> <li>ii. Taxation of Joint Venture</li> <li>iii. Taxation about the builders</li> </ol>	<b>Chairman</b> Shri K. Gopal, Advocate Shri Ajay Singh, Advocate

<b>Session IV</b>	
<p><b>Issues arising while drafting Deeds and Documents such as</b></p> <p>a. Conveyance                      b. Deemed Conveyance                      c. Development Agreement, Joint venture agreements                      d. Power of Attorney                      e. Agreement for Sale                      f. Permanent Alternative Accommodation                      g. Mortgage deed</p> <p>Stamp duty, Registration with special reference to above documents related to real estate.</p>	<p><b>Chairman -</b>                      Shri Pravin Veera,                      Advocate &amp; Solicitor</p> <p>Shri Nirav Jani, Advocate and Solicitor</p>

<b>Session V</b>	
<p><b>Indirect Tax (Issues and Controversy)</b></p> <p><b>MVAT -</b></p> <ul style="list-style-type: none"> <li>- Flat Owners</li> <li>- Land owners</li> <li>- Housing Societies</li> <li>- Developers</li> <li>- Contractors</li> </ul>	<p>CA. Deepak Thakkar</p>

<b>Session VI</b>	
<p>Funding arrangements for Real Estate Development for developers &amp; Self Redevelopment process and procedure including funding options, REIT</p>	<p>CA Sunil Goyal</p>
<p><b>Brains' Trust – Panel Discussion with some Specific Issues</b>                      (Direct Taxes, Indirect Tax, Drafting of Documents)</p>	<p><b>Moderator</b>                      Shri Vipul Joshi, Advocate &amp; Past President</p> <p><b>Panellist</b></p> <p><b>Legal Documents</b>                      Shri K.K. Ramani,                      Advocate &amp; Past President</p> <p><b>Direct Taxes</b>                      Shri K. Gopal,                      Advocate &amp; Past President</p> <p><b>Indirect Taxes</b>                      CA. Deepak Thakkar</p>

**Takeaway :** The participants will be able to gain clear understanding of the various aspects like regulations, process, related agencies and tax implications among others of Real Estate Development and Redevelopment of housing societies.

**Note :**

1. Conference will commence at 10.30 a.m. on Saturday, 19th December, 2015 and end by 5.30 p.m. (after High Tea) on Sunday, 20th December, 2015.
2. Participants have to make their own arrangement for reaching Silent Hill Resort, National Highway No. 8, Vaitarna River Bridge, Manor, Palghar, Maharashtra 401403. Tel.: 077090 04680
3. In case of cancellation, no refund request shall be entertained, except under genuine unavoidable circumstances, subject to approval of the committee.
4. Check-in time at Silent Hill Resort : Saturday, 19th December, 2015 at 12.00 noon (Early Check-in can be availed on request)
5. Check-out time: Sunday, 20th December, 2015 at 10.00 a.m. We have arranged suitable arrangements for Water Sports.
6. Delegates fees include course materials, stay on twin sharing basis, all meals, use of rides in water park.

**Please send the Cheque / DD in favour of “All India Federation of Tax Practitioners-Western Zone”. (Outstation members are requested to make the payment by At par Cheque / Demand Draft only). For enrollment and any conference related inquiries, please contact Mr. Vipul Joshi, Chairman on 9820045569.**



## DIRECT TAXES

Ms. Neelam Jadhav, Advocate  
KSA Legal Chambers

### HIGH COURT

**1. S. 32 : Depreciation : Even assets installed in a discontinued business are eligible for depreciation as part of 'block of assets' (r.w.s. 43(6))**

The assessee claimed depreciation in respect of its machinery which was used in its business of refining edible oil. The machinery had not been used during the assessment year as the respondent had discontinued its business of refining edible oil. The depreciation was claimed on the block of assets on the written down value including the refining edible oil machinery. The AO disallowed the claim of depreciation on the ground that one of the twin requirements of ownership and user u/s. 32(1)(ii) user was not satisfied. The CIT(A) held that in the absence of the machinery being put to use and the business of refining edible oil having been discontinued, the assessee is not entitled to depreciation. The Tribunal held that the refining machinery was a part of the block of assets of plant and machinery. In such a case depreciation is granted to the entire block of assets whether or not an individual item therein has been used during the subject assessment year.

The Hon'ble High Court has confirmed the view of the Tribunal stating that once the concept of block of assets was brought into effect from earlier assessment years then the aggregate of written down value of all the assets in the block at the beginning of the previous year along with additions made to the assets in the relevant assessment year therefore depreciation is allowable to the assessee. (A.Y. 2005-2006)

*CIT v. Sonic Biochem Extractions Pvt. Ltd. (Bom) (HC) source : www.itatonline.org*

### TRIBUNALS

**2. S. 147 : Reopening – Recorded reasons – without recording the reasons prior to the issuance of notice u/s. 148 and without providing a copy of the same to the assessee, AO cannot make valid reopening of the assessment and cannot frame reassessment order**

The assessee company had filed Return of Income on 31-10-2001, intimation was passed u/s. 143(1)(a) on 31-3-2003. Notice issued u/s. 148 dated 17-2-2006. (No recorded reasons were provided along with notice). The assessee filed letter dated 9-3-2006 (filed on 14-3-2006) to notice u/s. 148 along with copy of return and specific request to provide reasons recorded for issue of notice u/s. 148 for filing the objection. Assessee vide letter dated 20-12-2006 once again requested to provide the reasons recorded but same was not provided to the assessee and passed the order u/s. 143(3) r.w.s. 147 on 28-12-2006. The CIT(A) also confirmed the order of the A.O. passed the order dated 24-8-2009.

During the second appeal before the tribunal, the Hon'ble ITAT observed that on the earlier occasions,

Bench directed the Ld. DR to produce the assessment records, same was produced, and on the basis of perusal of assessment records, it was found that there was no copy of 'Reasons', in the assessment records. An interim order was passed by the Hon'ble Bench, directing the Revenue to file a suitable affidavit in support of its claim. An affidavit was filed by the AO on behalf of the Revenue, along with few other documents, wherein certain facts were deposed on oath. A counter affidavit was filed by the assessee, pointing out various contradictions, fallacies and inconsistencies in the affidavit of the AO as well as other records placed on record by the department, before the Hon'ble Bench. After long drawn exercise and exchange of affidavit, counter affidavit and other documents the final facts have emerged on the surface that the reasons are not available in the assessment records and that no copy of reasons was furnished to the assessee during the course of reassessment proceedings. The Hon'ble ITAT after analysing the whole factual situation, has taken view by considering *CIT v. Videsh Sanchar Nigam Ltd. (2012) 340 ITR 66 (Bom.)* and *GKN Driveshaft 259 ITR 19* that the without recording the reasons prior to the issuance of notice u/s. 148 and without providing a copy of the same to the assessee, the AO cannot make valid reopening of the assessment and cannot frame reassessment order.

*Muller & Philpys (India) Ltd. v. ITO 2 (2)(2) (ITA No.5926/Mum/2009 dated 28-10-2015 (Mum.)(Trib.) Source : www.itat.nic.in*

**3. S. 263 : Revision of Order : when the assessee shows from the record that the necessary enquiries were made by the AO and the AO had applied his mind and the view adopted by him was one of the possible views, then it cannot be said that the order of the AO is erroneous.**

The Hon'ble ITAT held that If there is an enquiry even inadequate that would not by itself give occasion to the CIT to pass order under section 263 merely because he has a different opinion in the matter. The AO is not required to give detailed reasoning in respect of each and every item of deduction in the assessment order. Where the AO had called for an explanation regarding the claim made by the assessee and the assessee had furnished its explanation, then it cannot be said to be a case of lack of enquiry. The exercise of the power being quasi-judicial in nature, the reasons must be such as to show that the enhancement or modification of the assessment or cancellation of the assessment or directions issued for a fresh assessment was called for and must irresistibly lead to the conclusion that the order of the AO was not only erroneous but was also prejudicial to the interest of the Revenue. (A.Y. 2005-06)

*M/s. A.V. Industries v. ACIT, ITA No. 3469/Mum/2010 dated 6-11-2015, (Mum.)(Trib.) Source. www.itat.nic.in*



## INDIRECT TAXES

### SALES TAX

*D. H. Joshi, Advocate*

#### 1. Attempt to Evade Tax – Penalty

Section 51(7)(c) of the PVAT Act, 2005. The appellant while transporting Earth Wire Equipments into the State of Punjab, for designing, engineering, installation, etc. pursuant to a contract to the tune of ₹ 66,37,90,312 was detained at the check-post for in genuineness of documents and levied penalty of ₹ 4,29,970 for an attempt to evade tax. This was challenged before the appellate authorities. The appellate authority passed an elaborate order and the same was based on the computer record of the case. He had gone deep into the issue to rebut the finding regarding imposition of penalty upon the appellant and has reached the right conclusion that the vehicle carrying the goods was not carrying with it the proper and genuine documents. As such, penalty imposed was justified. Consequently, the appeal was dismissed.

*KEC International Ltd., Gurgaon v. State of Punjab (2015) 52 PHT 326 (PVT)*

#### 2. Entries in Schedule

A. “Glazed Roofing Tiles” was taxable under Entry No. 18(1)(c) of the 3rd Schedule to Kerala VAT Act, 2003, even after colour coating on ‘Kiln Burnt Roofing Tiles’ that did not give the ‘Glazed Roofing Tiles’ a commercial identity different from ‘Kiln Burnt Roofing Tiles’ for the reason that it continued to be the same with more attractive appearance. In holding so, *Gujarat Steel Tubes Ltd. v. State of Kerala & Ors.* 74 STC 176 followed.

*State of Kerala v. Monier Roofing (P) Ltd. (2015) 23 KTR 527 (Ker.)*

B. “Image Runners” (multi-function network printers) were computer peripheral workings in consumption with the computer. Therefore, it fell under Entry No. 18(i) of Part-B of Schedule-I, liable to tax @4%. Functional utility and primary usage of the product to be taken into account for classification purpose as against a specific entry in a Schedule. A commodity not to be classified in a Residuary Entry 18(i), Part-B, Schedule-1 of the Tamil Nadu General Sales Tax Act, 1959. Accordingly, the revisions were decided in favour of the assessee.

*Canon India Pvt. Ltd. v. State of Tamil Nadu (2015) 23 KTR 557 (Mad.)*

#### 3. Interpretation of Statute

Electricity is goods, and generation of electricity from coal is a manufacturing process. Coal is raw material for generating electricity in thermal power plant. In

the case of the assessee, relying on various statutory provisions, SC and HC judgments, the petitioner filed written submission in assessment proceedings in support of his contentions. But, the assessing authority without dealing with the submissions of the petitioners passed assessment order raising demand for huge tax and penalty. The HC observed the impugned order showed complete non-application of mind by the assessing authority. It amounted to judicial indiscipline and impropriety. Accordingly, writ petition was allowed.

*Odisha Power Generation Corporation Ltd. v. State of Odisha and Anr. (2015) 27 STJ 482 (Ori.)*

#### 4. Pre-Deposit of Tax

PVAT Act, 2005, Section 62(5) regarding pre-deposit of tax. Huge demand of ₹ 29,05,92,650 on account of tax, interest and penalty was created against the appellant, being 25% which was mandatory one. Appellant contended that he had challenged the validity of provisions of pre-deposit and the same are pending adjudication and that Apex Court had restrained the Dept. from taking any coercive step, whether, a ground for staying the mandatory demand of 25%? Held, in the negative by relying upon full Bench judgment of PHT HC in the case of *Emerald International Ltd. v. State of Punjab (1997) 10 PHT 1 (P&H)(FB)* had held that while taking the stricter view of the matter, condition with regard to the taxing statutes were mandatory nature and had to be complied with. Further, it is held money loss was not irreparable loss. If the public money is left in the hands of the appellant, then, it may seriously affect the revenue and welfare work would be stalled. It was further held that if any adverse view was taken by the Apex Court, the Tribunal or authorities below are duty bound to follow, act upon and implement the Apex Court judgment.

Accordingly, the appellant was directed to make payment of the mandatory tax amount of 25%.

*Punj Llyod Ltd., Mohali v. State of Punjab (2015) 52 PHT 359 (PVT)*

#### 5. Presumptive tax qua definition of “Importer”

Section 6(5) Kerala VAT Act, 2003. To be an importer, import must fall the purpose of business. Effecting inter-State purchase not for the purpose of business would not qualify a ‘dealer’ as an ‘importer’. That is made clear from the definition of importer u/s. 2(xxii) that the import must be for the business purpose. The

status of a presumptive dealer shall not be disallowed for the sole reason that an isolated inter-State purchase happened to be in his name and that too for personal purpose. From the above legal position, it was crystal clear that the appellant was not an importer as stipulated in Section 6(5) of the KVAT Act. Hence, the status of 'presumptive dealer' had to be restored which was earlier disallowed. Thus, the revision filed by the Dept. was not entertained.

*State of Kerala v. Mohankumar B (2015) 23 KTR 555 (Ker.)*

## 6. Rectification of Mistake

PVAT Act, 2005, Section 66 dealing with rectification of mistake. The appellant was an authorised dealer of Maruti and Bajaj Auto and was a taxable person registered with the Dept. Its assessment for A.Y. 2005-06 and 2006-07 resulted into huge demand created by an ex-parte order. Ex parte order was set-aside by jurisdictional court and assessment framed earlier also set-aside by designated officer. After about two and half years of reassessment and on the basis of an anonymous complaint filed against appellant, reassessment proceedings initiated and quashed. In the meantime, designated officer became the Revisional officer and took-up the case in revision. Ultimately, at the time of arguments before the Tribunal, the appeal *qua* the revision notices and the Revision Order were dismissed as withdrawn. However, the petitioner continued to proceed with the appeal against the Order which was modified by the Commissioner to quash the said Order of rectification / modification. Tribunal ruled in favour of the appellant and held that in the present case, the mistake detected by the Tribunal is apparent on the record. The HC held that the Tribunal appears to have been moved only by the fact that since the Commissioner has the administrative control and has jurisdictional over the whole state of Punjab, therefore he was justified in passing any order, but the same was not factually correct. All these factors were not brought to the notice of the Tribunal and it proceeded to dismissed the application merely on the ground that the Commissioner had autocratic powers under the Act, therefore, it was a fit case for rectification of the Order passed by the Tribunal.

Resultantly, the HC accepted the Rectification Appln. and corrected the Order in the manner that the earlier orders regarding reassessment for the years 2005-06 and 2006-07 would remain intact subject of provisions of limitation and the Order dated 22-2-2013 rectifying the order of the Commissioner dated 14-2-2013 substituting the word "revisional proceedings" was quashed.

*Pankaj Motors, Moga v. State of Punjab (2015) 52 PHT 346 (PVT)*

## 7. Registration Certificate

Section 17 of the M.P. VAT Act, r/w. Section 7(3) and 8(3)(b) of the CST Act, 1956. The appellant was a works contractor for construction of buildings, roads and bridges. In his Registration certificate JCB, Tractor-trolley and dumper were included as plant and machinery. Subsequently, appellant applied for inclusion of transit mixture mounted vehicle, pump-set, generator and parts and accessories under the heading plant and machinery for his activities pertaining to ready-mix-concrete (RMC). The registering authority after giving opportunity of hearing to the appellant rejected his application on the ground that they are not used in the manufacture or processing of RMC. On the contrary, the Registering authority *suo motu* amended the Registration Certificate of the appellant to delete JCB, tractor-trolley and dumper already included in the Registration Certificate. The appellate authority confirmed the decision of the registering authority. The Appellate Board held that there was no need to intervene in the decision taken by the appellate authority. The decision so taken was justified in law. Accordingly appeal was rejected.

*S.S. Construction, Bhopal v. C.C.T., M.P. (2015) 27 STJ 523 (MP-BD)*

## 8. Revision – Limitation

Section 16, DST on Works Contract Act, 1999, Section 46, Delhi ST Act, 1975 and Sections 74A and 106 of Delhi VAT Act, 2004 were for the consideration of the Delhi HC in the matter of Revision and limitation as applicable due to change of law i.e. Repeal of ST Act and Enactment of Delhi VAT Act. Assessment Order passed under ST Act for the year 2003-04. No proceedings for revision taken before repeal of ST Act. Enactment of Delhi VAT Act w.e.f. 1-4-2005. Revision thereafter governed by the provisions of Delhi VAT Act. Therefore, period of limitation that would apply would be the one prescribed u/s. 74A(2) (B) of Delhi VAT Act, which was 4 years. Limitation being a matter of procedure, the law applicable to it would be the law at the time of filing revision application.

As the revision notice was not issued within the prescribed limitation, the HC quashed the revision notice and the writ petition filed by the dealer was allowed.

*Kumagai Skanska Hcc Itochu Group v. Commissioner VAT And Anr. (2015) 23 KTR 540 (Del.)*

## 9. Sale Price

Sections 2(39) and 2(44) of the Rajasthan ST Act and sections 2(h) and 2(j) of the CST Act, 1956. The assessee sold 14.2 kg. LPG Cylinders (empty) to oil companies of GOI @ ₹ 682 per cylinder and raised bills and received the payment for the same. Thereafter, the oil companies reduced price to ₹ 645

per cylinder vide letter dated 4-5-2000 including for the supplies already made by the assessee. On that basis, the assessee claimed deduction from the sale price on the ground of price reduction. Alternatively, the assessee contended that this price reduction by oil companies should be made eligible for deduction as discount. The Tribunal rejected the claim of the assessee. On approaching the HC, the HC upholding the decision of the Tribunal held that any agreement with the buyer after making of the sale could not reduce the sale price nor such subsequent reduction in the price could be treated and allowed as discount. Accordingly, revision petition was dismissed.

*Universal Cylinders Ltd. v. CTO, Anti evasion, Alwar (2015) 27 STJ 502 (Raj.)*

### 10. Taxable Turnover

Tax amount shown separately in the cash memo whether liable to be included in the taxable turnover. The HC decided this point in the negative. Earlier, the Tribunal had recorded the finding of fact in favour of the assessee that he had produced the cash memo which he had given to the purchaser and in the cash memo the tax amount was shown separately, therefore, that amount could not become part of the sale price. The judgment of the Tribunal based on facts was confirmed and the revision filed by the Commissioner was dismissed.

*C.C.T., U.P. v. M/s. Kanat Plaza Restaurant Pvt. Ltd. (2015) 52 PHT 294 (All.).*



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