

AIFTP TIMES

Volume 5 - No. 6 | June 2014

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
14-6-2014	One Day Tax Seminar (Western Zone)	Nanded
28-6-2014	National Executive Committee Meeting	Chennai
28, 29-6-2014	National Tax Conference (Southern Zone)	Chennai
16, 17-8-2014	Justice Dr. B. P. Saraf National Tax Moot Court Competition (Eastern Zone)	Kolkata
22-8-2014	National Executive Committee Meeting	Nagpur
23, 24-8-2014	National Tax Conference (Western Zone)	Nagpur
6-9-2014	One Day Tax Conference (Western Zone)	Anand
4 to 6-10-2014	3rd Residential Refresher Course (Western Zone)	Goa

Suggestions for improving the administration of the Income Tax Appellate Tribunal

Dear Members,

The ITAT Bar Associations' Co-ordination Committee (BACC) desires to forward a detailed representation to the Hon'ble Law Minister, Mr. Ravi Shankar Prasad in the month of July, 2014, with suggestions on better administration of the Income-tax Appellate Tribunal (the "Tribunal").

The BACC seeks the valuable suggestions of its Members on the following issues:-

1. Amendments desirable in the Income-tax Act for improving the functioning of the Tribunal;
2. Modification / amendments in the Income-tax Appellate Tribunal Rules or forms;
3. How to improve the quality of orders;
4. e-filing of appeals;
5. Functioning of e-court of the Tribunal;
6. Constitution of in-house committee to oversee administration;
7. Improving the official website of the Tribunal;
8. Appointment of ITAT members for a period of five years (Refer the bill introduced www.itatonline.org);
9. Appointment of President, Senior Vice President and Vice Presidents [R. P. Tolani vs. UOI | Sunil Kumar Yadav vs. UOI (Delhi High Court) www.itatonline.org];
10. Checklists for filing appeals and representation before the Tribunal; and
11. Any other suggestions that the Members may consider appropriate for efficient management of the Tribunal.

Sd/-
Convenors

Please send your suggestions on itatbacc@gmail.com / aiftp@vsnl.com latest by 30th June, 2014.

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

Announcement

3RD RESIDENTIAL REFRESHER COURSE at Goa (4th to 6th October, 2014)

All India Federation of Tax Practitioners – Western Zone is happy to announce a fun-filled 3rd Residential Refresher Course at Goa. The topics for discussion will cover Post Budget Developments in Direct & Indirect Taxation and their implications. The uniqueness of this RRC is to get insight into these latest developments in taxation in a true Goan atmosphere of fun & frolic!!!!

Details will be announced soon.

DO BLOCK THE DATES IN ADVANCE FOR THIS REFRESHING OPPORTUNITY

Announcement

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

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

The conference is jointly organised with

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

The details of the programme will be announced soon.

YOU ARE REQUESTED TO BLOCK THIS DATE FOR THIS UNIQUE OPPORTUNITY



Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Chartered Accountants Association, Ahmedabad for the year 2014-15.

President : CA. Shailesh C. Shah
Vice President : CA. Yamal A. Vyas
Hon. Secretary : CA. Abhishek J. Jain
Hon. Secretary : CA. Nirav R. Choksi

We wish them all the success.

Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Baroda Tax Bar Association for the year 2014-15.

President : Hitendra Upadhyay
Vice President : Kalpesh M. Shah
Hon. Secretary : Ajit Tiwari
Joint Secretary : Ashwin R. Parekh
Treasurer : Daxesh A. Dalwadi

We wish them all the success.

ONE DAY TAX SEMINAR

Organized By

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WESTERN ZONE)

Jointly With

TAX PRACTITIONERS ASSOCIATION NANDED,
ICAI BRANCH NANDED

ON SATURDAY, 14TH JUNE 2014

AT NANDED NIYOJAN BHAVAN, COLLECTOR OFFICE, STATION ROAD, NEAR GANDHI STATUE, NANDED

THEME : BORDERLESS BROTHERHOOD

PROGRAMME

- 8:30 a.m. to 9:30 a.m. **Registration & Breakfast**
- 9:30 a.m. to 10:30 a.m. **Inauguration**
Chief Guest : Dist. Judge or Dist. Collector
Guest of Honour : Vice Chancellor of Nanded University*
or Chairman of Nanded Municipal Corporation*
- 10:30 a.m. to 12:00 noon **First Technical Session** – MVAT Act 2002, Form 301, Notice in Form No. 603, Hawala Transaction under MVAT Act 2002, Ask to pay Notice.
Paper Writer : Mr. Vinayak Patkar, Advocate, Mumbai.
- 12:00 noon to 1:30 p.m. a) **Second Technical Session** – Capital Gains Tax in relation to 50C of Income Tax Act, Assessment under Section 148 and Appeal Procedure.
Paper Writer : CA. Harish N. Motiwalla, Mumbai
b) Technical guidance for submission of online Income Tax & TDS Returns
Paper Writer : CS. Ahalada Rao Vummenthala, Hyderabad.
- 1:30 p.m. to 2:30 p.m. Lunch Break
- 2:30 p.m. to 4:00 p.m. **Third Technical Session** – Levy of Service Tax on Hotels and Restaurants before and after 1-07-2014
Paper Writer : Mr. M.V.J.K. Kumar, Advocate, Hyderabad
- 4:00 p.m. to 5:00 p.m. Valedictory Session
High Tea
- Delegate Fees : Members : ₹ 500/-

* Confirmation awaited

For further details, Please contact the below Office Bearers:—

R.R. Baheti,
Advisor Tax Conference
Advocate, Nanded
Cell : 09422171704

CA. Govind Mundra,
Chairman ICAI Branch,
Nanded. Cell : 09823120555

CA. Atul Dhoot,
Co-Chairman Seminar Committee
Nanded Cell : 09423693705

Adv. V.B. Joshi
Chairman-WZ-AIFTP
Mumbai.
Cell : 09820045569

Gangabishan Kankar,
Tax Consultant
President, Tax Practitioners
Association Nanded
Cell : 09422170630

Pravin R. Shah,
Secretary –WZ-AIFTP
Cell : 09821634128

CA. S.B. Kabra,
National Joint Secretary AIFTP
Chairman-Seminar Committee
Cell : 09849024732

Two Day National Tax Conference at Chennai

ALL INDIA FEDERATION OF TAX PRACTITIONERS, SOUTHERN ZONE

IN ASSOCIATION WITH THE

**SOCIETY OF AUDITORS, CHENNAI,
REVENUE BAR ASSOCIATION, CHENNAI,
CHARTERED ACCOUNTANTS STUDY CIRCLE, CHENNAI
ASSOCIATION OF CHARTERED ACCOUNTANTS, CHENNAI and
INTERNATIONAL CHAMBER OF INDIRECT TAX PROFESSIONALS**

Invite you to

THE NATIONAL TAX CONFERENCE

on

'TAXATION – MODERN PERSPECTIVES AND CHALLENGES'

At

**The Park Sheraton, Cenotaph Road, Chennai on
Saturday and Sunday the 28th and 29th of June 2014**

P R O G R A M M E

DAY 1

07.45 a.m. to 08.55 a.m.	Registration
08.55 a.m. to 10.15 a.m.	Inaugural Session Inauguration by Hon'ble Mr. Justice C. Nagappan, Judge, Supreme Court of India Guest of Honour: Hon'ble Mr. Justice Satish Agnihotri, Acting Chief Justice, Madras High Court
10.15 a.m. to 10.30 a.m.	Coffee Break
10.30 a.m. to 11.45 a.m.	1st Technical Session (Income Tax) Re-assessments, Revision and Rectification Chairman: Hon'ble Mr. Justice R. V. Easwar (Retd.) Speaker: Mr. R. Chaitanya, Advocate, Bengaluru
11.45 a.m. to 1.00 p.m.	2nd Technical Session (Service Tax and VAT) Overlapping Issues in Service Tax and VAT Chairman: Mr. Bharat Ji Agrawal, Senior Advocate, Allahabad Speaker (VAT): Mr. Deepak Bapat, Advocate, Mumbai Speaker (Service Tax): Mr. M.V.J. Kumar, Advocate, Hyderabad
1.00 p.m. to 1.45 p.m.	L U N C H
1.45 p.m. to 2.30 p.m.	Luncheon Address on 'Bhagawat Gita and Management' by Dr. C.L. Ramakrishnan, I.P.S. (Retd.), Chennai
2.30 p.m. to 4.30 p.m.	Panel Discussion on Companies Act, 2013 Moderator: Mr. Arvind P. Dattar, Senior Advocate, Chennai Panelists: Mr. P.H. Arvinth Pandian, Senior Advocate, Chennai Ms. Savithri Parekh, Company Secretary, Pidilite (India), Mumbai Dr. B. Ravi, Company Secretary, Chennai

DAY 2

9.30 a.m. to 10.30 a.m.	1st Technical Session Accounting Standards Chairman: CA. P. R. Ramesh, Hyderabad Speaker: CA. M.P. Vijay Kumar, Chennai
10.40 a.m. to 12.30 p.m.	2nd Technical Session Taxation of Intellectual Property Rights under Indirect and Direct Taxes Chairman: Mrs. Justice Prabha Sridevan (Retd.) Speaker (Indirect Taxes): Mr. N.Venkatraman, Senior Advocate, Delhi Speaker (Direct Taxes): Mr. Ajay Vohra, Advocate, Delhi

12.30 p.m. to 1.15 p.m.	L U N C H
1.15 p.m. to 2.45 p.m.	BRAINS' TRUST SESSION Chairman: Mr. S. Rajarathnam, Tax Management Consultant, Chennai Trustees: Ms. Prem Lata Bansal, Senior Advocate, Delhi Ms. Nikita Badheka, Advocate, Mumbai Mr. K. Vaitheeswaran, Advocate, Chennai CA. P. Rajendra Kumar, Chennai
2.45 p.m. to 3.00 p.m	Summing up of Proceedings by Mr. V.S. Jayakumar, Advocate, Chennai

Delegate Fees :

Corporate : ₹ 3,000/-	Professionals : ₹ 2,500/-
Spouse : ₹ 1,500/-	Law Students : ₹ 1,000/-

For further details, please contact :

Dr. Anita Sumanth
Chairperson - SZ
Mob: 09840320296

G. Bhaskar
Secretary - SZ
Mob: 09444061639, 09361707000

M. Srinivasa Rao
Vice President - SZ
Mob: 09885796999

Note : List of Hotels have been uploaded on our Website i.e. www.aiftponline.org

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

It is our pleasure to inform all members of AIFTP that AIFTP (East Zone) is going to organise **Justice Dr. B. P. Saraf National Tax Moot Court Competition** in association with The West Bengal National University of Juridical Sciences (WBNUJS) on 16th and 17th of August, 2014 at the WBNUJS Campus, 12 LB, Salt Lake Sector III, Kolkata 700098 for the benefit of law students in India and to promote Moot in India. The subject is **Implications of section 263 of the Income-tax Act.**

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

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

Organising committee :

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

Ex-officio:

- Mr. Indu Chatrath, Zone Chairman 098304 95134
- Mr. R.D. Kakra, Vice-Chairman
- Mr. N. D. Saha, Zone Secretary 098300 44321
- Mr. Arvind Agarwal, Jt. Secretary
- Mr. Sandip Choraria, Member

Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Income Tax Bar Association, Varanasi for the year 2014-15.

President	: Shri Kaushal Narin Singh
Vice President	: Shri Prakash Gupt
Secretary	: Shri Brij Gopal Das
Joint Secretary (Library)	: Shri Anand Kumar Pandey
Joint Secretary (Admin)	: Shri Pramod Kumar Ram Tripathi
Treasurer	: Shri Shashi Kant Shukla

We wish them all the success.

TWO DAY NATIONAL TAX CONFERENCE AT NAGPUR

ON 23RD AND 24TH AUGUST 2014

ORGANISED BY

ALL INDIA FEDERATION OF TAX PRACTITIONERS – WESTERN ZONE

JOINTLY WITH

THE SALES TAX PRACTITIONERS ASSOCIATION OF MAHARASHTRA, MUMBAI;
SALES TAX BAR ASSOCIATION, NAGPUR &
VIDHARBHA TAX PRACTITIONERS ASSOCIATION, NAGPUR

Theme : Learn, Relax & Rejuvenate

All India Federation of Tax Practitioners (Western Zone) jointly with above organisations are pleased to announce Two Day National Tax Conference at Nagpur on 23rd and 24th August, 2014. The venue is "Suraburdi Meadows", which is a new and unique resort, spread over 35 acres, and is a lush green leisure destination with scenically located hillocks, winding roads and pristine lake water. This retreat destination having serene and tranquil atmosphere, is one of its kind in entire Central India. We strongly recommend all members not to miss this opportunity of learning with complete relaxation. In fact, we suggest all members to come with family one day in advance for total rejuvenation and have quality time with family (as no Idiot Box in rooms, so free from daily soaps)! We have negotiated attractive package for the delegates and their families.

Conference details are:

Days & Dates	:	Saturday, 23rd August, 2014 (Full Day) Sunday, 24th August, 2014 (Half Day) AIFTP - NEC Members - NEC Meeting on Friday 22nd Aug., 2014 - EVENING
Venue	:	SURABURDI MEADOWS, Nagpur-Amravati Road, Near Suraburdi Lake, Waddhamna, Nagpur - 440023 Maharashtra Approx. 20 kms. from Nagpur Airport and also from Nagpur Railway Station (Nagpur is well connected with major cities by Air / Rail / Road. Details will be mailed to the requesting delegates)
Delegate Fees	:	Members of AIFTP, STPAM, STBA & VTPA Non-Members For Non-Residential Delegate - For Non-Residential Delegate - ₹ 3,000/- per person ₹ 4,000/- per person For Residential Delegate - For Residential Delegate - ₹ 4,500/- per person ₹ 5,500/- per person For Accompanying Spouse / Family Member - ₹ 3,500/- per person. (Package deal inclusive of one night stay at the resort on twin sharing basis.)

[The above rates are inclusive of two breakfast (23rd & 24th), two lunch (23rd & 24th) and gala dinner on 23rd night, along with Entertainment Evening. It also includes (for delegates) course material, tea & coffee during the conference and delegate kit. For the spouses / family members, it includes sightseeing]

Delegates wishing to stay extra will get the same accommodation @ ₹ 1500/- per person on twin sharing, excluding food charges

The tentative schedule of the conference is as under:-

DAY 1 – SATURDAY, 23RD AUGUST, 2014

9.30 a.m. to 10.00 a.m.	–	Registration & Fellowship
10.00 a.m. to 10.45 a.m.	–	Inaugural Session
10.45 a.m. to 12.00 noon	–	1st Technical Session
Topic	–	Service Tax Issues in Reverse Charge Mechanism & issues of CENVAT Credit under Service Tax
Paper Writer	–	Mr. Jitendra Motwani, Advocate, Mumbai
Chairman	–	Shri Bharat Ji Agrawal, Sr. Advocate, Allahabad

12.00 noon to 1.30 p.m.- **2nd Technical Session**
 Topic - Update on liability of Developers & Works Contractor
 Paper Writer - Shri Nitin S. Shah, Advocate, Pune
 Chairman - Shri Vinayak Patkar, Advocate, Mumbai

1.30 p.m. to 2.30 p.m. - Lunch Break

2.30 p.m. to 3.45 p.m. - **3rd Technical Session**
 Topic - Issues of Inter-State Sales *vis-à-vis* Branch Transfer & practical difficulties & solutions
 Paper Writer - Shri H. C. Bhatia, Advocate, New Delhi
 Chairman - Shri P. C. Joshi, Advocate, Mumbai

3.45 p.m. to 4.00 p.m. - Tea Break

4.00 p.m. to 5.15 p.m. - **4th Technical Session**
 Topic - Capital Gain *vis-à-vis* transactions in Immovable Property
 Paper Writer - CA. (Dr.) Girish Ahuja, New Delhi
 Chairman - Shri N. M. Ranka, Sr. Advocate, Jaipur

ENTERTAINMENT PROGRAMME

7.00 p.m. to 7.30 p.m. - Fellowship
 7.30 p.m. onwards - Musical Programme
 8.30 p.m. onwards - Gala Dinner

DAY 2 - SUNDAY, 24TH AUGUST, 2014
--

9.30 a.m. to 10.45 a.m. - **5th Technical Session**
 Topic - Deemed Income under sections 56(2), 68 & 69 of Income-tax Act, 1961
 Paper Writer - CA. Pradip Kapasi, Mumbai
 Chairman - CA. Jaydeep Shah, Nagpur, Past President, ICAI.

10.45 a.m. to 12.00 noon - **6th Technical Session**
 Topic - Input Tax Credit with special reference to Rules 53(6), 54(g) & 54(h)
 Paper Writer - CA. Kiran Garkar, Mumbai
 Chairman - CA. Ashok Chandak, Nagpur, Past President, ICAI.

12.00 noon to 12.15 p.m.- Tea Break

12.15 p.m. to 1.30 p.m. - **Brains' Trust Session**
 Trustees - Shri Chandrakant J. Thakar, Advocate, Nagpur (Income Tax)
 - Shri S. K. Poddar, Advocate, Ranchi (Income Tax)
 - Shri Mukul Gupta, Advocate, Ghaziabad (Service Tax)
 - Smt. Nikita R. Badheka, Advocate, Mumbai (Sales Tax/CST)
 - Shri Vikram Nankani, Advocate, Mumbai (Service Tax, Excise)
 - Shri S. S. Gandhi, Advocate, Nagpur (Sales Tax/CST)

1.30 p.m. - Lunch

For further information, please contact the below Office Bearers:

1. Vipul B. Joshi, Chairman, AIFTP - WZ (Mob.) 09820045569
2. Chirag S. Parekh, Vice Chairman, AIFTP - WZ (Mob.) 09821634128
3. Deepak R. Shah, Chairman, Education Committee, AIFTP - WZ (Mob.) 09820148536
4. Pravin R. Shah, Secretary, AIFTP - WZ (Mob.) 09821476817
5. Shailendra Jain, President, VTPA (Mob.) 09822720057
6. Mahesh Mundada, President, STBA, Nagpur (Mob.) 09423685325
7. Santosh Gupta, Chief Co-ordinator, Nagpur (Mob.) 09890033480
8. Sachin Gandhi, Vice President, STPAM (Mob.) 09821482020
9. Shashank Dhond, Hon. Secretary, STPAM (Mob.) 09821094250

DIRECT TAXES

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

SUPREME COURT

1. Taxation of discretionary & specific trusts – Principle explained

The ex-Ruler of Gondal Shri Vikramsinhji executed three deeds of settlements (trust deeds) in the USA & UK. These trusts were created for the benefit of (a) the Settlor, (b) the children and remoter issue for the time being in existence of the Settlor and (c) any person for the time being in existence who is the wife or widow of the Settlor or the wife or widow or husband or widower of any of them, the children and remoter issue of the Settlor. During his life time, the settlor, Shri Vikramsinhji, was including the whole of the income arising from these trusts in his returns of income. The said income was also included in the two returns filed by his son Jyotendrasinhji for the A.Y. 1970-71. Thereafter, the assessee took the stand that the income from these trusts is not includible in his income. Jyotendrasinhji also took the stand that inclusion of the said income in the returns submitted by his father for the AYs 1964-65 to 1969-70 and by himself for the assessment year 1970-71 was under a mistake. Clause 3 of the deeds of settlement executed in U.K. leaves at the discretion of the trustees to disburse benefits to the beneficiaries. The endorsement made in the returns, as noted above, shows that income was retained by the trustees and not disbursed. The Tribunal while considering clause 3(2) and clause 4 of the U.K. Trust Deeds observed that if the trusts were really intended to be discretionary, the trustees had a duty cast on them to ascertain the relative needs and personal circumstances of all the beneficiaries and to allocate the income of the trusts, among them from time to time, according to the objects of the trusts, however, the tell tale facts bring out the intention of the settlor to treat the trust property as his own. The Tribunal held that due to failure on the part of the Maharaja to appoint discretion exercisers as per clause 3(2), clause 4 has become operative and the U.K. trusts have to be held to be specific trusts. The High Court did not agree with the Tribunal's view and held that on interpretation of the relevant clauses of the deeds of settlement executed in U.K., character of the trusts was discretionary and not specific. On appeal by the department to the Supreme Court HELD dismissing the appeal:

A discretionary trust is one which gives a beneficiary no right to any part of the income of the trust property, but vests in the trustees a discretionary power to pay him, or apply for his benefit, such part of the income as they think fit. The trustees must exercise their discretion as and when the income becomes available, but if they fail to distribute in due time, the power is not extinguished so that they can distribute later. They have no power to bind themselves for the future. The beneficiary thus has no more than a hope that the discretion will be exercised in his favour. Having regard to the above legal position about the discretionary trust which is also applied by this Court in the earlier

judgment and the fact that the income has been retained and not disbursed to the beneficiaries, the view taken by the High Court cannot be said to be legally flawed. Merely because the settlor and after his death, his son did not exercise their power to appoint the discretion exercisers, the character of the subject trusts does not get altered. The two U.K. trusts continued to be 'discretionary trust' for the subject assessment years. The High Court has taken a correct view that the value of the assets cannot be assessed on the estate of the deceased settlor.

CWT v. Estate of Late HMM Vikramsingji of Gondal (Supreme Court) (Source: www.itatonline.org)

2. S. 80HHC - Meaning of the word "turnover" in s. 80HHC explained. Sale proceeds of scrap is not "turnover" for s. 80HHC - Revenue should encourage assessee to bring in foreign exchange

- (i) The word "turnover" means only the amount of sale proceeds received in respect of the goods in which an assessee is dealing in. So far as the scrap is concerned, the sale proceeds from the scrap may either be shown separately in the Profit and Loss Account or may be deducted from the amount spent by the manufacturing unit on the raw material. When such scrap is sold the sale proceeds of the scrap cannot be included in the term 'turnover' for the reason that the unit is engaged primarily in the manufacturing and selling of steel utensils and not scrap of steel. Therefore, the proceeds of such scrap would not be included in 'sales' in the Profit and Loss Account of the assessee (The situation would be different in the case of a person who is primarily dealing in scrap);
- (ii) The intention behind enactment of s. 80HHC was to encourage export so as to earn more foreign exchange. For the said purpose the Government wanted to encourage businessmen, traders and manufacturers to increase the export so as to bring more foreign exchange in our country. If the purpose is to bring more foreign exchange and to encourage export, we are of the view that the legislature would surely like to give more benefit to persons who are making an effort to help our nation in the process of bringing more foreign exchange. If a trader or a manufacturer is trying his best to increase his exports, even at the cost of his business in a local market, we are sure that the Government would like to encourage such a person. In our opinion, once the Government decides to give some benefit to someone who is helping the nation in bringing foreign exchange, the Revenue should also make all possible efforts to encourage such traders or manufacturers by giving such business units more benefits as contemplated under the provisions of law.

CIT v. Punjab Stainless Steel Industries (Supreme Court) (Source: www.itatonline.org)

HIGH COURTS

3. S. 45 - Gains arising from PMS transactions are capital gains & not business profits

The assessee offered LTCG & STCG on sale of shares which had arisen through a Portfolio Management Scheme of Kotak and Reliance. The investments were shown under the head "Investments" in the accounts and were made out of surplus funds. Delivery of the shares was taken. The AO, CIT (A) & Tribunal held that as the transactions by the PMS manager were frequent and the holding period was short, the LTCG & STCG were assessable as business profits. On appeal by the assessee, HELD allowing the appeal:

- (i) The PMS Agreement in this case was a mere agreement of agency and cannot be used to infer any intention to make profit;
- (ii) The intention of an assessee must be inferred holistically, from the conduct of the assessee, the circumstances of the transactions, and not just from the seeming motive at the time of depositing the money;
- (iii) Along with the intention of the assessee, other crucial factors like the substantial nature of the transactions, frequency, volume etc. must be taken into account to evaluate whether the transactions are adventure in the nature of trade.

The block of transactions entered into by the portfolio manager must be tested against the principles laid down, in order to evaluate whether they are investments or adventures in the nature of trade. On facts, the source of funds of the assessee were its own surplus funds and not borrowed funds. About 71% of the total shares have been held for a period longer than 6 months, and have resulted in an accrual of about 81% of the total gains to the assessee. Only 18% of the total shares are held for a period less than 90 days, resulting in the accrual of only 4% of the total profits. This shows that a large volume of the shares purchased were, as reflected from the holding period, intended towards the end of investment. The fact that an average of 4-5 transactions were made daily, and that only eight transactions resulted in a holding period longer than one year is not relevant because the number of transactions per day, as determined by an average, cannot be an accurate reflection of the holding period/frequency of transactions. Moreover, even if only a small number of transactions resulted in a holding for a period longer than a year, the number becomes irrelevant when it is clear that a significant volume of shares was sold/purchased in those transactions.

Radials International v. ACIT (Delhi High Court) (Source: www.itaionline.org)

TRIBUNALS

4. No s. 14A/Rule 8D disallowance for investment in shares of subsidiaries & Joint Ventures

In AY 2009-10, the assessee has specifically raised a point before the AO that 97.82% of the investment is in subsidiary companies and joint venture companies and, therefore, no expenditure was incurred for maintaining the portfolio on these investments or for holding the

same. The assessee has also pointed out that these investments are long-term investment and no decision is required in making the investment or disinvestment on regular basis because these investments are strategic in nature in the subsidiary companies on long-term basis and, therefore, no direct or indirect expenditure is incurred. The department has not disputed this fact that out of the total investment about 98% of the investments are in subsidiary companies of the assessee and, therefore, the purpose of investment is not for earning the dividend income but having control and business purpose and consideration. Therefore, *prima facie* the assessee has made out a case to show that no expenditure has been incurred for maintaining these long-term investment in subsidiary companies. The AO has not brought out any contrary fact or material to show that the assessee has incurred any expenditure for maintaining these investments or portfolio of these investments. In *Godrej & Boyce Mfg. Co* it was held that s. 14A(2) does not *ipso facto* empower the AO to apply the method prescribed by Rule 8D straightaway without considering whether the claim made by the assessee is correct. Also, in *Garware Wall Ropes* it was held that a disallowance u/s 14A cannot be made if the primary object of investment is holding controlling stake in the group concern and not earning any income out of investment. Similarly, in *Oriental Structural Engineers* (approved by the Delhi High Court) it has been held that s. 14A disallowance cannot be made for investment in subsidiaries and SPVs out of commercial expediency.

JM Financial Limited v. ACIT (ITAT Mumbai) (Source: www.itatonline.org)

5. S. 32: Assessee (Bank) is entitled to depreciation on assets given on lease

In so far as the issue relating to the claim of depreciation on leased transactions is concerned, the Supreme Court in *ICDS v. CIT 350 ITR 527* had the occasion to consider the question "whether the Assessee is entitled to depreciation on vehicles financed by it which is neither owned by the assessee nor used by the assessee?" The Supreme Court after perusing the lease agreement and other related factors held that the lessor is the owner of the vehicles. As an owner, it used the assets in the course of its business satisfying both the requirements of S. 32 of the Act and hence is entitled to claim depreciation. A similar view was taken by the Delhi High Court in *Cosmos Films 338 ITR 266* wherein the Delhi High Court considered the implications of S. 19 of Sale of Goods Act, 1930. The Tribunal, Mumbai Bench in the case of *Development Credit Bank Ltd.* has followed the decision of the Supreme Court in the case of *ICDS* and the decision of Delhi High Court in the case of *Cosmos Films* and allowed the claim of depreciation. The Tribunal, Mumbai bench, in the case of *L&T* has considered a similar issue and followed the findings of the Supreme Court in the case of *ICDS* and also of the co-ordinate bench in the case of *Development Credit Bank Ltd.* and allowed the claim of depreciation on sale of lease back assets. Considering all these judicial decisions in the light of the facts, we direct the AO to allow depreciation

ICICI Bank Ltd. v. JCIT (ITAT-Mumbai) (Source: www.itatonline.org)

INDIRECT TAXES

SALES TAX

D. H. Joshi, Advocate

1. New industrial units – Exemption of Tax

In the present case, there was a challenge to the judgment of the Rajasthan High Court before the Apex Court. In brief, the court noted the facts of the case thus: (i) the assessee company was a new industrial unit manufacturing cement situated within Panchayat Samiti, Pindwara, Rajasthan. It started commercial production on 27-5-1997. The company had invested money in the project exceeding ₹ 500 crores and employed more than 250 employees and (ii) the core issue that arose was for grant of eligibility certificate for exemption from payment of CST and Rajasthan Sales Tax to be decided by the State level Screening Committee, under the "Sales Tax New Incentive Scheme for Industries, 1989"

The High Court after considering the scheme took a view that the Company would only be eligible for grant of exemption under item 1E as a large new cement unit in accordance with FCI being above ₹ 5 crores. As against this, the Supreme Court took a view that eligibility criteria for exemption of tax shall be based on the combined reading of various notifications issued by the Government. In the circumstances and facts of the case, the Supreme Court was of the considered opinion that the judgment and order passed by the High Court ought to be set aside and the appeals of the revenue requires to be allowed.

CTO Rajasthan v. M/s Binani Cements Ltd. And Anr. 2013-14 (19) TNCTJ 427.

2. Payment and recovery of tax

When dealer has disputed his liability to pay tax and when returns were being filed, no order could be passed for demanding advance tax before assessment. In such cases, it is for the revenue to complete the assessment and on that basis a notice of demand could be issued. Without assessment and computation of tax, issue of show cause notice and recovery of tax by coercive method was unsustainable, ruled by the M.P. High Court.

Birla Corporation Ltd. v. State of M.P. (2014) 24 STJ 601 (M.P.)

3. Penalty for evasion of tax

The authorities imposed maximum penalty without assigning any reason. The Supreme Court in Kesar Enterprises 13 SCC 733 has held that imposition of penalty is a quasi-judicial function and the rules of natural justice would be applicable in the proceedings of imposition of penalty. Applying the said Supreme

Court judgment, the M.P. High Court quashed the Orders in regard to imposition of penalty, and remanded the matter back to the authority to pass a proper order with respect to penalty after considering its observations.

Agro Solvent Products Pvt. Ltd. v. State of M.P. & Ors. (2014) 24 STJ 605 (M.P.)

4. Precedence

The Punjab & Haryana High Court, on the point of 'Precedence', ruled the concept as under, while considering the order challenged before it of the Haryana Tax Tribunal, which was comprised Five Member Bench. In a nutshell, the controversy before the Haryana VAT Tribunal was whether job work carried out by an exempted unit can or cannot be included while calculating production for the purpose of Rule 28-A (11)(a)(i) of the Haryana GST Rules, 1975. The said reference was answered against the appellant.

"The Tribunal held that it has no jurisdiction to opine whether an Order passed by the Jurisdictional High Court was no longer good law in view of subsequent judgments of the Supreme Court. The High Court held that the Supreme Court sits at the pinnacle of the system of administration of justice, and its orders prevail over all other orders. The Tribunal, exercising judicial or quasi-judicial powers could not refuse to consider judgments of the Supreme Court by holding that it is for the High Court to decide whether earlier decision given by the High Court subsists. The High Court held that the Tribunal while recording that it has no power to consider the Supreme Court judgments, vis-à-vis an earlier Division Bench Judgment of the High Court, had misdirected itself and failed to comprehend the nature of its jurisdiction as a quasi-judicial authority." Accordingly, the appeal was allowed and the Tribunal was directed to answer the reference afresh and decide the appeals on merits.

J.P. Polymers India (P) Ltd. v. State of Haryana & Another (2014) 24 STJ 631 (P&H)

5. Recovery / Surety

In this case, the Allahabad High Court, as regards recovery held that a company has a distinct and juristic personality. Properties of a director cannot be attached for the recovery of dues of the Company unless there is a statutory provisions to that effect. Accordingly, recovery action was quashed and set-aside. As regards surety amount deposited by the Director against fresh notice issued for recovery of demand of outstanding tax due and payable by

the Company (meantime Director resigned from the Company). In the circumstances, it was held that the properties of the Directors cannot be attached for the recovery of the dues of the Company unless there is a statutory provision to that effect. However, the Court clarified that the order should not preclude the authorities from taking due steps for the recovery of the amount due and payable against the assets of the Company and from investigating as to whether any of the assets of the Company are held by the petitioner-Director.

Anupam Jalan v. State of U.P. & Ors. (2014) NTN (Vol. 54) 315

6. Recovery of dues without assessment order

A. The Gujarat High Court, *vide* its Order dated 4-4-2014 in Tax Appeal No. 560 of 2013 confirmed the Order of the Tribunal holding that u/s. 44 of the Gujarat VAT Act, no recovery of tax can be made unless and until it is backed by an assessment order, straightaway order in recovery without any opportunity of hearing to the dealer was wholly not permissible.

The State of Gujarat v. Welspun Gujarat Rohren Ltd. Gujarat Sales Tax Journal (Vol. 53) Page 20

B. The Gujarat High Court *vide* its Order dt. 14-2-2014 in Civil Appln. No. 959 of 2014 upheld the contention of the petitioner that in absence of any quantified demand, the respondent-State could not have recovered the amount from the petitioner. It was strongly contended that neither adjudication had taken place nor assessment order had been passed, and, therefore, no action for recovery of tax would have been initiated. The High Court accepted the contention of the petitioner.

Atul Motors Pvt. Ltd. v. State of Gujarat. Gujarat Sales Tax Journal (Vol. 53) Page 21

7. Scope of manufacture

In this case before the Delhi High Court, the issue was whether the process of salting or roasting whether changed or transformed dry fruits in something else. The High Court held in the negative inasmuch as, if an article undergoes some modicum or transformation pursuant to a process, then alone would it be said that a manufacturing activity takes place. Conversely, if the essential characteristic or nature of the article does not change, notwithstanding the use of some process, there is no manufacture. If that test – and a constant one – is applied, it can be seen that the process of roasting or salting does not change the quality or essential nature of the article – its use is the same i.e. as a dry fruit.

KBB Nuts Pvt. Ltd. v. Commissioner of VAT (2014) 47 PHT 445 (Del.).

8. Seizure of goods

In this case decided by the Allahabad Tribunal, 'Readymade Uniforms' of Indian Armed Forces, while in transit after job work of stitching of cloths, where required documents were submitted along with reply to the show cause notice issued by the Mobile Squad, then, under such circumstances, seizure of the aforesaid goods was not valid inasmuch as, movement of goods in question was not in pursuance of sale instead it was after performance of job work and there was no intention to evade tax. Hence, seizure was illegal and goods allowed to be released without demand of security.

Tiwari Exports v. Commissioner CT (2014) NTN (Vol. 54) Tribunal 197.

9. Transfer of right to use goods

In this case, decided by the Commercial Tax Tribunal, Ghaziabad, where issues of fact and law were involved in regard to situs of sale calling determination of place of taxable event. The Tribunal followed the judgment of the Apex Court in the case of *20th Century Financial Corpn. v. State of Maharashtra* and held that the situs of taxable event for the right to use goods would be where the goods were delivered. And the execution of a written agreement in between appellant / lessor and the lessee after the oral or implied transfer of right of use of the goods, outside the State (i.e. in Delhi) could not change the situs of the taxable event in the transaction; not even in any year subsequent to the year the agreements had been executed. The orders of the assessing authority, accordingly, were restored as the same did not suffer any illegality or mistake.

M.G.F. (India), New Delhi v. Commissioner, Trade Tax 2014 NTN (Vol. 54) P 153.

10. Works Contract

In this case, the nature of work assigned to the assessee was supplying, laying and polishing of hydraulic pressed mosaic tiles at the site of the customers. The assessee carried on manufacture of mosaic tiles in his business premises. From the invoice, it was clear that what was sold was mosaic tiles. Therefore, assessing authority after scrutiny of documents found that assessee manufactured mosaic tiles and the property therein was passed on the customers. In view of this factual position, placed before the court, it was held that assessee has not used the goods purchased for manufacturing of mosaic tiles in execution of any works contract. Therefore, there was no question of granting exemption for the same. The finding of fact recorded by the authorities was justified and calls for no interference by this court.

M.R. Tiles, Chennai v. State of Tamil Nadu (2014) 24 STJ 506 (Mad.)



Report of CENTRAL ZONE

1. Representations

In the State Level Paramarshdata Committee of Govt. of Rajasthan, AIFTP, Central Zone was included and Meeting was attended by Zone Chairman Dr. Shri S. L. Jain with Shri P.M. Chopra, Conference Chairman and In-charge VAT Committee and they submitted representation to the Govt. Pre-Budget Memorandum of State of Rajasthan. The above meeting was called by the Principal Secretary, Govt. of Rajasthan.

2. Felicitation

Our following Members were felicitated at the Election of Executive Committee of Tax Bar Association, Jodhpur:

- | | | |
|--------------------------|-----------------------|------------------------|
| 1. Shri Deep Chand Mali | 3. Shri Dev Raj Bohra | 5. Shri Rajendra Lodha |
| 2. Shri Paras Mal Chopra | 4. Shri T. L. Jain | 6. Shri Ashok Jangid |

We also extended hearty Welcome to Hon'ble Chief Justice of India Shri R. M. Lodha during his visit on 11th May, 2014 at Jodhpur by Members of Federation Shri H.S. Tak, Shri P. M. Chopra, Shri Sumer Patwa, Shri D. C. Mali, Shri Dev Raj Bohra Shri Ranjeet Joshi, Shri Dinesh Joshi and Shri K. K. Gehlot at Jai Narayan Vyas Town Hall at Jodhpur.

Dr. S. L. Jain
Chairman-AIFTP(CZ)

Shri Rajesh Mehta
Secretary General-AIFTP(CZ)

**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 28-5-2014
Life Members**

	Associate	Individual	Association	Corporate	Total
Central	0	793	23	3	819
Eastern	3	1153	35	3	1194
Northern	0	948	17	0	965
Southern	1	889	13	6	909
Western	4	1704	33	16	1757
Total	8	5487	121	28	5644

Non-receipt of the Times must be notified within one month from the date of publication, which is 4th of every month.

Associate Editor of AIFTP Times : Mr. Deepak R. Shah

Printed by Kotecha Mitesh Ashwin Published by Kotecha Mitesh Ashwin on behalf of All India Federation of Tax Practitioners (name of owner) and Printed at Finesse Graphics & Prints Pvt. Ltd., 309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai - 400 013. (name of the printing press with address) and published at All India Federation of Tax Practitioners, 215 Rewa Chambers, 31, New Marine Lines, Mumbai - 400 020 (full address of the place of publication). Editor: Vanjara Kishor Dwarkadas.

To

**Posted at Mumbai Patrika Channel Sorting Office
Mumbai 400 001.**

Date of Publishing : 1st of every month.

Date of Posting : 3rd & 4th June, 2014

If undelivered, please return to :



ALL INDIA FEDERATION OF TAX PRACTITIONERS
215, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020. • Tel.: 22006342
Telefax: 22006343 • E-mail: aiftp@vsnl.com • Website: www.aiftponline.org