

All India Federation of Tax Practitioners



AIFTP TIMES

Volume 6 – No. 11 • November 2015



We wish all our members and readers Very Happy Diwali and Prosperous New Year



FORTHCOMING PROGRAMMES	Date & Month	Programme	Place
	21-11-2015	Full day Seminar on Recent Issues in Direct and Indirect Taxes	Thane
	21-11-2015	Notice of Extraordinary General Meeting of Central Zone	Jodhpur
	27, 28-11-2015	TAXCON 2015 (WZ)	Mumbai
	28-11-2015	Notice of Extraordinary General Meeting of Southern Zone	Hyderabad
	30-11-2015	Notice of Extraordinary General Meeting of Western Zone	Mumbai
	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

NOTICE OF EXTRAORDINARY GENERAL MEETING OF WESTERN ZONE

An Extraordinary General Meeting of the AIFTP (Western Zone) will be held on Monday, 30th November, 2015 at 6.00 p.m. at 215, Rewa Chambers, 31, New Marine Lines, Mumbai-400 020 to transact the following:-

AGENDA

- To approve the minutes of the EGM held on 29th November, 2013.
- To announce the names of the members elected to the Managing Committee of the Western Zone for the term 1-1-2016 to 31-12-2017.

For AIFTP (WZ)
Sd/-

Pravin R. Shah
Hon. Secretaries

Date : 19th October, 2015

Place : Mumbai

NOTES:

- Members are requested to send the nomination forms duly proposed and seconded on or **before Friday, 20th November, 2015 before 6.00 p.m.** at the Federation's Office stated above. The last date for withdrawal of nomination is on or **before Monday, 23rd November, 2015.**
- Only members of **two years** standing of the zone are eligible to file the nomination.
- As per the resolution passed at the AGM held on 1st October, 2005 at Mumbai the notice published in the AIFTP Times may be treated as notice and hence, no separate notice will be issued to member.
- Election will be held, if necessary, from 4.00 p.m. to 6.00 p.m. on Monday, 30th November, 2015 at 215, Rewa Chambers, 31, New Marine Lines, Mumbai- 400 020.
- The nomination form has been hosted on our website i.e. www.aiftponline.org. Members are requested to download the same or collect hard copy from Federation's office.
- For further details please contact the office bearers or the office of the Federation at Rewa Chambers.

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

NOTICE OF EXTRAORDINARY GENERAL MEETING OF SOUTHERN ZONE

Notice is hereby given that the Extraordinary General Body Meeting of All India Federation of Tax Practitioners (Southern Zone) will be held on **28-11-2015 at 10.30 a.m. at Telangana Tax Practitioners Association, 2nd Floor, Suryalok Complex, Abid Road, Hyderabad** to elect 19 members for the Zonal Managing Committee for the term 2016 & 2017.

CA Hemendra V. Shah has been appointed as the Election Officer to conduct the election.

Nomination papers (to be downloaded from website) may be forwarded to the office of CA Hemendra V. Shah at 4-3-378/B, First Floor, Devka Mahal, Bank Street, Hyderabad-500 095 between 11 am and 5 pm, Monday through Friday.

The Nominations are to reach latest by **20-11-2015 by 5 p.m.** either by post or by hand.

Scrutiny of the nomination papers shall be held at 6 p.m. on 25-11-2015 by the Election Officer at the aforesaid address and the list of candidates shall be forwarded immediately thereafter to the Head Office for display on the official website of the All India Federation of Tax Practitioners.

The last date for withdrawal of nomination is 27-11-2015 till 5 p.m.

The Results of the election shall be declared by the Election Officer on 28-11-2015 after the election process is complete.

The final list of candidates shall thereafter be forwarded to the Head Office to be featured on the official website of the All India Federation of Tax Practitioners on 28-11-2015 after declaration at the EGM.

Dr. Anita Sumanth
Chairperson

G. Baskar
Secretary

23rd October 2015

Note:

The newly elected Managing Committee Members shall meet immediately after the EGM at the same venue to elect the following office bearers:

- | | |
|----------------------------|--------------------------|
| 1. One Zonal Chairman | 4. Two Joint Secretaries |
| 2. One Zonal Vice-Chairman | 5. One Treasurer |
| 3. One Zonal Secretary | |

NOTICE OF EXTRAORDINARY GENERAL MEETING OF CENTRAL ZONE

22nd October, 2015

NOTICE

Notice is hereby given that the Extraordinary General Body Meeting of All India Federation of Tax Practitioners (Central Zone) shall be held on **Saturday, the 21st November, 2015 at 5.00 P.M.** at Hotel, Niky International, Panchbathi Circle, Ratanada, Jodhpur-342001 to elect 16 members of the Zone Managing Committee and thereafter to elect office bearers for the term 2016 & 2017 amongst the elected members to the Managing Committee.

Shri R. S. Jain, Advocate has been appointed as the Election Officer and Shri S. K. Asopa, Advocate, has been appointed as the Deputy Election Officer as decided by the Managing Committee of Central Zone of AIFTP on 23rd August, 2015 at Jodhpur.

Nomination papers must be sent at the office of election officer or Secretary. All India Federation of Tax Practitioners (Central Zone), c/o **Shri R.S. Jain (Adv.), 12-A, Umaid Bhawan Palace Road, Jodhpur, Rajasthan-342 010** Phone 0291-2517979 Mobile 9414611459) or **Shri Rajesh Mehta, Rajesh Heeralal Mehta & Co., 203, Manas Bhawan Extn., 11 RNT Marg, Indore (M.P.) M. No. 09827036956/09424818719.**

to reach latest by Thursday, the **19th November, 2015** by 5.00 pm either through post/ courier or by hand.

Scrutiny of the nomination papers shall be held at 6.00 pm on 19th November, 2015 by Election Officer of his Office mentioned above. The Election Officer shall publish the name of the Eligible Candidates at the Office of election officer immediately after scrutiny and withdrawal of the Nomination forms.

The date for withdrawal of nomination is **Friday, 20th November, 2015 till 4.00 pm.**

The Nomination forms are available at AIFTP Site.

If the voting is required then it shall take place at Hotel Niky International, Panchbathi Circle, Ratanada, Jodhpur 342001 on 21-11-2015, Saturday between 4.00 pm to 5.00 PMpm.

The Election results will be declared by the Election officer on 21st November, 2015 after the completion of Voting and Counting thereon.

The newly elected 16 members shall meet immediately after EOGM at same venue to elect the following office bearers:

1. Zone Chairman 2. One Zone Vice-Chairman, 3. Zone Secretary 4. Two Joint Secretaries 5. Treasurer

Dr. S. L. Jain
Chairman
Cell: 9351451866

Rajesh Mehta
Secretary
Cell: 9827036956

Note : A Tax Conference on Direct Taxes and Service Tax shall also be held on 21-11-2015 from 9.30 am to 4.00 p.m. in which eminent faculties shall deliberate on topics of professional interest. For Registration please contact Shri Ashok Jangid(Adv.) M. No. 9829030166 and Shri D.C. Mali (Adv.) M. No. 9414130281

NOTICE FOR ORDINARY GENERAL BODY MEETING OF THE FEDERATION TO BE HELD ON 25-12-2015 AT HYDERABAD

Dear Members,

October 20, 2015

An Ordinary General Meeting as provided in Rule 7 read with 8 & 10 of the Rules & Regulations of the Federation will be held on **Friday, the 25th December, 2015 at Jalavihar, Necklace Road, Hyderabad** at 2.30 p.m. to transact the following agenda as prescribed in Rule 8.

A G E N D A

- (a) Welcome address and opening remarks by the President Mr. J. D. Nankani.
- (b) To announce the valid nominations for the National Executive Committee.
- (c) To introduced the candidates for the ensuing election.
- (d) To elect 50 members to the National Executive Committee for the term 2016-17 in accordance with Rule 7(3).
- (e) To receive the report of the Election Officer.
- (f) To consider suggestions from the members in respect of rendering better service to the members and for overall progress of the AIFTP.
- (g) To transact any other business that mat be raised with permission of the Chair.

For All India Federation of Tax Practitioners
Harish N. Motiwalla
Secretary General

Notes.:

1. Copy of Constitution, rules and regulations may be obtained from the National Secretariat. Members are requested to read the same before filing the nomination.
2. Specimen nomination form is available on the website of the Federation and on request may be obtained from the National Secretariat, Mumbai.
3. Nominations are hereby invited for the membership of National Executive Committee from all eligible members in terms of amended Rules 10 and 14 subject to numerical limit as provided in Rule 7(3) for each Zone. The number of members to be elected from each zone will have their contest amongst the candidates from that zone but all members from all zones will be eligible to vote for all the five zones.
4. Nomination form duly proposed and seconded must reach the registered office of the Federation on or before 21st December, 2015 (Monday) before 5.00 p.m.
5. Candidate may withdraw the nomination on or before 25th December, 2015 (Friday) before actual commencement of Election process.
6. As per clause 10(3) of the constitution of the Federation, the Chairman of the respective zone shall be ex-officio member of the Executive Committee hence Chairman elect is not required to file the nomination for the National Executive Committee. A special request is hereby made to all the zones to hold the election of respective zone on or before 30th November, 2015 and convey the result to head office and copy to President and Secretary General through e-mail followed by dispatch through speed post at the earliest.
7. As per the membership of respective zones as on 20th October, 2015 maximum number of candidates who can be elected to NEC as per rule 7(3) of the Constitution are as under:—

Zones	Members as on 20-10-2015	Entitlement (Max.)
Central -	823	07
Eastern -	1192	11
Northern -	985	08
Southern -	974	08
Western -	1768	16
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Total -	5742	50
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8. As per Rule 10, clause 6(1) of the constitution of the Federation, a member who is more than 5 years in practice and who has been a member of the Federation for at least two years only are qualified to file the nomination.

9. At the meeting held on 1-10-2005 at Mumbai it was decided unanimously that notice for all General Meeting be published in the AIFTP Times as contemplated under rule 9 clause 3. Hence, no separate notice will be issued. The same is also uploaded in our website i.e. www.aiftponline.org
10. The National Executive Committee Meeting will be held **once in three months at different places in the country**, along with two days' conference. The Executive Committee Members have to bear personally the expenses of travelling, stay and delegate fees of the conference and also devote time for the welfare of the Federation. Persons of integrity and who can **afford to spend time and money** for the welfare of the profession are only requested to file the nomination.
11. The National Executive at its first meeting after election shall elect from amongst its members the following office bearers for one calendar year i.e. for the year 2016 only and then in its last meeting of calendar year 2016 shall likewise elect the office bearers for the year 2017. Rule 10 Clause 4 read with clause 6 read with amended Rule 11, however the term of National Executive will continue to be that of two years as per Rule 14.
 1. One President
 2. One Deputy President
 3. Five Vice Presidents (one from each zone)
 4. One Secretary General
 5. One Hon. Treasurer and
 6. Five Hon. Joint Secretaries (one from each zone)
12. For further clarification the members may contact the Secretary General, Chairman of respective zone or Registered Office.
13. At the National Executive Committee Meeting held at Bengaluru on 13th June, 2015, Shri P. C. Joshi was appointed as the Election Officer.
14. The Nomination Forms would be scrutinized by the aforesaid Election Officer on 21st December 2015 after 5 pm. and conduct the election if warranted at Hyderabad at the time of Ordinary General Body Meeting.
15. The names of valid nominations shall be notified in our website and will also be announced at the time of Ordinary General Body Meeting.

Full Day Seminar on Recent Issues in Direct and Indirect Taxes

There have been various amendments to various Acts and laws, for which it is important to be updated regularly.

With a view to help the Members, All India Federation of Tax Practitioners (WZ) jointly with the Tax Practitioners Association – Thane, Sales Tax Practitioners Association of Maharashtra - Mumbai, Thane Branch of WIRC of ICAI, Ulhasnagar Tax Consultants Association - Ulhasnagar, Bhiwandi Tax Practitioners Association – Bhiwandi and Tax Friends – Mumbai, has arranged a full day seminar on Recent Issues in Direct and Indirect Taxes on Saturday, 21st November, 2015 from 9.00 a.m. to 5.30 p.m. at Hotel Vihang Inn, Ghodbunder Road, Thane-400 607.

<i>Topics</i>	<i>Speakers</i>
Reverse Charge Mechanism and Place of Provision of Service Rules under Service Tax	CA Shailesh Sheth
Overview of proposed GST Bill	Adv. Pradeep Kshatriya
Practical issues in various declarations under CST Act (viz. Form C, Form H etc.)	CA Prem Chhatpar
Deeming Fictions under Income-tax, Act 1961 (Viz. s. 50C, 43CA and 56(2))	CA Jagdish Punjabi

Delegates fee (including Breakfast, Lunch, Tea & Material)

₹ 1,250/- for Members, ₹ 1,500/- for Others

(Early Bird Discount of ₹ 250/- to be given for Registrations received up to 7th November, 2015)

Cheques to be drawn in favour of **“Tax Practitioners’ Association, Thane”**

Members are requested to take advantage of this unique opportunity and enroll early to avoid disappointment.

Members wishing to enroll can contact the following:

AIFTP Office : 2200 6342/43

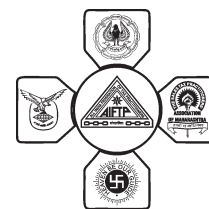
For AIFTP (WZ)

Sd/-

Pravin R. Shah
Hon. Secretary

IMPORTANT ANNOUNCEMENT

TAXCON — 2015



“Conflicts and Convergence in Tax Laws”

We are extremely happy to announce the much awaited TAXCON 2015, 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:—

Days & Dates	: Friday & Saturday, 27th & 28th November, 2015
Time	: 10 a.m. to 6.00 p.m. (Friday); 9.30 a.m. to 4.30 p.m. (Saturday)
Venue	: Khimji Kunverji Vikamsey Auditorium, ICAI Towers, Gr. Floor, G Block, Next to Standard Chartered Bank, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051
Fees	: ₹ 2,950/- (inclusive of Conference Materials, breakfast, lunch and tea on both days)

PROGRAMME SCHEDULE

Friday, 27th November, 2015

Inauguration and Key-Note Address: Eminent Personality

Subjects	Faculties
Sale, Service or Works Contract (Inclusive EPC Contracts)	
i) Service Tax & VAT	CA. Sunil Gabhawalla, Mumbai
ii) Income Tax	CA. Hitesh Gajaria, Mumbai
Update on GST	Shri Dilip Dixit, Pune
Intricate issues of Business Restructuring	
i) Income Tax	CA. Anup Shah, Mumbai
ii) VAT & Service Tax	CA. Parind Mehta, Mumbai

Saturday, 28th November, 2015

Subjects	Faculties
ICDS – Unsettling Settled Laws?	CA. Pinakin D. Desai, Mumbai
Panel Discussion – Controversies in Real Estate Transactions	
Moderator -	CA. Yogesh Thar, Mumbai
Panellists -	
i) Income Tax	Shri Saurabh Soparkar, Sr. Adv., Ahmedabad
ii) VAT	Shri P. C. Joshi, Adv., Mumbai
iii) Service Tax	Shri Shailesh Sheth, Adv., Mumbai
Brains' Trust Session	
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

Please send your enrollment 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 15th November, 2015 by e-mail at taxcon2015@yahoo.in**

CONFERENCE COMMITTEE

Chairman: Kishor Vanjara (Mob.: 9820186480)	Co-Chairman: Deepak R. Shah (Mob.: 9820148536)	Convenor: Ashok Manghnani (Mob.: 9820395195)
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Members

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

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 : 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 Latha Bansal, Senior Advocate, New Delhi Speaker : Mr. K. Vaitheeswaran, Advocate, Chennai

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

* Confirmation awaited

Fee and Charges

S. No.	Partoculars	
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	

Hotel Tariff

Hotel	Superior Double Occupancy	Luxury Double Occupancy	Deluxe Double Occupancy
Justa- The Residence Near Boats Club, Secunderabad, Ph. No. 040-66336644	₹ 2,700	₹ 3,500	₹ 4,500
	Standard	Deluxe	
Hotel Raj Comfort Inn, Near Paradise Circle, Secunderabad, Ph. No. 040-27893871/72/73/74	₹ 2,400	₹ 3,200	
Raj Classic In, Ranigunj X Road, Secunderabad Ph. No. 040-27815291/27720900	₹ 2,000	₹ 2,200	
Mango Hotels, Ranigunj X Road, MG Road, Secunderabad Ph No. 040-6050 0118/4007 3318	₹ 2,500	₹ 2,800	
Hotel Annapoorna Residency, Prenderghast Road, Near Paradise Circle, Secunderabad, Ph. No. 040-2789 1221/22/23	₹ 2,000	₹ 2,200	

Note : Distance from venue to hotels is about 4 kms

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

Convention Chairman

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e-mail: paramatmuni@yahoo.com

Dr. Anitha Sumanth

Chairperson, AIFTP-SZ

Phone: 09840320296

e-mail: anitasumanth@gmail.com

Mr. J. D. Nankani

National President, AIFTP

CA Harish N. Motiwalla

Secretary General, AIFTP

Mr. J. V. Rao

Chief Co-ordinator

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CA Hemendra V. Shah

Co-Chairman, National Convention

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Mr. K. Raji Reddy

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Mr. S. S. Satyanarayana

Secretary, Convention Committee

Phone: 9989924646

e-mail: sreepadass@gmail.com

DIRECT TAXES

Ms. Neelam Jadhav, *Advocate*
KSA Legal Chambers

HIGH COURTS

1. S. 54F: Capital Gain – Investment in residential house section does not require that the construction of the new residential house has to be completed, and the house be habitable, within 3 years of the transfer of the old asset

The assessee has purchased the residential property on 13-10-2008 immediately after sale of the property on 6-10-2008, and on 2-6-2010 assessee obtained approval of the building plan from the local authority and commenced the construction. However, it was not completed within 3 years i.e., on or before 5-10-2011. The A.O. rejected the claim of for deduction u/s. 54F towards the benefit of Long Term capital gain only on the ground that the construction has not been completed. The CIT(A) and Tribunal followed the principles enunciated while interpreting s. 54F.

The hon'ble High Court held that s. 54F is a beneficial provision which promotes for construction of residential house. The intention of the legislature, as could be discerned from the reading of the provision, would clearly indicate that it was to encourage investments in the acquisition of a residential plot and completion of construction of a residential house in the plot so acquired. The essence of said provision is to ensure that assessee who received capital gains would invest same by constructing a residential house and once it is established that consideration so received on transfer of his Long Term capital asset has invested in constructing a residential house, it would satisfy the ingredients of s. 54F If the assessee is able to establish that he had invested the entire net consideration within the stipulated period, it would meet the requirement of s. 54F and as such, assessee would be entitled to get the benefit of s. 54F of the Act.

CIT v. B. S. Shantakumari (Karn)(HC). source : www.itatonline.org

2. S. 147 : Reassessment – Recorded reasons - If Department does not furnish the recorded reasons, that the assessee was already aware of them, the reassessment has to be quashed

The assessee filed its return of income for the A.Y. 2008-09, the same was processed u/s. 143(1) of the Act. The A.O. initiated reassessment proceedings by issuing notice u/s. 148 seeking to reopen the

assessment for the A.Y. 2008-09. On receipt of notice, the assessee by letter sought copy of recorded reasons for reopening of assessment in respect of notice u/s. 148 of the Act. The A.O. by letter directed the assessee to file its return of income and also informed the assessee that the reasons would be furnished after the return of income is filed. The assessee thereafter by letter informed the A.O. that return of income filed on 29-9-2008 to be treated as the return of income consequent to notice u/s. 148. The A.O. completed the reassessment proceedings on u/s. 143(3) r/w 147 without having given a copy of the reasons recorded for issue of reopening notice to the assessee. The CIT(A) was not entertained the plea of the assessee and confirmed the action of the A.O. The hon'ble ITAT deals with this issue and relying upon the decision of the *GNK Driveshafts (India) Ltd. v. ITO 259 ITR 19 (SC)* and *CIT v. Videsh Sanchar Nigam Ltd. 340 ITR 66* held that failure to furnish the recorded reasons for issue of reopening is bad in law.

The Hon'ble High Court held that — (i) It is axiomatic that power to reopen a completed assessment under the Act, it is an exceptional power and whenever revenue seeks to exercise such power, they must strictly comply with the prerequisite conditions. (ii) These recorded reasons as laid down by the Apex Court must be furnished to the assessee when sought for so as to enable the assessee to object to the same before the A.O. Thus, in the absence of reasons being furnished, when sought for would make an order passed on reassessment bad in law. The recording of reasons and furnishing of the same has to be strictly complied with as it is a jurisdictional issue. This requirement is very salutary as it not only ensures reopening notices are not lightly issued. The A.O. disposes of these objections and if satisfied with the objections, then the impugned reopening notice u/s. 148 of the Act is dropped/withdrawn otherwise it is proceeded with further. Where jurisdictional issue is involved the same must be strictly complied with by the authority concerned.

CIT v. Trend Electronics (Bom)(HC) source : www.itatonline.org

TRIBUNALS

3. S. 2(24)(iv) : Income – Profit or Perquisite - Assessee had let out property to the company in which her husband and their relatives were holding substantial interest, rent

derived as a *quid pro quo* for letting out the property, such receipt of rent could not be characterised as benefit or perquisite

The assessee had let out property to the company in which her husband and their relatives were holding substantial interest. During the relevant year, the assessee has received a rent which was adjusted against interest-free deposit received from JISL. The A.O. taxed rental receipts u/s. 2(24)(iv) in preference to s. 22. Thus, the assessee was denied standard deduction of 30% u/s. 24. The CIT(A) cancelled the order of AO. The Hon'ble ITAT held that the rental income derived from the letting out of the house property is chargeable under section 22 or section 2(24)(iv) of the Act. let out to the company in which the husband of the assessee and their relatives are holding substantial interest and therefore the A.O. has invoked section 2(24)(iv) of the Act in preference to section 22 of the Act. The interest-free deposit received in terms of lease agreement is for letting out the property. It is not the case of the A.O. that heavy interest-free deposit has been paid in the guise of rent. On the contrary, it is the case of the A.O. the exorbitant rent has been paid. Interest-free deposit in letting out the property is not anything unusual in common parlance and is attributable to decision taken based on exigencies involved. Such action of the assessee cannot be inferred adversely. (A.Y. 2005-06)

Dy. CIT v. Smt. Nisha Anil Jain, source : www.itat.nic.in

4. S. 69C: Bogus Purchases – default by a person under MVAT Act cannot be a base for making addition under Income tax Act - section 69C is an independent section and can be invoked if certain conditions are fulfilled

The AO found that the Sales Tax department had informed that the assessee had made bogus purchase from Shree Enterprises (SE) and he directed the assessee to file certain details and to prove the genuineness of the transaction. After considering the details filed by the assessee, he held that challan copy was without markings and signatures, that goods were not actually received by the assessee, the assessee had shown sales against the alleged purchases, that entire purchases were made and he received the payments after four months of the sale, the assessee must have purchased goods from the grey market by investing unaccounted cash. Invoking the provisions of section 69C of the Act, the AO made an addition. The CIT(A) had allowed the appeal of the assessee. The Hon'ble ITAT confirmed the order of the CIT(A) and held that undisputed facts of the case are that the Sales tax department had declared SE a defaulter under MVAT Act, the assessee had claimed that he had sold gold jewellery was purchased from SE. The A.O was not

justified in invoking the provisions of section 69C of the Act just because SE was declared defaulter by the Sales tax department, default by a person under MVAT Act cannot be a base for making addition under Income tax Act in case of another person until and unless documentary evidence is not brought on record in the income tax proceedings proving the transaction was non-genuine. SE did not deposit tax in the treasury of State Government and later on the assessee had paid the required sum, as he had taken credit under MVAT Act. Section 69C of the Act is an independent section and can be invoked if certain conditions are fulfilled. The AO had ignored the documentary and corroborative evidences produced by the assessee. Except referring to the information received from the Sales Tax department the AO had not carried out any independent inquiry. If the evidences produced by the assessee are weighed against the information of the Sales Tax department, it becomes clear that piece of the information was too light. The A.O stopped at the beginning and made an addition though the assessee had produced reliable evidence in his favour therefore without purchases there cannot be any sale.

ITO v. Shri Nikhil A. Jhaveri, (Mum)(Trib.) source. www.itat.nic.in

5. S. 271(1)(c) : Penalty – Concealment - If the notice does not clearly specify whether the penalty is initiated, penalty should not be imposed.

The penalty notice issued u/s 274 is ambiguous to the extent for which the penalties are initiated. The said notice does not specify where the present penalty is being levied for concealment of income or for furnishing of inaccurate particulars of income. CIT (A) did not strike of the irrelevant limb mentioned in the notice u/s 274. CIT(A) is not clear as to the relevant limb of the provisions of section 271(1)(c) for which penalty should be levied. The ITAT held that the penalty for assessee's failure in furnishing inaccurate particulars in respect of estimated cost of future expenditure resulted in suppression of income. The penalty order of the CIT(A) mentioned the penalty was levied for "concealment of particulars of income" in respect of the change in estimated cost. All these variations, the CIT(A) is not clear as to whether the penalties are levied for "concealment of income" or "furnishing of inaccurate particulars of income". Further cannot initiate penalty for one reason and levy for other reasons. Therefore, the concealment penalty in the case is not sustainable on such addition / issues.

Parinee Developers Pvt. Ltd. v. ACIT (Mum)(Trib.) Source : itatonline.org



INDIRECT TAXES

SALES TAX

D. H. Joshi, Advocate

1. Anticipated liability

In this case, ETO Navjeet Singh inspected business premises of the petitioner and taken two cheques of ₹ 3,00,000 each and one of which was got encashed. Petitioner served notice objecting to high-handedness of authorities during the visit. Department stated that during visit, huge amount of stocks lying were found without documents. That was the reason why the cheques were taken in anticipation of the liability. During the pendency of writ, provisional assessment was framed and produced before the court alleging that the demand of ₹ 11,20,281 was due from the petitioner against which ₹ 3,00,000 have been adjusted as already taken and the balance was due to be paid. HC did not accept this version of the Dept. holding that in the absence of any assessment, the action of the Dept. to take two cheques in favour of the Dept. was not justified. The provisional assessment was quashed as it was done by the officer who had inspected the premises of the petitioner during the pendency of the writ petition. At the same time, to safeguard the interest of the revenue, the petitioner was directed to maintain in his bank account balance of ₹ 3,00,000 pending assessment proceedings.

Sumit Agencies v. State of Punjab And Ors. (2015) 51 PHT 441 (P&H).

2. Section 2(c) of The H.P. Value Added Tax Act, 2005 pertaining to “business”

In this case appellant was a residential school, and supplied uniform, shoes etc. to the students. Assessing Authority treated this activity as “business” and the school as a “dealer” under the H.P. VAT Act, 2005 and levied tax and interest on the appellant’s school. Whether this view of the Dept. was correct was a question in appeal before the Tribunal.

The Tribunal held in the negative as educational activity was a very grey area and law of the land treats imparting of education as a non-commercial activity as has been held in *University of Delhi v. Ram Nath, AIR 1963 SC 1873*. Further, to record an activity as a “business” there must be a sequence of dealings either actually continued or contemplated to be continued with a profit motive. It was thus clear that the appellant was neither a “dealer” nor undertaking “business”. Moreover, the extended definition of “sale” after the 46th amendment to the Constitution, did not give a licence to assume that a transaction was a sale and, then, to look around for what could be the goods. Accordingly, the appeal was allowed and assessment order set aside.

Lawrence School, Sanawar (H.P.) v. Addl. Taxation Commissioner, Shimla (H.P.) (2015) 52 PHT 24 (HPTT)

3. Amendment – Retrospective effect

Uttar Pradesh Trade Tax Act, 1948 section 21(2) as amended by 2001 Amendment. This amendment was challenged in the context of reassessment. The Supreme Court held that – “The cardinal principle which was accepted was that law in force in the assessment year was to be applied unless there was an amendment which came into force being of the retrospective operation”

Commercial Motors Ltd. v. Commissioner Trade Tax U.P., Lucknow 2015 NTN Vol. 59 P 53

4. Dealer qua sale of brochure/admission forms ?

Assessing Authority imposed tax on sale of brochure/admission forms u/s. 2(h). This was challenged in the writ petition. High Court held that in the light of the previous judicial citations, since the petitioner was not doing business of selling of questioned goods, hence, he was not a dealer within the scope of section 2(h) of the U.P. VAT Act, 2008.

Chhatrapati Sahu Ji Maharaj University v. State of U.P. And Ors. 2015 NTN Vol. 59 P 38.

5. Interpretation of statute

A Appeal: Period of limitation – it is settled law that periods of limitations are procedural in nature and, therefore, any amendment to that would ordinarily be applied retrospectively. This, however, was subject to a rider that if a shorter period of limitation was provided by an amendment, the limitation prescribed in unamended provision would apply unless the shorter period of limitation as provided by amended provision was specifically given retrospective effect.

B Justice and reason at all times is the heart of all legislation. It is proper to assume that the lawmakers enact laws which the Society considers as honest, fair and equitable. The object of every legislation is to advance public welfare. In other words, the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently, where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in that case it can be assumed that the appellant or the suggested meaning of the statute was not intended by the lawmakers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that such harsh or ridiculous effect represents the

legislative intent. Courts always lean in favour of advancing the cause of justice where a clear case is made out for doing so.

M.P. Steel Corporation v. Commissioner of Central Excise (2015) 27 STJ 81 (SC)

C Doctrine of incorporation by reference: Section 2(o) of the Rajasthan Sales Tax Act, defines 'sale'. As per Explanation II, to the said section "a transfer of property in goods shall be deemed to have been made within the State if it fulfils the requirements of sub-section 2 of section 4 of the CST Act, 1956". The Supreme Court held that we would interpret the said Explanation as if sub-section (2) of section 4 were written out verbatim in the explanation and once sub-section (2) of section 4 is written out in the Explanation, there is no occasion or need to refer to the Central Act from which this incorporation is made or to its purpose or context. We need not therefore allow ourselves to be oppressed by the opening words 'subject to the provisions contained in section 3' in sub-section (1) of Section 4 or by the context in which Section 4 occurs in the Central Act.

Onkarlal Nandlal v. State of Rajasthan And Ors. (2015) 27 STJ 119 (SC)

6. Entry tax

A Plant & machinery purchased for expansion before commencement of business under expansion, M.P. High Court held that there are consistent judgments of M.P. High Court and that of the Supreme Court which laid down the principle that if plant and machinery was brought into local area for expansion of business, the same cannot be subjected to payment of entry tax. This aspect has been completely overlooked by AO and by incorrectly applying the law the assessment has been made. This could not be approved. Accordingly, the court quashed impugned assessment order.

Makson Nutrition Food (I) Pvt. Ltd. v. A.C.C.T. Bhopal (M.P.) (2015) 27 STJ 130

B Poultry fed to the parental mother birds in the hatchery – it amounted to consumption and therefore was liable to entry tax.

Phoenix Poultry v. State of M.P. (2015) 27 STJ P 133 (M.P.)

7. Revision is permissible pending appeal

The Bombay HC has held under the BST Act, 1959 that revision is independent power of the authority. The assessee has filed appeal against impugned Order on different issues. Therefore, the Revisional Authority had right to initiate Revision proceedings in the present case by following the decision of the very court as confirmed by the Supreme Court in *Tel Utpadak Kendra v. Dy. Commr. of ST (1981) 48 STC 248 (SC)*, would have hardly any application in the

present set of facts and circumstances. The Reference Application came to be dismissed accordingly.

Jitendra R. Gandhi v. Commissioner of ST (2015) 81 VST 157 (Bom.) / STJ Vol. 54 P 644

8. Transfer of Right to use Goods

In case of transfer of right to use goods, it was immaterial whether the buyer himself carries goods for his use or was transported by the personnel of the selling dealer. The Rajasthan HC held that a very thin line of conclusion has been drawn by the Tax Board. Under both the propositions, it would certainly fall within the definition of "sale". Hence, the Revision filed by the revenue came to be allowed and the decision of the Tax Board came to be set aside accordingly.

Addl. Commr. (Legal) Commercial Taxes, Rajasthan v. Taluka Tent Decorators And Anr. (2015) 81 VST 258 (Raj.) / STJ Vol. 54 P. 645

9. Seizure of goods under GVAT Act, 2003

Goods cannot be seized for recovery of assessed dues before expiry of time limit for appeal against the Order raising dues. According to the Gujarat HC, the authority could not have seized the goods under the provisions of sections 68 and 69 of the Act. The Order passed by the Assessing Authority came to be quashed and set aside.

Alliance Fiber Ltd. v. State of Gujarat (SCA No. 9014 of 2015 / STJ Vol. 54 P 645

10. Ex parte orders

In an interesting case before the WBTT, ex-parte Orders passed in a row by Assessing Authority confirmed by Appellate Authority and also confirmed by the Revisional Authority due to non-appearance by the petitioner before all the said authorities, the plea was taken that due to pending of application for grant of Eligibility Certificate, the petitioner not appeared before the Authorities as no purpose would have been served by appearing before each of the authorities. The question to be decided was whether the plea was a valid one ?

The Tribunal held in the negative because petitioner nowhere brought the aforesaid fact to the notice of the authorities below. Hence, all ex parte orders were justified. Another question was whether sufficient opportunities had been provided ? Again, the Tribunal held in the affirmative. Also, plea that levy of tax @12% on sales of the aluminium utensils instead of 4% was a valid plea, held in the affirmative because levy of tax @12% on such sales was not discussed in the Assessment Order. All in all, whether all ex parte orders should be set-aside with direction to the Assessing Authority to make fresh assessment, Tribunal held in the affirmative considering Schedule Entry-IV, Entry No. 227 of Part A of Schedule IV.

Anvil Investment Pvt. Ltd. v. CTO, Ballygunge Charge And Ors. (2015) 66 STA P 136.



Life Time Achievement Award Conferred to Shri Bharat Ji Agrawal by AIFTP

All India Federation of Tax Practitioners conferred "Life Time Achievement Award" on Shri Bharat Ji Agrawal, Senior Advocate and Past President for his outstanding contribution to legal profession and sharing of his knowledge and expertise in more than 100 national tax seminars.

Justice R. K Agrawal of Supreme Court and Mr. K. V. Chaudhary, Central Vigilance Commissioner were also present and they appreciated the services of Shri Bharat Ji Agrawal to the tax fraternity.

Shri Bharat Ji Agrawal expressed his gratitude for the honour.

On this occasion S/Shri Jagdish Nankani, President, AIFTP, P. C. Joshi, N. M. Ranka, M. L. Patodi, S. K. Poddar (Past Presidents), Harish Motiwalla (Secretary General), Pankaj Ghiya, Mukul Gupta, B. N. Mahapatra, M. S. Rao (Vice Presidents), Janak Vaghani (Treasurer), Narayan Jain, (Chairman PR and Membership Committee); Arvind Shukla (Chairman, North Zone), K. L. Goyal, O. P. Shukla, Indu Chatrath; Padamchand Khincha, Arun Agarwal, Rahul Agarwal, Asim Zafar, R. D. Kakra, Arvind Agarwal; Smt. Nikita Badheka, Smt. Premlata Bansal and many other dignitaries were also present.

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