

All India Federation of Tax Practitioners**AIFTP TIMES**

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FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
20-8-2016	National Executive Committee Meeting	Jamshedpur
20, 21-8-2016	Two Day National Tax Conference	Jamshedpur
28-8-2016	One Day Seminar	Bhavnagar
15-10-2016	National Executive Committee Meeting	Kanyakumari
15, 16-10-2016	Two Day National Tax Conference	Kanyakumari
11-11-2016	National Executive Committee Meeting	Pune
11, 12-11-2016	Two Day National Tax Conference	Pune
2, 3, 4-12-2016	19th National Convention	Delhi

A N N O U N C E M E N T

Income Declaration Scheme 2016
Direct Tax Dispute Resolution Scheme 2016

Dear Members,

As you are aware that Government has announced the above two Schemes and have issued clarifications too. Yet, many issues remain unanswered or there are doubts with regards to many issues in the mind of Tax Professionals.

Members are requested to send their issues relating to the above two schemes, which will be answered by the Panel set up by AIFTP consisting of S/Shri N. M. Ranka, Sr. Advocate, Dr. K. Shivaram, Sr. Advocate, S. R. Wadhwa, Advocate, CA. H. N. Motiwalla, CA. Pradip Kapasi, CA. Chetan Karia and Others.

Queries be sent to the Federation's office or by e-mail, with subject line : ISSUES on IDS & DRS, 2016. The same will be answered & published in www.itatonline.org

Representation Committee of the Federation will also be taking up the controversial issues on the above subject before the Hon'ble Finance Minister and Chairman, CBDT for further clarification.

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

Name	Mobile	Tel. (O)	Fax	E-mail
National President – Dr. M. V. K. Moorthy, Adv.	9849004423	040-23228474	23261667	mvkmoorthy59@gmail.com
Deputy President – Smt. Prem Lata Bansal, Sr. Adv.	09811558194	011-23955703	—	plbansal49@gmail.com
Secretary General – Shri M. Srinivasa Rao, TP	09885796999	08812-238898	—	sai9malladi@yahoo.com
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REPORT OF INTERNATIONAL TAX CONFERENCE – 2016

Organised by All India Federation of Tax Practitioners on 29/31 May, 2016 to 2/4 June 2016 at TASHKENT
THEME – Make in India – Role of Tax Professionals

Pankaj Ghiya, Advocate

In the NEC at Nashik the responsibility for holding a Conference outside India was given to me. It was suggested that the Conference may be held at the earliest. Accordingly after discussions it was planned to hold a Conference along with NEC at Tashkent, Uzbekistan in the first week of June.

The Conference was announced and immediately the same was booked and continuous demand for further bookings was received. Due to International location and prior flight tickets and visa issues the first group was planned initially for 70 persons but was further increased on demand to 100 persons. In spite of it there was continuous calls for participants and after discussion with the President Dr. Moorthy we planned a second group also and that group was also booked immediately. The total number of participants swelled to 170.

It was a unique event as there were large participants of the members and their families. We had representation of members throughout India. At a certain points we had to refuse the request for participation in the Conference due to non-availability of seats. In fact the participants would have crossed 250 if we had enough bookings with us.

The group was divided into two departures with the first departure on 29th May and the Second departure on 31st May, 2016 from Delhi International Airport. The first group was led by our past President Shri N. M. Ranka, Sr. Advocate and the second group was led by the President Dr. M. V. K. Moorthy. The stay of both the groups was at Lotte Tashkent Palace Hotel and the Conference was organised at Le Grand Palace Hotel on 31st May and 1st and 2nd June, 2016.

All the male participants of the Conference was given gift consisting of one travel bag, one T-shirt and one full jacket and all the female participants was given one travel bag, one T-shirt and one Saree of Kota Doria, a speciality of Rajasthan.

The Conference was inaugurated by Mr. Sharma, Counsellor of the Indian Embassy at Uzbekistan and Mr. Ashok Tiwari a leading Industrialist of India in Uzbekistan. In the inaugural ceremony the President Mr. M. V. K. Moorthy welcomed all the delegates to the Conference and informed about the activities of the AIFTP. Mr. Pankaj Ghiya informed about the working of the Conference and the plan of the visit etc. The Secretary General Mr. M. Srinivasa Rao proposed vote of thanks.

After the inaugural session there was a tea break and thereafter NEC was held.

On the second day of the Conference the technical sessions started and we are grateful and thankful to all the learned speakers and Chairmen of the session for their valuable time and presentations and discussions in the technical sessions. The details of the technical session and the Chairmen, Speakers, Panellists and Trustees are as under:-

First Technical Session – Income Tax

Chairman – Mr. N. M. Ranka, Sr. Advocate, Jaipur

Speaker – CA. Vijay Kewalramani, Mumbai

Speaker – Mr. Mahendra Gargieya, Adv., Jaipur

Second Technical Session – Service Tax

Chairman – Mr. B. Panda, Sr. Advocate, Bhubneshwar

Speaker – CA. Ashok Chandak (Past President, ICAI)

Speaker – Mr. Pankaj Ghiya, Adv., Jaipur

Third Technical Session – VAT

Chairman – Mr. K. L. Goyal, Sr Advocate, Chandigarh

Speaker – Smt. Nikita Badheka, Adv., Mumbai

Speaker – CA. Ravi Kumar, Noida

Fourth Technical Session

Panel Discussion on issues of Income Tax, VAT, Service Tax and Stamp Duty on Real Estate Transactions

Chairman – Smt. Prem Lata Bansal, Sr. Advocate, New Delhi

1. Mr. Shanker Poddar, Adv., Jaipur
2. Mr. Anand Pasari, Adv, Ranchi
3. Mr. Kishor Vanjara, TP, Mumbai
4. Mr. R. B. Mathur, Adv., Jaipur
5. Mr Bhasker Patel, Adv., Ahmedabad

Impact of the Real Estate (Regulation and Development) Act, 2016 on Industries, customers, professionals and regulators.

Chairman – Shri D. V. Pathi, Sr. Advocate, Patna

1. Ms. Gunjan Mittal, Adv., New Delhi
2. CA. Jatin Harjai, Jaipur
3. Mr. Rajiv Shankar Dvivedi, Adv, Delhi

Brains' Trust and Valedictory Session

Chairman – Dr. M. V. K. Moorthy, Advocate, Hyderabad

1. Mr. D. K. Gandhi, Adv., Ghaziabad
2. Mr. O. P. Shukla, Adv., Varanasi
3. Mr. R. D. Kakra, Adv., Kolkata
4. CA. Janak Vaghani, Mumbai (Case Study on VAT)
5. CA. Vipin Garg, Ghaziabad (Case Study on IT)

On the Third day again technical session was conducted and thereafter a valedictory session of all the participants including the ladies was organised, wherein for the first time an open session was organised so that all the participants can express their views and comments on the complete programme. More than 15 participants expressed their views and appreciated the arrangements and the overall package.

For the first time also a housie was organised with a prize of ₹ 15,000 and no ticket charges. The ticket given free to all the participants and the prizes was sponsored of ₹ 15,000 by Mr. Pankaj Ghiya. All the participants enjoyed the housie and won the various prizes.

In addition to the technical sessions there was site seeing tours. The Air conditioned coaches carried all the delegates to the local site seeing places, local markets etc. One day tour to the mountains and lake resort was also made. All the delegates went on the cable car to the top of the mountain. At the lake resort lunch was organised and thereafter water sports were done by the delegates.

The breakfast was in the hotel itself and the lunch and the dinner was organised at different Indian restaurants. The valedictory function and lunch was organised at the Conference venue itself and it was organised with the famous “Raj Kapoor” Restaurant.

The City Centre was just 10 minutes walk from the Hotel and at night most of the delegates stayed back after dinner and enjoyed the atmosphere and got there face sketching done.

There is lot of thanks to say about the Conference and the tour but to sum it up we can simply state that it was a momentous task of taking 170 persons outside India and to come back without any untoward happening. It is with the grace of God and the blessing of Lord Ganesh that this International Conference has been a success and more or less everybody enjoyed it.

We are grateful to the National President Dr. M. V. K. Moorthy for giving this opportunity and highly grateful to Shri N. M. Ranka, Sr. Advocate and Past President for giving guidance and blessing and being a part of this Conference.

My special thanks to all the persons participating in this Conference as without them there could not have been such a successful programme. My gratitude to Mr. Vijay Kewalramani for helping for invitation of the Chief Guest and the guest of honour. Thanks to each and every person who has helped me in working of the Conference.



**REPORT OF
CENTRAL ZONE NAKODA CONFERENCE
HELD ON 26-6-2016**

By
D. C. Mali, *Chairman*, AIFTP (CZ)

All India Federation of Tax Practitioners (Central Zone) organised a tax seminar in the name of Nakoda Darshan and Tax Seminar on 26th June at Rajendra Dham, Nakoda Balotra (Rajasthan) in which 100 delegates participated and 40 spouses and children were also present. Delegates were from Chhattisgarh, M.P., Bikaner, Jaipur, Pali, Nagaur, Jodhpur, Barmer, Balotra, Sumerpur, Jalore, Sanchore, Bhinmal. In this Conference, special speakers were Dr. Rajesh Mehta from Indore on TDS and TCS; Dr. S. L. Jain from Jaipur on Capital Gains; S. M. Padiwal (Advocate) on VAT and Service Tax. Our Conference Chairman (CZ) and Member GST Committee P. M. Chopra addressed regarding next Conference and GST committee meetings. Conference was inaugurated by K. L. Jain, Additional Commissioner, Commercial Taxes (Appellate Authority) as Chief Guest. Seminar is organised by A.I.F.T.P. (CZ) with active support of Balotra Tax Bar and with active participation of Om Banthia, Joint Secretary. Inaugural session started with lighting the lamp and Saraswati Vandana. Inaugural Session was conducted by Miss Prerna Chopra and in the end of session National Anthem. This one day Conference was organised with Brains Trust Session. Seminar was well published in all the newspapers of Jodhpur, Jaipur, Bikaner, Pali, Balotra. In this seminar we also sent a representation to Government for certain issues to the State Government and we also decided to submit the problem of TDS and TCS to our Head Office.

Ultimately Conference was concluded by Vote of Thanks. After that AGM of the Zone was held and accounts have been passed and then auditor was appointed. Shri P. M. Chopra Trustee of Shri Vijay Chopra Charitable Trust announced four shields and Central Zone Chairman D. C. Mali gave memento and special felicitation to the active participants of Tax Bar and members in Zone.

**REPORT OF SEMINAR ON
INCOME DISCLOSURE SCHEME &
DISPUTE RESOLUTION SCHEME 2016**

Organised by The Income Tax Bar Association, Allahabad

Jointly with

All India Federation of Tax Practitioners (North Zone)

By

Arvind Kumar Mishra, Secretary, ITBA

The Income Tax Bar Association, Allahabad jointly with All India Federation of Tax Practitioners (North Zone) organised a Interactive Seminar on two schemes viz., Income Disclosure Scheme, 2016 (IDS) and Dispute Resolution Scheme, 2016 (DRS) on 16th June, 2016 in the Conference Hall of the Income Tax Office Building, Allahabad

The programme started with Saraswati Vandana thereafter President of the Income Tax Bar Association, Allahabad, Mr. Sanjay Kumar Advocate welcomed the Chief Guest Hon'ble Justice S. P. Kesarwani, Judge Allahabad High Court who has also been the General Secretary of The Income Tax Bar Association Allahabad for the Term 1997-99. The Guest of Honour for the programme was The Commissioner of Income Tax (Appeals) Shri Raj Kumar Lacchiramka.

The Speaker on the subject Mr. A. K. Srivastava, National Executive Committee Member, AIFTP from New Delhi explained the provisions of the Income Disclosure Scheme, 2016(IDS) and Dispute Resolution Scheme, 2016 (DRS) to more than 110 delegates who attended the Seminar. The Joint Secretary of the AIFTP Ms Jamuna Shukla, National Executive Members Mr. Asim Zafar and Mr. O. P. Shukla, Shri L. K. Singh President of the Varanasi Income Tax Bar were present with several members, AIFTP members of Varanasi, Gorakhpur, Mirzapur, Bhadoi and other nearby cities

The Chief Guest Hon'ble Justice S. P. Kesarwani, Judge Allahabad High Court also commented on various provisions of the two schemes and suggested that the AIFTP should send a Memorandum to the Central Board of Direct Taxes seeking clarifications on various issues discussed in the programme. He added that the Income Disclosure Scheme is very beneficial for the people having undisclosed movable and immovable properties or huge Benami Investments where the Dispute Resolution Scheme is an effort to reduce Litigation at the level of Commissioner of Income Tax (Appeals) where there is enormous pendency.

Thereafter Guest of Honour The Commissioner of Income Tax (Appeals) Allahabad, Shri R. K. Lacchiramka gave his personal views and clarified on the issues raised by the Senior Advocates & Chartered Accountants from Allahabad and many outstation AIFTP members who attended the programme and participated in the Query Session which was conducted by the General Secretary of The Income Tax Bar Association, Allahabad Shri Arvind Kumar Mishra.

Later the two senior most members of AIFTP and the Income Tax Bar Association Allahabad who are over the age of 80 years and actively practising Mr. Suraj Prasad Agrawal, Advocate and Shri K. N. Kumar, Advocate were felicitated by Hon'ble Justice S. P. Kesarwani. The Seminar closed with the Vote of Thanks by Shri Shaswat Singhal, the Chairman of the Study Circle.



TWO DAY NATIONAL TAX CONFERENCE 2016

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS (EZ)
Jointly with

**JAMSHEDPUR TAXATION BAR ASSOCIATION • JAMSHEDPUR CHARTERED ACCOUNTANTS SOCIETY
JAMSHEDPUR COMMERCIAL TAXES BAR ASSOCIATION**

On 20th & 21st August, 2016
at Michael John Auditorium, Bistupur, Jamshedpur – 831 001.

PROGRAMME

Day One : Saturday – 20-8-2016

- 9:00 A.M. to 10:30 A.M. : Breakfast, Registration
- 11:00 A.M. to 12:30 P.M. : INAUGURAL SESSION –
Hon'ble Mr. Justice R. K Agarwal, Hon'ble Supreme Court*
Hon'ble Mr. Justice Virender Singh, Chief Justice – Jharkhand High Court*
Hon'ble Mr. Justice P. K. Mohanty, Judge, Jharkhand High Court*
(*Confirmation awaited)
- 12:30 P.M. to 01:30 P.M. : Lunch
- 01:30 P.M. to 2:00 P.M. : Panel Discussion with Shri Binod Poddar, Advocate General of Jharkhand
- 2:00 P.M. to 4:00 P.M. : FIRST TECHNICAL SESSION
Chairman – Shri S. K. Poddar, Advocate
- | Topics | Speakers |
|---|-----------------------------|
| (1) Search, Seizure under Income-tax Act – 1961 | Shri N. K. Poddar, Advocate |
| (2) Survey under Income-tax Act | Dr. Anita Sumanth, Advocate |
- 4:00 P.M. to 4:15 P.M. : Tea Break
- 4:15 P.M. to 6:15 P.M. : SECOND TECHNICAL SESSION
Chairman – Shri P. C. Joshi, Advocate
- | Topics | Speakers |
|---|------------------------------------|
| 1. Real Estate Transactions – Legal, Taxation & Accounting Aspects. | |
| (a) Income Tax | Smt. Premlata Bansal, Sr. Advocate |
| (b) Service Tax | Shri Mukul Gupta, Advocate |
| 2. Sailable features under GST | Eminent faculty |
- 6:30 P.M. to 7:30 P.M. : National Executive Committee Meeting
- 7:30 P.M. to 8:45 P.M. : Cultural Programme
- 8:45 P.M. to onwards : Dinner

Day Two : Sunday 21-8-2016

- 8:30 A.M. to 9:30 A.M. : Breakfast
- 9:30 A.M. to 11:30 A.M. : THIRD TECHNICAL SESSION
Hon'ble Guest : Hon'ble Mr. Justice D. N. Patel, Judge, Jharkhand High Court
Chairman – Dr. Ashok Saraf, Sr. Advocate
- | Topics | Speakers |
|--|-------------------------------|
| 1. (a) I T C under J VAT Act after recent amendments | Shri Sumit Garodia, Advocate |
| (b) Controversial issues of ITC under VAT Act | Smt. Nikita Badheka, Advocate |
| 2. Problem & Remedies under Service Tax Act | CA. Arun Agarwal |
- 11:45 A.M. to 1:45 P.M. : FOURTH TECHNICAL SESSION
Hon'ble Guest : Hon'ble Mr. Justice Ananda Sen, Judge, Jharkhand High Court

Chairman – Dr. M. V. K. Moorthy, Advocate

Topic

Speakers

(1) Important amendment made by Finance Act, 2016

Shri N. P. Jain, Advocate

1:45 P.M. to 2:30 P.M.

: Lunch

2:30 P.M. to 4:00 P.M.

: Brains' Trust Session

Chairman – Shri R. D. Kakra, Advocate

Trustees – Eminent faculties

4:00 P.M. to 5:00 P.M.

: VALEDICTORY SESSION

National Anthem

HIGH TEA

Registration Charges:- ₹ 2,000/- for Members, ₹ 1,000/- for Spouse & ₹ 2,500/- for Corporate.
DD or Cheque at par in favour of "Jamshedpur Taxation Bar Association" payable at Jamshedpur

For further details, please contact:

Shri M. D. Kedia, Chairman, Conference Committee, 9835166266, mdkjsr@gmail.com
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Shri R. K. Gupta, Chairman, Reception Committee, 9835163576, ramakant_rkg@hotmail.com
Shri Rajesh Mittal, Chairman, Hotel Accommodation, 9431113487, snmital@hotmail.com

Hearty Congratulations

It is to inform that NEC Member of AIFTP **Mr. M. V. J. K. KUMAR**, a leading advocate both indirect and direct tax laws, service matters and constitutional aspects has been appointed as Senior Central Government Standing Counsel in High Court of Judicature at Hyderabad for the State of Telangana and Andhra Pradesh in Central Excise, Customs and Service Tax branches of law.

Subscription Rates w.e.f. 1-4-2014

1. Life Membership of the AIFTP					₹ 2,500/-*
ID Card Fees					₹ 100/-*
Subscription of AIFTP Journal (for 1 year)					₹ 800/-
Subscription of AIFTP Journal (for 3 years)					₹ 2,100/-
2. For Non-Members					
Subscription of AIFTP Journal (for 1 year)					₹ 1,000/-
Subscription of AIFTP Journal (for 3 years)					₹ 3,000/-
Single copy of the AIFTP Journal					₹ 80/-
3. Corporate Membership					
Nature of fees	Type I (5 Yrs.)	Type II (10 Yrs.)	Type III (15 Yrs.)	Type IV (20 Yrs.)	
Admission	500/-*	500/-*	500/-*	500/-*	
Subscription	5,000/-	7,500/-	11,500/-	15,000/-	
Total	5,500/-	8,000/-	12,000/-	15,500/-	

Note: Members may download the membership form from the website of AIFTP, i.e., www.aiftponline.org

* 15% Service Tax as applicable.

RENEWAL SUBSCRIPTION TO AIFTP JOURNAL

Dear Members,

We have posted bill for renewal subscription of AIFTP Journal in first week of April, 2016. Members are requested to send the DD or Cheque at par in favour of "All India Federation of Tax Practitioners" payable at Mumbai as early as possible.

Members can also download the subscription form from our website; i.e. www.aiftponline.org and send us the subscription.

Thanking you,

For All India Federation of Tax Practitioners

CA. S. B. Kabra
Treasurer

Note:

1. Members who have not paid the subscription for AIFTP Journal for the year 2016-17 will not receive the AIFTP Journal from July, 2016 onwards.
2. Members who required the AIFTP Journal to be couriered separately at their communication address, should add ₹ 300/- per year as courier charges.

Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Baroda Tax Bar Association, Baroda for the term 2016-17.

President	:	Shri Ajit Tiwari
Vice-President	:	Shri Daxesh Dalwadi
Hon. Secretary	:	Shri Mukesh Sharma
Hon. Joint Secretary:		Shri Mehul Sutaria
Treasurer	:	Shri Suresh Prajapati

We wish them all the success.

Hearty Congratulations to the newly elected office bearers of Income Tax Bar Association, Varanasi for the term 2016-17.

President	:	Shri Lavkush Singh
Vice-President	:	Shri Asim Zafar
Secretary	:	Shri Om Prakash Shukla
Joint Secretary	:	Shri Vishnu Shankar Singh
Library Secretary	:	Shri Rajendra Kr. Chaurasia
Treasurer	:	Shri Sanjaykumar Verma

We wish them all the success.

Hearty Congratulations

Hearty Congratulations to National Executive Committee Member Mrs. Gouri Chandnani Papat, Advocate who has been unanimously appointed as the Chairperson of Gujarat Sindhi Advocates Association for a period of 2 years.

We wish her all the success.

DIRECT TAXES

Ms. Neelam Jadhav, *Advocate*, KSA Legal Chambers

Unreported Decisions

1. S.48: Capital Gain – Mode of Computation – Interest paid in respect of acquisition of shares irrespective of number of shares allotted should be considered as cost of acquisition

The controversy is whether the entire interest on the borrowed money paid by the assessee can be allowed u/s. 48 treating the same as the cost of acquisition. The ITAT held that as the entire money has been borrowed by the assessee, with the sole purpose for acquiring the shares of though the applied shares were not allotted in full, that will not deprive the assessee from claiming the entire interest paid as the part of the cost of the acquisition of the shares allotted as the money borrowed has direct nexus with the acquisition of the shares. Therefore, the interest paid by the assessee as a part of cost of acquisition of the shares and the same is allowable as a deduction. (AY. 2006-07)

Firestone Trading Pvt. Ltd v. Dy.CIT [ITA No. 886/Mum./2014 dtd. 29-1-2016 (Mum.)(Trib.)]

2. S. 69: Unexplained expenditure – Cross Examination of parties not provided – Addition of Bogus purchase was deleted

AO received certain information from the Sales Tax Department, as per the information purchase party supplying bogus bills. The AO did not supply the copy of the statement of purchase party to the assessee and neither made him available for cross examination, which the assessee had filed all the details from placing of order to the receipt of final bills before the AO during the assessment proceedings. ITAT held that as the assessee had discharged the onus upon it, after that the AO did not make any inquiries, and not rejected the books of account of the assessee, AO. had accepted the sale made by the assessee. Therefore AO has violated the basic principles of natural justice. Therefore addition made by the A.O. is not justified. (A.Y. 2010-11)

Dy. CIT-9(1) v. Aspee Agro Equipment Pvt. Ltd. ITA No. 4065/Mum/2014 dtd. 1-1-2016 (Mum.)(Trib.)

3. S. 69A: Retraction before A.O. during assessment proceedings not justified

During the course of search and seizure operations, the statements were recorded u/ss. 131 and 132(4) of Director, he stated that the company is offering undisclosed income (comprising unaccounted cash

and cash salary paid) over and above its regular income and filed its return of income u/s. 153 which admittedly included the additional income on account of undisclosed unaccounted cash seized which is not accounted.

During the course of assessment proceedings, the assessee before the AO came up with a new claim that instead of treating the entire unaccounted seized cash as income and only the profit element of the sales should be treated as income and brought to tax by applying the gross profit rate. These new claim by the assessee were rejected by the AO as they were bereft of any material evidence to buttress the claim.

The Hon'ble ITAT held that, it has been clearly established by the factual matrix of the case and the corroboration thereof by the assessee's own acceptance of the same in the sworn statements recorded by Directors, that the cash seized was unaccounted and the declaration of the same cash as undisclosed income, unaccounted in the assessee's books of account in its return of income. Afresh claim made before the AO almost two years after the search and almost a year after filing the return of income. It is a self-serving afterthought and contention is bereft of any material evidence. Therefore retraction made during assessment is not justifiable. (r.w.s.132, 133A and 153A) (A.Y. 2010-11)

Chains Corner Jewellery (I) Pvt. Ltd. vs. ACIT ITA No. 2558/Mum/2013 dtd. 27-1-2016 (Mum)(Trib.)

4. S.80-IB(10): Housing Project – Claim of deduction made in revised return – Entitled deduction though not claimed in original return. (r.w.s. 80A(5), 139(5))

The assessee is engaged in development of housing project. However, the original return was filed well within the time u/s. 139(1), wherein the assessee has not made any claim of deduction u/s. 80IB(10). The assessee filed revised return wherein deduction u/s. 80IB(10) was claimed, however, while framing assessment the AO disallowed claim of deduction in view of the provisions of Section 80A(5). The ITAT held that when the original return of income has been filed well within the due date, the revised return filed thereafter before the completion of assessment proceedings, is a valid return of income. The assessee has filed revised return claiming deduction u/s. 80-IB(10) before completion of assessment. Nowhere the AO has alleged that assessee has failed to comply with any of the conditions of Section 80-IB(10). (A.Y. 2007-08)

DCIT 15(3) v. Kamdhenu Builders and Developer ITA No. 7010/Mum./ 2010 dtd. 27/1/2016 (Mum.)(Trib.)

5. S. 271(1)(c): Penalty concealment – Penalty cannot be levied once the question of law is admitted before High Court in quantum proceedings – Issue becomes debatable

The addition made by the AO was confirmed by the First Appellate Authority as well as ITAT that the assessee was not entitled to claim depreciation in respect of assets/equipment leased out to GEB.

The Hon'ble ITAT had considered against decision of Gujarat High Court in the case of Soft Touch Hygiene Products Pvt. Ltd. ITA No.2146 of 2010 dt. 20-12-2012 and by following the Jurisdictional High Court in the case of *Nayan Builders and Developers Pvt. Ltd. (2014) 368 ITR 722 (Bom.)(HC)* held that once a question of law is admitted by the Hon'ble High Court in quantum proceedings the issue becomes debatable and penalty u/s. 271(1)(c) cannot be levied. (AY. 1993-94)

ICICI Bank Limited v. DCIT ITA No. 4903/Mum/2005 dtd. 1-1-2016 (Mum)(Trib.)



INDIRECT TAXES

CA. Janak Vaghani

1. Input Tax Credit – Packing material used for inter-State stock transfer of manufactured goods – Not entitled

Provisions of Section 6(3)(d) and the cognate provisions contained in the proviso thereto leaves no doubt that the legislature never intended to give benefit of ITC in regard to “Packing materials” used in connection with inter-State stock transfer of finished goods. No ITC is admissible on tax paid on packing materials used for inter-State stock transfer of finished goods.

(M/s. Hindustan Lever Ltd., v. State of Uttarakhand & Others, Special Appeal Nos. 159 to 161 of 2005, dated 23rd September, 2015, 2016 NTV (Vol. – 60) – 267 (Ultra)).

2. Notification – Successive inter-state sale of goods manufactured by eligible PSI unit – Exempt from payment of tax – Interpretation – Proviso to main provision – Does not exclude something by implications

Inter-State sale of goods manufactured by eligible industrial unit is exempt from payment of tax u/s. 8(5) of the CST Act in view of notification issued thereunder providing exemption from payment of tax on inter-State sale of goods manufactured by any dealer holding a valid exemption certificate u/r. 25A. Under the said notification, goods are exempt and not the selling dealer. There is no stipulation that only first sale or sale by the eligible unit is exempt. The confusion arises due to proviso to the said notification which states that manufacturer dealer should not have charged tax.

The normal function of proviso is to qualify something enacted therein but for the said proviso would fall within the purview of the enactment. It is in

the nature of exemption. However, proviso should not be given a greater or more significant role in interpretation of the main part of the notification except as carved out an exception. Further, except for instances dealt within the provision, the same should not be used for interpreting the main provision/enactment so as to exclude something by implication. It means and implies that the requirement of the proviso should be satisfied i.e. the manufacturing dealer should not have charged tax. The proviso would not scuttle or negate the main provision by holding that the first transaction by the eligible manufacturing dealer in the course of inter-State sale would be exempt but if the inter-State sale is made by trader/purchaser, the same would not be exempt. That would not be the correct understanding of the proviso. Therefore, successive sale by trader of manufactured goods by eligible industrial unit is exempt from payment of tax u/s. 8(5) of the CST Act read with notification issued thereunder.

(M/s. Casio India Co. Pvt. Ltd. v. State of Haryana, Civil Appeal No. 1411 of 2007, and 5450 of 2013, dated 29th March, 2016, (2016) 53 PHT 505 (SC)).

3. Search Survey and Seizure – Sealing order – Judicial requirement

Section 60 of the Delhi VAT Act sets out the jurisdictional requirement for invocation of power u/s. 60(2)(f) that the Commissioner must have reasonable grounds to believe that ‘any person or dealer is attempting to avoid or evade tax or is concealing his tax liability in any manner: This satisfaction of Commissioner has to be based on materials that are available on record. It ought not to be mechanically exercised using a cyclostyled form. The High Court did not find anything in file which showed what reasons weighed with Commissioner to order a survey under section 59 of the Delhi VAT Act and

subsequently order sealing of the premises under section 60 of the Delhi VAT Act. The sealing action was undertaken mechanically and only for the reason of failure to produce records as sought by the notice under section 59 of the Act. The court set aside the sealing orders passed by the department.

(M/s. Larsen & Toubro Ltd. v. Govt. of NCT of Delhi, W. P. (C) Nos. 1820 to 1822/2013 & CM Nos. 3490 to 3492/2013 (for stay), dated 3rd February, 2016 (2016) 53 PHT 531 (Del.).

4. Registration Certificate – Amendment for change in place of business – Illegal recovery of dues by attaching bank account – Not permissible – Directed to refund with interest – Cost awarded to department

The application for amendment in registration certificate for change in place of business was rejected on the ground that it is filed late and also not paid fees of ₹ 20, which is erroneous. Under section 17(4) (a) of the VAT Act, it is obligatory upon the registering authority to carry out the amendment irrespective of the fact that the application was not furnished within the prescribed period as provided under section 75 of the Act. The failure to pay requisite fees is curable defect. The application could not be rejected on this ground. The High Court observed that the manner in which the department proceeded with assessment and recovered the amount from the Bank of petitioner in haste was deplorable and gross violation of the provisions of the Act. The court further observed that “If in this cavalier fashion the Commercial Tax Department functions and withdraws huge sums of money without valid service, it would be difficult for big business houses to carry on their business and such business houses would be forced to shift their business outside the State of U. P.”. Accordingly, the High Court directed the department to refund the recovered amount with interest after adjusting admitted tax and awarded cost of ₹ 2,00,000/- to be paid by the department to the petitioner.

(M/s. Flipkart India Pvt. Ltd. v. State of U. P. & Ors., Civil Misc. W. P. Nos. 80 and 168 of 2016, dated 29th February, 2016, 2016 NTN (Vol. – 60) – 313 (All)).

5. Works Contract – Sale in course of import

Import of equipment and used in execution of works contract as per requirement and specification set-out by DMRC is in pursuance of the conditions and /or as an incident of the contract between assessee and DMRC. The goods were of special quality and description for being used in the works contract awarded on turnkey basis and there was no possibility

of such goods being diverted by the assessee for any other purpose. The sale of those goods is in the course of import not liable to tax.

(Commissioner, Delhi VAT v. ABB Ltd., Civil Appeal Nos 2989 – 3008 of 2016, dated 5th April, 2016, 2016 NTN (Vol.-60) – 363 (SC)).

6. Entry Tax – Condition not fulfilled – Not entitled to exemption

The assessee did not cross the specified limit of investment provided in Notification for grant of exemption from payment of entry tax. It is a different matter that once the conditions contained in the exemption notification are satisfied and the assessee gets covered by the exemption notification, for the purpose of giving benefit, notification has to be construed liberally. However, the appellant has not crossed the threshold limit and to find entry under notification. Therefore the appellant was not entitled to exemption from Entry Tax.

(M/s. Eveready Industries India Ltd. v. State of Karnataka, Civil Appeal No. 4231 of 2006, dated 13th April, 2016, 2016 NTN (Vol.-60)-373(Kar)).

7. Health drinks are beverages

Merely because a drink has more nutritive value in the form of proteins and meant for a certain class of consumers, it would not cease to be a “beverage”. Even if the potable drink made from the powders are perceived as health drink, it does not fall out of the purview of the Entry. Non-alcoholic beverage concentrate in powder form, the proteins obtained from whey products, which are remnants of cheese making process and are sold in flavours and the said products are general purpose protein powders, from which non-alcoholic beverages are prepared are therefore covered under Schedule Entry No. C-107(11) (g) of MVAT Act which are exigible to tax @ 5%.

(The Commissioner of Sales Tax v. M/s. Neulife Nutrition System Pvt. Ltd., VAT Appeal No. 932 of 2014, dated 6th May, 2016, Bombay High Court).

8. Works Contract – Construction of glass curtain wall – Not a contract for construction of building

The contracts of construction of glass curtain wall would not constitute contracts for construction of buildings mentioned in para A of the Notification dated 8th March, 2000 issued for the purpose of section 6A(1) of the Works Contract Act nor would it constitute contracts incidental for ancillary to the contracts mentioned in paragraph B of the said Notification.

(M/s. Permasteelisa (India) Pvt.Ltd. v. State of Maharashtra, Sales Tax Reference No. 55/2014 and 80/ 2010, dated 6th May, 2016, Bombay High Court).



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