

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

Volume 13 – No. 10 • October 2022

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
16th December, 2022	National Executive Committee Meeting	Jaipur
16th to 18th December, 2022	25th National Tax Convention 2022 (Central Zone)	Jaipur

25th NATIONAL TAX CONVENTION, 2022

17TH – 18TH DECEMBER, 2022, JAIPUR

All India Federation of Tax Practitioners (CZ)
with

Rajasthan Tax Consultant's Association • Tax Consultant's Association Jaipur • Jaipur Tax Bar Association

CONVENTION SCHEDULE

DAY ONE – 17th December, 2022 - Saturday	
9.00 AM to 9.45 AM	Breakfast, Registration & Fellowship
10:00 AM to 11.15 AM	Inaugural Session
	Chief Guest – Hon'ble Mr. Justice Ajay Rastogi, Judge, Supreme Court of India
	Guest of Honour – 1. Hon'ble Mr. Justice M.M. Srivastava, Acting Chief Justice, Rajasthan High Court 2. Sh. Nitin Gupta,* Chairman - Central Board of Direct Taxes
11:15 AM to 12:30 PM	1st Technical Session Direct Tax
12:30 PM to 1:45 PM	2nd Technical Session Indirect Tax
1:45 PM to 2:15 PM	Lunch
2:15 PM to 3:30 PM	3rd Technical Session Startups and Taxation – Direct & Indirect Tax benefits
3.30 PM to 4.45 PM	4th Technical Session PMLA Act – Precautions and Remedies
4:45 PM to 5:45 PM	Tea Break
7.30 PM Onwards	Musical Evening & Dinner
DAY TWO – 18th December, 2022 - Sunday	
9.00 AM to 10.00 AM	Breakfast
10:00 AM to 11:15 AM	5th Technical Session Impact of Recent Supreme Court Decision in Income Tax Law

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

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Treasurer – CA. Vijay Kewalramani	9820073165	022-41235960	info@kewalramani.in

11:15 AM to 12:30 PM	6th Technical Session Impact of Recent Supreme Court Decision in GST
12:30 PM to 1.15 PM	7th Technical Session Litigation and Advisory Services – Direct & Indirect Tax – Scope & Future
01:15 PM to 02:15 PM	Lunch Departure of trip to Khatushyam Ji Mandir
2:15 PM to 3:45 PM	Brain Trust/ Queries Session
3:45 PM to 4:15 PM	Valedictory Session
4:15 PM to 5:00 PM	High Tea

Side Sessions – Meet the Legends

16th Dec 2022 – NEC & Meetings (Only For NEC Members)

17th Dec 2022 – Inaugural & Technical Sessions (Breakfast, Lunch, Dinner with Musical Evening)

17th Dec 2022 – Day Outing for Ladies & Family Members for shopping & Local sightseeing.

18th Dec 2022 – Technical Sessions (Breakfast, Lunch, Hi-Tea)

18th Dec 2022 - (Afternoon) – Trip to Khatushyam Ji Mandir (Mandir Darshan, Tea / Coffee & Dinner) (Complimentary for Delegates)

DELEGATE FEES

Up to 30.09.2022	Rs. 5000/- Per Person
01.10.2022 Onwards	Rs. 6000/- per Person
Corporate Delegate	Rs. 7000/- per Person
Family	Rs. 4000/- per Person

Contact- aiftpcentralzone@gmail.com **Mob. 9829056151, 9414043300, 9414242195**

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Direct Taxes

Ms. Neelam Jadhav, Advocate, KSA Legal Chambers

High Court

1. **S.179: Liability of Directors of Private Company – when there is no satisfaction recorded by the authority that tax cannot be recovered from Company, recovery procedure under section 179 against the directors is not to be resorted to casually and only because it is convenient to do so for affecting recovery of the tax dues.**

The petitioner, is the Chairman and Managing Director of Crest Paper Mills Limited (CPML). The department passed an order under section 179 of the Income Tax Act, 1961 holding that the petitioner was liable to pay the demand of tax along with interest under section 220(2) of the Act which was otherwise due and payable by the company, CPML. The department relying on the decision of the *Pravinbhai M. Kheni v. ACIT [2012]28 taxmann.com 111 (Gujarat)* observed that even the directors of public companies could be brought within the purview of section 179, especially where the affairs of the company were not conducted as a public limited company in its true sense.

The Honorable Bombay High Court observed that, the procedure adopted by the department was violative of the principles of natural justice and without affording the petitioner, an opportunity of being heard on the question, as to why the principle of 'lifting the corporate veil' was not applied in the case of CPML to justify the recovery of the tax dues from the directors. Further, the department also failed to record that the satisfaction of tax cannot be recovered from the company before initiating proceedings under section 179. Therefore, held that recovery of tax dues of the company and recovery procedure under section 179 of the Act against the directors is not to be resorted to casually and only because it is convenient to do so for affecting recovery of the tax dues.

Rajendra R. Singh v. ACIT, Writ Petition No. 3590 of 2019 dt. 26th July, 2022 (Bom)(HC)

2. **S. 253: Additional ground raised the before Tribunal for subsidy received by the Assessee is allowed as a capital receipt as per the New Industrial Policy and Other Concession Scheme from the state of Jammu & Kashmir, is justified, confirmed the view of the Tribunal. (r.w.s. 28)**

The assessee before the Tribunal raised an additional ground with respect to subsidy received by it from the State of Jammu & Kashmir. It was stated that the subsidy received by the assessee under the "New Industrial Policy and Other Concessions Scheme" from the State of Jammu & Kashmir is to be treated as 'capital receipt'. It was stated that the subsidy was wrongly reported as revenue receipt instead of a capital receipt in the return of income. The ITAT placed reliance on a CBDT Circular No. 14(XL-35) dated 11th April, 1955 to note that it is the obligation of the assessing officers to make the assessee aware about any refund or relief which may be due to the assessee and not to take advantage of the ignorance of the assessee of its rights. The ITAT held that the additional ground raised by the assessee cannot be excluded from consideration as the issue to be determined is whether the amount of subsidy is taxable or not? The ITAT held that this issue has to be decided by the appellate

authority notwithstanding the fact that the assessee has suo moto offered the amounts for taxation already and hence ITAT concluded that, the assessee is eligible to raise additional issues at the appellate stage.

The Honorable Delhi High Court has confirmed the view of the Tribunal that, as there was no error committed by the ITAT by permitting the assessee to raise the additional ground at the stage of the appeal as there was no dispute raised by the department to the fact that the said subsidy given by State of Jammu & Kashmir to the assessee is liable to be treated as a capital receipt. The decision of *Shree Balaji Alloys v. CIT (2011) 133 ITR 335 (J&K)(HC)* was followed wherein it was held that Excise Duty, Subsidy, Interest Subsidy and Insurance Subsidy received by industry is a capital receipt.

Pr. CIT v. M/s. Crystal Crop Protection Pvt. Ltd. ITA 173 of 2022, dt. 25th July, 2022 (Delhi)(HC)

Tribunal

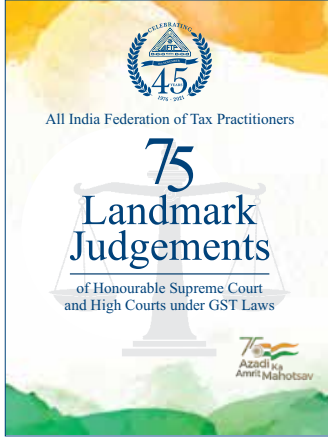
3. **S. 74: Capital Gain Loss – Carry forward short term capital loss from share transactions with Company declared as Penny Stock is allowed as no evidence of Malpractices was found.**

The assessee company is a statutory authority in the state of Ohio, USA, registered with the Securities and Exchange Board of India as a foreign portfolio investor for carrying out investment in India Market in equity shares and debt securities. The AO found that assessee has incurred a loss under the head Short Term Capital Gain in purchase and sale of shares of M/s Kailash Auto Finance Limited, which is a suspicious sale transaction in shares and exempt long term capital gain shown in the return in penny stock Tab in ITS, hence he disallowed the loss of the assessee. Before the CIT(A) the assessee provided the confirmation of the brokers note, furnished the complete details of the capital gain and there is no evidence against the assessee that the above loss was fraudulent. Considering the same CIT(A) allowed the loss to the Assessee.

The Department in appeal before Tribunal, the Tribunal considering the details of the Assessee observed that, Assessee is engaged in providing retirement benefit to certain public employees of that state. It is also registered with SEBI as a foreign portfolio investor and is regularly investing in Indian market earning capital gain, dividend and interest income the details of purchases and sales in the above script, such as the purchase and sale bills of the registered brokers as well as the demat statement of National Securities and Depository Limited. The transactions in shares were made through stock exchange Neither the information is available that assessee has engaged into any manipulative activities with respect to the purchase and sale of above shares and further the complete details was filed before the Assessing Officer and he was not at all doubted. Held that the business loss occurring out of share transactions with a company declared as a penny stock, shall be allowed as a short-term capital loss due to lacking evidence.

Jt. CIT v. M/s Public Employees Retirement System of Ohio, ITA No. 1527/Mum/2022 dt. 18/08/2022 (Mum.)(Trib.)

75 Landmark Judgements of Hon'ble Supreme Court and High Courts under GST Laws



AIFTP is pleased to announce the release of the Publication titled “75 Landmark Judgements of Honorable Supreme Court and High Courts under GST Laws” by Hon'ble Mr. Justice Dinesh Maheshwari, Judge, Supreme Court of India and Hon'ble Mr. Justice Rajesh Bindal, Chief Justice, Allahabad High Court at National Tax Conference organized by A.I.F.T.P. (NZ) held on 6th August, 2022.

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This publication is authored by two brilliant Advocates from Chandigarh viz. Shri Sandeep Goyal and Ms. Aanchal Goyal.

The book is a ready reckoner covering 75 judgments, all on different matters. The citations are mentioned for your detailed reference. The Authors have attempted to cover every topic under Goods and Service Tax Act, 2017 and precisely summarized the judgments.

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Pankaj Ghiya

Chief Editor and Dy. President (2022)



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Date: February 22, 2022

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Eastern	6	2027	37	0	2070
Northern	0	1451	20	2	1473
Southern	1	2331	24	4	2360
Western	5	2895	38	3	2941
Total	12	10117	144	9	10282

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