



All India Federation of Tax Practitioners

Price ₹ 5/-
(For Members only)

AIFTP TIMES

Volume 3 - No. 7

July, 2012

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
14-7-2012	One Day Seminar on Taxation (SZ)	Kakinada
14-7-2012	Annual General Meeting (SZ)	Kakinada
14-7-2012	Half Day Seminar (EZ)	Kolkata
14-7-2012	Annual General Meeting (EZ)	Kolkata
14-7-2012	One Day Conference on Income Tax & Service Tax (CZ)	Raipur
14-7-2012	Annual General Meeting (CZ)	Raipur
18-7-2012	Annual General Meeting (WZ)	Mumbai
11-8-2012	National Executive Committee Meeting	Bhubaneswar
11 & 12-8-2012	National Tax Conference (EZ)	Bhubaneswar
5-10-2012	National Executive Committee Meeting	Bengaluru
6 & 7-10-2012	National Tax Conference (SZ)	Bengaluru
11, 12 & 13-10-2012	9th Nani Palkhivala Memorial National Tax Moot Court Competition	Mumbai
17, 18, 19 & 20-10-2012	AOTCA Seoul Meeting 2012	Korea

FEDERATION NEWS

Narayan P. Jain, Secretary General

NEC AND NATIONAL TAX CONFERENCE at Bengaluru in October, 2012

National Executive Committee meeting will be held in the evening of 5th October, 2012.

National Tax Conference at Bengaluru on 6th and 7th October, 2012. The efforts are being made to confirm the acceptance of the invitation to the Hon'ble Mr. Justice H.L. Dattu, Judge of the Supreme Court of India as Chief Guest and Hon'ble Chief Justice of Karnataka High Court as guest of Honour. We accordingly request your goodselves to make note in your diary the above mentioned dates for your stay at Bengaluru on those days. Further details would be supplied soon.

Dr. M.V.K. Moorthy
Chairman, AIFTP (SZ)

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

Name	Tel. (O)	Fax	Mobile	E-mail
National President — S. K. Poddar, Adv.	0651-2202787	2309407	9431115265	sheojipoddar40@gmail.com
Deputy President — J.D. Nankani, Adv.	022-22841717	22831717	9821034867	jagdish@nankanis.com
Secretary General — Narayan P. Jain, Adv.	033-22821100	22820180	9830951252	npjain@vsnl.com
Treasurer — CA. Harish N. Motiwalla	022-22002103	22094331	9819422300	hnmotiwalla.ca@gmail.com

NATIONAL TAX CONFERENCE at Bhubaneswar

on 11th & 12th August, 2012

Organized by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (EASTERN ZONE)
Jointly with
BHUBANESWAR TAX BAR ASSOCIATION
(SUPPORTED BY ALL TAX BAR ASSOCIATIONS OF ODISHA)

AT: KIIT Campus, Patia, Bhubaneswar, Odisha.

PROGRAMMEE

Saturday, 11th August, 2012

Theme – New Challenges for Tax Professionals in Changing Scenario

- 9.00 am to 10.00 am : Registration & Breakfast
- 10.00 a.m : Inaugural Session
- Inauguration by : His Excellency, The Hon'ble Governor of Odisha.
- Presided over by : Shri S.K. Poddar, National President, AIFTP
- Chief Guest : Hon'ble Mr. Justice Anang Kumar Pattnaik,
Judge, Supreme Court of India
- Guests of Honour : Hon'ble Mr. Justice Gopal Gouda,
Chief Justice, High Court of Odisha.
- Hon'ble Mr Justice B.P. Das, Judge, High Court of
Odisha, Cuttack
- Shri.Prafulla Chandra Ghadai, Hon'ble Minister of
Finance, Govt of Odisha.
- Dr. A. Samanta, Chancellor, KIIT University.
- Shri N.P.Jain, Secretary General, AIFTP
- C.A Indu Chatrath, Chairman, AIFTP, E.Z.
- Mr. Manas Ranjan Mohapatra, Sr. Advocate
Chairman, Reception Committee, NTC, 2012
- Shri N.D. Saha, Secretary, AIFTP, E.Z.
- Shri Rabindra Nath Pal, Advocate
Secretary Reception Committee NTC – 2012
NEC Member, AIFTP
- Vote of Thanks : Shri Matadin Udayapurua, Advocate, Cuttack.
- 1 pm to 2 pm : Lunch Break
- 2 pm to 4 pm : **1st Technical Session**
- Topic : (A) Solutions of problems relating to Computerization and TDS
under the IT Act, & recent Amendment by Finance Act, 2012
for curbing Tax Evasion.
- (B) Penalties under the Income Tax Act
- Chairman : Hon'ble Mr. Justice B.P.Das, Judge, High Court of
Odisha, Cuttack
- Co-Chairman : Shri S.R Wadhwa, Advocate, New Delhi.
- Speakers : Shri N.P. Jain, Secretary General, AIFTP
CA. A.K.Sabat, Bhubaneswar
Chief CIT, Odisha, Bhubaneswar
- Vote of Thanks : Shri Sanjay Ku. Acharya, Advocate, Cuttack.

- 4 pm to 6 pm : **2nd Technical Session**
- Subject : Service Tax in the Present Scenario with special Reference to Real Estate, and Works Contracts with penal Provisions And Matters relating to Central Excise & Customs.
- Chairman : Hon'ble Mr Justice L..K. Mohapatra, Judge Odisha High Court.
- Co-Chairman : Shri Bharat Ji Agrawal, Sr. Advocate & Past President, AIFTP
- Speakers : Shri J.D. Nankani, Advocate and Deputy President, AIFTP, Mumbai.
Chief CIT, Central Excise and Service Tax, Odisha Bhubaneswar
CA. Anjan Sirkar, CA, Kolkatta.
CA. H. Padamchand Khincha, Bengaluru
- Vote of Thanks : Shri Ramesh Chandra Das, Advocate, BBSR
- 6 pm to 8 pm : N.E.C Meeting at KIIT Banquet Hall, BBSR, Cultural Programme at KIIT Auditorium.
- 8 pm onwards : Dinner At - KIIT, Dining Hall.

SUNDAY, 12th August, 2012

- 8.30 am to 9.30 am : Breakfast.
- 9.30 am to 11.30 am : **3rd Technical Session**
- Subject : New Challenges for Professionals under recent trends within Fiscal Policy of India and Tracking of Black Money
- Chairman : Hon'ble Mr. Justice M.M. Das, Judge, High Court of Odisha
- Co-Chairman : Shri P.S. Sarin, Advocate, New Delhi
- Speakers : Prof. Dr. Muktikanta Mishra, Chairman, Centurrian Group of Institutions, Bhubaneswar
Shri M.L. Patodi, Advocate, Kota
Immediate Past President, AIFTP
Shri N.K. Chakraborty, Director, Kitts School of Law, Bhubaneswar
Shri Ratan Samal, Advocate, Mumbai
- Vote of Thanks : Shri R.K. Mishra, Vice-Chairman, E.Z
- 11.30 am to 1.30 pm. : **4th Technical Session**
- Subject : Ensuing GST regime and Challenges
- Chairman : Shri P.C. Ghadai, Hon'ble Minister of Finance, Govt. of Odisha
- Co-Chairman : Shri Sushil Kumar Modi, Hon'ble Deputy Chief-Minister And Finance Minister, Bihar.
- Speaker : Shri J.K. Mohapatra, IAS Principal Secretary, Finance Department Govt. of Odisha
Shri P.C. Joshi. Advocate Mumbai & Past President, AIFTP.
- Vote of Thanks : Shri Jagabandhu Sahoo, Advocate, Odisha High Court
- 1.30 pm to 2.30 pm : LUNCH
- 2.30 Pm To 4.30 pm : **5th Technical Session**
- Subject : Problems of VAT Law, Penalties and Input Tax Credit Law related to Stock Transfer
- Chairman : Hon'ble Mr. Justice B.N. Mohapatra, Judge, High Court of Odisha

Speaker : Shri A. K. Ganguli, Sr. Advocate, Supreme Court of India, New Delhi.
Shri B.K. Mohanti, Sr. Advocate,
Former Advocate General of Odisha
Shri Manoj Ahuja, IAS, Commissioner of Commercial Taxes, Odisha, Cuttack.
Shri S.C. Lal, Advocate, Odisha High Court.

Vote of Thanks : Shri Ramesh Chandra Samantaray, Advocate, BBSR

4.30 pm to 5.30 pm

: **Valedictory Session**

Presided over by Shri S.K.Poddar, National President, AIFTP

Chief Guest : Shri Naveen Pattnaik, Hon'ble Chief Minister of Odisha.

Guest of Honour : Shri Baijayant Panda, Hon'ble Member of Parliament
Shri Pinaki Mishra, Sr. Advocate, Supreme Court of India, Hon'ble Member of Parliament
Shri J.D. Nankani, Advocate, Mumbai & Dy. President AIFTP.
Shri Narayan Prasad Jain, Secretary General, AIFTP
Dr. Ashok Saraf, Sr. Advocate, Advocate General, Arunachal Pradesh and Vice President, AIFTP
Shri Ashok Parija, Chairman, Bar Council of India
CA Indu Chatrath, Chairman, AIFTP (E.Z.)
Shri Ashok Kumar Mohanty, Advocate General, Odisha Cuttack.
Shri Natabar Mohanty, Advocate, Bhubaneswar & Co-Chairman, Reception Committee NTC 2012.
Felicitation of Members of the AIFTP in Odisha State.

Vote of Thanks : Shri Ramesh Kumar Dhal, Advocate, Bhubaneswar and E.C. Member, AIFTP E.Z and Vice-Chairman Reception Committee.

HIGH TEA

INDU CHATARTH
CHAIRMAN, E.Z,
ichatrath@yahoo.com
NATABAR MOHANTY
CO-CHAIRMAN NTC.2012
natabarmohanty@rediffmail.com
09437962328

N.D. SAHA
SECRETARY,,E.Z
ndsaha-51@hotmail.com

MANASRANJAN MOHAPATRA
CHAIRMAN NTC-2012
R.K. DHAL,
VICE CHAIRMAN NTC 2012
rkdhaladvocate_tax@yahoo.co.in

RABINDRA NATH PAL
SECRETARY, NTC.2012,BBSR
Mobile 09437448880 • speaktopalassociates@yahoo.com

ONE DAY SEMINAR ON TAXATION AT KAKINADA, AP

All India Federation of Tax Practitioners-SZ jointly with The Kakinada Sales Tax Consultants & Accountants Association is conducting one day Seminar on Taxation at Spandana Function Hall, Sarpavaram Junction, Kakinada, EG District, AP on 14th July, 2012 from 9.00 am to 5.30 pm. Well experienced speakers will give lectures on latest topics of both Direct and Indirect Tax Laws. We cordially invite all the members to attend and enrich themselves with the latest topics.

For All India Federation of Tax Practitioners-SZ

S.S. Satyanarayana
Secretary

NOTICE TO MEMBERS

NOTICE is hereby given that the Annual General Meeting of the Members of All India Federation of Tax Practitioners (Eastern Zone) will be held on the 14th Day of July, 2012 at The Indian Council For Cultural Relations at 3:00 p.m. to transact following business:-

AGENDA

1. To read and approve the minutes of the AGM held on 25th June, 2011.
2. To receive and adopt the Annual Report of the Managing Committee (EZ) for the year 2011-12.
3. To consider and adopt the audited accounts of the Federation (EZ) for the year ended 31st March, 2012.
4. To appoint Auditors for the year 2012 - 2013 and fix their honorarium.
5. To transact any other business with the permission of the Chair.

Yours faithfully,
For A.I.F.T.P. (EZ)
Sd/-
(N.D.Saha)
Hon. Secretary

Place: Kolkata
Date: 22-06-12

Note. 1. Accounts for the year ended on 31-3-2012 and the report of the Managing Committee for the East Zone can be collected from the Secretaries Office from 7th July 2012 onwards between 11.30 a.m. to 5.00 p.m. The accounts and report can be made available to the members through e-mail on request to the office.

2. If there is no quorum by 3:15 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

NOTICE TO MEMBERS

NOTICE is hereby given that the Annual General Meeting of the Members of All India Federation of Tax Practitioners (Southern Zone) will be held on Saturday, the 14th July, 2012 at Spandana Function Hall, Sarpavaram Junction, Kakinada, East Godavari District, Andhra Pradesh at 5.30 p.m. to transact following business:-

AGENDA

1. To read and approve the minutes of the AGM held on 21st July, 2011.
2. To receive and adopt the Annual Report of the Managing Committee (SZ) for the year 2011-12.
3. To consider and adopt the audited accounts of the Federation (SZ) for the year ended 31st March, 2012.
4. To appoint Auditors for the year 2012-13 and fix their honorarium.
5. To transact any other business with the permission of the Chair.

Yours faithfully,
For A.I.F.T.P. (SZ)
Sd/-
(S.S. Satyanarayana)
Secretary

Place: Hyderabad
Date: 21-6-2012

Note. 1. Accounts for the year ended on 31-3-2012 and the report of the Managing Committee for the Southern Zone can be collected from the Treasurer from 1st July, 2012 onwards between 11.30 a.m. and 5.00 p.m. The accounts and report can be made available to the members through e-mail on request to the office.

2. If there is no quorum by 6.00 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

NOTICE TO MEMBERS

Notice is hereby given that the Annual General Meeting of the Members of All India Federation of Tax Practitioners (Western Zone) will be held on Wednesday, the 18th July, 2012 at 215, Rewa Chambers, 31, New Marine Lines, Mumbai – 400 020 at 6.30 p.m. to transact following business:-

AGENDA

1. To read and approve the minutes of the AGM held on 28th June, 2011.
2. To receive and adopt the Annual Report of the Managing Committee (WZ) for the year 2011-12.
3. To consider and adopt the audited accounts of the Federation (WZ) for the year ended 31st March, 2012.
4. To appoint Auditors for the year 2012 - 2013 and fix their honorarium.
5. To transact any other business with the permission of the Chair.

Yours faithfully,
For A.I.F.T.P. (WZ)
Sd/-
(Pravin R. Shah)
(Tushar P. Joshi)
Hon. Jt. Secretaries

Place: Mumbai
Date: 26-06-12

- Note. 1. Accounts for the year ended on 31-3-2012 and the report of the Managing Committee for the Western Zone can be collected from the Office of the Federation from 13th July 2012 onwards between 11.30 a.m. to 5.00 p.m. The accounts and report can be made available to the members through e-mail on request to the office.
2. If there is no quorum by 6.30 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

NOTICE TO MEMBERS

Notice is hereby given that the Annual General Meeting of the Members of All India Federation of Tax Practitioners (Central Zone) will be held on Saturday, the 14th July, 2012 at at Rotary Club, Jalvihar Colony, RAIPUR (C.G.) at 6.00 p.m. to transact following business:-

AGENDA

1. To read and approve the minutes of the last AGM.
2. To receive and adopt the Annual Report of the Managing Committee (CZ) for the year 2011-12.
3. To consider and adopt the audited accounts of the Federation (CZ) for the year ended 31st March, 2012.
4. To appoint Auditors for the year 2012 - 2013 and fix their honorarium.
5. To transact any other business with the permission of the Chair.

Yours faithfully,
For A.I.F.T.P. (CZ)
Sd/-
(Paras Chhajer)
Hon. Secretary

Place: Raipur
Date: 30-06-12

ONE DAY CONFERENCE ON INCOMETAX AND SERVICETAX AT RAIPUR (C.G.) ON 14TH JULY, 2012

ORGANISED BY Central Zone,
Office C/o Taparia Maheshwari & Co., In front of S.B.I. Zonal Office , Byron Bazar RAIPUR (C.G.)

One day conference is scheduled to be held on Saturday, the 14th July, 2012 from 9.30 A.M. at Rotary Club, Jalvihar Colony, RAIPUR (C.G.) on Incometax and Servicetax. Subject to confirmation, the venue is likely to change to a better centrally located place at Raipur.

The eminent faculties who will address are Shri V.S.Datey, Pune, Shri Gautam Nayak, Mumbai, Dr.S.L.Jain, Jaipur and Shri Rajesh B.Doshi, Raipur.

The delegate fee shall be for the members of AIFTP, I.T.Bar Associations or Chartered Accountants Association will be Rs.400/- per delegate which will be inclusive of cost of Lunch and Tea.

All the members of tax law profession are cordially invited.

DIRECT TAXES

Ajay R. Singh, Paras S. Savla, Rahul Hakani, & Renu Choudhuri
Advocates, KSA Legal

SUPREME COURT

- 1. S. 194A: Deduction at source – Interest other than interest on securities – Interest – Definitions – Discount – Discounting charges is not “Interest” hence not liable to deduct tax at source. [Ss. 2(28A), 40(a)(ia), 195]**

The assessee paid ₹ 3.97 crores to an associate concern in Singapore on account of discounted charges for getting the export sale bills discounted. The AO held that the discounting charges was “interest” u/s 2(28A) and that as there was no TDS, the expenditure had to be disallowed u/s 40(a)(i). This was reversed by the CIT(A) and Tribunal. The High Court also upheld the order (*CIT vs. Gargill Global Trading P. Ltd. (2011) 335 ITR 94 (Delhi)*) Relied on Circular No.65 dated 2-9-1971, Circular No.674 dated 22-3-1993 & *Vijay Ship Breaking Corporation vs. CIT (2009) 314 ITR 309 (SC)* and held that as the discounting charges were not in respect of any debt incurred or money borrowed and were merely discount of the sale consideration on sale of goods, it was not “interest” u/s 2(28A) and there was no obligation to deduct TDS thereon. On appeal by the department to the Supreme Court, held that, delay is condoned. The special leave petitions are dismissed. (A.Ys. 2004-05, 2005-06)

CIT vs. Cargil Global Trading Pvt. Ltd (SC) www.itatonline.org.

- 2. S. 271(1)(C): Penalties – Concealment- Book profit – Despite concealment, no s. 271(1)(c) penalty can be levied if book profit is assessed under section 115JB**

For A.Y. 2001-02, the assessee filed a ROI declaring loss of ₹ 43.47 crores under the normal provisions of the Act and book profits of ₹ 3.86 crores u/s 115JB. The AO assessed a loss at ₹ 36.95 crores as per normal provisions and book profits at ₹ 4.01 crores. As there was a reduction in the loss under the normal provisions owing to various additions and disallowances, the AO levied penalty u/s 271(1)(c) in accordance with Explanation 4 & *CIT vs. Gold Coin Health Food P. Ltd (2008) 304 ITR 308 (SC)*. Before the High Court, the assessee argued that even if there was a concealment u/s 271(1)(c) with respect to the normal assessment, the same was not relevant because the assessee’s income was assessed u/s 115JB. The High Court accepted the plea and held that as the s. 115JB “book profits” were by a legal fiction deemed to be the “total income”, the furnishing of wrong particulars had no effect on “the amount of

tax sought to be evaded” as defined in Explanation 4 to s. 271(1)(c). On appeal by the department to the Supreme Court, held that delay condoned. The special leave petition is dismissed.(A.Y. 2001-02)

CIT vs. Nalwa Sons Investment Ltd. (SC) www.itatonline.org.

HIGH COURT

- 3. S. 2(22)(e): Definitions – Dividend – Deemed dividend – Unsecured loans from other company provisions of section 2(22)(e) cannot be invoked under this section if the assessee does not possess the prescribed voting rights in that company**

S. 2(22)(e) cannot be invoked in respect of the unsecured loans taken by the assessee from the other company if the assessee does not possess the prescribed voting rights in that company; shareholding of the common shareholder or director cannot be taken into consideration for the purpose. (A.Y. 1994-95, 1996-97 & 1997-98)

CIT vs. Gopal Clothing Co. Ltd. (2012) 71 DTR 358 (Delhi)(High Court)

- 4. S. 9: Income deemed to accrue or arise in India - Foreign agent – Commission – Business connection – Permanent establishment. (Sd. 4(1), 40(a)(ia), 195)**

Where a foreign agent of an Indian exporter operates in his own country and his commission is directly remitted to him, such commission is not received by him or in his behalf in India. Such agent is not liable to income tax in India on commission received by him. As there was no right to receive income in India nor there was any business connection between assessee and ETUK, therefore, when income was not chargeable to tax in India under section 4(1), there was no question of invoking provisions of section 195 hence no disallowance be made under section 40(a)(ia). (A.Y. 2007-08).

CIT vs. Eon Technology (P) Ltd. (2011) 203 Taxman 266 / 64 DTR 257(2012) 343 ITR 366 (Delhi)(High Court)

- 5. S.11: Charitable purpose – Members club – Providing cultural and educational activities for its members does not detract from the position that it advances a general public utility. [S. 2(15)]**

The assessee is a trust registered under the Bombay Public Trusts Act, 1950, and also registered under section 12 of the Income-tax Act. The Assessing Officer held that the assessee being mutual association computed the income as not charitable. In appeal the Commissioner (Appeals) confirmed the view of Assessing Officer. Tribunal reversed the finding of Commissioner (Appeals) and held that the activities of the club being to encourage or promote and to advance games, sports, athletic activities and cultural activities of the assessee which are of general public utility hence the requirement of section 2(15) is met and entitled to exemption. On appeal by the revenue the High Court also confirmed the order of Tribunal and held that the fact that the assessee provides services to its members does not detract from the position that it advances a general public utility. (A.Y. 1996-97)

DIT vs. Chembur Gymkhana (2012) 70 DTR 163 (Bom) (High Court)

6. S.11: Charitable or religious purposes – Exemption – Charitable Trust – Development Authority engaged in charitable activities is entitled to exemption if books of account are maintained for construction business

The grant of registration under section 12AA is not an empty formality as it has to be granted after satisfying that the objects are charitable in nature. The assessee, development authority is engaged on charitable activities and construction business of the assessee is merely incidental to the main object of town planning and therefore is entitled to exemption under section 11 if separate books have been maintained for construction business in accordance with the stipulation in section 11(4A). (A.Y. 2007-08)

ITO vs. Moradabad Development Authority (2012) 145 TTJ 746 (Delhi) (Trib)

7. S.22: Income from house property – Business income- Builder – Property dealer – Stock-in-trade – Unsold flats being house property rental income should be assessed as income from house property and not as business income [S. 28(i)]

The assessee is a property developer and builder, in the course of its business activities constructed a building for sale, in which some flats were unsold. During the year the assessee received rental income from letting out of the unsold flats which was shown as stock in trade in the balance sheet. It disclosed the rental income from letting out of the unsold flats as income from house property and claimed the statutory deduction. The Assessing Officer held that in the wealth tax proceedings the assessee had shown the unsold flats as stock in trade and not taxable

for the purpose of wealth tax. The Assessing Officer assessed the rental income as business income. Commissioner (Appeals) has accepted the contention of assessee. On appeal to the Tribunal by revenue, the Tribunal restored the order of Assessing Officer. The Assessee filed an appeal to the High Court, the High Court under the Act the income of an assessee is one and various sections of the Act direct the modes in which the income is to be levied. No one of the sections can be treated as general or specific for the purpose of nay one particular source of income. They all specific and deal with various heads in which an item of income, profits and means of an assessee falls. These sections are mutually exclusive and where an item of income falls specifically under one head, it has to be charged under that head and no other. On the facts since unsold flats being house property, rental should be assessed under the head 'income from house property'. Appeal is decided in favour of assessee. (A.Y. 1998-99)

Azimganj Estate (P) Ltd. vs. CIT (2012) 206 Taxman 308 (Cal High Court)

8. S.23: Income from house property – Notional Interest – Not to be added as the rent received by the assessee more than the reasonable expected value, the actual rent received should be the annual value of the property under section 23(1)(b)

The assessee had shown the actual rent received, which was far more than the municipal rateable value. As the rent received by the assessee was far more than the sum for which property might reasonably be expected to let from year to year, the actual rent received should be the annual value of the property under section 23(1)(b). Notional interest on interest free security deposit rent received in advance should not be added to the same in view of the decision of Bombay High Court in case of *J.K. Investors (2001) 248 ITR 723 (Bom)*. (A.Y. 2004-05)

ACIT vs. Monisha R. Jaisingh (2012) 51 SOT 182 (Mum.)(Trib.)

9. S. 28(i): Business Income – Lease – Hostel facilities – Lease of hostel building with provision for hostel facility is assessable as business income

Where the assessee had constructed hostel for being let to lessee and under agreements, it had undertaken to provide hostel facilities to the lessee, entire income, the net of expenses, has to be treated as business income; even if lease agreement could not be considered in isolation, i.e., as independent and apart from the other agreements, all of which are qua and toward a single arrangement for the provision

of hostel facilities to the lessee. (A.Ys. 2004-05 & 2006-07)

Kenton Leisure Services Pvt. Ltd vs. DCIT (2012) 71 DTR 329 (Cochin) (Trib)

10. S.37(1): Business expenditure – Capital or revenue – Market support service – Market support services do not result in acquisition of a capital asset hence allowable as revenue expenditure

Assessee acquired personal computer business from IBM and entered in to a market support agreement with IBM with a view to retain a market share in the business. As per the marketing support agreement, IBM was to provide services to facilitate the sale

of the products by the assessee and to extend services to the customers through one or more of its subsidiaries or third parties. The services to be rendered by the IBM are for a period of five years. The Assessing Officer treated the said expenses as capital in nature. The Tribunal held that services rendered by IBM to facilitate the sale of products by the assessee under market support agreement were meant for smooth and efficient running of the business of the assessee for a period of five years and it did not result in acquisition of a capital asset and therefore, fees paid by the assessee for the said marketing support services rendered by IBM is a revenue expenditure. (A.Y. 2006-07)

Lenova (India)(P) Ltd vs. ACIT (2012) 71 DTR 90 (Bang) (Trib)



AOTCA – SEOUL MEETING 2012

Members who desire to attend the AOTCA International Conference at Seoul, Korea may contact Mr. J.D. Nankani, Deputy President, AIFTP at 022-22841717 Mobile: 9821034867 • E-mail: jagdish@nankanis.com

Congratulations

Our member, Senior Advocate Porus Kaka, has been unanimously nominated by the Executive Committee of the International Fiscal Association (IFA), a 12,000 member non-governmental global tax body headquartered in the Netherlands, as the proposed next President of IFA. He is the first Asian to be so nominated. His term will begin from the end of the Copenhagen Conference in August 2013.

Mr. Porus Kaka is Managing Committee Member of ITAT Bar Association, Mumbai and was very active in the ITAT Bar Association's Co-ordination Committee of AIFTP. It is great honour to tax professionals of India.

We wish him all the success and good luck.

ALL INDIA FEDERATION OF TAX PRACTITIONERS (EASTERN ZONE)

Organizes a Seminar

on

White Paper on Black Money & Adjustment of unverified tax demand with refunds by Central Processing Centre

on

Saturday, July 14, 2012 at 4.00 pm

at

ICCR, Conference Room (4th Floor), 9A, Ho Chi Minh Sarani, Kolkata 700 071

Speakers:

Prof. Narayan Jain, Advocate • CA Pawan Agarwal • Shri Deepak Jain, Advocate • Shri R.D.Kakra, Advocate
Shri Indu Chatrath, Zone Chairman will preside over.

INDU CHATRATH

(Zone Chairman)

N.D.SAHA

(Zone Secretary)

Note: Managing Committee Meeting of Eastern Zone will be held from 2.00 p.m. and Annual General Meeting of Eastern Zone will be held from 3.00 p.m. on the same date and same venue.

INTERNATIONAL TAXATION

CA Dhanesh Bafna, CA Madhav Khandelwal, Sujeeth Karkal, Advocate

HIGH COURT

1. Fees for Technical Services – Source of Income – S. 9(1)(vii)(b) – Income Tax Act, 1961

The assessee, an Indian company, made payment to a US company for 'KEMA' certification which was necessary to enable it to sell its products in the European markets. The High Court, reversing the judgment of the Tribunal, held as follows:

i. "Source of Income" under Income Tax Act

The term "source" under S. 9(1)(vii)(b) is not a legal concept but one which a practical man would regard as a real source of income. There is a distinction between the source of income and the source of receipt of monies. In order to fall u/s 9(1)(vii)(b), the source of the income, and not the receipt, should be situated outside India. In this case, the assessee manufactured goods in India and concluded the export contracts in India. The source of income is created the moment the export contracts are concluded in India. The customer located outside India is not the source of the income, though he/she is the source of the monies received. Furthermore, though the profits arise both from the manufacturing activity and from the sale, bifurcation of the fees is not permissible. Therefore, the assessee case falls under S. 9(1)(vii)(b) of the Act as fees for technical services ('FTS') and it cannot be said that FTS was paid for earning income from source outside India.

ii. Position under DTAA

The Tribunal, in the instant case, held that the payment was not taxable under the Act itself and therefore, it did not have any occasion to determine taxability under the Double Taxation Avoidance Agreement ('DTAA') between India and USA. Therefore, the matter was set aside by the High Court to the Tribunal to determine the taxability under the DTAA.

CIT vs. Havells India Ltd. TS-353-HC-2012(Delhi)

TRIBUNAL

2. Royalty – Finance Act, 2012 – S. 9(1)(vi) – Income Tax Act, 1961

The assessee, a Mauritius company, made payment to Panamsat, USA, for hire of a "transponder

satellite". The Tribunal rejected the department's contention that, pursuant to the amendment to s. 9(1)(vi) by the Finance Act 2012 w.r.e.f. 1-4-1976, such hire charges shall be assessable as "royalty" on the ground that even after the amendment, there is no change in the DTAA between India and USA and in this case, the DTAA will prevail as it is favourable to the assessee. Even otherwise as the payment is made from one non-resident to another non-resident outside India on the basis of contract executed outside India, s. 195 will not apply as held in *Vodafone International Holdings B.V. (341 ITR 1) (SC)*. As s. 195 did not apply, no disallowance can be made u/s 40(a)(i).

B4U International Holdings Ltd. vs. DDIT (TS-362-ITAT-2012 (Mum))

3. Dependent Agent PE – Article 5 – India-Mauritius DTAA

The assessee, a Mauritius company, was engaged in telecasting TV channels. It had an advertisement collection agent in India who collected revenue from time slots given to Indian advertisers. The Tribunal held as follows:

i. Under Article 5(4): Based on the facts of the case, the agent had merely forwarded the advertisement to the assessee. Accordingly, there was neither legal existence of authority, nor evidence to show "habitual exercise" of authority. Therefore, the agent could not be said to be a dependent agent permanent establishment ('DAPE') under Article 5(4) of the DTAA.

ii. Under Article 5(5): Under Article 5(5) of the DTAA, the perspective of dependent agent should be from the angle of the agent and not of the non-resident. As the income from the assessee was only 4.69% of the agent's total income, the agent was not a "dependent agent" under Article 5(5) of the DTAA.

iii. Even assuming that there was a DAPE, as the agent had been remunerated on an arm's length basis, no further profit is attributable to the permanent establishment.

DDIT vs. B4U International Holdings Ltd. (TS-358-ITAT-2012 (Mum.))



INDIRECT TAXES

Nikita R. Badheka
Advocate & Notary

1. Revision – No limitation prescribed

Where no period of limitation is prescribed, statutory authority must exercise its jurisdiction within a reasonable period. The P&H High Court followed the Hon'ble Supreme Court case reported as *State of Punjab vs. Bhatinda District Co-operative Milk Producers Union Ltd.*, (2007) 30 PHT 474 (SC). The Supreme Court has engrafted a five years period of limitation in Section 21 of the GST Act holding that if no period of limitation is prescribed then the statutory authority is obliged to exercise jurisdiction within a reasonable period of five years only.

Piccadilly Sugar and Allied Industries Limited vs. State of Punjab and Others (2012) 41 PHT 301 (P&H).

2. Service contract or sale ? – Software

The Karnataka HC following the *Tata Consultancy Services [2004(137 STC 620 (SC))]*, *Imagic Creative (P) Ltd. vs. Commissioner of Commercial Taxes and Others [(2008) 2 SCC 614]* and *Bharat Sanchar Nigam Limited [(2006) 145 STC 91]* held that the contract for development of software is not a composite contract consisting of contract of service or contract of sale of goods, it is an indivisible contract of service only.

M/s. Sasken Communication Technologies Limited vs. The Joint Commissioner of Commercial Taxes, 2011-12 (16) KCTJ 303 (Kar. HC)

3. Trade discounts

The Supreme Court held that under Kerala General Sales Tax Rules, 1963, claim for exemption of the amounts of trade discount are not to be rejected solely on the ground that the discount amounts were not shown in the sale invoices.

M/s. IFB Industries Ltd. vs. State of Kerala 2012 NTN (Vol. 48)-233C

4. Transfer of Right to use act, supply of priced tender whether sale and dealer

Making available the facility to use the cranes and heavy vehicles by the contractors only on the works of the petitioner against realization of service charges do not amount to "transfer of right to use" thereof and as such not "sale" within the amended definition of the term "sale". The transaction do not involve the transfer of the right to use the machinery in favour of the contractors, hence not exigible to sales tax. The P&H High Court followed the Apex Court decision

in *State of Andhra Pradesh and Another vs. Rashtriya Ispat Nigam Ltd.*, (2002) 19 PHT 369 (SC).

Another issue decided in this very judgment was whether supply of tender documents and application forms – which are priced documents, to the contending contractors for submitting their quotations in response to the notice inviting tenders is a sale. – The Court following *Maharashtra State Electricity Board vs. State of Maharashtra*, (1998) 109 STC 69 held it as not a sale. The Petitioner was also held as not a dealer qua activity of supply of tender

M/s. National Fertilizers Limited, Panipat vs. The State of Haryana (2012) 41 PHT 316 (P&H)

5. Writ Jurisdiction

24.1 The appeal against the assessment and penalty orders were not being heard nor stay was petition was being heard. The Punjab and Haryana HC directed the Appellate Authority to take a decision in the matter at the first instance. The stay order was extended till decision of the appeal. *Escorts Limited, Faridabad, vs. Dy. Excise and Taxation Commissioner* ((2012) 41 PHT 165 (P&H))

13.2 The order was passed by the revenue, without providing a copy of slip pad on which reliance is placed for assuming Uchanti sales on which tax and penalty has been imposed. The petitioner had filed the returns and the order was passed without discussing the deductions claimed in the returns and the input tax claims made therein. Since the action of the authority was in violation of principles of natural justice without affording proper opportunity, the plea of alternative remedy raised by the State was not considered by Punjab and Haryana High Court.

M/s. S.V. Cold Drinks vs. State of Punjab and Others 41 PHT 311 (P&H)

News from Mumbai**6. Information about suspicious dealer on website**

List of Suspicious Dealers who have issued false bills without delivery of goods is available on Maharashtra Govt's official website www.mahavt.gov.in. Similarly list of the Gujarat dealers whose Registration is cancelled is also available on the same website. This list is being updated periodically.



**Renewal Subscription to AIFTP Journal and
Voluntary Contribution to**

AIFTP TIMES
July, 2012

Palkhivala National Tax Moot Court Competition and Research on Tax

Dear Members,

We have posted bill for renewal subscription of AIFTP Journal, Life Membership Update Form and Palkhivala Foundation on 16th April, 2012. Members are requested to send the DD or Cheque in favour of "All India Federation of Tax Practitioners" payable at Mumbai as early as possible.

Members can also download the subscription, Update form and an Appeal for voluntary contribution from our website; i.e., www.aiftponline.org and send us the subscription.

Thanking you,

For All India Federation of Tax Practitioners

NARAYAN P. JAIN

Secretary General

Note: Members who have not paid the subscription for AIFTP Journal for the year 2012-13 will not be send the journal from July 2012 onwards.

**ADVERTISEMENT TARIFF
FOR AIFTP JOURNAL
(W.e.f. October, 2011)**

Per Insertion

- | | |
|--|------------|
| 1. Quarter Page | ₹ 1000/- |
| 2. Ordinary Half Page | ₹ 1,500/- |
| 3. Ordinary Full Page | ₹ 3,000/- |
| 4. Fourth Cover Page –
Three fourth page (in four colour) | ₹ 5,000/- |
| 5. One single colour page | ₹ 11,000/- |
| 6. Four colour pages | ₹ 20,000/- |

Discount

20% on advance for 12 months
15% on advance for 6 months

**Membership of AIFTP
as on 20-6-2012**

Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	755	22	3	780
Eastern	2	1048	35	3	1088
Northern	0	873	17	0	890
Southern	0	805	13	3	821
Western	3	1632	32	15	1683
Total	5	5113	119	24	5262

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

Associate Editors of AIFTP Times : Mr. Kishor Vanjara & 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: Karkala Shivaram Kittanna.

To

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

Date of Posting : 3rd & 4th July, 2012

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