



All India Federation of Tax Practitioners

Price Rs. 5/-
(For Members only)

AIFTPtimes

Volume IV - No. 8 • August, 2009

Federation News

Mukul Gupta, Secretary General

FORTHCOMING PROGRAMMES

Dates & Months	Programmes
21st to 23rd August, 2009	First Raja Ram Agrawal Memorial National Tax Moot Court Competition, 2009
29th August, 2009	Annual General Meeting at Jamshedpur
29th August, 2009	National Executive Committee Meeting at Jamshedpur
29th & 30th August, 2009	Two Day National Tax Conference at Jamshedpur
19th, 20th & 21st November, 2009	AOTCA Mumbai Meeting, 2009 – International Tax Conference at Hotel Trident, Mumbai
18th, 19th & 20th December, 2009	15th National Convention at Jaipur

REPORT ON ONE DAY TAX CONFERENCE ON 12TH JULY, 2009 AT CHANDIGARH

By Sandeep Goyal, Advocate

One day Tax Conference was held at Chandigarh on 12th July, 2009 organised by the All India Federation of Tax Practitioners – Northern Zone (AIFTP - NZ) in association with Chandigarh Judicial Academy on the theme "Administration of Fiscal Laws". This was for the first time that this kind of Conference was held jointly by the Federation with Judicial Academy. The participation of Judicial Academy in the Conference had ensured that besides the tax professionals from across the country, the Conference would also be attended by judicial officials of Punjab and Haryana who always have to decide the cases in the absence of expert assistance in the matters relating to prosecutions arising out of various fiscal laws.

The venue chosen for the Conference was Chandigarh Judicial Academy which has recently been inaugurated by the Chief Justice of India Hon'ble Mr. Justice K.G. Balakrishnan. In fact, this was the first function in the modern and high-tech auditorium of the Academy having facilities like Video conferencing, e-mailing, projections, LCDs and a number of other modern equipments to enable the speakers and the delegates to interact in the best possible manner.

The Conference was started with the congregation of delegates from across the country including the States of Delhi, Uttar Pradesh, Rajasthan, Gujarat, Himachal Pradesh, Andhra Pradesh, Maharashtra, etc. A number of delegates from various cities of Punjab and Haryana besides Chandigarh had also gathered at this Conference, which was in excess of 450. The presence of tax professionals from distant places like Bhiwani, Rewari, Gurdaspur, Pathankot and Ferozpur was heartening. The enthusiasm was so high that additional chairs were placed in the Auditorium to accommodate the delegates in a jam packed Auditorium.

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

Name	Tel. (O)	Fax	Mobile	E-mail
National President — Bharat Ji Agrawal, Sr. Adv.	0532-2260576/77	2601389	9415235429	bharatjiagrawal@yahoo.co.in
Deputy President — M. L. Patodi, Adv.	0744-2361179	2363637	9829035256	patodi_jp1@sancharnet.in
Secretary General — Mukul Gupta, Adv.	0120-2820380	2821407	9811023739	mukuladv@hotmail.com
Treasurer — CA. Janak Vaghani	022-22821978	—	9324680306	janakvaghani2004@yahoo.com



Inaugural Session

In the Inaugural Session, Hon'ble Mr. Justice D.K. Jain, Judge, Supreme Court of India was the Chief Guest. The function was presided over by Hon'ble Mr. Justice P. Sathasivam, Judge, Supreme Court of India. Hon'ble Mr. Justice T.S. Thakur, Chief Justice, Punjab and Haryana High Court was the Guest of Honour for this occasion. Hon'ble Mr. Justice Ashutosh Mohanta, seniormost member of the Executive Committee of Chandigarh Judicial Academy also graced the occasion. The Session started with the lighting of lamp by the dignitaries accompanied by Shri Bharat Ji Agrawal, National President, AIFTP, Shri M.L. Patodi, Deputy President, AIFTP, Shri S.R. Wadhwa, Vice President (Northern Zone), AIFTP, Shri H.C. Bhatia, Chairman (Northern Zone), AIFTP and Shri Kashmiri Lal Goyal, Conference Chairman (Northern Zone), AIFTP. After the lighting of lamp, Saraswati Vandana was recited by Mrs. Shipra Chopra accompanied by Shri Rajesh Kumar on Tabla with her melodious voice.

Shri Bharat Ji Agrawal, Senior Advocate and National President, AIFTP welcomed all the guests, dignitaries and the delegates. He threw light on various aspects of AIFTP and on the theme of the Session, i.e. "Administration of Fiscal Laws". Hon'ble Mr. Justice Ashutosh Mohanta, Judge, Punjab and Haryana High Court also addressed the gathering on the theme of the Session. In his speech, Hon'ble Mr. Justice T.S. Thakur, Chief Justice, Punjab and Haryana High Court praised the Chandigarh Judicial Academy and the organizers for holding such a Conference in a newly inaugurated Chandigarh Judicial Academy. He also laid a lot of stress on honest administration of Tax Laws. Hon'ble Mr. Justice P. Sathasivam, Judge, Supreme Court of India threw light on various aspects of the theme of the Conference. In his address to the gathering, Hon'ble Mr. Justice D.K. Jain, Judge, Supreme Court and Chief Guest of the Conference, observed that this is a high time that the honest tax-payer should be encouraged and he must be given a good deal by the revenue officials. He also criticized the unnecessary filing of appeals by the revenue, which lead to pendency of litigation before the higher courts and put a lot of pressure on the judiciary.

The speech of Hon'ble Mr. Justice Swatanter Kumar, Chief Justice Bombay High Court through Video Conference added glamour to the Session.

The dignitaries were presented with the token of remembrance in the shape of Mementos at the end of the Session. Shri Kashmiri Lal Goyal, Senior Advocate and Conference Chairman delivered a Vote of Thanks to all the guests and the delegates present.

1st Technical Session

After the tea break, delegates gathered again in the Auditorium for the 1st Technical Session on the theme of "Prosecution under the Fiscal Laws". Hon'ble Mr. Justice A.K. Basheer, Judge, Kerala High Court was the Chairman of the Session. On the Dais were Shri N.M. Ranka, Senior Advocate, Jaipur and Past President of AIFTP, Shri A.K. Ganguly, Senior Advocate, Supreme Court of India who offered his expert comments, Shri Ashok Aggarwal, Senior Advocate, Punjab and Haryana High Court and former Advocate General who was the moderator of the session. The papers were presented by Shri Jagdeep Jain, Additional District & Session Judge, Haryana, Shri Jagmohan Bansal, Advocate, Punjab and Haryana High Court and Mrs. Radhika Suri, Advocate, Punjab and Haryana High Court.

2nd Technical Session

After the lunch break, delegates got together for 2nd Technical Session on the theme "Works Contract – Service Tax and VAT". The Session was chaired by Hon'ble Mr. Justice M.M. Kumar, Judge, Punjab and Haryana High Court while expert comments were given by Shri Bharat Ji Agrawal, Senior Advocate, Allahabad High Court and National President, AIFTP. The Session was moderated by Shri M.L. Patodi, Advocate, Kota and Deputy President of AIFTP. The papers were presented by Shri H.C. Bhatia, Advocate, Delhi High Court and Chairman (Northern Zone), AIFTP, Ms. Nikita Badheka, Advocate, Bombay High Court and Chairman (Western Zone), AIFTP and Shri Sandeep Goyal, Advocate, Punjab and Haryana High Court. The Session was well attended and a number of queries were raised by the delegates but due to shortage of time, those could not be answered on the spot. The highlight of the Session was the Video Conference with Shri P.C. Joshi, Advocate, Bombay High Court and past President AIFTP who answered few queries from Bombay in live Video Conferencing which was held in the Auditorium.

Valedictory Session

In the concluding Session, Hon'ble Mr. Justice R.M. Doshit, Judge, Gujarat High Court, Hon'ble Mr. Justice S.K. Mittal, Judge, Punjab and Haryana High Court, Hon'ble Mr. Justice Rajesh Bindal, Judge, Punjab and Haryana High Court shared their valuable experiences with the delegates and congratulated the organizers for holding the Conference successfully. Shri P. S. Sarin, Advocate and Member, NEC, AIFTP also shared his views while Shri Mukul Gupta, Secretary General of AIFTP delivered Vote of Thanks on his behalf and on behalf of AIFTP.

The Conference ended with tea.

News from AIFTP – Central Zone

AIFTP (CZ) in association with Tax Practitioners' Association, Indore organised "A Talk on Union Budget" at Jall Auditorium Indore on 11th July 2009. The Chief Speaker was Shri S. N. Divetia, Senior Advocate, Ahmedabad. He discussed the Budget proposals in detail and hardships provided in various provisions particularly in Sections 50-C and 56. He suggested to incorporate hardships in the Post Budget Memorandum. The Event was well attended. Shri Mahesh Agrawal, President, Tax Practitioners' Association, Indore welcomed the Guest. Mr. M. D. Sodani, Chairman, Central Zone proposed a hearty Vote of Thanks. Shri Anil Khandelwal, Secretary, Tax Practitioners' Association conducted the proceeding.

CA M. D. Sodani, Chairman, AIFTP (CZ)

1ST RAJA RAM AGRAWAL MEMORIAL NATIONAL TAX MOOT COURT COMPETITION 2009

Organized by
ALL INDIA FEDERATION OF TAX PRACTITIONERS, NORTH ZONE
and
UNIVERSITY OF ALLAHABAD, FACULTY OF LAW

on 21st, 22nd & 23rd August, 2009

PROGRAMME

DAY – 1 Friday, 21st August, 2009

Venue : Senate Hall, University of Allahabad

- Inaugural Session** : **At 5.00 p.m.**
- Chief Guest** : **Hon'ble Mr. Justice Markandey Katju**, Judge, Supreme Court of India
- President of the Session** : **Hon'ble Mr. Justice Brijesh Kumar**, Former Judge, Supreme Court of India
- Guest of Honour** : **Hon'ble Mr. Pradeep Kant**, Senior Judge, Lucknow Bench, Allahabad High Court
- Guest of Honour** : **Hon'ble Mr. Justice Rajesh Bindal**, Judge, Punjab & Haryana High Court
- Vice Chancellor** : **Professor R.G. Harshe**, University of Allahabad
- National President** : **Shri Bharat Ji Agrawal**, Senior Advocate

DAY – 2 Saturday, 22nd August, 2009

Venue : Law Faculty, Allahabad University

- 9.00 A.M. to 12.00 Noon **Preliminary two rounds of Moot Court Competitions**
Lunch
- 2.00 P.M. onwards **Quarter Final of Moot Court Competitions**

DAY - 3 : Sunday, 23rd August, 2009

Venue : University Guest House & Monerba Hall

- 9.00 A.M. onwards **Semi Final Moot Court Competitions**
Venue : K.P. Community Centre
- 5.00 P.M. onwards **Final Moot Court Competitions**
Followed by
Valedictory Session and Prize Distribution Function
- Chief Guest** : **Hon'ble Mr. Justice Tarun Chatterjee**, Judge, Supreme Court of India
- President of the Session** : **Hon'ble Mr. Justice Markandey Katju**, Judge, Supreme Court of India
- Guests of Honour** : **Hon'ble Mr. Justice Chandra Mouli Kumar Prasad**,
Chief Justice, Allahabad High Court
Hon'ble Mr. Justice Sushil Harkauli, Judge, Jharkhand High Court
Hon'ble Mr. Justice R.K. Agrawal, Judge, Allahabad High Court



H.C. Bhatia
Chairman
AIFTP (NZ)

S.R. Wadhwa
Vice President
AIFTP(NZ)

Mukul Gupta
Secretary General
AIFTP

H.L.. Madan
Secretary
AIFTP(NZ)

Local Organizers

Sanjay Kumar
AIFTP (NZ)

Piyush Agrawal
AIFTP (NZ)

Pro L.R. Singh
Dean Faculty of Law

Prof. B.P. Singh
Co-ordinator, Faculty of Law

Mrs. Sonal Shankar
Convener

Km. Pragati Singh
President

Km. Roshni Shukla
Secretary

(Moot Court Society)

Awards

Best Team

- Rs. 10,000/- cash prize
- One trophy for the institution + three individual trophies
- Internship in Titus & Co. Law firm for three months, with stipends, for each of the member.

M/s. Titus and Co., Titus House, R – 77A, Greater Kailash – I, New Delhi – 110 048

1st Runners Up

- Rs. 5,000/- cash prize
- One trophy for the institution + three individual trophies
- Internship in B. M. R. and Associates for three months, with stipends, for each members.

M/s. B. M. R. and Associates, The Great Eastern Centre, First Floor, 70, Nehru Place, New Delhi – 110 019.

Best Male Speaker

- Rs. 2,000/- cash prize
- One individual trophy

Best Female Speaker

- Rs. 2,000/- cash prize
- One individual trophy

Best Memorial

- Rs. 2,500/- cash prize
- One individual trophy

2nd Best Speaker

- One individual trophy

2nd Best Memorial

- One individual trophy

Participation certificates shall be given to the members of each participating team.

For further details, please contact the below office bearers :-

1. Shri Bharat Ji Agrawal, National President, AIFTP • Mobile : 9415235429 • Email : bharatjiagrawal@yahoo.co.in
2. Shri Mukul Gupta, Secretary General, AIFTP • Mobile : 9811023739 • Email : mukuladv@hotmail.com
3. Shri Sanjay Kumar, Jt. Secretary, AIFTP • Mobile : 9415216798 • Email : snslawoffices@yahoo.com
4. Shri H. C. Bhatia, Chairman, AIFTP - NZ • Mobile : 9810082677 • Email : bhatia_hc@hotmail.com

Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Taxation Bar Association Bihar, Patna for the year 2009-10.

President

Arun Kumar Jha

Vice President

**Santosh Sharaf &
Anil Kumar Verma**

General Secretary

Lalit Mohan Prasad

Jt. Secretaries

**Sudhir Kumar Jha &
Uma Shankar Singh**

Treasurer

Uma Shankar Pathak

We wish them all the success.

Hearty Congratulations to the newly elected office bearers of District Tax Bar Association, Bolangir for the year 2009-10.

President

Rahasa Bihari Majhi

Vice President

Aswini Kumar Tripathy

Secretary

Ashok Kumar Das

Joint Secretary

Shantanu Kumar Bhua

Treasurer

Pitabasa Mishra

We wish them all the success.

TWO DAY NATIONAL TAX CONFERENCE AT JAMSHEDPUR

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (EASTERN ZONE)

Jointly with

**JAMSHEDPUR TAXATION BAR ASSOCIATION
FEDERATION OF JHARKHAND C.T. BAR ASSOCIATION
COMMERCIAL TAXES BAR ASSOCIATION, JAMSHEDPUR
JAMSHEDPUR BRANCH OF CIRC OF ICAI
JAMSHEDPUR CHARTERED ACCOUNTANTS SOCIETY**

On 29th & 30th, August 2009

at Michel John Auditorium, K-Road, Bistupur, Jamshedpur - 831 001

PROGRAMME

DAY 1 – SATURDAY, 29TH AUGUST, 2009

09.00 a.m. to 11.00 a.m.	:	Breakfast, Registration	
11.00 a.m. to 12.45 p.m.	:	INAUGURAL SESSION	
		*Hon'ble Mr. Justice Altmas Kabir, Judge, Supreme Court	
		Hon'ble Mr. Justice S. B. Sinha, Judge, Supreme Court - Key Note Speaker	
		Hon'ble Justice Smt. Gyan Sudha Mishra, Chief Justice, Jharkhand High Court	
		Hon'ble Mr. Justice M. Y. Iqbal, Judge, Jharkhand High Court	
		Hon'ble Mr. Justice R. K. Merathia, Judge, Jharkhand High Court	
01.00 p.m. to 02.00 p.m.	:	Lunch	
02.00 p.m. to 04.00 p.m.	:	FIRST TECHNICAL SESSION	
		Chairman : Mr. V. Ramchandaran, Sr. Advocate, Chennai	
		Important issues relating to Real Estate Transactions under	
		(a) Income Tax Speaker : Mr. N. K. Poddar, Sr. Advocate, Kolkata	
		(b) VAT Speaker : CA. S. Venkatramani, Bangalore	
		(c) Service Tax Speaker : Mr. Mukul Gupta, Advocate, Ghaziabad	
04.00 p.m. to 04.15 p.m.	:	Tea Break	
04.15 p.m. to 06.15 p.m.	:	SECOND TECHNICAL SESSION	
		Chairman : Mr. P. C. Joshi, Advocate, Mumbai	Speaker
		1) ITC under VAT Act, TDS & Refund under VAT Act -	Dr. Ashok Saraf Sr. Advocate, Guwahati
		2) Inter-State Works Contract & Maintenance Contract	Mr. P. S. Sarin, Advocate, New Delhi
		3) Second Inter-State Sales – Emerging Controversies	Mr. K. N. Jain, Sr. Advocate, Patna
06.30 p.m. to 07.30 p.m.	:	National Executive Committee Meeting	
07.30 p.m. to 08.45 p.m.	:	Cultural Programme	
08.45 p.m. onwards	:	Dinner	

DAY 2 – SUNDAY, 30TH AUGUST, 2009

08.30 a.m. to 09.30 a.m.	:	Breakfast	
09.30 p.m. to 11.30 a.m.	:	THIRD TECHNICAL SESSION	
		Chairman : *Dr. K. Shivaram, Advocate, Mumbai	Speaker
		1) Important Changes made by the Finance Bill, 2009	Mr. Narayan Jain, Advocate, Kolkata
		2) Share, Securities and Derivatives Transactions under Income-tax Act.	Mr. Anil Kumar Singh Advocate, Varanasi
11.45 a.m. to 01.45 p.m.	:	FOURTH TECHNICAL SESSION	
		Chairman - Bharat Ji Agrawal, Sr. Advocate, Allahabad	Speaker
		CENVAT Credit in Service Tax on indirect expenses	CA. Pulak K. Saha, Kolkata
		Current Controversial issues in Service Tax (Levy and Abatements) Overview of GST	
		Overview of GST	Mr. J. N. Pandey, Advocate, Ranchi
01.45 p.m. to 02.30 p.m.	:	Lunch	
02.30 p.m. to 04.30 p.m.	:	BRAIN TRUST SESSION	
		Chairman : N. M. Ranka, Sr. Advocate, Jaipur	
04.30 p.m. to 05.30 p.m.	:	VALEDICTORY SESSION	
		Hon'ble Judges of Jharkhand High Court, Ranchi have been invited	
05.30 p.m. Onwards	:	HIGH TEA	
		* Confirmation awaited	

Delegates Fees

Members : Rs. 1,500/- | Corporate delegates/Non-Members : Rs. 2,000/- | Accompanying Spouse : Rs. 1,000/-



For further details please contact :

- | | | |
|---|-------------|--------------------------------|
| 1) S.K. PODDAR, Advocate Vice President, AIFTP, | 09431115265 | sheojipoddar@rediffmail.com |
| 2) R.D. SHARMA, Advocate, Chairman, AIFTP (EZ) | 09830849149 | satishsharmacalcutta@yahoo.com |
| 3) M.D. KEDIA, Advocate Chairman (Conf. Committee) | 09835166266 | mdkjsr@yahoo.co.in |
| 4) CA. G.R. GOLECHHA, FCA Co-Chairman Conf. Committee | 0931300934 | dkgolechha@yahoo.com |
| 5) R.N. GUPTA Advocate General Secretary | 09308644077 | e-mail-rngupta01@sify.com |
| 6) CA R.N. GUPTA – President Jsr Branch CIRC of ICAI | 09835163576 | ramakant_rkg@hotmail.com |
| 7) R.M. AGARWAL – Advocate Co-Chairman | 09430739329 | rajiv_agarwal@hotmail.com |

Conference Secretariat : 8, Diagonal Road, Bistupur, Jamshedpur - 831 001

HOTEL ACCOMMODATION

List of Hotels near the Conference Venue

Name of the Hotel	Phone & E-mail ID	Distance from Venue	TARIFF	
			Non A.C. Single/Double	A.C. Single/Double
Hotel Natraj Main Road, Bistupur Jamshedpur	0657-2426061 (5 lines) 2431861 jst_natraj@sancharnet.in	Zero	1200/- 1600/-	1600/- 2000/-
Fortune Hotel (Centre Point) 2, I.C. Road, Bistupur, Jamshedpur	0657-2224200 centrepont@fortunehotels.in	10 Minutes		3800/- 4500/-
The Sonnet I.C. Road, Bistupur, Jamshedpur	0657-2226932 reservations@thesonnet.com.	10 Minutes	3800/-	4800/-
Boulevard Hotel Main Road, Bistupur, Jamshedpur	0657-2425321/22 ronald48@rediffmail.com	10 Minutes	850/- 1000/-	1000/- 1150/-
B.S. Park Plaza Main Road, Bistupur,	0657-321318/19/20/21 jamshedpur bsparkplaza@sify.com	10 Minutes	2000/-	2273/-
Hotel Siddhartha Main Road, Bistupur, Jamshedpur	0657-2320399/ 2320411 hotelsiddhartha@rediffmail.com	10 Minutes	895/- 1150/-	995/- 1245/-
Hotel Darshan Main Road, Opp. Ram Mandir Bistupur, Jamshedpur	0657-2320217/2320611 2320568/2439939 hoteldarshan@sify.com	10 Minutes	900/- 1100/-	1150/- 1450/-
Hotel Rajhans Bistupur, Jamshedpur	0657-2433205/2433444 2433446 rajhanshotel.jsr@rediffmail.com	10 Minutes	600/- 850/-	1000/- 1250/-
Nalanda Hotel Main Road, Bistupur	0657-2321150 (6 lines) 0657-2321150 (Tele Fax)	10 Minutes		1050/- 1300/-
South Park Bistupur, Jamshedpur	0657-2435001 2435636 reservations@hotelsouthpark.net.	10 Minutes	900/- 1100/-	1100/- 1400/-

NOTE : Other good hotels at distance of 2 Kms from venue are also available at lower tariffs

15TH NATIONAL CONVENTION AT JAIPUR

18th December, 2009

- National Executive Committee Meeting
- Extra Ordinary General Meeting
- Election of Office Bearers

Venue : Hotel Om Tower,
M. I. Road, Jaipur

19th & 20th December, 2009

Two Days Conference

Venue : Birla Auditorium,
Statue Circle, Jaipur



NOTICE OF ANNUAL GENERAL MEETING

Notice is hereby given that the Annual General Meeting of the All India Federation of Tax Practitioners will be held on Saturday, the 29th August, 2009 at 5.30 p.m. at Conference Room, Michel John Auditorium, K-Road, Bistupur, Jamshedpur - 831001 to transact the following business:-

AGENDA

1. To read and approve the minutes of last Annual General Meeting held on 18th September, 2008.
2. To receive and adopt the Annual Report of the National Executive Committee of AIFTP for the years 2008 & 2009.
3. To consider and adopt the Audited Accounts of AIFTP for the year ended 31st March, 2009.
4. To appoint Auditors for the year 2009-10 and to fix their honorarium.
5. To transact any other business with the permission of the Chair.

Place: **Mumbai**
Date: **31st July, 2009**

Sd/-
Mukul Gupta
Secretary General

Note: 1. The Annual Report and the Audited Profit and Loss Account and Balance Sheet will be circulated to the National Executive Committee Members by e-mail.

2. Accounts for the year ended 31st March, 2009 and the report of the National Executive Committee can be collected from the office of the Federation from 22nd August, 2009 onwards between 11.30 a.m. and 5.00 p.m. The accounts and reports can be made available to the members through e-mail on request to the office.

3. If there is no quorum by 5.30 p. m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

INTERNATIONAL TAXATION

CA DHANESH BAFNA, CA MADHAV KHANDELWAL, SUJEETH KARKAL, Advocate

(A) AUTHORITY OF ADVANCE RULING

1. PE - Article 5- DTAA - India and Mauritius
In this case the authority ruled as follows:
 - i. It was implicit in the very concept of PE and the expression 'fixed place of business' that PE should be in existence for a fairly long time and merely carrying on some activities intermittently or for a short while did not impress the place with the character of a fixed place through which the business of the enterprise was carried on. The project commencement could not in the absence of any definite indication be equated to be contract signing date. It would be absurd to say that even before programme of work schedule was drawn up, the project commenced.
 - ii. Therefore, the applicant could not be said to have permanent establishment within the meaning of para 1 of Article 5 read with clause (i) of Article 5.2 of the DTAA between India and Mauritius. When there was no permanent establishment, the question of taxing any part of the business profits in India did not arise in view of the clear provision of Article 7.1 of DTAA. It was not contended and it could not be contended that payment received by the applicant under the contract constituted 'fee for technical services'. Whatever technical services

were provided, they were only integral to the performance of the project work.

Cal Dive Marine Construction (Mauritius) Ltd. [25 DTR 59 (AAR)]

2. In absence of PE, Business Income - Not taxable
In this case the authority ruled as follows:
 - i. In the present case, C&W UK was not providing any managerial, technical or consultancy services, nor was it providing the services of its technical or other personnel to the applicant. C&W UK performs this part of service itself without the involvement of the applicant. The description of service presented did not fulfil the requirements of clause (c) of Article 13(4) of DTAA. Firstly, no technical service was rendered and secondly, there was no transfer of technology.
 - ii. The network of the applicant will inter-connect with the network of C&W UK at Marseilles in France. Thus the telecom signal will move on the network of the applicant from India to Marseilles. It was beyond Marseilles that the network and equipment of C&W UK would be used for transmission of the signal. In the draft agreement that there was neither any stipulation for provision of any equipment nor payment of any fee for the same. The payments made by the applicant would not be royalty income in the hands of C&W UK.

- iii. The applicant in its independent capacity negotiated and concluded contracts with its customers on principal-to-principal basis, to which C&W UK was not a party. Similarly, the agreement with C&W UK was also on principal-to-principal basis, the Indian customer not being a party to the same. The breach of one type of contract did not affect the rights and obligation arising under the other type of contract. Therefore, the payments made by the applicant to C&W UK were in the nature of business profits. In the absence of there being any permanent establishment of C&W UK in India, this income was not at all taxable here. Since this income not chargeable to tax under the Act, there was no question of making any deduction at source under section 195.

Cable & Wireless Networks India Private Limited. [25 DTR 49 (AAR)]

3. Subscription fees – Clause (v) of Explanation (2) to section 9(1)

In this case the authority ruled that a licence granting some rights and entitlements attached to the copyright so as to enable the licensee to commercially exploit the limited rights conferred on him was what was contemplated by the expression 'granting of licence' in clause (v) of Explanation 2 to section 9(1)(vi). The copyright of the applicant had not been assigned or otherwise transferred so as to enable the subscriber to have certain exclusive rights over the applicant's works. The subscription fee received by the applicant from the licensee (user of data base) did not fall within the scope of clause (v) of Explanation (2) to section 9(1) of the Act. The subscription fee is not taxable in India as royalty. It was liable to be taxed only as business income if at all it was found by the Department that an agency PE exists. At present, on the facts stated by the applicant, PE was not in existence and therefore the income was not liable to be taxed in India. The customers were not required to withhold the tax, until and unless the Department finds the existence of PE after due enquiry.

Factset Research Systems Inc. (2009)-TIOL-18-ARA-IT

(B) TRIBUNAL

4. Inland Haulage Charges – India – Belgium DTAA – Article 8.

In this case, the tribunal held that there was no substance in the contention of the assessee that the inland haulage charges were covered u/s 44BB of the Act since they were equal to or part and parcel of the amount received on account of

carriage of goods shipped at any port in or outside India and hence were automatically covered under article 8. It was further held that, in this treaty the inland transportation if coupled with the further shipping of cargo also by the assessee from the Indian port to the foreign country, would be construed as the "activity directly connected with such transportation." Hence, the case would be covered under article 8(2)(b)(ii). Since the assessee had transported the containers for the purpose of transportation in international traffic, the case was also covered within the sweep of clause (c). Therefore, the inland charged earned by assessee were covered within the scope of "income covered from the operation of ships in international traffic as per Article 8 of the DTAA between India and Belgium.

Dy. DIT vs. Safmarine Container Lines N.V. [2009] 314 ITR (AT) 15 (Mum).

5. Transfer pricing – TPO not to ignore the current year data while determination of transfer price – S. 92C

The Tribunal held that the Rule 10B(4) quite clearly specifies that the data to be used in analyzing the comparability of an uncontrolled transaction with an international transaction shall be the data relating to financial year in which the international transaction had been entered into. Also, an exception has been carved out in the proviso to Rule 10B(4) which allows data relating to a period of not being more than two years prior to such financial year may also be considered if such data have influence on the determination of transfer prices in relation to the transaction compared. The TPO had not brought on record any cogent, relevant and reliable evidence to prove that the data for preceding two years revealed facts which could have had influence on the determination of ALP. There was thus no case made out by the TPO to justify the use of prior years' data by invoking the proviso to Rule 10B(4).

Customer Services India (P) Ltd. vs. ACIT [2009 –TIOL-424-ITAT-Del]

6. Transfer Pricing – Determination of ALP

In this case for determination of ALP, the Tribunal held that the depreciation can be taken into account or disregarded in computing profit of comparables depending upon the context and the purpose for which profit is to be computed. There is no formula which would be applicable universally and in all circumstances. It was further held that, the finding that cash profit cannot be considered is not legally correct. The tax-payer in order to get



adjustment of difference in depreciation furnished arm's length working after excluding depreciation and by taking all other expenses into consideration and showed that such profit of the tax-payer was quite comparable to the mean margin of other comparables similarly computed. This demonstratively showed that deductions of depreciation was making huge difference and

required suitable adjustment. This claim has not been challenged. Therefore, it is clear that the best way to adjust difference on account of depreciation was to ignore depreciation both in case of the tested party and comparables.

Schefenacker Motherson Ltd. vs. ITO (2009) 24 DTR 561 (Del) (Trib)

INDIRECT TAXES – SALES TAX DECISIONS

P. C. JOSHI
Advocate

Branch transfer

The assessee, before the Madras High Court, had produced declarations in Form 'F' from its branch together with proof of payment of taxes in other States. The assessing authority, however, rejected the claim for failure to submit the statement and records as provided in Rule 4(3-A) of the Central Sales Tax (Tamil Nadu) Rules, 1957. The High Court set aside the order in question with a direction to the officer to hold an enquiry as provided in Section 6A(2) and pass the order thereafter.

M/s Associated Cement Companies Ltd., Coimbatore vs The Assistant Commissioner (CT)(FAC) & Others 2009-10 (15) TNCTJ – 37.

Binding nature of judgment in advisory capacity

The West Bengal Taxation Tribunal, while deciding a petition by the Government Medical Stores Depot, observed that the decision of the Supreme Court rendered on a reference under Article 143 of the Constitution was not the law declared under Article 141.

Government Medical Stores Depot, Govt. of India vs State of West Bengal & Others 2009 NTN (Vol. 40) – 147.

Concessional Rate of Tax without 'C' Form

The Petitioner, before the Madras High Court, was an association representing Cotton Waste Merchants whose inter-State sales, though covered by a notification under Section 8(5) of the Central Sales Tax Act, were held to be liable by the assessing authority, to higher rate of tax in view of the amendment to Section 8(5) by Finance Act, 2002.

The Hon'ble High Court, after considering the provisions concerned and the judgment of the Supreme Court in the case of *M/s Sarvottam Vegetables Products (101 STC 547)*, held that the ratio of that judgment was not applicable to the case before it, in view of the fact that the notification under Section 8(5) was legally issued as per the law then prevailing, without any condition of producing the 'C' Form. The Hon'ble High Court, therefore, held that the authorities were not justified in insisting on the submission of 'C' Form as a condition precedent for the payment of CST at the rate notified under section 8(5).

The Southern India Cotton Waste Merchants & Exporters Association, Coimbatore & Others vs The Union of India & Others 2009-10 (15) TNCTJ – 71.

Circular

The Supreme Court, while upholding the judgment of the Kerala High Court, held that the returns of the assessee having been accepted on the basis of the Circular issued by the Board of Revenue under section 3(1A)(c); cannot be reopened by the

departmental officers working under the Board of Revenue, on the footing that the Circular was not binding on them. Under the Kerala General Sales Tax Act, section 3(1A) enabled the Board of Revenue to issue circulars for just and fair administration of the Sales Tax Act. Such a power was found to be similar to Section 119(1) of the Income-tax Act, 1961.

State of Kerala & Others vs M/s Kurian Abraham Pvt. Ltd. & Another (2009) 53 S. T. A. – 241.

Declared goods

The Calcutta High Court set aside the decision of the West Bengal Taxation Tribunal and held that Stainless steel wire and Stainless steel wire resistance were declared goods under section 14(IV)(xv) of the Central Sales Tax Act, 1956.

M/s Dolat Electric Corpn. & Another Vs Commercial Tax Officer, Ezra Street Charge & Others. (2009) 53 S. T. A. – 259.

Entries in Schedule

1. Rab, Gur

The West Bengal Taxation Tribunal, after considering the language of entry 41, Schedule I, relating to Gur & Jaggery and the well settled principles of interpreting legislative amendments which were clarificatory and explanatory, held that for the periods prior to 1st August 2001, the amendment in question was not applicable and the sales of Rab was not liable to be taxed.

Sri Durga Agency vs State of West Bengal & Others. (2008) 52 S.T.A. – 280.

2. Digital Camera

The Commissioner of Commercial Taxes of Gujarat State, while determining the rate of tax under section 80 of the Gujarat VAT Act and after considering the literature in regard to working of the digital camera and Custom Tariff heading, held that the digital camera was covered by entry 45 of Schedule II as IT products and therefore was liable to be taxed @ 4%.

M/s Kodak India Pvt. Ltd (Order dated 9th March 2009) Source : Sales Tax Journal, Vol. 48, Part 2, Page 109.

3. L. P. G. Pressure Regulators

Uttarakhand High Court, while deciding an appeal against the full Bench of Commercial Tax Tribunal, Uttarakhand, under the provisions of Uttarakhand VAT Act 2005, held that L. P. G. Pressure Regulators were not containers and therefore was taxable @ 12.5% and not @ 4% as containers.

M/s I. A. S. Products, Udham Singh Nagar vs Commissioner, Commercial Tax, Uttarakhand at Dehradun.

4. Video Compact Disk

The Madras High Court, while considering the clarification issued by the Commissioner of Commercial Taxes under the provisions of Tamil Nadu General Sales Tax Act 1959, held that the clarification being only for video compact disk, cannot be made applicable to writable compact disc.

M/s Kodak India Ltd vs Asst. Commissioner (CT), Circle – IV, Chennai. 2009 NTN (Vol. 40) – 129.

5. Medicine, drug, etc

The Kerala High Court adopted the principle of harmonious construction while interpreting the words 'medicine', 'drug' etc and held that Nycil prickly heat powder was not a medicine, though the same was manufactured under a drug licence. The product in question was held to be a talcum powder covered by entry 127 of the First Schedule relating to perfumeries, cosmetic, shampoo etc. The High Court also held that the item was not covered by entry 79 of the First Schedule relating to drugs and medicines.

M/s Heinz India Ltd vs State of Kerala (2009) 17 KTR 323 (Ker).

Estoppel

The Central Sales Tax Appellate Authority, New Delhi, held that there was no estoppel against the Statute. If a person was not liable to pay any tax on a transaction under the provisions of the Act, he cannot be assessed to tax merely because under a wrong impression the liability was admitted by submitting the return. In other words, the liability to pay tax was to be ascertained from the provisions of law and not merely on admission of the assessee.

Commissioner of VAT, New Delhi vs State of Haryana & Others. (2009) 33 PHT 657 (CSTAA-ND) (FB).

Interpretation

The Supreme Court, while considering the language of the notification, held that the imposition of tax must be through express provisions of a statute and no tax can be levied by clarification. It also held that while interpreting a notification, benefit of doubt should go to an assessee.

Commissioner of Trade Tax, U. P. Vs M/s S. S. Ayodhya Distillery & Others. (2009) 17 KTR 281 (SC).

Judicial propriety – Classification

The Supreme Court, while considering the appeal under the Central Excise Act, held that the classification adopted in earlier decision should not be disregarded by a Bench of co-ordinate jurisdiction in a later case. The Supreme Court emphasised the need for consistency, certainty and predictability in the administration of justice. The Supreme Court also held that in case the later Bench feel that the earlier decision was, according to it, an erroneous one, the matter should be referred to a larger Bench.

M/s Jayaswals Neco Ltd. Vs Commissioner of Central Excise. 2009 NTN (Vol. 40) – 163.

Limitation

1. The Punjab & Haryana High Court, while considering the delay caused by the State authorities, held that while disposing of the application for condonation of delay, the Tribunal cannot consider the merits of the case and the delay cannot be condoned merely on the ground that huge revenue was involved.

M/s Sachdeva & Sons Rice Mills Pvt. Ltd., Amritsar vs State of Punjab. (2009) 33 PHT 631 (P&H).

2. The Delhi High Court, after considering the provisions of Section 62 of the Delhi Sales Tax Act, held that the Revisional authority have no jurisdiction to condone the delay in excess of what was provided by Section 4 & 12 of the Limitation Act. In other words, Section 5 of the Limitation Act was excluded from the proceedings under the Act as can be seen from Section 47 of the Act.

M/s Jagannath Dudadhar vs The Sales Tax Officer & Others. 2009 NTN (Vol. 40) – 46.

Obligation of the Tribunal

The Allahabad High Court, while restoring the case to the Tribunal for fresh consideration, held that even where the Tribunal was in agreement with the order of the First Appellate Authority, it should have considered the submissions of the authorities and give its own reasoning for the conclusion.

M/s D. C. M. Toyota Ltd. vs The Commissioner of Trade Tax. 2009 NTN (Vol. 40) – 156.

Penalty

1. Under section 10-A of the CST Act

Before the Allahabad High Court, the assessee was carrying out the job work on the materials belonging to the customers. The materials required to be used in such job work were purchased by issuing declaration in Form 'C'. Treating such purchases as unauthorised; penalty was imposed by the assessing authority. However, following the well settled law by the Supreme Court in the case of *M/s East India Cotton Mfg. Co. Ltd* (48 STC 239), the Allahabad High Court quashed the penalty, observing that the use of material purchased on 'C' Form for the job work was perfectly legal within the phrase "for sale by him", when the customer of the job worker after completion of the job work by the assessee had sold those goods.

The Commissioner, Trade Tax, Lucknow vs M/s Jyoti Rubber Works. 2009 NTN (Vol. 39) – 299.

2. Non-payment of TDS amount by deductor

The assessee, before the Gujarat VAT Tribunal, was a sub-contractor from whose payment the main contractor deducted certain amount towards TDS.

Such deduction was not deposited in the government treasury by the contractor concerned nor any certificate of deduction of tax was issued to the sub-contractor. In absence of such a certificate, the sub-contractor was visited with the levy of interest and imposition of penalty, in addition to the tax amount that was deducted but not paid by the main contractor.

After considering the facts of the case which were not disputed by the State government, the penalty was quashed and the order set aside with a direction to the assessing authority to consider the matter afresh.

M/s Suyash Equipment (P) Ltd. vs The State of Gujarat. Source : Sales Tax Journal, Vol. 48, Part 2, Page 132.

3. Sale of wet grinders The Supreme Court, while deciding an appeal under the Tamil Nadu General Sales Tax Act against the judgment of the Madras High Court, held that no penalty could have been imposed when the items not included in the return were duly included in the assessee's own account books and the assessing authority added those items to the turnover.

M/s Sree Krishna Electricals vs State of Tamil Nadu & Another. 2009 NTN (Vol. 40) – 36.



Packing material

The Kerala High Court held that the polythene films sold to the milk supplier, whereby the polythene sheets were converted into polythene bags in the course of packing milk of a specified quantity through an automatic packing machine, can be said to be the sale of packing material. It also held that though the Government was empowered to notify an item as packing material, such an occasion would arise only when an item normally do not come within the term 'packing material'.

M/s. Trends Polymer Pvt. Ltd. vs Asst. Commissioner – III (2009) 17 KTR 266 (Ker).

Revision – In limine rejection

The West Bengal Taxation Tribunal disapproved the approach of the Revisional authority in not entertaining the revision petition submitted by the assessee. The assessee in question did not receive the original copy of the Appellate order and submitted the revision petition after obtaining the duplicate copy thereof. Tribunal in that regard observed that under the system that prevailed in the State, the copy of the final order was to be served on the concerned dealer and there was no obligation on the assessee to make enquiries after completion of the hearing. The Tribunal, therefore, directed the Revisional authority to hear the matter afresh on merit.

M/s Crawler Technic (I) Pvt. Ltd. vs C.T.O. Beliaghata Charge & Others. (2008) 52 S. T. A. – 329.

Registration – Cancellation

The Punjab & Haryana High Court held that in absence of the publication in the Gazette the information about the cancellation of Registration Certificate, no knowledge about such cancellation can be inferred to the public at large. Consequently, transactions made by the assessee of selling goods to such registered dealers during the intervening period between the day of passing of order cancellation and its publication in the official gazette, was entitled to the benefit of section 5(2)(a)(iii) of the Punjab General Sales Tax Act, 1948.

M/s N. S. Oswal Yarns, Ludhiana vs State of Punjab. (2009) 33 PHT 641 (P&H).

Refund

The Punjab & Haryana High Court, after considering the provisions of section 44 of the Haryana General Sales Tax Act 1973, held that the refund due to the assessee cannot be withheld merely on the ground that the recovery of revenue would be adversely affected if the refund was granted. The Hon'ble High Court held such an action to be not proper.

M/s National Agricultural Co-op. Marketing Federation of India Ltd Vs State of Haryana & Others (2009) 33 PHT 647 (P&H).

APPEAL TO MEMBERS

Dear Members,

The journal has become monthly from January, 2002. We desire that the journal should become self-sufficient. Hence, we request you to send us advertisements for the journal. The rates of advertisement are as under:

1. Quarter Page	Rs. 600/-
2. Ordinary Half Page	Rs. 1,000/-
3. Ordinary Full Page	Rs. 2,000/-
4. Second and Third Cover Page	Rs. 2,500/-
5. Fourth Cover Page – Three fourth page (in four colour)	Rs. 3,500/-

MUKUL GUPTA, Secretary General

Remand

The Allahabad High Court held that in absence of any adverse material in possession of the department, the First Appellate Authority was not justified in remanding the matter back to the assessing authority. The remand order, therefore, was quashed and in absence of such a material, the initiation of reassessment was held to be without basis.

M/s Sanjeev Kumar & Brothers vs Commissioner, Trade Tax, U. P. 2009 NTN (Vol. 40) – 33.

Recovery – Liability of the Surety

The Kerala High Court held that the Surety who had executed a bond, as provided by the Sales Tax authorities under Rule 6 of the Kerala Sales Tax Rules, was equally liable for payment of dues of the defaulter during the period of validity of the bond.

Mr Abdul Vahid vs Deputy Tahsildar (RR) & Ors (2009) 17 KTR 317 (Ker).

Sale in the course of export under Section 5(3) of the CST Act

The Kerala High Court held that the provisions of Section 5(3) had its source in the constitutional provisions and therefore was applicable both to registered as well as unregistered dealers. What was essential for grant of exemption under Section 5(3) was the prior export order and export of the goods pursuant thereto. The non mentioning of sale bill number in Form 18A was not fatal. The claim was therefore held to be allowable even to an unregistered dealer.

M/s P. A. Anilkumar & Ors vs State of Kerala & Ors. (2009) 17 KTR 261 (Ker).

Writ Petition maintainability – Alternative remedy

The Supreme Court, while granting SLP of the assessee, held that the Kerala High Court was not correct in not admitting the writ petition, especially when the validity of the notification was challenged. In such a situation, the statutory alternative remedy was not a bar, because the validity of a notification cannot be decided by the Revenue authorities.

M/s Godrej Sara Lee Ltd. vs Assistant Commissioner (AA) & Another (2009) 33 PHT (SC) (FB).

News from Uttar Pradesh

The State of Uttar Pradesh, in exercise of the powers under section 3A of U. P. VAT Act 2008, have notified that an additional tax would be payable from 1st June, 2009 by all registered dealers @ 0.50% on the sale of goods covered by Schedule II and @ 1% on the sale of goods described in Schedule V appended to the Act.

Source : Shri Rateeshkumar for National Law Book Publication.

**Membership of AIFTP
as on 10-07-2009**

Life Members

	Associate	Individual	Association	Corporate	Total
Central	—	613	20	1	634
Eastern	—	726	32	0	758
Northern	—	735	17	0	752
Southern	—	649	13	2	664
Western	03	1481	31	10	1525
Total	03	4204	113	13	4333



Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of The Chamber of Tax Consultants, Mumbai for the year 2009-10.

President **K. Gopal**
Vice President **Sujal A. Shah**
Hon. Jt. Secretaries **Yatin K. Desai & Hitesh R. Shah**
Hon. Treasurer **Manoj C. Shah**

We wish them all the success.

Hearty Congratulations to the newly elected office bearers of Bombay Chartered Accountants' Society, Mumbai for the year 2009-10.

President **Ameet N. Patel**
Vice President **Mayur B. Nayak**
Hon. Jt. Secretaries **Deepak R. Shah & Nitin P. Shingala**
Hon. Treasurer **Mrs. Nandita P. Parekh**

We wish them all the success.

SUBSCRIPTION RATES (W.E.F. 1-4-2008)

1. Life Membership of the AIFTP					Rs. 2,500/-
Additional subscription of AIFTP Journal (for 1 year)					Rs. 400/-
Additional subscription of AIFTP Journal (for 3 years)					Rs. 1,000/-
2. For Non-Members					
Subscription of AIFTP Journal (for 1 year)					Rs. 600/-
Subscription of AIFTP Journal (for 3 years)					Rs. 1,500/-
Single copy of the AIFTP Journal					Rs. 50/-
3. Corporate Membership					
Nature of fees	Type I (5 Yrs.) Rs.	Type II (10 Yrs.) Rs.	Type III (15 Yrs.) Rs.	Type IV (20 Yrs.) Rs.	
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

Non-receipt of the Times must be notified within one month from the date of publication, which is 2nd of every month.

Members of Editorial Team of AIFTP Times : Mr. Kishor Vanjara & Mr. Deepak R. Shah

Printed & Published by Mitesh Kotecha 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, Tel.: 24961605/85 • Fax: 24962297 (name of printing press) and published at 215, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020, Tel.: 22006342 • Fax: 22006343 (place of publication) • Editor : Dr. K. Shivaram

To

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

Date of Posting : 1st & 2nd August, 2009

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