



All India Federation of Tax Practitioners

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# AIFTP TIMES

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## FEDERATION NEWS

Mukul Gupta, Secretary General

### FORTHCOMING PROGRAMMES

Dates & Months	Programmes
5th June, 2009	7th National Executive Committee Meeting at Pune at 6.30 p.m.
5th & 6th June, 2009	Two Day National Tax Conference at Pune
19th, 20th & 21st November, 2009	AOTCA Mumbai Meeting, 2009 (International Tax Conference) at Hotel Trident, Mumbai

### TWO DAY NATIONAL TAX CONFERENCE

ORGANISED BY ALL INDIA FEDERATION OF TAX PRACTITIONERS – WESTERN ZONE

JOINTLY WITH

THE WESTERN MAHARASHTRA TAX PRACTITIONERS ASSOCIATION, PUNE  
THE MAHRATTA CHAMBER OF COMMERCE, INDUSTRIES & AGRICULTURE, PUNE

ON FRIDAY, 5TH JUNE, 2009 & SATURDAY, 6TH JUNE, 2009  
AT SYMBOISIS COLLEGE HALL, AIRPORT ROAD, PUNE

#### DAY 1 – FRIDAY, 5TH JUNE, 2009

9.00 a.m. to 10.00 a.m.	Registration & Breakfast
10.00 a.m. to 11.00 a.m.	Inauguration
11.00 a.m. to 11.15 a.m.	Break
11.15 a.m. to 2.00 p.m.	<b>First Technical Session – Goods &amp; Service Tax</b>
	i) GST – Shape of things to come and how it works in other countries – Canada & European VAT
	ii) Expectation of the Industry. How to gear up for GST – Marketing Policy, Pricing Policy and administrative policy – Impact on Mega Project
	iii) E-Governance
	iv) Legal Aspects – Merging of various local levies, cess, tax by Centre & State – How it should be done? Constitution Amendments required.
2.00 p.m. to 3.00 p.m.	Lunch Break

#### FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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3.00 p.m. to 3.45 p.m.	<b>Second Technical Session</b> Aftermath of Dharmendra Textiles
3.45 p.m. to 4.00 p.m.	Tea Break
4.00 p.m. to 6.00 p.m.	<b>Third Technical Session – Tedious Issues of TDS</b> Issue under Income Tax Act Issues of TDS & Refund under MVAT & DVAT
6.30 p.m. to 8.30 p.m.	<b>National Executive Committee Meeting</b>

**DAY 2 – SATURDAY, 6TH JUNE, 2009**

8.30 a.m. to 9.30 a.m.	Breakfast
9.30 a.m. to 11.15 a.m.	<b>Fourth Technical Session</b> i) Issues of Capital Gains ii) Disallowances under Section 14A of Income Tax Act
11.15 a.m. to 11.30 a.m.	Tea Break
11.30 a.m. to 1.30 p.m.	<b>Fifth Technical Session – Software Industry – Issues, Solutions &amp; Suggestions</b> i) Issues under Service Tax Act ii) Issues under Sales Tax Act
1.30 p.m. to 2.30 p.m.	Lunch Break
2.30 p.m. to 5.00 p.m.	<b>Sixth Technical Session – Input Tax Credit &amp; CENVAT Credit</b> i) Issues on CENVAT Credit ii) Issues on Input Tax Credit

**Optional Tour** – For the members desiring to visit Shirdi Sai Baba Sansathan - Start at 6.30 p.m. from Pune – Complete darshan by Sunday, 7th June, 2009 afternoon – The tour charges will be intimated shortly.

**Delegates Fees** – Members Rs. 2000/- Non-Member Rs. 2500/-  
Accompanying Spouse - Rs. 1250/-

**In addition** to the above interesting debate, the two days conference would be memorable for the members who wish to visit Shirdi.

Special visit to this holy place by luxury coach is being planned.

Within Pune also there are famous places to be visited. There would be special arrangement for accompanying spouse with lots of places to shop at Pune.

The Seminar is specially planned on 5th & 6th June, 2009 so as to enable the members to resume their work on the Court opening day; i.e. 8th June, 2009.

With the recent trend of early rains, the weather at Pune would be pleasant in the first week of June.

Friends, plan your visit from now only. Book your tickets by Air or Train so as to reach Pune latest on 5th June, 2009 early morning.

Do not miss tour to Shirdi temple.

Detailed programme will be published in the next issue of AIFTP Times

**For further details, please contact:**

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**Hearty Congratulations**

Hearty Congratulations to the newly elected officer bearers of Western India Regional Council of The Institute of Chartered Accountants of India for the year 2009-10.

CA B. C. Jain	Chairman	CA B. K. Rathi	Vice Chairman
CA Raju Shah	Secretary	CA Ashok Pagariya	Treasurer

## **DIRECT TAXES**

**AJAY R. SINGH, PARAS S. SAVLA & RAHUL K. HAKANI**  
Advocates, KSA Legal

### **SUPREME COURT**

#### **1. Interest on borrowed capital – S. 36(1)(iii)**

Amount borrowed for expansion of business. Proviso to section 36(1)(iii) inserted w.e.f. 1st April, 2004 is not clarificatory in nature, therefore will operate prospectively and the same could not be applied to denying the claim for deduction of interest paid by the assessee in A.Y. 1989-90.

*L. K. Trust vs. CIT & Ors (2009) 222 CTR 214 (SC)*

### **HIGH COURTS**

#### **2. Appellate Tribunal – Fees – Penalty – S. 253(6)(d)**

Imposition of penalty having no nexus with total income, fee payable will be Rs. 500/-. Tribunal calling the fees based on assessed income is not proper.

*Dr. Ajit Kumar Pandey vs. ITAT (2009) 310 ITR 195 (Patna)*

**Editorial Note:** *Bidyut Kumar Seth vs. ITO (2005) 272 ITR (At) 75 (Kol.)(SB) considered.*

#### **3. Depreciation – Sale and lease back transaction**

Lessee having been allowed lease rental as business expenditure by High Court corresponding receipt having also been assessed as business income in the hands of lessor, therefore justified in holding the sale and lease back transaction as genuine and allowing depreciation on the assets leased.

*CIT vs. Gujarat Gas Co. Ltd. (2009) 222 CTR 297 (Guj.)*

#### **4. Owner for purpose – S. 22**

Though it is the settled position under the common law that the term “owner” means a person who has valid title legally conveyed to him after complying with the requirements of law such as Transfer of Property Act, Registration Act, etc, a different view has to be taken in the context of S. 22 of the Act having regard to the ground realities and the object of the Act, namely, “to tax the income”. Accordingly, the term “owner” means a person who is entitled to receive income from the property in his own right.” There is no requirement that there has to be a registered Deed of conveyance for a person to be treated as an owner for purposes of S. 22.

*Pallonji Mistry vs. CIT (Bombay High Court)*  
(Source: [www.itatonline.org](http://www.itatonline.org))

#### **5. Penalty – S. 158BFA(2)**

Levy of penalty under section 158BFA(2) is discretionary and not mandatory.

*CIT vs. Satyendra Kumar Dosi (2009) 222 CTR 288 (Raj.)*

#### **6. Reopening of assessment – Beyond period of 4 years – Ss. 143(3), 148**

In the present case assessment was made under sec. 143(3) and the notice u/s. 148 of the Act was issued beyond 4 years from the perusal of records, recorded for reopening of the assessment it cannot be considered that there was any failure on the part of the assessee to disclose fully and truly all material facts.

*Bang Securities P. Ltd. vs. ACIT & Ors. (Bombay High Court) W.P. No. 2581 of 2008 dated 18-3-2009*

#### **7. Sale of diamonds/Jewellery declared under VDIS**

Where the assessee made a VDIS declaration in which diamonds were disclosed and he later claimed that the moneys received by him were the sale proceeds of the said diamonds which could not be taxed but the AO held that the sale was fictitious as the second purchaser to whom the diamonds were stated to have been sold by the first purchaser was not traceable, HELD

The Hon'ble Court held that the diamonds formed a part of the declaration which was accepted by the department and the consideration was received from the purchaser by cheque and recorded in the books of account, the assessee had proved the possession of the diamonds at the time of declaration and the sale thereof could not be disbelieved merely because there was doubt about the second sale.

*CIT vs. Inder V. Nankani (Bombay High Court)*  
(Source: [www.itatonline.org](http://www.itatonline.org))

#### **8. Validity of return not signed and verified – Ss. 140, 292B**

Return which was neither signed by the assessee nor verified in terms of mandate of sec. 140 was an absolutely invalid return as the inherent defect could not be cured in spite of the deeming effect of sec. 292B and therefore no assessment could be made on an invalid return.

*CIT vs. Harjinder Kaur (2009) 222 CTR 254 (P&H)*

### **TRIBUNALS**

#### **9. Brought forward unabsorbed losses & depreciation – S. 80I**

Aggregate of brought forward unabsorbed losses, depreciation and investment allowance relating to an eligible industrial undertaking which was set-off in earlier assessment years against other income of assessee-

company, such as interest, capital gains and dividend, it was also required to be reduced as per section 80-I(6) from current year's profits derived by assessee from its eligible industrial undertaking for purpose of computing deduction under section 80-I(1).

*Gujarat Ambuja Cements Ltd. vs. Dy. CIT (2009) 117 ITD 87 (Mum.)(TM)*

### 10. Capital gains or business income

The shares purchased and sold by the assessee were held under the head 'investment'. The contentions of the assessee are very clear that since long the assessee is showing purchases under the investment portfolio. The contention of the learned Counsel of the assessee that short-term capital gain assessed under the head 'business income' is for the reason that during the year under consideration short-term capital was assessable @ 10% tax whereas the business profit is assessable @ 30%. If for this reason the Assessing Officer has changed the head of the income, in our view was not correct and cannot be sustained. The reasons assigned by the Assessing Officer are not such that the income shown by the assessee can be assessed under the head 'Business income'.

*Mrs. Amita A. Kapadia vs. ITO ITA No. 7054/M/07, Bench "A" order dated 3-2-2009.*

### 11. Deferred revenue expenditure – Ss. 115JA, 234C

Though taxpayer may have written-off expenditure in its books of account over a period of say five years, it must be allowed in its entirety in year in which it has been incurred, if it is revenue expenditure, and has been wholly and exclusively incurred for purposes of business.

Total income computed under provisions of section 115JA is liable to advance tax and in event of default in relevant provisions of payment of advance tax, levy of interest under section 234C is mandatory.

*ACIT vs. Ashima Syntex Ltd. (2009) 117 ITD 1 (Ahd.) (SB)*

### 12. Direction for subsequent years allowing consequential relief – S. 254

The main plea of the learned Counsel for the assessee was that since financial assistance fee had been assessed in the year under consideration, hence, it could not be taxed in

subsequent year wherein such income had been offered and hence, the matter to be restored to the file of the AO to decide the same afresh.

Tribunal held that in the substantial interest of justice this aspect should be restored to the file of the AO to consider the claim of the assessee in the subsequent year(s) in which this has been offered and if assessee's contentions are found to be correct then to grant due relief to the assessee, because the same income cannot be taxed twice.

*Matchelss Machine & Technology vs. ITO ITA No. 8/M/2006, Bench "J" order dt. 12-12-2008*

### 13. Penalty – Concealment – S. 271(1)(c)

The Hon'ble Mumbai Tribunal after considering the judgement of Supreme Court in *Union of India & Ors. vs. Dharmendra Textiles Processors and Ors. (2008) 306 ITR 277 (SC)* has confirmed the order of the CIT (A) deleting the penalty. The Hon'ble Tribunal held as under:-

"The Hon'ble Supreme Court has not held that in all cases where addition is confirmed, the penalty shall mechanically follow. The ratio decidendi of the judgement is confined to treating the willful concealment as not vital for imposing penalty u/s. 271(1)(c). It is austere from the language of section 271(1)(c) that the penalty is imposable for the concealment of the particulars of income or furnishing of inaccurate particulars of such income. The literal meaning of the word 'conceal' is 'to hide'. Be that as it may, in order to be covered within the mischief of this section, the act (intentional or unintentional) of the assessee should result into the concealment of income."

*ACIT vs. M/s. VIP Industries Ltd. ITA No. 4524/Mum/2006 A. Y. 2000-01 'A' Bench dt. 20-3-2009*

[Source : [www.itatonline.org](http://www.itatonline.org)]

### 14. Reopening – Time limit – S. 149(3)

Time-limit provided under section 149(3) would not apply to an assessee who has voluntarily filed return of his non-resident principal and in whose case no order under section 163 has been passed treating him as an agent of non-resident.

*J. M. Baxi & Co. vs. Dy. DIT (2009) 117 ITD 131 (Mum.)(SB).*

## INDIRECT TAXES

P. C. JOSHI, Advocate

### SALES TAX DECISIONS

#### Branch transfer – Dispute under Section 6A

The Madras High Court, considering the constitution of Central Sales Tax Appellate Authority after the remand of the case by the Supreme Court to it, held that the dispute between the State Government and the assessee being

squarely covered by the scope of section 6A, it would be the said Appellate Authority at New Delhi which can consider the matter in question. The High Court, therefore, granted liberty to approach the said authority against the order of the Tamil Nadu Sales Tax Appellate Tribunal.

*The State of Tamil Nadu, vs Tvl. Macwin Explosives & Accessories, Hosur 2008-09 (14) TNCTJ – 329.*

## Entries in Schedule

### 1. Bicycle Parts

The Kerala High Court held that when the legislature has specified in an entry only some parts of bicycle, the other parts were outside the purview of the said entry. The Hon'ble Court also held that there was no discrimination in levying tax at different rates on different parts of cycle.

*Mr Mathew Varghese vs. Commercial Tax Officer (2009) 17 KTR 82 (Ker).*

### 2. Scented arecanut

The Commissioner of Commercial Taxes clarified under section 94 of the Kerala VAT Act that scented arecanut was liable to tax @ 12.5%.

*Source : Kerala Tax Reporter, Vol. 17 Part II, February 2009, Page 22.*

### 3. Bituminised water proof paper

The Special Bench of the Maharashtra Sales Tax Tribunal held that bituminised water proof paper used for packing / wrapping, being a kind of paper, was covered by the entry relating to paper. The Special Bench in that connection referred to the precedents relating to the terms "namely" or "that is to say" used in the entry C-II-9 prior to 1-10-1995 or C-II-67 thereafter". The Bench also held that bituminised wrapping paper had a special water proofing quality required for packing as well as for wrapping and there was no logical difference between packing and wrapping.

*M/s Convertor vs. The State of Maharashtra (Second Appeal Nos. 98 & 99 of 2001 decided on 10th February, 2009).*

## Export

1. The West Bengal Commercial Tax Appellate & Revisional Board held that export to Nepal parties have to be justified by the assessee by production of custom certificate and not mere sale bill and consignment note.

*M/s Galaxy Foundaries Pvt. Ltd. vs. A. C. C. T., Chowringhee Circle, (2009) 53 S. T. A. (Board – 30).*

2. The VAT Tribunal, Punjab, held that in case of export covered by section 5(1), it was not necessary to produce the prior order of the foreign buyer.

However, it was required in the indirect export covered by section 5(3) of the Central Sales Tax Act, to establish the genuineness of the transaction.

*M/s Oswal Woollen Mills Ltd., Ludhiana & Another vs. State of Punjab (2009) 33 PHT 49 (PVT).*

## Inter-State sale

The Supreme Court, while deciding the appeal arising out of the provisions of Central Sales Tax Act 1956, held that the nature of the transaction has to be concluded on the

basis of common intention of the parties. The seller having knowledge of the ultimate destination was not enough, but the cumulative effect of the factual position in regard to the despatch of goods from one State to another was relevant. If the movement of goods was occasioned by the transaction, it would be a case of inter-State sale, but for that purpose it was not necessary that there should be an expressed term in the contract; the conduct of the parties would govern the case. Since the conditions of section 3(a) were duly satisfied, the decision of the Orissa High Court, holding the nature of transaction to be that of inter-State sale was approved by the Apex Court.

*State of Orissa & Another vs. M/s K. B. Saha & Sons Industries Ltd. (2009) 53 S. T. A. – 82.*

## Inter-State Works Contract

1. The Allahabad High Court held that where the Plant & Machinery parts were brought from a place outside the State of U. P., on Form 31 after payment of Central Sales Tax in knocked down condition and where such parts were fabricated and erected as a part of Plant & Machinery within the State, the value of such plant cannot be charged to tax under the provisions of the U. P. Trade Tax Act 1948, because section 3-F under the said Act was subject to the provisions of sections 3, 4 & 5 of the Central Sales Tax Act and such goods brought from outside the State cannot be subjected to tax even if the goods were fabricated and erected within the State of U. P.

*The Commissioner, Trade Tax vs. S/s Indus Food Products & Equipment Ltd. 2009 NTN (Vol. 39) – 144.*

2. Before the Punjab & Haryana High Court, the assessee purchased machinery from A for installation at B's premises. The seller A in turn purchased the same machinery from C of Mumbai. Considering the transaction to be between A & C to be that of inter-State sale, the Hon'ble Court held that the Tribunal which gave finding in favour of the assessee was correct in holding the transaction to be that of inter-State and the State had effective alternative remedy of reference. The writ petition was dismissed without any decision on merit.

*State of Punjab & Another vs. M/s Urea Casale S.A. Naya Nangal, Dist. Ropar (2009) 33 PHT 42 (P&H).*

## Interpretation

The Haryana Tax Tribunal held that a preamble in a statute cannot override the provisions of the Act and the levy of tax under the Special Act will prevail over the similar levy under the General Sales Tax law. Therefore, the Tribunal negated the levy on the same transaction under Haryana General Sales Tax Act, when tax was already levied under the Special enactment of Punjab

Sugarcane (Regulation of Supply and Purchase) Act, 1953.

*M/s Saraswati Industrial Syndicate Ltd., Yamunanagar vs. State of Haryana. (2009) 33 PHT 44 (HTT).*

### Manufacture

The Supreme Court, after considering the definition of the term 'manufacture' to be in wider terms covering within its sweep, not only a new product but also alterations made in an existing product, held that the mounting of body of autorickshaw on the chassis through fixing of nuts and bolts; was an activity of manufacture as defined under the U. P. Trade Sales Tax Act, 1948.

*M/s Kumar Motors, Bareilly vs. Commissioner of Sales Tax, U. P., Lucknow (2009) 53 S. T. A. – 73.*

### Production of TDS Certificate and Challan for payment

The assessee, before the Gujarat VAT Tribunal, was a contractor executing the works contract in the State of Gujarat. The assessee had deducted certain amount from the tax payable by them by considering certain TDS deductions by its employer. However, in absence of the TDS Certificate and copy of Challan showing the payment in the Government Treasury, the lower authorities did not give credit for such amounts. When the matter came up before the Tribunal, the assessee produced the copy of the agreement as well as the bill and showed its willingness to produce the TDS Certificate and copy of the Challan.

In absence of any explanation by the assessee for non-production of the evidence required for the deduction made by it, the Tribunal held the case to be that of negligence, but the matter was remanded in the interest of justice on payment of heavy cost of Rs. 20,000/-.

*M/s V. K. Patel & Company vs. The State of Gujarat.*

*Source : Sales Tax Journal, Vol. 47, Part 11, Feb. '09, Page 1021.*

### Power of Commissioner to issue Circular

The Supreme Court directed the Gujarat High Court to decide as to whether the Commissioner of Sales Tax had the authority or competence to issue a Circular in 2001 under the provisions of Gujarat Sales Tax Act, 1969, by considering the submission of the assessee that the provisions of Andhra Pradesh law and the Gujarat law were different.

*State of Gujarat & Another vs. M/s AMI Pigments Pvt. Ltd. & Others etc. 2009 NTN (Vol. 39) – 121.*

### Penalty – Attempt to evade tax

The Supreme Court held that in case of movement of goods from other States to the State of Rajasthan, the consignment in question were to be supported by duly filled up Form 18A / 18C. However, such an ultimate responsibility was that of a consignee, the owner of the goods, and not that of the consignor or the transporter. In the case before the Supreme Court, Form ST-18A was

incomplete though signed and the details required were not supplied, holding such an action to be a civil obligation different from a crime under the provisions of IPC. According to the Supreme Court, when the goods in movement were carried without a declaration in Form 18A, the strict liability of penalty under Section 78(5) was applicable.

*Assistant Commercial Taxes Officer vs. M/s Bajaj Electricals Ltd. (2009) 33 PHT 1 (SC).*

### Promissory Estoppel

The Punjab & Haryana High Court applied the doctrine of promissory estoppel and held that where the assessee acted upon the promises made by the State by the delegated registration in the form of rules, it cannot be withdrawn retrospectively by a later amendment.

*M/s Mahabir Vegetable Oils Pvt. Ltd., Karnal vs. State of Haryana & Others, (2009) 33 PHT 25 (P&H).*

### Res Judicata

Applying the principles of *res judicata*, the Maharashtra Sales Tax Tribunal held that when the earlier judgment was delivered in the assessee's own case after considering all facts in details against the rate of tax applicable, it was not open to question the same in a later matter of the very same assessee's case, especially when the earlier judgment was accepted by the revenue and no Reference was filed against the earlier judgment.

*Commissioner of Sales Tax vs. M/s India Hume Pipe Co. Ltd (Miscellaneous Application Nos. 80 to 82 of 2001 decided on 18th February, 2009).*

### Revision

1. The Hon'ble Gujarat VAT Tribunal held that the order of assessment sought to be revised under section 67 by the Assistant Commissioner (Audit) was unwarranted; in view of the fact, that the said order of assessment, was passed after approval of the Assistant Commissioner (Pre-Audit Division) which made the order of assessment as the order of Assistant Commissioner.

Following the decision of the Gujarat High Court in the case of M/s RPG Life Sciences Ltd (124 STC 157), the Tribunal set aside the order in revision passed by the authority of the same status.

*M/s Montex Engg. Co. Pvt. Ltd vs. The State of Gujarat*

*Source : Sales Tax Journal, Vol. 47, Part 11, Feb. '09, Page 1017.*

2. The West Bengal Taxation Tribunal, after considering the scope of *suo motu* revisional power, held that such a power can also be exercised at the instance of the assessee and was not restricted to only those cases involving interest of revenue.

*M/s Mamoni Industries & Another vs. C. T. O., BP Charge & Others (2009) 53 S. T. A. – 121.*



3. The Supreme Court disapproved the exercise of power of revision under the U. P. Trade Tax Act 1948, by holding that the expressions in section 10B(1) were “for the purpose of satisfying himself as to the legality or propriety of such order” and “with respect thereto” enable the revisional authority to decide legality or propriety of the order cancelling the notices before it and it cannot empower him to consider the merits of the order of assessment. In other words, the revisional authority had no power to substitute the original order of assessment while considering the legality of the order cancelling the notices.

*M/s Kanpur Edibles Pvt. Ltd. vs. Commissioner, Trade Tax, U. P. (2009) 33 PHT 60 (SC).*

4. The Allahabad High Court, while disposing off several writ petitions, held that the notices under section 21 of the U. P. Trade Tax Act cannot be issued on a mere change of opinion.

*M/s Aryaverth Chawal Udyog & Others vs. State of U. P. & Others (2009) 33 PHT 71 (All).*

### Recovery

The Madras High Court held that in case of a private limited company that was in existence, the outstanding dues cannot be recovered by attaching the personal property of an individual director.

*Shri R. Vasinathan & Others vs. The Commercial Tax Officer (FAC), Chennai & Others 2008-09 (14) TNCTJ – 357.*

### Sale price

1. The Kerala High Court held that the royalty received for the use of brand name was part of the taxable turnover and liable to tax.
- M/s Kreem Foods Pvt. Ltd. vs. State of Kerala (2009) 17 KTR 93 (Ker)*
2. The Allahabad High Court, disapproving the decision of the Trade Tax Tribunal held that the charges for maintenance and repair of gas cylinders required for filling of oxygen gas, was

part of the turnover of sale under the U. P. Trade Tax Act. The said charges were incurred by the assessee for cleaning and maintaining the cylinders before the delivery of the gas filled therein and therefore such charges had nexus with the sale of gas in the cylinder so maintained.

*The Commissioner of Trade Tax, U. P. vs. M/s Advance Gases & Consultants Ltd., Agra 2009 NTN (Vol. 39) – 134.*

### Stay Petitions

The Supreme Court, while granting leave against the Division Bench judgment of the Andhra Pradesh High Court, held that while considering the Stay petition, the prima facie case was relevant and such an application should not be disposed off in a routine manner, unmindful of the consequences flowing from the order requiring the assessee to deposit full or part amount of tax dues. The factual scenario in each case has got to be kept in mind. The order proposed to be passed has to be decided on the touchstone of fairness, legality and public interest. The grave irreparable loss that may be suffered by an assessee would shake a citizen's faith in the impartiality of public administration. The Supreme Court also observed that simply referring to its decision in the case of Siliguri Municipality and M/s Dunlop India was not sufficient while dealing with the Stay applications without analysing factual scenario of the case.

*M/s Pennar Industries Ltd vs. State of Andhra Pradesh & Others 2009 NTN (Vol. 39) – 126.*

### Trade Mark – Whether goods

The Madras High Court, while dismissing the Review application, held that Trade Marks are movable property and therefore goods. The transfer of such goods for a price constituted sale of goods liable to sales tax under the provisions of Tamil Nadu General Sales Tax Act, 1959.

*M/s S. P. S. Jayam & Co., Madurai vs. The Registrar, Tamil Nadu Taxation Special Tribunal, Chennai & Others 2008-09 (14) TNCTJ – 344.*

Date : 28th March, 2009

## Renewal Subscription to AIFTP Journal and Voluntary Contribution to Palkhivala National Tax Moot Court Competition and Research on Tax

Dear Members,

We have posted bill for renewal subscription of AIFTP Journal and Palkhivala Foundation on 26th March, 2009. Members are requested to send the DD or Cheque in favour of “All India Federation of Tax Practitioners” payable at Mumbai on or before 21st April, 2009.

We will also e-mail the circular and an appeal to members by 1st April, 2009. Members can also download the subscription and an appeal from our website; i.e., [www.aiftponline.org](http://www.aiftponline.org) and send us the subscription.

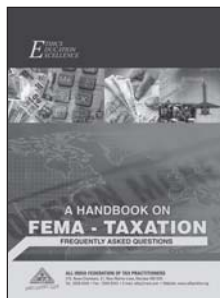
Thanking you,

For All India Federation of Tax Practitioners

*Mukul Gupta*  
Mukul Gupta  
Secretary General



## BOOK RELEASE ANNOUNCEMENT



We are pleased to make the announcement of the release of publication of the All India Federation of Tax Practitioners titled "A Handbook on FEMA – Taxation – Frequently Asked Questions". Hon'ble Mr. Justice Dalveer Bhandari, Judge, Supreme Court of India, Hon'ble Mr. Justice Markandey Katju, Judge, Supreme Court of India and Hon'ble Mr. Justice H. L. Gokhale, Chief Justice, Madras High Court released the publication on 7th March, 2009 at Varanasi in a National Tax Conference organised by the AIFTP (Northern Zone) in association with local association of Varanasi.

This publication is a unique publication in a questions answers format explaining the provisions and various controversies relating to FEMA & Taxation. In this publication 271 questions of practical importance are answered in a simple and lucid language. It is divided into 14 Chapters. It deals with all important issues relating to FEMA, such as Emigrating Indians, Non-Resident Indians, Returning Indians, Facilities for Resident & Returning Indians,

Direct Investment outside India, Imports of Person Resident in India, Exports under FEMA, Compounding of Offences, Penalties, Adjudication & Appeals under FEMA, 1999, Custom Baggage Rules, PIO Card, Overseas Citizen of India (OCI), The Citizenship Act, 1955, Foreign Contribution Regulation Act, 1976 (FCRA), Taxation of Non-Resident Indians, etc.

This publication will be a useful guide to tax payers, tax consultants, as well as tax department.

This publication is authored by Mr. Pravin P. Mashru & Mr. Paresh P. Shah, Chartered Accountants from Mumbai and is edited by Mr. Dilip J. Thakkar, Chartered Accountant & Dr. K. Shivaram, Advocate.

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## Obituary

We deeply mourn a sudden demise of Shri T. Gunasekaran on 7-3-2009 at Mumbai.

We pray God to rest his soul in eternal peace.

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

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