



AIFTP TIMES

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Federation News

Mukul Gupta, Secretary General

FORTHCOMING PROGRAMMES

Dates & Months	Programmes
13th December, 2008	National Executive Committee Meeting at Kolkata
13th & 14th December, 2008	Two Days National Tax Conference at Kolkata organised by All India Federation of Tax Practitioners (Eastern Zone)
7th March, 2009	National Executive Committee Meeting at Varanasi
7th & 8th March, 2009	National Tax Conference at Varanasi organised by All India Federation of Tax Practitioners (Northern Zone)
19th, 20th & 21st November, 2009	AOTCA International Tax Conference, 2009 at Mumbai.

5th Nani A. Palkhivala Memorial National Tax Moot Court Competition, 2008 16th – 18th October, 2008 – Report

by

Ms. Persis Sidhva, General Secretary, Moot Court Association

The 5th Nani Palkhivala Memorial National Tax Moot Court Competition was organised by Moot Court Association of Government Law College jointly with All India Federation of Tax Practitioners (AIFTP) and the Income Tax Appellate Tribunal (ITAT) Bar Association from 16th to 18th October, 2008 in memory of one of India's foremost jurist – Late Mr. Nani A. Palkhivala. This venerated moot court competition enjoys the distinction of being India's first and only Moot Court Competition based exclusively on the subject of 'Taxation'.

The Inaugural Function of the competition was held on 16th October, 2008 at the Government Law College, Auditorium. The Chief Guest for the function was Hon'ble

Mr. Justice F. I. Rebello, Judge, Bombay High Court and the Guest of Honour was Hon'ble Mr. M. A. Bakshi, Vice- President, Income Tax Appellate Tribunal. The other esteemed dignitaries at the Inaugural Function included Mr. Bharatji Agrawal, National President, All India Federation of Tax Practitioners, Mr. Soli Dastur, President, Income Tax Appellate Tribunal Bar Association, Mr. Dinesh Vyas, Vice President, Income Tax Appellate Tribunal Bar Association and Dr. K. Shivaram, Chairman, Palkhivala Foundation and Research Committee. The Hon'ble Members of the Income Tax Appellate Tribunal and members of the All India Federation of Tax Practitioners and Income Tax Appellate Tribunal Bar Association also graced the occasion. The Competition

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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Souvenir was released on this momentous occasion by the Chief Guest Hon'ble Mr. Justice F. I. Rebello. This year the competition saw a record high participation of 26 illustrious Law Colleges from across India.

The Preliminary Rounds of Argument were conducted on 17th October, 2008 in the Income Tax Appellate Tribunal (ITAT) Court rooms. The competition provided the mooters a once-in-a-life time opportunity of being judged by the Hon'ble Members of the ITAT, Eminent Tax Practitioners and Chartered Accountants in the ITAT Court rooms itself. This stimulated court room atmosphere coupled with the outstanding advocacy and oratory skills displayed by the participants ensured that the Preliminary Rounds of Argument were well contested by all the teams. The competition provided all the participants not only a platform to hone their mootng and reasoning skills but also an opportunity to enhance their interest in Tax Law.

The Semi-final and Final Rounds of Argument were conducted on 18th October, 2008. The four teams that qualified to Semi-final Rounds included Law Centre II, University of Delhi, Amity Law School, New Delhi, Army Institute of Law, Mohali and National Law School of India University, Bangalore. The Semi-final Rounds were judge by the Hon'ble Members of the Income Tax Appellate Tribunal in the ITAT Court rooms. The standard of mootng between semi-finalists was phenomenal. The two teams that qualified to the Final Rounds were Law Centre II, University of Delhi and Army Institute of Law, Mohali.

The Final Rounds of Argument and the Valedictory Function was held at Hotel West End, New Marine Lines, Mumbai. The Chief Guest for the evening was Hon'ble Mr. Justice Markandey Katju, Judge, Supreme Court of India. The Final Rounds of the competition were judged by Hon'ble Dr. Justice S. Radhakrishnan, Hon'ble Mr. Justice V. C. Daga and Hon'ble Mr. Justice S. J. Kathawalla of the Bombay High Court. The inspiring Valedictory Address delivered by Hon'ble Mr. Justice Markandey Katju proved to be the highlight of the evening. The finalists displayed immense knowledge, confidence, intellect and poise. After a well contested round the team from Law Centre II, University of Delhi was conferred with the coveted Best Team Award and Army Law Institute, Mohali came a close second.

The members of the winning team from Law Centre II, University of Delhi received a cash prize of Rs. 7,500/- and an opportunity to intern with the law firm Economic Law Practice or Titus & Co or Nishith Desai &

Associates. Mr. Vikram Nankani, Partner, Economic Law Practice, Mr. Mukul Gupta, Partner, Titus & Co. and Mr. Nishith Desai, Partner, Nishith Desai & Associates handed over the letter for internship with their respective law firm. The members of the 2nd Best Team from Army Law Institute, Mohali were awarded a cash prize of Rs. 5,000/- and were offered an internship with the law firm Nishith Desai & Associates. The winners of the Best Memorial Team Award – Gujarat National Law University, Gandhinagar was awarded a cash prize of Rs. 3,000/-.

Mr. Ashutosh Kumar from National Law School of India University, Bangalore was adjudged as the Best Speaker of the competition. He was awarded with a cash prize of Rs. 2,000/- and an offer to intern with the law firm Nishith Desai & Associates. The 2nd Best Speaker Award was jointly shared by Mr. Sameer Adlakha from Law Centre II, University of Delhi and Mr. Rohit Anand from National Law School of India University, Bangalore. They received a cash prize of Rs. 1,000/- each. All the winners of the Best Speaker Awards were also given the golden opportunity to intern with Mr. Soli Dastur, Sr. Advocate, Mumbai or Mr. V. Ramachandran, Sr. Advocate, Chennai or Mr. Bharatji Agrawal, Sr. Advocate, Allahabad or Mr. N. M. Ranka, Sr. Advocate, Jaipur. Truly a once in a lifetime opportunity for all aspiring lawyers.

Mr. Mukul Gupta, Secretary General, AIFTP presented the Life Membership of AIFTP to all the students of Winning team.

Mr. P. C. Joshi, Past President, AIFTP presented the publication of AIFTP to all the students of Winning and Runner-up teams.

The Moot Court Association of Government Law College is indeed privileged to co-host this venerated moot court competition with the All India Federation of Tax Practitioners (AIFTP) and the Income Tax Appellate Tribunal (ITAT) Bar Association and is committed to take this acclaimed Moot Court Competition to scale newer heights with each passing year.

Mr. Bharatji Agrawal, Sr. Advocate and National President, AIFTP sponsored the trophies which were dedicated to Late Shri Raja Ram Agrawal, Sr. Advocate and Former Advocate General of U. P. and Ex-Chairman of U. P. Bar Council, who was a great legal luminary of the State of Uttar Pradesh.

The entire programme was co-sponsored by Ernst & Young Pvt. Ltd., M/s. Nishit Desai & Associates and Mr. B. A. Palkhivala.



4th Nani Palkhivala Memorial Research Paper Competition, 2008

by
Ms. Persis Sidhva, General Secretary, Moot Court Association

The 4th Nani Palkhivala Memorial National Tax Moot Court Competition, 2008 was an astounding success. The competition has received an overwhelming response from law schools across the country. Over the past years we have received several well-researched entries that reflect the calibre of the participants and the high standard of the competition.

It is indeed a matter of great pride and honour for the Moot Court Association of Government Law College to co-host a competition as prestigious and celebrated as this one. This Research Paper Competition was set to bring out the knowledge, interpretation skills, competence and literary prowess of law students throughout the country.

It is a well known fact that Late Mr. Nani Palkhivala was a legend in the field of taxation laws. This competition, organized in his memory, provides a platform for law students to do exhaustive research and explore the nuances of taxation laws. It encourages the participants to work with dedication and zeal to attain the desired results.

The Judges for the Research Paper Competition were Mr. Percy Pardiwalla, Sr. Advocate and Mr. Vipul Joshi, Advocate.

The prize winners for the competition are:

1st Place: Mohammed Chishty & Sumangala A. Chakalabbi – University College of Law, Dharwad – Rs. 8,000/-, a medal and a certificate

2nd Place: Jainee Shah & Sandeep Bagmar – Indian Law Society's Law College, Pune – Rs. 5,000/-, a medal and a certificate

3rd Place: Rohit Bhatt & Ajay Prasad – University Law College, Bangalore, Rs. 3,000/-, a medal and a certificate.

All prizes were generously sponsored by Mr. Arvind Sonde, Advocate and Mr. Aurobindo Pooniah, Kuala Lumpur, Malaysia on behalf of M/s. International Bureau of Fiscal Documentation (IBFD).



Report of Foundation Day function

Southern Zone – by P. V. Subba Rao, Chairman, AIFTP (SZ)

The Southern Zone celebrated the Foundation Day by organising speeches by two eminent Doctors i.e., Dr. Bipin Sethi, Consultant Endocrinologist and Dr. V. Nagesh, Psychologist & Hypnotist. Members and invitees attended with families and enjoyed the programme. The programme was conducted from 4 PM to 8 PM on 11-11-2008 at Surana Udyog AC Auditorium, FAPCCI Building, Hyderabad, preceded by high tea. Dr. Sethi answered a number of questions on obesity and diabetes, in addition to delivering an excellent speech on health tips. Dr. Nagesh, who is a visiting professor to 25 foreign universities spoke on 'How to control mind'. The audience were so impressed that there was an unanimous request to organise such speeches on 'health' frequently. In addition to several executive committee members, the programme was attended by Dr. M.V.K. Murthy, Vice President–SZ, Shri S.H. Rao, Shri K.H. Rao, Shri J.V. Rao and Shri Hemendra Shah, all past Chairmen of SZ. Shri P.V. Subba Rao, Chairman–SZ welcomed the gathering, explained the objects of the Federation and spoke on the occasion.

Central Zone – by Murlidhar Sodani, Chairman, AIFTP (CZ)

To celebrate Foundation Day a One Day National Tax Seminar was organized at Ujjain by AIFTP (CZ) in association with TPA Ujjain and TCA Jabalpur. The seminar was inaugurated by Hon'ble Justice N. K. Mody of M. P. High Court, Indore Bench in the presence of Shri N. M. Ranka, Past President, Shri M.L. Patodi, Deputy President, Shri J. K. Ranka, Vice President, AIFTP (CZ). Theme of the seminar was "Quick Justice is the Demand of the Day". The Hon'ble Justice explained that the pendency of cases related to Taxation are very few in comparison to other matters. Even such cases are taken as early as possible for hearing.

There were two Technical Sessions one on Issues under VAT, Tax Audit under VAT and Tax Implications of Charitable Institutions. Speakers were CA P. D. Nagar, CA S. C. Bansal and Shri N. M. Ranka Saheb.

There was Brains' Trust Session also where about 40 queries were dealt by learned speakers.

Seminar was attended by about 150 delegates. Mostly from small towns and cities.

All the sessions and programme conducted by CA M. D. Sodani, Chairman, AIFTP (CZ). Active support given by Shri G. B. Dass, Shri Vijay Navlakha, Shri Anil Dalal and Shri Subhash Maheshwari.

Besides this Central Zone Chairman arranged Foundation Day at Ratlam on 9-11-2008 and felicitated CA S. L. Jain. at Indore on 14-11-2008. Thus at three places in M.P. Foundation Day was celebrated.

Northern Zone – by Mukul Gupta, Secretary General, AIFTP

Foundation Day Celebration of All India Federation of Tax Practitioners, which was established on 11th November, 1976 at Mumbai was celebrated by having Nani Palkhivala Memorial Lectures in New Delhi. Eminent professionals from the fields of Direct and Indirect Taxes conceived the idea of establishing an all India body for the tax practitioners on 11-11-1976 in the presence of late Shri N.A. Palkhivala and Justice J.C. Shah, former Chief Justice of India.

Shri Bharat Ji Agrawal, Senior Advocate and National President of All India Federation of Tax Practitioners, pointed out that the Federation has 110 professional Associations, from 19 States, as it's affiliated members and more than 4,000 individual life members.

Shri Agrawal also pointed out that in the context of global financial crisis it is absolutely essential that the Government should also frame its financial policies keeping in view the future growth, in accordance with the requirement of the day for which the tax professionals can also give substantial contribution with their useful suggestions.

The Federation decided to shape and frame strategies by focusing on the real economy for the future and suggest the same to the Government for its consideration. It also undertake to develop the young members of the Tax Bar, who shall be the pillars in the coming years which shall be a real tribute to Late Shri N.A. Palkhivala.

The Chief Guest of the function Hon'ble Dr. Justice Arijit Pasayat, Judge, Supreme Court of India, while delivering

his lecture said that "India – Vision 2020" is the dream for the fully developed country. It is necessary that the corruption must be totally eradicated, even though this is difficult but not impossible. We are quite sure that for having a fully developed country for achieving progress in every sphere, corruption has to be totally eradicated.

Mr. Goolam E. Vahanvati (Sr.), Solicitor General of India and Mr. Soli J. Sorabjee, Senior Advocate, Former Attorney-General for India spoken in detail about late Shri N.A. Palkhivala who was a True & Great son of India and a Lawyer Beyond Excellence.

Mr. P.H. Parikh, President, Supreme Court Bar Association and Shri H.C. Bhatia, Chairman of AIFTP (North Zone) also spoke about late Shri Palkhivala.

The Foundation Day Celebration was attended by Mr. M.L. Patodi, Dy. President, Mr. Mukul Gupta, Secretary-General, AIFTP, Mr. J.D. Nankani, Mr. J.K. Ranka, Mr. P.M. Chopra, Mr. A.K. Singh, Mr. Sanjay Kumar, Mr. K.L. Goyal, Senior Counsels of Mumbai, Jaipur, Varanasi, Allahabad and Chandigarh as well as members of National Executive AIFTP. Mr. B.S. Rana, Chairman, Bar Council of Delhi, Mr. K.C. Mittal, President, Delhi High Court Bar Association, Mr. Raj K. Batra, President, Sales Tax Bar Association, Delhi, Mr. Subhash Gupta, President, Delhi Tax Bar Association, Mr. A.S. Chandok, Senior Advocate, Delhi High Court Bar Association, Mr. Ramesh Gupta, Former Chairman, Bar Council of Delhi, a large number of Advocates & Chartered Accountants and others also attended the function.


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

**Membership of AIFTP
 as on 10-11-2008**
Life Members

	Associate	Individual	Association	Corporate	Total
Central	—	588	20	0	608
Eastern	—	712	32	0	744
Northern	—	635	16	0	651
Southern	—	622	13	1	636
Western	03	1431	31	8	1473
Total	03	3988	112	9	4112

VALEDICTORY SESSION SPEECH

on 18-10-2008 at National Tax Conference at Mumbai

By **Bharat Ji Agrawal,**

Senior Advocate Allahabad High Court, Former Chairman U.P. Bar Council & National President, AIFTP

I welcome Hon'ble M. Katju. We had been friends at the Bar for several years. A bright student, a successful lawyer and a judge who always balanced law and equity with an acute sense of justice. I have been a beneficiary of his respect and kindness during his tenure as Judge and then Acting Chief Justice of Allahabad High Court and again as Chief Justice of Madras High Court, Chief Justice of Delhi High Court and now as Judge of Supreme Court.

States needs revenue for which taxes are levied. Activities of the State are no more confined to governance and administration only. It is now running business, companies, corporations, banks and is engaged in various trading activities, which may at times suffer losses or other setbacks. The problem arises as to who is to pay for those losses and setbacks otherwise also who is to pay for those activities which are resorted to, in the name of welfare and service of the State.

Is the State entitled to fall back on the taxes collected or find out some other ways of collecting additional revenue. The desire to find new items or sources to tax is ever-growing to augment the revenue of the State. Taxes are imposed by resorting to deeming provisions which the State always find justification for the purposes of the welfare of the State.

Tax can be imposed by laws enacted by competent legislature and in no uncertain terms within the limits of specific power conferred upon it under the Constitution. The laws has to be clear, specific and unambiguous. There is no scope for presumptions and implications.

Rowlett J in *Cape Brandy Syndicate vs. Ireland (1921) 1 KB 64* propounded the theory that equity and taxes are strangers by observing –

“In a taxing statute one has to look merely at what is clearly said. There is no room for any intendment, there is no equity of a tax. There is no presumption as to the tax. Nothing has to be read and nothing is to be implied. One can only look fairly at the language used.”

This view was approved by Lord Simson. Similar principle has been adopted by our Supreme Court. In the process a theory grew up that there is no necessary co-relationship between logic and taxation. Both equity and logic lost ground in law of taxation but Supreme Court of India in the case of Nawab Sir Mir Osman Ali Khan's case, ITR 1986 (162) 888 slightly softened the theory by observing that :-

“It is well to remember that in the scheme of administration of justice, Tax laws like any other law will have to be interpreted reasonably and whenever possible in consonance with equity and justice.”

• The ever growing need of the State of collect more and more revenue gave rise to the instinct of the citizen to save its income from the ever growing net of tax gatherers and in the process grew the doctrine that there is nothing immoral in the attempt of a citizen to avoid taxation if he can by appropriate interpretation and construction of statute itself. Justice P.B. Mukerjee says :-

• “If a taxing statute shows that the legislation closes only one of the two doors, it is then no evasion to use the other door, which may have been left open.”

• Lord Summer was more emphatic in his speech in House of Lords when he said :-

• “It is trite law that His Majesty's subjects are free, if they can, to make their own arrangement so that their case may fall outside the taxing Acts. This incurs no legal penalty, and strictly speaking, no moral censure, if having considered the lines drawn by the legislature for the imposition of taxes, they make it their business to work outside them.”

• The legitimate avoidance of tax has been and still is a good law. The tussle between the tax collectors and the citizen has been continuously going on Shri N.A. Palkhiwala said :-

• “Unending competition in ingenuity between tax gathers and tax-payers has rendered the taxation statute increasingly complicated. But in this battle with the revenue a citizen has been fighting losing battle.”

• Sri Lew Money told the Royal Commissioner of Income Tax that taxation was the best expenditure he made and he got more satisfaction from it than from any other expenditure laid out by him.

• Justice Holms of the United States of America while deciding the case about the taxability of Judges salary observed that every citizen has an obligation to contribute for the governance of the State. On another occasion he says, “Taxes are what we pay for a civilized society. I like to pay taxes, with them I buy civilization.”

• In the prevailing condition in our country today whether the tax-payers would subscribe to the views of these learned and hon'ble men of law.

• In this introduction of the book on Income Tax Mr. Palkhivala said :-

• “Though it may be conceded that taxes are an inevitable overhead of civilization, public dissatisfaction becomes equally inevitable when this overhead is excessive or not fairly distributed. In such a situation, he says, “Justice Holmes dictum would be more quotable than convincing.”

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TWO DAYS NATIONAL TAX CONFERENCE

Organised By

ALL INDIA FEDERATION OF TAX PRACTITIONERS – EASTERN ZONE

ON SATURDAY, 13TH DECEMBER, 2008 & SUNDAY, 14TH DECEMBER, 2008
AT THE GOLDEN PARK HOTEL, 13, HO-CHI MINH SARANI, KOLKATA – 700 071

DAY 1 – SATURDAY, 13TH DECEMBER, 2008

- 8.30 am to 9.30 am : Registration
- 9.30 am to 11.30 am : **INAUGURAL SESSION**
- Theme – Simpler Tax Regime needed for better tax compliance**
- Inauguration : Hon'ble Justice Chittatosh Mookerjee, Former Chief Justice of Calcutta and Bombay High Courts
- CHIEF GUEST : Janab Hashim Abdul Halim, Hon'ble Speaker, West Bengal Assembly
- Guests of Honour: Dr. Asim Dasgupta, Hon'ble Finance Minister, West Bengal
- 11.30 am to 12.00 Noon : TEA BREAK
- 12.00 Noon to 1.30 pm : **1st TECHNICAL SESSION**
- Chairman : Shri S.R. Wadhwa, Advocate
(Ex Chairman-IT Settlement Commission)
- Topic : **Scrutiny Assessments under Income Tax with special reference to Annual Information Returns**
- Speaker : Shri Anil Kumar Singh, Advocate (Varanasi)
- Topic : **Survey under Income-tax Act including TDS related Survey**
- Speaker : Shri Narayan Prasad Jain, Advocate & Author (Kolkata)
- 1.30 pm to 2.30 pm : LUNCH BREAK
- 2.30 pm to 4.00 pm : **2nd TECHNICAL SESSION**
- Topic : **Inter-State Works Contract and Annual Maintenance Contract (AMC)**
- Chairman : Shri Bharat Ji Agrawal, Sr. Advocate (Allahabad) and National President, AIFTP
- Speakers : Shri P.S. Sarin, Advocate (Delhi)
Shri G.C. Mookherji, Advocate (Kolkata)
- 4.00 pm to 4.15 pm : TEA BREAK
- 4.15 pm to 6.00 pm : **3rd TECHNICAL SESSION**
- Chairman : Shri G. D. Agrawal, Hon'ble VP – ITAT, Kolkata
- Topic : **Tax Planning through Will and Family Settlement**
- Speaker : Shri S. Bagchi, Advocate (Kolkata)
- Topic : **Res judicata vis-a-vis need for consistency in Tax matters**
- Speaker : Dr. K. Shivaram, Advocate (Mumbai) and Past President, AIFTP

DAY 2 – SUNDAY, 14TH DECEMBER, 2008

- 8.30 am to 9.00 am : TEA
- 9.00 am to 10.30 am : **4th TECHNICAL SESSION**
Chairman : Shri P.C. Joshi, Advocate (Mumbai), Past President, AIFTP
Topic : **Issues in Real Estate Transactions including development and redevelopment under VAT**
Speaker : CA S. Venkataramani (Bangalore)
- 10.30 am to 11.30 am : **5th TECHNICAL SESSION**
Chairman : Dr. Gautam Ray, IAS, Commissioner, Central Excise and Customs (Legal)
Topic : **Tax on 'Services' but What is 'Service' ? Whether 'Renting of Property' is 'Service' and thus liable to Service Tax?**
Speaker : Shri Mukul Gupta, Advocate, (Ghaziabad) Secretary General, AIFTP
- 11.30 am to 1.00 pm : **6th TECHNICAL SESSION**
Topic : **Issues in Capital Gain Tax with reference to treatment of share transactions and on transfer of immovable property u/s 50C of the I.T. Act**
Chairman : Shri V. Ramachandran, Sr. Advocate (Chennai) and Past President, AIFTP
Speaker : Shri N.K. Poddar, Sr. Advocate (Kolkata)
- 1.00 pm to 2.00 pm : LUNCH BREAK
- 2.00 pm to 3.30 pm : **BRAINS' TRUST SESSION**
Chairman : Shri N.M. Ranka, Sr. Advocate (Past President, AIFTP)
Trustees : Shri P.C. Joshi, Advocate (Mumbai) (Past President, AIFTP)
Dr. K. Shivaram, Advocate (Mumbai) (Past President, AIFTP)
Shri G.C. Mookherji, Advocate (Kolkata)
Shri N.K. Poddar, Sr. Advocate (Kolkata)
Shri S.K. Poddar, Sr. Advocate (Ranchi)
Vice President, AIFTP(EZ)
Shri Sanjoy Bhattacharyajee, FCA, (Kolkata)
- 3.30 pm to 4.30 pm : **VALEDICTORY SESSION**
Valedictory Address
Dr. Prof. M. P. Singh, Vice Chancellor, West Bengal National University of Juridical Sciences (WBNUJS)
Mr. S. Radhakrishnan, President, Bengal Chamber of Commerce & Industries
Vote of Thanks
Shri S.K. Poddar, Sr. Advocate, Conference Chairman, Vice President, AIFTP (EZ)
- Delegate Fees : Rs. 1,500/- for Members; Rs. 2,000/- for Non-members; Rs. 1,000/- for spouse.

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DIRECT TAXES

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

I. SUPREME COURT

1. Conversion of Jumbo rolls of photographic films – Manufacture or production

The word 'production' or 'produce' when used in juxtaposition with the word 'manufacture' takes in bringing into existence new goods by a process, which may or may not amount to manufacture. It also takes in all the by-products, intermediate products and residual products, which emerge in the course of manufacture of goods. The conversion of Jumbo rolls of photographic films into small flats and rolls in the desired sizes amounts to manufacture/production for purposes of ss. 32AB, 80HH and 80I.

India Cine Agencies vs. CIT
Source : www.itatonline.org

2 Cost of Acquisition on transfer of the undertaking – S. 50B

Where (pre s. 50B), the assessee's banking undertaking was transferred by nationalization and it received compensation calculated on the basis of capitalization of last 5 years profits and the question arose whether the said compensation was assessable as capital gains, held as the undertaking was transferred as a going concern and there was no evidence on record to show that the compensation had been arrived at on an item-wise allocation of the various assets of the undertaking and there was no "cost of acquisition" of the undertaking, capital gains was not chargeable.

PNB Finance vs. CIT
Source : www.itatonline.org

3. Treatment of Provision for Bad debts – S. 115JA

Provision for bad and doubtful debts cannot be added to the "book profits" for purposes of section 115JA because they merely represent the diminution in the value of an asset and are not a provision for an unascertained liability.

CIT vs. HCL Comnet Systems & Services Ltd. (2008)
305 ITR 132 (SC)

II. HIGH COURT

4. Delay in pronouncement of judgement – Tribunal being last fact finding authority to appreciate the evidence and assigns its own reason

Where the Tribunal passed an order after more than four months from the date of hearing without dealing with propositions and case laws relied upon by the Appellant, HELD allowing the appeal that:

(i) The complaint of the assessee that the Tribunal had passed an order after 4 months delay and without recording reasons was "a serious complaint" and reflected "a disturbing state of affairs";

(ii) It is incumbent upon the Tribunal, being the final authority of facts, to appreciate the evidence, consider the reasons of the authorities below and assign its own reasons as to why it disagrees with the reasons and findings of the lower authorities. The Tribunal cannot brush aside the reasons or findings recorded by the lower authorities. It must give reasons and its failure to do so renders its order unsustainable;

(iii) The inordinate unexplained delay in pronouncement of the impugned judgment has also rendered it vulnerable. Confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments;

(iv) Accordingly the President of the ITAT is directed to frame and lay down guidelines on the lines laid down by the Apex Court in *Anil Rai vs. State of Bihar* and to issue appropriate administrative directions to all the benches of the Tribunal within the shortest reasonable time;

(v) In the meanwhile, all revisional and appellate authorities are directed to decide matters heard by them within three months from the date the case is closed for judgment.

Shivsagar Veg vs. ACIT (Bombay High Court)
Source : www.itatonline.org

5. Set-off – If direct nexus between income and expenses – S. 57

Where the assessee was a company incorporated in the Netherlands and its main activity was operation of aircrafts in international traffic both for transport of

passengers and cargo and its income was exempt under the Double Taxation Avoidance Agreement between India and the Netherlands and it recovered charges from an Indian company which on facts was found to be arising from the activity of cargo handling and was directly and inextricably linked to such activity, held the same was exempt. Also held in the alternative that even if the recovery of rent was to be treated as an income from other sources at the hands of the assessee, since an identical amount was paid to the Airport Authority of India, the same would be entirely offset u/s 57(iii) against each other because there was a direct nexus between the receipt and the payment.

DIT vs. KLM Royal Dutch Airlines (Delhi High Court)
Source : www.itatonline.org

6. Dividend stripping

Where the assessee bought units of a mutual fund, received tax-free dividend thereon and immediately thereafter redeemed the units and claimed the difference between the cost price and redemption value as a loss and the same had been upheld by a Five Member Special Bench of the Tribunal as a genuine loss, HELD affirming the order of the Special Bench that:

- (i) S. 94(7) was inserted prospectively w.e.f. 1-4-2002 to disallow dividend stripping losses. If the argument of the Revenue that even transactions prior to s. 94(7) can be disallowed is accepted, it will render s. 94(7) redundant and also lead to anomalous results.
- (ii) CBDT Circular No. 14 of 2001 makes it clear that prior to s. 94(7) the loss was allowable. This Circular is binding on the revenue and they cannot argue contrary to that.
- (iii) Even otherwise it was not established that the motive was to earn a loss. The allegation that there was complicity between the mutual funds, the brokers and the assessee was also without merit. *McDowell 154 ITR 148 (SC)* and *Azadi Bachao Andolan 263 ITR 706 (SC)* considered.
- (iv) The alternative argument that the loss should be treated as expenditure incurred to earn dividend and disallowed u/s 14A is also without merit.

CIT vs. Wallfort Shares & Stocks (Bombay High Court)
Source : www.itatonline.org

III. TRIBUNAL

7. Method of Accounting – S.145A

- (1) For purposes of s. 145A, where an assessee follows the procedure laid down by the ICAI and the tax auditor reports in clause 12(b) of Form 3CD of the Tax Audit Report that no adjustment is required to be made on account of s. 145A, the unutilized MODVAT credit cannot be added to income.
- (2) To give effect to s. 145A, the opening stock as of 1-4-1998 has to be increased by the amount of tax, duty, cess etc.

Hawkins Cookers vs. ITO (ITAT Mumbai)
Source : www.itatonline.org

8. Notice deemed to be valid in certain cases – S. 292BB

- (i) Though s. 292BB comes into force on 1-4-2008 and not from any particular assessment year, it is declaratory, procedural and curative in nature and accordingly the validity of notices issued/served will have to be decided after 31-3-2008 in accordance with the provisions of section 292BB irrespective of the assessment year involved;
- (ii) Even if the assessee has appeared in any proceeding or co-operated at any time in the past; i.e., prior to 1-4-2008, in any inquiry related to an assessment etc. that per se is sufficient to preclude the assessee from raising the objection of non-service.

ITO vs. Varia Pratik (ITAT A'bad)
Source : www.itatonline.org

9. Deduction – Foreign exchange gain – S.80HHC

- (i) The exchange rate gain difference pertaining to exports is an integral part of the exports and export turnover and cannot be treated as income from other sources.
- (ii) However, where such gain relates to exports made in an earlier year, the deduction u/s 80HHC is allowable only in the year in which the exports are made and not in the year of realisation of the gain.
- (iii) As it would not be permissible to assess the exchange gain in the year of realisation while allowing s. 80HHC deduction in an earlier year, the AO was directed to exclude the exchange gain from the total income of the current year and to include it in the income of the year of exports and allow deduction u/s 80HHC accordingly.

ACIT vs. Prakash I. Shah (ITAT Mumbai) (Special Bench)
Source : www.itatonline.org

SALES TAX DECISIONS

P. C. JOSHI
Advocate

Assessment and collection

The Haryana Tax Tribunal, while considering the judgment of the Constitution bench in the case of *M/s Sunrise Associates [(145 STC 576 (SC))]* with prospective effect overruling the earlier judgment of *M/s H. Anraj*, rejected the plea of the department that the judgment debarred the collection of tax, but did not debar passing of the assessment on the sales of lottery tickets before the date of the judgment. The Tribunal also observed that the collection of tax would include the assessment, because without assessment there can be no collection and there was no point in passing the assessment order without any collection.

M/s Samadhan Trading Pvt. Ltd., Gurgaon vs. State of Haryana (2008) 32 PHT 425 (HTT).

Delegated legislation

The Punjab & Haryana High Court, while considering the language used in section 5(1) of the Punjab General Sales Tax Act, 1948 as amended, held that in absence of express or implied provision, conferring power of issuing the notification with retrospective effect, the State Government cannot issue a notification with retrospective effect.

M/s Kumar Brothers (Chemists) Pvt. Ltd. vs. Union Territory of Chandigarh.

Source : *Sales Tax Matters, October 2008, Volume II Part 10, Page No. 1105.*

Declared goods – Rough & unmachined C.I. castings

The West Bengal Commercial Tax Appellate & Revisional Board held that the rough and unmachined C. I. castings were declared goods liable to be taxed @ 4% instead of 7% as taxed by the departmental authorities.

M/s Shree Jagannath Iron Foundry (P) Ltd. vs. A.C.C.T. Bally Circle (2008) 52 S. T. A. – Board 94

Entries in Schedule

1. Mini Lab

The Commissioner of Commercial Taxes, Kerala, while clarifying the rate of tax under section 94 of the Kerala VAT Act, held that a mini lab with its accessories; stated to be photographic machinery, was not covered by entry

: 83(60) and therefore fell under the residuary entry 103.

Source : *Kerala Tax Reporter, Vol. 16 Part X, Oct. 2008, Page 234.*

2. Embroidered textiles

The Commissioner of Commercial Taxes, Kerala State, clarified that Chapters 52, 54 & 55 of the Custom Tariff Act dealt with ordinary woven fabrics, while Chapter 58 covered special woven fabrics, embroidery, lace etc. Considering that aspect of the matter, it was clarified that all embroidered textile materials were covered by entry 40 of Third Schedule, appended to the Kerala VAT Act liable to tax at 4%.

Source : *Kerala Tax Reporter, Vol. 16 Part X, Oct. 2008, Page 235.*

3. Works Contract

The Commissioner of Commercial Taxes, Kerala State, clarified that the transfer of advertising materials printed on paper or PVC sheet as per specification of the customer, were covered under entry 100(5) of the Third Schedule appended to the Kerala VAT Act, liable to tax at 4%.

Source : *Kerala Tax Reporter, Vol. 16 Part X, Oct. 2008, Page 250.*

4. Utensils

The Calcutta High Court, after interpreting the language used in Clause 7 of Schedule C of the West Bengal VAT Act, 2003, held that utensils used in kitchen or for use of any household purposes were covered by the said Schedule C and therefore liable to be taxed @ 4%.

M/s Prashant Milan (P) Ltd & Another vs. Commissioner of Sales Tax, West Bengal & Another (2008) 52 S. T. A. – 232.

Inter-State Works Contract

The Madurai bench of the Madras High Court held that the return of paper after doing the job of printing to a customer and printing of books on the basis of order placed by the customer, from other States prior to 11th May 2002, cannot be taxed under the Central Sales Tax Act in view of the amendment to section 2(g) effective from 11th May, 2002.

M/s The Orient Litho Press, Sivakasi vs. The Commercial Tax Officer-I, Sivakasi & Others 2008-09 (14) TNCTJ – 251.

Liability on retirement

The Kerala High Court held that, in absence of the required notice by the retiring partners, the dues can be recovered as if they had not retired. However, on equitable grounds, the Hon'ble Court held that such recovery can be enforced only after making attempt of recovery from the continuing or existing partners.

Shri Danesh Kumar Gupta vs. Inspg. Asst. Commissioner (Inv. Branch) (2008) 16 KTR 437 (Ker).

Manufacture

The Maharashtra Sales Tax Tribunal held that the process of blending 'Propane' and 'Butane' (kinds of chemicals) resulting into a new product 'LPG' was a manufacturing process as defined under Bombay Sales Tax Act, 1959.

M/s Gas Suvidha Petrochem Pvt. Ltd. vs. State of Maharashtra

(Appeal No. 23 of 2004 decided on 13th October, 2008).

Packing material

The Kerala High Court held that generally bottles were treated as packing material used for packing of any commodity in liquid form like water, drug, perfume, milk, soft drink etc., but no one used the feeding bottle as a packing material. Such feeding bottles were used to feed milk and liquid food to small babies with the assistance of a nipple that was sold along with the feeding bottle.

M/s J. I. Morrison (India) Ltd vs. State of Kerala (2008) 16 KTR 434 (Ker).

Revision – Propriety

The Haryana Tax Tribunal accepted the preliminary objection by the assessee and held that the authority who passed the original order cannot, later on, revise the same as a revising authority. In other words, no person can revise his own order, since that may amount to mere change of opinion.

M/s Ganpati Rice Mills, Kaithal vs. State of Haryana (2008) 32 PHT 451 (HTT)

Refund

The Supreme Court, while interpreting the provisions under the U. P. Trade Tax Act, 1948, held that the amount can be said to have been found refundable only on adjudication and therefore the amount before

: adjudication cannot be said to be refundable. The Supreme Court further held that the power of adjustment lay with the authority and therefore the assessee on his own cannot make any adjustment.

Commissioner of Sales Tax, U. P. vs. M/s Hind Lamps Ltd.

Source : Sales Tax Matters, October 2008, Volume II Part 10, Page No. 1146.

Sale

The Madras High Court, after considering the amendment to the Constitution by insertion of Article 366(29-A), held that simply because a Society was registered under the Societies Registration Act, it did not necessarily become an incorporated society. The Court further held that when the incorporated body undertook commercial activities by way of supply to their own members, they would be deemed to have undertaken a transaction of sale, liable to tax.

M/s Vasim Tanning Company, Tiruchirappalli vs. The State of Tamil Nadu 2008-09 (14) TNCTJ – 231.

Use in the manufacture or processing – Penalty under section 10(b) of the Central Sales Tax Act

The assessee had purchased machinery on 'C' Form and used the same in the construction of cold storage for the purpose of preservation of goods in it. The Hon'ble Allahabad High Court held that though for the purpose of provisions under the Income-tax Act, the Supreme Court in the case of *M/s Delhi Cold Storage P. Ltd (191 ITR 656)* did held in favour of the assessee; considering the language of section 8(3)(b), use of the machinery cannot be said to be *mala fide* and without any reasonable excuse. The penalty, therefore, was quashed.

M/s Chokrayat Cold Storage vs. Commissioner of Trade Tax, U. P., Lucknow

Source : Sales Tax Matters, October 2008, Volume II Part 10, Page No. 1142.

Works Contract

The Madras High Court held that manufacture of rolling shutters and erecting the same at the customer's building, amounted to a transaction of works contract for which it referred to the Supreme Court judgment in the case of *M/s Sentinel Rolling Shutters & Engg. Co. Pvt. Ltd and M/s BSNL.*

M/s Vinayaga Engineering Works & Others vs. The State of Tamil Nadu 2008-09 (14) TNCTJ – 238.



APPEAL TO MEMBERS

Date : 28-11-2008

Dear Members,

The Journal Committee is proposing to publish following special issues in Questions and Answers format for the benefit of our readers. If you are having any questions on the said subjects relating Direct Taxes, Accounting, Indirect Taxes or General Law, you may send the same to the office of the Federation on or before 31st December, 2008. This may help us to bring the publication.

You are also requested to send us the suggestions in respect of any other subjects which may be relevant for Tax Practitioners.

The proposed subjects are as under:-

1. Construction Industry;
2. Intellectual Property Rights;
3. Depreciation;
4. Business Reorganization;
5. SEZ;
6. Entertainment Industry;
7. Tax Deduction at Source

Thanking you,

For All India Federation of Tax Practitioners

Mitesh Kotecha
Chairman, Journal Committee

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