



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
6th 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

NATIONAL EXECUTIVE COMMITTEE

29th January, 2009

The 6th National Executive Committee meeting of All India Federation of Tax Practitioners is scheduled to be held on Friday, 6th March, 2009 at 7.00 p.m. at Varanasi.

Mukul Gupta, Secretary General

NATIONAL TAX CONFERENCE

Days & Dates:

7th & 8th March, 2009 (Saturday & Sunday)

Venue:

Shehnai Ramada Plaza

The Mall Cantonment, Varanasi – 221 002

HIGHLIGHTS AND ATTRACTIONS

All India Federation of Tax Practitioners (NZ) is organizing a two days National Tax Conference in the Holy City of Varanasi for the first time and is going to be a memorable one for its uniqueness. Some of the highlights and attractions of the Conference are:-

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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- (1) The Holy City of Varanasi, described as eternal city by saints and historian, offers great attractions to travellers, visitors, religious tourists, foreigners, pilgrims, traders and others from all over the world and for the people of all the castes, creeds and religions since the time immemorial. Being the holy place for Hindus, Jains, Buddhists, Sikhs and Muslims this is considered as the cultural capital of the world. The place itself is the first and foremost attraction.
- (2) The City of Varanasi is well connected to the major cities of India through Air, Rail and Road and is easily accessible from every corner of the country.
- (3) The weather conditions in March being excellent and the Conference Committee having already made excellent arrangements for accommodations of every kinds, from ethnic Dharmshalas to various Star Hotels at very attractive special rates, it offers excellent opportunity to visit and enjoy comfortable stay in Varanasi.
- (4) The Conference Committee has made special arrangements for –
 - Boating in the Holy River Ganges and excellent river-front-view of the eternal city which has mesmerized the visitors from all across the world.
 - The famous Ganga Arti Darshan from specially arranged big boat and from the platform.
 - Special Rudrabhishek Pooja in river Ganges.
 - Mangala Arti Darshan of Lord Vishwanath.
 - Pooja and other Darshans of Lord Vishwanath.
 - Local sight seeing of important places including Sarnath, Banaras Hindu University and other places through conducted tours of different choices and varieties.
 - Special Tour Packages are available for Chunar, Vindhyachal, Allahabad, Ayodhya, Chitrakoot, Naimisharanya, Kushi Nagar, Bodh Gaya etc. in different brackets.
 - Special programme for visiting spouses and other family members for their entertainment, sight-seeing and marketing of world famous Banarasi Sarees, Fabrics, Carpets, Handloom products and souvenirs.
- (5) The Conference is being organized in very comfortable and serene atmosphere at Hotel RAMADA PLAZA, the best venue in Varanasi. The food will be delicious in taste and excellent in quality.
- (6) The Conference itself is going to be unique in every respect as the eminent faculties and delegates from Guwahati to Mumbai and Chandigarh to Chennai have already given their consent. The inaugural as well as technical sessions are being graced by as many as 11 Hon'ble Judges from Supreme Court of India and various High Courts, Hon'ble Law Minister of India, the Chairman, Central Board of Direct Taxes and distinguished dignitaries. Each technical session is going to be interesting in subjects, rich in deliberations and graceful in presentation as each one will be chaired by a sitting Judge of High Court and the Chairman, C.B.D.T. and will be laced with the expert comments on subject being made by an eminent and distinguished professional.

Please attend in large numbers to make it a grand success.

AN INVITATION

All India Federation of Tax Practitioners, North Zone, cordially invites you to participate in the National Tax Conference on 7th & 8th March, 2009 (Saturday & Sunday) being organized by it in the holy city of Varanasi.

From time immemorial, the eternal city of Kashi, now known as Varanasi has been a seat of wisdom, knowledge, education, spiritual learning, religion, art, craft and culture. Apart from the mystique of its serpentine lanes, the beauty of Ghats and the attraction of its art and craft, Varanasi offers great places of attraction to one and all. The city has a culture as rich and varied as its famous Benarasi Sarees, weaving timeless traditions and dynamism into its folds.

With excellent weather conditions in March, we invite you to attend with your spouse and on our part we assure to do every thing to make your stay comfortable and your visit memorable.

ABOUT THE CONFERENCE

आ नो भद्राः क्रतवो यन्तु विश्वतो ऽ दब्धासो अपरीतास उद्भिदः ।

देवा नो यथा सदमिद्वृधे असन्नप्रायुवो रक्षितारो दिवेदिवे ॥१॥

ऋग्वेद ॥८९॥

Let us be recipient to all the benevolent, invincible, and auspicious thoughts and deeds from all over the world and from all directions. This wisdom that is enshrined in the Vedas has emphasized the need of convergence of thoughts and laid the foundation of the modern days conferences.

In an era where uncertainty of tax laws has become a certainty, it is an arduous task to comprehend and keep oneself up-to-date. The National Tax Conference has been designed to cover certain major burning issues pertaining to direct and indirect tax laws wherein the eminent tax professionals, jurists, and tax administrators will converse, discuss, and deliberate these issues.

The Technical Sessions have been designed in such a manner that each session ends with comprehensive analysis of the subject in its entirety. Important topics under Income Tax, VAT and Service Tax have been arranged in a manner that at the end of each session the particular subject will get completely clarified.

Another important and most interesting aspects of the Conference is the Brain Trust Session which is the heart and soul of the Conference. We hereby invite queries from all the participants in advance so that the same could be answered, deliberated, and interactively discussed by the eminent tax professionals of the country in this session.

In order to make the Technical Sessions more interesting and purposeful Hon'ble Senior Judges of various High Courts have been requested to chair each Technical Session. Every Technical Session is going to be interesting in subjects, rich in deliberation and graceful in presentation.

You are heartily invited to participate in large numbers and make the Conference a grand success.

ANIL KUMAR SINGH Advocate
Chairman,
Conference Committee





Theme : Global Economic Scenario – Role of Tax Professionals

PROGRAMME

SATURDAY, 7th MARCH, 2009

08.30 A.M. to 09.30 A.M.	Registration & Breakfast												
09.30 A.M. to 12.30 P.M.	INAUGURAL SESSION: Chief Guest & Guests of Honour: <ul style="list-style-type: none">• Hon'ble Shri H.R. Bhardwaj, Union Minister of Law, Government of India• Hon'ble Mr. Justice Dalveer Bhandari, Supreme Court of India• Hon'ble Mr. Justice Markandey Katju, Supreme Court of India• Hon'ble Mr. H. L. Gokhale, Chief Justice, Allahabad High Court• Hon'ble Mr. Justice S.R. Alam, Senior Judge, Allahabad High Court												
12.30 P.M. to 01.15 P.M.	LUNCH BREAK												
01.15 P.M. to 03.45 P.M.	1st TECHNICAL SESSION Important issues relating to “Real Estate Transactions” under Income Tax, VAT & Service Tax <table><tr><td>Chairman of Session</td><td>Hon'ble Mr. Justice R.K. Agrawal Allahabad High Court</td></tr><tr><td>Introduction of subject</td><td>Mrs. Nikita R. Badheka, Advocate, Bombay High Court</td></tr><tr><td>Presentation of paper (Income-tax)</td><td>Dr. K. Shivaram, Advocate, Bombay High Court*</td></tr><tr><td>Presentation of paper (VAT)</td><td>Dr. Ashok Saraf, Senior Advocate, Guwahati High Court</td></tr><tr><td>Presentation of paper (Service Tax)</td><td>Shri Kapli Vaish, FCA, Bareilly</td></tr><tr><td>Expert's Comment</td><td>Shri V. Ramachandran, Senior Advocate, Madras High Court</td></tr></table>	Chairman of Session	Hon'ble Mr. Justice R.K. Agrawal Allahabad High Court	Introduction of subject	Mrs. Nikita R. Badheka, Advocate, Bombay High Court	Presentation of paper (Income-tax)	Dr. K. Shivaram, Advocate, Bombay High Court*	Presentation of paper (VAT)	Dr. Ashok Saraf, Senior Advocate, Guwahati High Court	Presentation of paper (Service Tax)	Shri Kapli Vaish, FCA, Bareilly	Expert's Comment	Shri V. Ramachandran, Senior Advocate, Madras High Court
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Expert's Comment	Shri V. Ramachandran, Senior Advocate, Madras High Court												
03.45 P.M. to 04.00 P.M.	Tea Break												
04.15 P.M. to 05.45 P.M.	2nd Technical Session Section 145 of Income-tax Act with special reference to Cottage Industries <table><tr><td>Chairman of Session</td><td>Chairman, Central Board of Direct Taxes, New Delhi</td></tr><tr><td>Introduction of subject</td><td>Shri Anil Kumar Singh, Advocate, Varanasi</td></tr><tr><td>Presentation of paper</td><td>Shri S.K. Poddar Senior Advocate, Jharkhand High Court</td></tr><tr><td>Expert's Comment</td><td>Shri N.M. Ranka, Senior Advocate, Rajasthan High Court</td></tr></table>	Chairman of Session	Chairman, Central Board of Direct Taxes, New Delhi	Introduction of subject	Shri Anil Kumar Singh, Advocate, Varanasi	Presentation of paper	Shri S.K. Poddar Senior Advocate, Jharkhand High Court	Expert's Comment	Shri N.M. Ranka, Senior Advocate, Rajasthan High Court				
Chairman of Session	Chairman, Central Board of Direct Taxes, New Delhi												
Introduction of subject	Shri Anil Kumar Singh, Advocate, Varanasi												
Presentation of paper	Shri S.K. Poddar Senior Advocate, Jharkhand High Court												
Expert's Comment	Shri N.M. Ranka, Senior Advocate, Rajasthan High Court												
05.45 P.M. 06.00 P.M.	HIGH TEA												
07.30 P.M. onwards	GULAB BARI — THE CULTURAL EVENING												

SUNDAY, 8th MARCH, 2009

08.30 A.M. to 09.00 A.M.	Breakfast	
09.00 A.M. to 10.45 A.M.	3rd Technical Session Important Issues under Income-tax relating to Shares, Securities and Derivatives Transactions	
	Chairman of Session	Hon'ble Mr. Justice Pradeep Kant Senior Judge, Lucknow Bench of Allahabad High Court
	Introduction of subject	Smt. Surabhi Ranka, CA, Jaipur
	Presentation of paper	Shri H. Padamchand Khincha, FCA
	Expert's Comment	Shri Kishor B. Karia, FCA, Mumbai*
10.45 A.M. to 11.00 A.M.	TEA BREAK	
11.00 A.M. to 01.00 P.M.	4th Technical Session Input Tax Credit (ITC) under VAT	
	Chairman of Session	Hon'ble Mr. Justice Rajesh Bindal Punjab & Haryana High Court
	Introduction of subject	Shri Rahul Agrawal, Advocate, Allahabad High Court
	Presentation of paper	Shri Sujit Ghosh, Advocate, Partner, BMR Tax Advisors, New Delhi
	Special comments with reference to U.P. VAT	Shri Bharatji Agrawal, Senior Advocate, Allahabad High Court
	Expert's Comment	Shri P.C. Joshi, Advocate, Bombay High Court
01.00 P.M. to 01.30 P.M.	LUNCH BREAK	
01.30 P.M. to 03.00 P.M.	5th Technical Session Important issues relating to Business Auxiliary Services under Service Tax	
	Chairman of Session	Hon'ble Mr. Justice Rajes Kumar, Allahabad High Court
	Introduction of subject	Shri Sumit Batra, Advocate, New Delhi.
	Presentation of paper	Shri Madhukar N. Hiregange, FCA, Bengaluru
	Expert's Comment	Shri Ashok Kumar Batra, FCA, New Delhi.
03.00 P.M. to 03.10 P.M.	TEA BREAK	
03.10 P.M. to 04.30 P.M.	6th Technical Session : Brain Trust	
	Chairman of Session	Shri N. M. Ranka, Senior Advocate Rajasthan High Court
	Other Brain Trustees	1. Shri P.C. Joshi, Advocate, Bombay High Court 2. Shri P.S. Sarin, Advocate, Delhi High Court 3. Shri M. L Patodi, Advocate, Kota 4. Shri Narayan P. Jain, Advocate, Calcutta High Court 5. Smt. Premlata Bansal, Advocate, Delhi High Court 6. Shri V.P. Gupta, Advocate, Delhi High Court 7. Shri Mukul Gupta, Advocate, Ghaziabad 8. Shri Vikram Nankani, Advocate, Bombay High Court*
04.30 P.M. to 06.00 P.M.	VALEDICTORY SESSION	
	Chief Guest:	Hon'ble Dr. Justice B.S. Chauhan, Chief Justice, Orissa High Court
	Guest of Honour:	Hon'ble Mr. Justice Rakesh Tiwari, Allahabad High Court
		• Felicitatation of Senior and elderly members of the Bar
06.00 P.M. onwards	HIGH TEA	

* Subject to confirmation.

We have been successful in negotiating excellent rates for all the nearby Hotels for your comfortable and affordable stay in Varanasi.

Sl. No.	Name of Hotel	Room Tariff Double	Distance from Venue
1.	Hotel Ramada Plaza, The Mall Cantonment, Varanasi – 221 002 (INDIA) Tel: +91 (0542) 2510000, Fax: +91 (0542) 2500711 Mobile: +91 9919101151 e-mail:f_b@ramadajhvns.com Website: www.ramadajhvns.com	3500.00	Zero
2.	Hotel Radisson, The Mall Cantonment, Varanasi – 221 002 India, Tel: (0542) 2501519	2850.00	100 mtrs.
3.	Hotel Clarks, The Mall cantonment, Varanasi – 221 002, India • Tel: (0542) 2501011 Fax: (0542) 2502736 • E-mail: clarkvns@satyam.net.in	2800.00	Adjacent
4.	Hotel Taj Ganges, Nadesar, Cantt, Varanasi – 221 002 • Tel: (0542) 2503001	3500.00	500 mtrs.
5.	Hotel Ideal Tower, The Mall Cantt, Varanasi – 221 002 (U.P.) India • Tel: (0542) 2503391-95, Facsimile: (0542) 2503396 • Mobile: 9956290906 E-mail: gm@hotelidealtower.com, • Website: www.hotelidealtower.com	2000,00	100 mtrs.
6.	Hotel De-Paris, 15, The Mall Cantt, Varanasi – 221 002 Tel: (0542) 2505131 to 138 Fax: (0542) 2502487 E-mail: deparisvns@hotmail.com	1200 00	50 mtrs.
7.	Hotel Surya, 5.20/51-A-5. Varuna Bridge, Varanasi – 221 002, U.P. (INDIA) Tel: (0542) 2508465-2508466, Fax: (0542) 2502758 Mob: 9935325829 • E-mail: rajangpg@yahoo.com Website:wwwhotelsuryavns.com	Standard 800.00 AC Dlx. 1,200.00 Super Dlx. 1,400.00	150 mtrs.
8.	Hotel M.M. Continental The Mall, Cantt, Varanasi – (U.P.) • Tel: (0542) 2500172/973, Website: hotelmmcontinental.com	1000.00	150 mtrs.
9.	Hotel Regard S. 19/19, Varuna Bridge Road, Varanasi – 221002 (U.P.) Tel: (0542) 2505054	750,00	200 mtrs.
10.	Hotel Meraden Grand 57, Patel Nagar, Cantt, Varanasi – 221 002 Tel: (0542) 2509952-3-4-7-9, • Fax: (0542) 2507653 E-mail: meradengrand@yahoo.co in, meradengrand@gmail.com • Website: www.meradengrand.com	2100.00	500 mtrs.
11.	Hotel New Temple's Town, 53 Patel Nagar Cantonment, Varanasi – 221 002 U.P. (INDIA) Tel: (0542) 2507733-34, Fax: (0542) 2507735 Mobile: 9839845873 • E-mail: somhaz4u@gmail.com.	Dlx. 1,250.00 Maharaja Dlx. 1,650.00 Royal Suite 2,700.00	500 mtrs

- Above rates are specially negotiated rates and are inclusive of breakfast and taxes on the basis of double occupancy.
- Only limited rooms are available on first come first served basis.
- Other kinds of accommodations are also available and may be arranged on request.



Special tour packages are available for all the nearby important places like Chunar, Vindhyachal, Ayodhya, Allahabad, Chitrakoot, Naimisharanya, Kushi Nagar, Bodh Gaya etc. in different brackets and rates.

DELEGATE FEES

AIFTP Members	Rs. 1,500/-
Non-member, Advocates, Chartered Accountants, ITPs, Company Secretaries	Rs. 2,000/-
Others	Rs. 3,000/-
Accompanying Spouse	Rs. 1,000/-

Please enroll yourself and your spouse as delegates and submit your Cheques/DDs in favour of **All India Federation of Tax Practitioners (North Zone)** payable at **Varanasi**. Separate Cheques/DDs may be sent towards Hotel accommodation.

For further details please contact Conference Secretariat at:

ANIL K. SINGH & ASSOCIATES

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S.R. Wadhwa
Vice-President (NZ)

H.C. Bhatia
Chairman (NZ)

A Report on National Tax Conference at Kolkata Simpler Tax Regime for Better Tax Compliance

A two day National Tax Conference with the theme “Simpler Tax Regime for Better tax Compliance” was organized by AIFTP (East Zone) at Hotel Golden Park, Kolkata on 13th and 14th December, 2008. It was inaugurated by Hon’ble Justice Chittatosh Mookerjee former Chief Justice of Calcutta and Bombay High Courts. National President Mr. Bharatji Agrawal highlighted the role of AIFTP in bringing positive change for better tax compliance and at the same time removal of hassles being faced by the tax-payers. Dr. Gautam Roy, IAS, Secretary Legal- Central Excise & Service Tax; and Mr. C.M. Bachawat, IAS, Principal Secretary, Excise & Revenue were the Guests of Honour. They highlighted the steps undertaken by the Government for simplification of tax laws and procedures. Hon’ble Justice Nadira Patherya of Calcutta High Court was the Chief Guest in Valedictory session. Prof. Dr. MP Singh, Vice Chancellor – WB NUJS emphasized the need for specialized study of tax laws as the taxation both direct as well as indirect have been occupying an important place for collection of revenue for funding the State functions.

The technical session on Scrutiny Assessments under Income Tax with special reference to Annual Information Returns was chaired by Shri S.R. Wadhwa, Advocate (Ex Chairman, IT Settlement Commission) and the speakers were Shri Anil Kumar Singh, Advocate (Varanasi). Shri Narayan Prasad Jain, Advocate & Author (Kolkata) spoke on Survey under Income-tax Act including TDS related Survey.

The 2nd TECHNICAL SESSION on Inter-state Works Contract and Annual Maintenance Contract (AMC) was chaired by Shri Bharatji Agrawal, National President and the Speakers were Shri P.S. Sarin, Advocate (Delhi) and Shri G.C. Mookherji, Advocate (Kolkata).

The 3rd TECHNICAL SESSION on “Tax Planning through Will and Family Settlement” was presided over by Mr. G.D. Agrawal, Hon’ble VP-ITAT, Kolkata in which Shri S. Bagchi, Advocate (Kolkata) spoke. The other topic “Res judicata vis-a-vis need for consistency in Tax matters” was elaborately dealt with by Dr. K. Shivaram, former President. AIFTP.

The 4th TECHNICAL SESSION was on “Issues in Real Estate Transactions including development and redevelopment under VAT” and it was chaired by Shri P.C. Joshi, former President, AIFTP and the speaker was Shri S. Venkataramani.

The 5th TECHNICAL SESSION was on “Tax on ‘Services’ But What is ‘Service’? and Whether ‘Renting of Property’ is ‘Service’ and thus liable to Service Tax? It was chaired by Dr. Gautam Ray, IAS, Commissioner, Central Excise and Customs (Legal) and the Speaker was Shri Mukul Gupta, Secretary General, AIFTP.

The last and 6th TECHNICAL SESSION was on “Issues in Capital Gain Tax with reference treatment of share transactions and on transfer of immovable property u/s 50C of the I.T. Act”. It was chaired by Shri V. Ramachandran, Ex President, AIFTP. Shri N.K. Poddar, Sr. Advocate (Kolkata) spoke in detail on the issue.

BRAINS’ TRUST SESSION was held under Chairmanship of Shri N.M. Ranka, Sr. Advocate (Former President, AIFTP). The trustees were Shri P.C. Joshi, Dr. K. Shivaram, Shri G.C. Mookherji, Shri N.K. Poddar, Shri S.K. Poddar, Advocate, and Shri Sanjoy Bhattacharjee.

Shri R.D. Sharma, Chairman, East Zone delivered welcome address and felt that the success of this convention has been possible with co-operation of all members of the Managing Committee and he lauded the help of Direct Taxes Professionals’ Association. Shri S.K. Poddar, Conference Committee Chairman, and Mr. Narayan Jain, Vice Chairman, delivered vote of thanks and presented mementoes for outstanding work. Mr. Jain specially appreciated the leadership of Mr. R.D. Sharma and help of Mr. C.K. Chatterjee and Mr. S.C. Mitra. A beautiful Souvenir containing Study material was also published. On this occasion a book “Tax Treatment of Cash Credits, Gifts and Unexplained Investments: authored by Narayan Jain and Deepak Jain was presented to the National President Shri Bharatji Agrawal, who appreciated the efforts of the authors.

Shri Sanjay Bajoria of DTPA and Shri Arvind Agarwal conducted the proceedings very well.



TRIBUNAL NEWS

1. Capital Gains or Business Income – Tests to distinguish Shares held as ‘stock-in-trade’ are as ‘Investments’ – S. 28, 45

The Mumbai Tribunal has held that, the assessee, a stock broker can hold shares as investments. The shares held as investment, cannot be assessed as business income.

J. M. Share & Stock Brokers vs. Jt. CIT. Source: www.itatonline.org

2. Notice – Validity of Assessment – S. 292BB

The Delhi Special Bench has held that, provision of section 292BB cannot have retrospective effect.

Kuber Tobacco vs. Dy. CIT. Source: www.itatonline.org

3. Capital Gain – Sale of TDR – S. 45

Gains on sale of TDR are not chargeable to tax, if cost of acquisition is not ascertainable.

New Shailaja CHS vs. ITO. Source: www.itatonline.org

4. Deemed Dividend – S. 2(22)(e)

Under section 2(22)(e), deemed dividend can be assessed only in the hands of a person who is a ‘shareholder’ of the lender company.

ACIT vs. Bhaumik Colour. Source: www.itatonline.org

5. DTAA

Even an Indian company can claim the benefits of non-discrimination under the DTAA.

DaimlerChrysler India vs. Dy. CIT. Source: www.itatonline.org

6. Matters referred to Special Bench & Pending for final hearing

Source: www.itatonline.org

7. Digest of Important cases of December, 2008

Source: www.itatonline.org

SALES TAX DECISIONS

P. C. JOSHI, *Advocate*

Export under section 5(3)

The Madras High Court have held that the export of polished granite blocks out of the rough granite blocks purchased was not eligible to be treated as sale in the course of export under section 5(3) of the Central Sales Tax Act, since the commodity exported and the commodity purchased were two different commercial commodities. In that connection, the court also observed that small change in the goods exported without changing the identity of the goods may be covered by section 5(3), but if the identity of the goods purchased was lost, then it will not be treated as deemed export for the purpose of section 5(3).

The court, however, considered the judgment of the Supreme Court in the case of *M/s Sterling Food* while dealing with yet another case and held that the export of dressed blocks and granite slabs were the same goods for the purpose of section 5(3).

M/s Iqra Traders, Chennai vs. The Commercial Tax Officer, Chennai 2008-09 (14) TNCTJ – 270.

Export sales

The Punjab & Haryana High Court held that the amount of export made by the assessee, through an intermediary and not directly, was eligible for the reduction under section 5 of the CST Act.

State of Haryana vs. M/s Haryana Bone Mills, Panipat (2008) 32 PHT 572 (P&H).

Estoppel

The Orissa High Court, following the provisions of Article 265, held that there was no estoppel against the statute and if a person was not liable, within the four corners of the statute, to pay tax, he cannot be assessed to tax merely because he previously admitted his liability on a wrong notion. According to the court, the liability to pay tax had to be determined in accordance with the provisions of law and not on admission.

M/s Srei International Finance Ltd vs. State of Orissa & Others (2008) 32 PHT 542 (Ori.)

Entries in Schedule

1. Chlorinated Vinyl Chloride

The Gujarat VAT Tribunal set aside the determination order under section 80 and held that Chlorinated Vinyl Chloride in liquid form was nothing but chemical under entry 18(1) of Schedule II of the Gujarat VAT Act.

M/s Ashirwad Pipes Pvt. Ltd vs. The State of Gujarat.

Source : Sales Tax Journal, Vol. 47, Part 9, Dec. '08, page 796.

2. Deluxe Janatha Cem

The Kerala High Court have held that Deluxe Janatha Cem was a dehydrated lime covered by entry 28 of Second Schedule to the Notification No. SRO 1728/93 and taxable at 2.5% under the Kerala General Sales Tax Act, 1963.

Mr Sooppy Haji N. vs. State of Kerala (2009) 17 KTR 22 (Ker).

Entry Tax – Referred to larger Bench of Supreme Court

A division Bench consisting of Hon'ble Mr Justice Arijit Pasayat and Hon'ble Mr Justice S. H. Kapadia referred certain questions to a larger Bench in regard to the scope of Article 304 and entry 52 of List II of Seventh Schedule, as also the nature of the levy of entry tax, as to whether the said can be termed as a fees or a tax on the movement of goods and whether such levy was discriminatory indirect State tax.

M/s Jayprakash Associates vs. State of M. P. & Ors. 2008 NTN Vol. 38 – 341.

Inter-State lease transaction

The Orissa High Court, after considering the impact of insertion of Article 366(29A)(d) and the consequential amendment to the definition of the term 'sale' in section 2(g) of the CST Act, held that the lease

transaction involving inter-State one can be taxed only under the CST Act by the State from which the movement of goods originated. In other words, the State where the goods leased are used, cannot levy any tax on such inter-State transaction. In the case before the Court, the agreements for leasing the goods in question were executed in Kolkata and therefore the Court held that the State of Orissa have no jurisdiction to levy tax.

M/s Srei International Finance Ltd vs. State of Orissa & Others (2008) 32 PHT 542 (Ori.)

Interest and penalty

The Punjab & Haryana High Court held that when the assessee had paid the tax along with the return which it calculated to be due, no interest and penalty would be leviable, but the same may become due upon non-payment of the additional tax assessed, after expiry of the period mentioned in the demand notice.

M/s India Forge & Drop Stamping Ltd vs. State of Haryana (2008) 32 PHT 570 (P&H).

Lease Tax

The Allahabad High Court held that for the taxable event under the lease tax, the delivery of the possession of goods leased at some stage was essential.

Commissioner of Trade Tax, U. P., Lucknow vs. M/s D. R. Zindal & Sons (2008) 32 PHT 657 (All).

Purchase Tax

The Kerala High Court have held that the transfer of goods in the form of old ornaments by the Partner to the Firm as his capital contribution was not liable to tax under section 5(1), since that was not a transaction in the course of business. However, the transaction of a purchase when such ornaments were taken as stock-in-trade, remade into new ornaments and were sold in the course of business, was liable under section 5A of the Kerala General Sales Tax Act.

M/s Kohinoor Fashion Jewellery vs. State of Kerala (2009) 17 KTR 15 (Ker).

Refund

The Punjab & Haryana High Court disapproved the withholding of refund by the department on the plea that it was likely to challenge the final refund order at the higher level. The Hon'ble Court not only directed the grant of refund, but also the payment was to be made along with interest, right from the 91st day to the date of payment.

M/s Urea Casale, Mumbai vs. State of Punjab & Another (2008) 32 PHT 531 (P&H).

Service Contract

The Orissa High Court held that a photographer taking photographs of its customers and delivering the same after developing through his skill and labour, did not amount to a works contract liable to tax. It was in the nature of service contract not involving any sale of goods. In that regard, the court observed that the photo prints supplied to the customer were not marketable commodity and have no value. In such a case, there was no accretion to goods or property of the customer, but the result of the skill of the photographer passed to the customer.

Studio Sujata vs. Commissioner of Sales Tax, Orissa, Cuttack (2008) 32 PHT 574 (Ori).

Scope of rectification

The larger Bench of the Maharashtra Sales Tax Tribunal held that when the earlier larger Bench took no cognisance of the relevant precedent and the documents submitted on record were overlooked, there was a mistake apparent from record and in appropriate cases where the error apparent on the face of the record affect the root of the matter, efforts should be made to eliminate that error and in that direction if it became necessary, recall the earlier order.

M/s Insulation House vs. The State of Maharashtra. Rectification Application No. 14 of 2008 decided on 13th October 2008.





Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Sales Tax Bar Association, Raipur for the year 2009.

President	:	Shri Lalit Bhatia
Vice Presidents	:	Shri Salim Shajada & Shri Shivkumar Soni
Secretary	:	Shri Alok Agarwal
Joint Secretaries	:	Shri Manish Bajaj & Shri Akhilesh Avadhiya
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Northern	—	662	16	0	678
Southern	—	626	13	1	640
Western	03	1439	31	8	1481
Total	03	4032	112	9	4156

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

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