



AIFTP TIMES

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Federation News

Mukul Gupta, Secretary General

FORTHCOMING PROGRAMMES

Date & Months	Programmes
12th July, 2008	Third National Executive Committee Meeting at 'The Manohar', Begumpet, Hyderabad, at 5.30 p.m.
12th & 13th July, 2008	National Tax Conference in Hotel 'The Manohar', Begumpet, Hyderabad, Organised by All India Federation of Tax Practitioners (Southern Zone)
3rd, 4th & 5th November, 2008	Three Days International Conference in Association with Taxation Institute of Australia at Taj Mahal Hotel, New Delhi
27th & 28th November, 2008	AOTCA Shanghai Meeting 2008 at Shanghai International Convention Centre at 2727, Riverside Avenue, Pudong, Shanghai, China
19th, 20th & 21st November, 2009	AOTCA International Tax Conference 2009 at Taj Mahal Hotel, Mumbai.

Hearty Congratulations

Hearty Congratulations to newly elected Office Bearers of Tax Bar Association, Nizamabad (A.P.) for the year 2008-10.

President	: CA. K. Hanmandloo
Secretary	: Shri Vemulapati Ravindra, Tax Advocate
Treasurer	: CA. Ambrish K. Chandarana

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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INTERNATIONAL CONFERENCE
A Professional Pilgrimage Tax and Business – Australia and India
ALL INDIA FEDERATION OF TAX PRACTITIONERS
In association with
TAXATION INSTITUTE OF AUSTRALIA

Monday 3rd November – Wednesday 5th November 2008 at Taj Mahal Hotel, New Delhi, India

Tuesday 4th November 2008

8.45 am – 9.45 am : **Registration**

9.45 am – 10.45 am : **Session 1: Inaugural Session**

The Finance Minister of India will be talking about the state of the Indian economy and the Government's fiscal plans for the foreseeable future.

Hon'ble Shri P. Chidambaram*

Chairs: Ms S. Williamson FTIA and Mr Bharatji Aggarwal, National President, AIFTP

10.45 am – 11.15 am : **Morning Tea**

11.15 am – 12.15 pm : **Session 2A : Introduction to Indian Tax**

- Outline of Corporate Income Tax both domestic and foreign corporations
- Taxes on Royalties
- Permanent Establishments
- Long-short term capital gains
- Other business taxes including Minimum Alternative Tax
- Withholding Tax
- Fringe Benefits Tax
- Tax incentives and holidays
- Determination of trading income and deductions
- State Taxes

Mr. P. Khatore – Ernst & Young, New Delhi : Chair: G. Levy FTIA

OR

: **Session 2B: Introduction to Australian Tax**

- Corporate income tax and the imputation system
- Fringe Benefits Tax
- Goods and Services Tax
- Personal income tax and the Pay-As-You-Go system
- Taxation of private companies and consolidated groups
- Capital Gains Tax for residents and non-residents
- State taxes and stamp duties

Mr. G. Cooper FTIA, Cooper and Co.

Chair: Ken Schurgott FTIA

- 12.20 pm – 1.20 pm : **Session 3A: Doing Business in India**
- Legal and statutory requirements for setting up a business in India
 - Common business structures used by residents and non-residents
 - Business incentives for particular industries
 - Development of information technology and other service industries for Australian business

Mr. N. Makhyani – KPMG

Chair: Mr. N. M. Ranka, Sr. Advocate, Past President, AIFTP

OR

- : **Session 3B: Doing Business in Australia**
- Statutory and legal requirements for setting up a business, both corporate and non-corporate
 - Common business structures used by non-residents to establish a business in Australia
 - Exchange and Foreign Investment controls
 - Business incentives

Mr. G. Levy FTIA, MGI Boyd : Chair: Mr. K. Schurgott FTIA

1.20 pm – 2.20 pm : **Lunch**

- 2.20 pm – 3.20 pm : **Session 4: Tax Practice in India**
- Structure of the tax and legal profession in India
 - Regulation of the tax profession
 - Tax filing system and payment procedures for residents and non-residents
 - Relationship between the tax and legal profession, and the Revenue, including the consultation process, ruling and appeal procedures

Dr. K. Shivaram, Advocate, Past President, AIFTP / Sr. Vice President, ITAT*

Chair: Mr M.L. Patodi, Advocate, Deputy President, AIFTP

Guest of Honour: Hon'ble President, ITAT*

3.20 pm – 3.50 pm : **Afternoon Tea**

- 3.50 pm – 5.20 pm : **Session 5: Tax Administrations in India and Australia**
The Chairman will speak about the Central Board of Direct Taxes organisation including:
- its role
 - the people
 - relationship with the profession
 - relationship with the courts and Government

Chairman of Central Board of Direct Taxes*

Chairs: Ms S. Williamson FTIA & Shri Bharatji Agrawal, National President, AIFTP

5.20 pm – 7.00 pm : **Free Time**

7.00 pm – 11.00 pm : **Conference Dinner**

Wednesday 5th November 2008

- 9.00 am – 10.00 am : **Session 6: Indian Taxation Disputes**
Part A – A discussion on how to conduct a tax dispute and the development of tax jurisprudence in India
Part B – Comparison and commentary on Australian System
Mr. M. Banerjee, Attorney General of India; Mr. D. Bloom QC FTIA
Chair: Mr V. Ramachandran, Sr. Advocate, Immediate Past President, AIFTP
- 10.00 am – 11.00 am : **Session 7: Hands on Business Implementation**
- Why India?
 - Financial motivations
 - Common traps and bug bears
 - Regional comparison
- Mr. P.C. Joshi, Advocate**
- 11.00 am – 11.30 am : **Morning Tea**
- 11.30 am – 12.30 pm : **Session 8: The Role Taxes and Economic Development in India**
- How taxes have played a role in the development in India?
 - What role will taxes play in the future?
 - Issues including incentive taxes and climate change
- First Secretary, Foreign Tax Division or Director General (International Taxation, Ministry of Finance, New Delhi)**
Chairs: Mr. G. Levy FTIA and Mr. Y. P. Trivedi, Sr. Advocate, Member, Rajya Sabha
- 12.30 pm – 2.00 pm : **Lunch**
- 2.00 pm – 3.15 pm : **Session 9: Australia/India Double Tax Agreement**
- Indian view of the operation of the treaty and future developments
 - Comparison and commentary by Prof. Graeme Cooper
- Shri S. R. Wadhwa, Vice President, AIFTP, Commentator : Prof. G. Cooper FTIA**
Chair: Mr. D. Bloom QC FTIA
- 3.15 pm – 3.45 pm : **Afternoon Tea**
- 3.45 pm – 4.30 pm : **Session 10: Specific Business Case Study in India**
This session will give a real time case study about developing an Australian business in India.
Speaker : CA. T. P. Ostwal
- 4.30 pm – 5.00 pm : **Session 11: Property Rights and their Enforcement by the Courts of Law**
His Lordship Mr. A. P. Shah, the Chief Justice of the Delhi High Court*
Chairs: Ms. S. Williamson and Mr. Bharatji Agrawal, National President, AIFTP
- 5.00 pm : **Vote of thanks by Shri Mukul Gupta, Secretary General, AIFTP**

For more information including CVs for speakers, please log on to the website at: www.taxinstitute.com.au/india

OR

Mr. S.R. Wadhwa, Vice President, AIFTP (Conference Co-ordinator in India).

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*** Subject to confirmation.**

DIRECT TAXES

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

SUPREME COURT

1. Cost of production of feature film — Rule 9A

Where a feature film is certified by Board of Film Censors for release in any previous year and the film is released for exhibition for at least 180 days in previous year, the entire cost of production of the film shall be allowed as deduction as per Rule 9A(2). However, where the film is not released for exhibition for 180 days in the previous year, deduction of the cost of production is to be allowed to the extent of the amount realized during the period of commercial exhibition in that year and balance shall be allowed in the next year as per Rule 9A(3).

CIT vs. Joseph Valakuzhy (2008) 7 DTR 1 (SC)

2. Profits derived from export for purpose of deduction – S. 80HHC

The words “business profits” in the formula given in sec. 80HHC(3) include ‘cash compensatory allowance’ and ‘duty draw back’ and deduction u/s. 80HHC is allowable in respect of both the items during the relevant accounting year even though no export was made by the assessee during the relevant year.

B. Desraj vs. CIT 2008 (7) DTR 54 (SC)

HIGH COURTS

3. Expenditure on Scientific Research – S. 35(1)(iv)

Purchase and actual use of machines for R & D – In view of unassailed findings of the Assessing Officer that the plant and machinery purchased by the assessee were used for the purposes of maintaining quality control in R & D, deduction under section 35(1)(iv) is allowable.

CIT vs. Metallizing Equipment Co. (P) Ltd. (2008) 8 DTR 12 (Raj)

4. TDS – Assessee in default – S. 201

Limitation for initiating proceedings under section 201 – Initiation of proceedings under section 201 against the assessee in respect of the assessment year 1990–91 was barred by limitation having been initiated beyond a reasonable period by time of four years.

CIT vs. NHK Japan Broadcasting Corporation (2008) 8 DTR 7 (Del)

5. Reassessment – Reason to believe – S. 148

Order under section 132(5) having been passed merely for the purpose of estimating the tax liability arising pursuant to the search operation and the same not being founded on any specific material referable to the relevant assessment year, it could not provide any nexus and basis for formation of belief that the income of the assessee for the relevant year had escaped assessment and in the absence of application of mind to any independent material, reopening of assessment was not valid.

CIT vs. Shiv Ratan Soni (2008) 8 DTR 17 (Raj)

TRIBUNAL

6. Notice – S. 158BD

The Tribunal observed that the Assessing Officer of the other person in whose case proceedings u/s 158BD are to be initiated, has to issue a notice u/s 158BD within a reasonable time because unlimited time for issuance of notice cannot be conceived and the intention of legislature was not to allow unlimited time for initiating proceedings u/s 158BD or for issuing notice for initiating such proceedings. The Bench relying on the judgment of Gujarat High Court in the case of *Khandu Bhai Vasanji Desai & Others vs. DCIT (236 ITR 73)* held that any notice u/s 158BD issued after the expiry of 60 days from the passing of the assessment order in the case of searched person was well beyond a reasonable period and hence, such notice was not validly issued. Further since the notice u/s 158BD does not contain or record satisfaction of the Assessing Officer or other details like date of search etc., the notice shows non application of mind by the Assessing Officer and such notice was held as vague and invalid as the same did not meet the requirement of law as propounded by the Apex Court in case of *Manish Maheswari vs. ACIT 289 ITR 351*.

DCIT vs. CSL Securities Pvt. Ltd., ITAT Delhi, IT(SS)A No. 475/Del/03, Block Period 1-4-1990 to 3-8-2000, Bench-B, dated 31st March, 2008.

7. Undisclosed Income

Once the assessee has declared undisclosed income in his return of Form 2B and the same is more than the figure of maximum amount of sale from the various sale bills found during the search, no further addition on account of peak investment for carrying out the undisclosed business of sale of jewellery be made by the Assessing Officer in block assessment proceedings.

ACIT vs. Shri Shyam Sunder Mosun, ITAT Delhi, IT(SS) No. 363/Del/2005, Block Period 1.4.1996 to 5.2.2003, Bench-E, dated 25th January, 2008.

8. Revision – S. 263

While passing order u/s 263, the approach of the Commissioner itself is contradictory, when he observes that the Assessing Officer made enquiry but did not pursue the same further. From the fact that Assessing Officer made enquiry but did not proceed further, it is obvious that he never wanted to make further enquiry and was satisfied with the material supplied by the assessee. In such circumstances, it is held that the assessment made by the A.O. was not without proper enquiry and the observation of the Commissioner that the assessment was erroneous and prejudicial to the interest of the revenue on the same was made without proper enquiry is untenable.

Anand Pal Jain vs. ACIT, ITAT Delhi, ITA No. 1269/Del/06, A.Y. 2001-02, Bench-I, dated 31st December, 2007

9. Deduction – S. 80HHF

The question that arose for consideration was as to whether 90 per cent receipts relating to subscription received from cable operators as well as commission could be excluded from the profits of the business as computed under the head 'Profits and gains from business or profession' in terms of the provisions contained in Explanation (f) to section 80HHF, which is similar to Explanation (baa) to section 80HHFC.

Up to the assessment year 1991-92, the judicial opinion was that formula provided in sub-section (3) of section 80HHC permitted the assessee to claim deduction with reference to the profits of the entire business, even though there may be loss from the export activity. Such judicial opinion, according to the revenue, was never the legislative intent, since the existing formula allowed deduction even in respect of profits which emanated from activities not involving element of turnover. Accordingly, the Legislature made amendment to section 80HHC by inserting clause (baa) in the Explanation to this section.

The intention behind the amendment was to cure the mischief in the existing formula. The purpose behind the existing formula was to determine the profit from export activity on the basis of ratio of export turnover to total turnover. This was done because common books of account were maintained by the assessee in respect of export as well as local turnover, whether of same commodity or of different commodities as there was no formula for segregating the turnover of different items. Since common account were maintained, it was difficult to ascertain the profits from export. So the object of the existing formula was to ascertain the export profits on the basis of ratio of export turnover to total turnover. Perhaps the Legislature could not foresee the other incomes which could be earned by the assessee emanating from the activities not involving the turnover. One of the variables to be considered in the formula was the profits of business computed under the head 'Profits and gains from business or profession' which included all types of incomes whether emanating from the activity involving the turnover or activity not involving the turnover. Thus, the formula resulted in distorted picture allowing the deduction even in respect of income emanating from activity not involving element of turnover. In order to cure this mischief, the Legislature introduced clause (baa) in Explanation to section 80HHC as is apparent from the CBDT Circular No. 621, dated 19-12-1991. The perusal of the said circular clearly reveals that amendment was made to exclude only those incomes which do not have element of turnover. It is pertinent to note that the Legislature referred to element of turnover and not export turnover. Therefore, any income arising from an activity involving element of turnover cannot be excluded from the profits of business in terms of Explanation (baa) to section 80HHC / Explanation (f) to section 80HHF.

The next question that arose for consideration was as to whether consideration received by the assessee by way of cable subscriptions amounted to turnover. The scope of the word 'turnover' may vary in section 80HHC and section 80HHF. Section 80HHC refers to goods or merchandise and, therefore, the turnover would refer to the amount of business done in respect of goods or merchandise; whereas section 80HHF refers to different softwares as well as telecast rights and, therefore, turnover would not only include sale of software but also consideration for transfer of rights therein as is apparent from the definition of 'export turnover' given in Explanation (c) to section 80HHF, which not only includes consideration for transfer of softwares but also consideration for transfer of software rights. What is true



to export business would also be true to local business. Therefore, the amount of income earned in respect of software rights would have to be treated as turnover. Section 80HHF refers to film software, music software, television news software and television software. The purpose behind production of such softwares is to view/exhibit the programmes contained therein. Consequently, right to exhibit such programmes would certainly fall within the scope of 'Software rights'. Consequently, the amount of business done with reference to such rights would form part of the turnover. In the instant case, the right to exhibit the programmes telecasted by various channels owned by 'Star group' in the Indian territory was with the assessee. The cable operators were the distributors through whom such programmes were exhibited to the subscribers. The consideration varied from operator-to-operator depending upon the number of viewers. If the cable operator stopped making payment, the assessee could stop the transmission of programmes to such cable operators through the equipments installed by the assessee. Therefore, what the assessee received was the consideration on account of transfer of right to exhibition programmes contained in such software and, therefore, the same would amount to turnover.

Even as per the decision of the Supreme Court in *CIT vs. K. Ravindranathan Nair* [2007] 295 ITR 228 / 165 Taxman 282 as well as the decision of the Bombay High Court in the case of *CIT vs. Bangalore Clothing Co.* [2003] 260 ITR 371 / 127 Taxman 637, the cable subscription has to be treated as turnover. As per judgment of the Supreme Court, the receipts from independent activity if found part of profits of business has to be treated as part of the total turnover. In the instant case, the activity of distribution of channel

programmes was an independent activity and, therefore, the profits arising therefrom would also form part of the profits of business. Further, there was no dispute in that cable subscription activity was part of main objects of the assessee and, therefore, the receipts arising from the same would form part of the operational income. Consequently, such receipts would form part of turnover.

The Board Circular No. 621, dated 19-12-1991 clearly shows that what are to be excluded from the profits of business are those receipts which do not have an element of turnover. That impliedly means that receipts having an element of turnover could not be excluded from the profits of business in terms of Explanation (f) to section 80HHF. Therefore, cable subscription having element of turnover could not be excluded from the profits of business computed under the head 'Profits and gains of business or profession'.

The judgment of the Bombay High Court in *Bangalore Clothing Company (supra)* is a precedent for the proposition that where a business activity carried on by the assessee results in operational income then such receipts would form part of the total turnover and, consequently, no part of it can be excluded from the profits of business computed under the head 'Profits and gains from business and profession' in terms of the Explanation (baa) to section 80HHC.

Therefore, the Commissioner (Appeals) was justified in his view that 90 per cent of the cables subscription income could not be excluded from the profits of business for working out deduction under section 80HHF.

ACIT vs. Star India (P.) Ltd. (2008) 22 SOT 444 (Mum)

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:

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Three fourth page (in four colour) Rs. 3,500/-

MUKUL GUPTA
Secretary General

**Membership of AIFTP
as on 10-6-2008**

Life Members

	Associate	Individual	Association	Died	Corporate	Total
Central	—	582	20	2	0	600
Eastern	—	699	31	4	0	726
Northern	—	542	15	1	0	556
Southern	—	608	12	1	0	619
Western	03	1421	31	6	8	1457
Total	03	3852	109	14	8	3958

INDIRECT TAXES – SALES TAX DECISIONS

P. C. JOSHI
Advocate

Entries in Schedule

1. Playing cards

The Gujarat VAT Tribunal held that playing cards were nothing but sports goods covered by Entry 70(I) and therefore liable to be taxed under that entry.

M/s Jaydeep Agency vs The State of Gujarat (Second Appeal No. 8 of 2007 decided on 7th January '08.

Source : Sales Tax Journal, Vol. 47, Part 2, Page 123.

2. Volume Corrector Stabilizer

The Gujarat Joint Commissioner of Commercial Taxes (Legal), by his order dated 17th April, 2008, held that the automatic electronic volume corrector stabilizer was covered by entry 97(d) as electronic goods and therefore liable to be taxed @ 4% under the Gujarat Sales Tax Act, 1969.

M/s. R.M.D. Electronics, Ahmedabad.

Source: Sales Tax Journal, Vol. 47, Part 2, Page 155.

Effect of prospective overruling

The Supreme Court, referring to its decision in the case of *M/s Sunrise Associates* in regard to the sale of lottery tickets, held that the impact of such a judgment was that the State was neither liable to refund the tax already collected nor can effect any further collection of tax for the period prior to the date of judgment.

State of U. P. & Another vs M/s Sugal & Damani (2008) 16 KTR 251 (SC).

Exemption

The Kerala High Court held that the power conferred on the Government under section 10(3) of the Kerala Government Sales Tax Act did not enable it to withdraw a notification granting exemption with retrospective effect. Such a notification was declared ultra vires.

Ms Bindu E. G. vs Additional Sales Tax Officer-II & Another (2008) 16 KTR 253 (Ker).

Inter-State Works Contract

Before the Karnataka High Court, the assessee entered into a contract with the Karnataka authority for supply and erection of capacitor banks at various locations in the State for which the required goods were manufactured at Chennai as per the specifications mentioned in the contract. The goods thereafter moved from Chennai to various sites in Karnataka.

Considering the provisions of section 9(1) of the Central Sales Tax Act read with section 3(a) of the same Act, the Karnataka High Court held that the transaction was in the nature of an inter-State sale, but was not covered by section 6(2) of the Central Sales Tax Act. In view of that position, the Karnataka State was held to be the appropriate State for levying Central Sales Tax on such transactions.

State of Karnataka vs M/s A & G Projects & Technologies Ltd.

Source : Sales Tax Matters, Vol. 11 Part 5, Page 540.

Impact of amalgamation

The Gujarat VAT Tribunal held that two companies which were amalgamated under an order of the High Court on 25th January, 1993, approving the appointed day of amalgamation to be 1st April, 1992, there was no case of any transaction of sale or purchase *inter se*, between the appointed day and the date of the order of the High Court. The assessment was accordingly directed to be corrected.

M/s Metro Dyechemie (I) Ltd. vs The State of Gujarat (Second Appeal Nos. 24 & 25 of 2000 decided on 18th December, 2007).

Source : Sales Tax Journal, Vol. 47, Part 2, Page 118.

Judicial Review

The Supreme Court, while interpreting the scope of judicial review in an appeal against Andhra Pradesh High Court judgment, held that ordinarily a policy decision cannot be interfered, however if that pertained to subordinate legislation, it was amenable to judicial review.

Shri A. Satyanarayana & Others vs Shri P. Purushottam & Others JT 2008 (5) SC 508.

Lease of goods

Before the Kerala High Court, the assessee (Lessor) engaged in the business of hire purchase and lease transactions, had entered into a lease agreement with its customer much before acquiring of the goods. The Kerala High Court in such an event held that the transaction involved the leasing of future goods and therefore the taxable event arose only on delivery of the goods by the lessor to the lessee. The movement of the material to be given on lease from other State to the lessor was an independent, distinct transaction and had no connection with the concerned lease transaction and therefore the

tax was held to be exigible under the Kerala General Sales Tax Act.

M/s First Leasing Company of India Ltd. vs State of Kerala (2008) 16 KTR 280 (Ker).

Manufacture

1. The Supreme Court, while considering the provision under the Central Excise Act 1944, held that the term 'manufacture' meant a process which resulted in an alteration or change in the goods which were subjected to the process leading to the production of a commercially different article. The assessee in question manufactured condensing units for which it had purchased from local markets cooling units for which it also supplied electrical motors. On those facts, the Supreme Court held that the condensing unit or the cooling unit *per se*, were not complete air conditioner. Only after both the units were put together that the complete unit of air conditioner fit for being used came into existence. The activity in question therefore held to be amounting to manufacture.

M/s Fedders Lloyd Corporation Ltd. vs Commissioner of Central Excise (2008) 51 S.T.A. – 232.

2. The Supreme Court, while deciding an appeal against the Kerala High Court decision, held that the test of irreversibility was an important criteria for ascertaining the true nature of the transaction as to whether the process in question resulted in the manufacture or otherwise of a new commercial commodity. In that background, the Apex Court held that the process of removing impurity and water from the red oil purchased by the assessee, so as to market the resultant oil as sandalwood oil did not amount to manufacture. According to the Supreme Court, red oil and sandalwood oil were no two separate and distinct products, especially when the sandalwood oil can be reconverted to the original status, namely red oil by adding the impurities. The process, therefore, was held to be reversible and did not involve any process of manufacture.

M/s Punjab Aromatics vs State of Kerala (2008) 31 PHT 509 (SC).

Natural justice

The Supreme Court held that where by reason of an action by a statutory authority, civil consequences result adverse to the assessee, the principles of natural justice were required to be followed. Even where the statute did not contain the express provision, compliance of such principles were implicit.

M/s Sahara India (Firm), Lucknow vs Commissioner of Income Tax, Central – I & Another JT 2008 (6) SC 83.

Penalty – Necessity of mens rea

The Supreme Court, after considering two conflicting judgments in regard to the need for proving mens rea before imposition of penalty under the Central Excise

Act section 11AC, similarly worded to the provisions of section 271(1)(C) of the Income-tax Act, 1961, referred the matter to Larger bench.

Union of India & Others vs M/s Dharmendra Textile Processors & Others (2008) 31 PHT 537 (SC).

Reference to High Court

The Supreme Court, considering the scope of powers of the High Court under section 256(1) of the Income-tax Act 1961, held that the Tribunal being the final court of facts, its decision of facts can be gone into by the High Court, in the reference jurisdiction, only if the question about perversity of the finding by the Tribunal, was referred to it and not otherwise. The word 'perverse' meant a conclusion or a decision which no reasonable person could have arrived at such a view or decision. In absence of such a reference, the High Court cannot deal with any question at the instance of either party.

M/s Sudarshan Silks & Sarees vs Commissioner of Income Tax, Karnataka JT 2008 (6) SC 144.

Reference – Question of law

The Punjab VAT Tribunal held that when the appeal was heavily time barred and the delay was not condoned, no question of law arose and therefore such a decision on question of fact was not required to be referred to the High Court.

M/s Petrochem (India), Jalandhar vs State of Punjab (2008) 31 PHT 556 (PVT)

Sale price

1. Rural Development Fund

The Punjab & Haryana High Court, while considering the relevant provisions of the Punjab Sales Tax Act, 1948, held that the rural development fund contribution cannot be added as part of the turnover on the same footing as payment of market fee contribution to Agricultural Produce Market Committee under the relevant Act.

Shri Tilak Raj Madan Mohan vs State of Punjab (2008) 31 PHT 489 (P & H).

2. Transport charges

The West Bengal Taxation Tribunal held that the obligation of transporting the goods to the site being that of seller, the cost thereof would form part of the sale price.

M/s Panchami Stone Products Trading Co. vs C.C.T. West Bengal (2008) 51 S. T. A.–250.

3. Despatch money

The Kerala High Court held that the despatch money received from the shipping company on export, for early loading of the cargo, did not represent part of the sale consideration. Therefore, no tax on such despatch money can be levied.

M/s Indian Rare Earths Ltd. vs State of Kerala (2008) 16 KTR 277 (Ker)

Sale in course of export

Before the Madras High Court, the assessee had produced all necessary documents before the assessing authority relating to supplies made to 100% Export Oriented Units. The claim was however disallowed for non production of Form 'H'. In writ jurisdiction, the Madras High Court quashed the said order with a direction to the assessee to place all documentary evidence before the assessing authority within a period of thirty days.

M/s Sai Lalith Fragrance, Chennai vs The Commercial Tax Officer, Chennai 2008-09 (14) TNCTJ – 78.

Scope of Saving Clause – Regional jurisdiction

The Delhi High Court held that after the repeal of the Delhi Sales Tax on Works Contract Act, along with the Delhi Sales Tax Act, by Delhi VAT Act 2004, did not revive the long dead revisional power under section 46 of the Delhi Sales Tax Act and the revenue cannot issue show cause notice for proposing to revise the order dated 31st March, 2003 long after the limitation provided under the repealed Act.

M/s International Metro Civil Contractors, New Delhi vs Commissioner of Sales Tax/VAT, New Delhi (VSTI 2008 B-171).

Sick Unit – Stay of recovery

The Punjab & Haryana High Court held that when the appeal under section 25 of the SICA Act was pending before the AAIFR, that authority was competent to grant a stay of recovery against the sick unit. The High Court, therefore, did not entertain the writ petition under Article 226 for that purpose.

M/s Electronics Systems Punjab Ltd. vs State of Punjab & Others (VSTI 2008 B-196)

Scope of power of Commissioner under section 62 – Determination of disputed questions

The Commissioner of Commercial Tax, Gujarat, held that the power of the Commissioner under section 62 of the Gujarat Sales Tax Act, 1969 did not cover any power to hear an appeal or revise an order passed by the Assistant Commissioner of Sales Tax under the powers delegated by the Commissioner, since such an order was passed with due consent of the Commissioner himself.

M/s Triveni Oil Field Services Ltd (Order dated 5th April, 2008).

Source : Sales Tax Journal, Vol. 47, Part 2, Page 161 (Order dated 5th April, 2008).

Transfer of right to use goods

Before the Allahabad High Court, the assessee was providing buses for transportation of the employees of a company from the residence to the factory and return at an agreed amount on monthly basis. However, the bus as such was never under the control of the company and was driven under the control of the assessee's driver and conductor during the specified hours. In other words, at no point of time, the possession and control of the bus, were with the company. Following the ratio of the Constitution bench judgment of the Supreme Court in the case of M/s BSNL, the Hon'ble High Court observed that in case of a transfer of right to use the goods, the same should be not only in a deliverable stage, but at some stage it should be delivered. The Hon'ble High Court also held that the assessee was not liable for the aforesaid activity.

Commissioner, Trade Tax, U. P., Lucknow vs Prince Tourists Bus Service

Source : Sales Tax Matters, Vol. 11 Part 5, Page 522.

Works Contract – Shrinkage & washing process

The Joint Commissioner of Commercial Tax (Legal), Gujarat State, while determining the disputed questions under Section 80 of the Gujarat VAT Act 2003, held that the process of shrinkage and washing process was a transaction of works contract. However, such a process did not involve any transfer of property, since the whitening agents, bleaching powder etc got consumed during the process and therefore the judgment of the Bombay High Court in the case of M/s Matushree Textile Ltd (132 STC 539) was held to be not applicable.

Arrow Clothing Pvt. Ltd., Ahmedabad (Order dated 11th April, 2008).

Source : Sales Tax Journal, Vol. 47, Part 2, Page 139.

News from Gujarat

The Gujarat Government has amended Rule 44(3) relating to submission of audit reports, whereby the dealers who are liable to submit such reports have been classified to be those having taxable turnover exceeding Rs. 20 lakhs along with the turnover earlier prescribed at Rs.1 crore. Such a provision is made effective for submission of audit report for the year 2006-07 also.

By notification dated 16th May, 2008 and in supersession of its earlier notification dated 31st March, 2006, the Government of Gujarat specified all types of medical equipments, devices and implants to be the "medical equipments, devices and implants" for the purpose of Entry 28A of Schedule II.

Source : Sales Tax Journal, Vol. 47, Part II, Page 173 & 171 respectively.

ONE DAY TAX SEMINAR AT SURAT ON 5TH JULY, 2008

All India Federation of Tax Practitioners (Western Zone) jointly with The Southern Gujarat Income Tax Bar Association, Surat is holding one day Tax Seminar on **Saturday, 5th July, 2008** from 9.30 a.m. to 4.30 p.m. at 1st Floor, 'Samruddhi', The Southern Gujarat Chamber of Commerce & Industry, Nanpura, Surat. The topics and speakers are as under:-

Topics	Speakers
Capital Gain on Shares – Securities Trading Transactions & on sale of Immovable Property Transactions. (In Gujarati)	CA. Ravindra N. Vepari, Surat
Recent Amendments On Direct Taxes	Shri Firoze B. Andhyarujina, Sr. Advocate, Mumbai
Service Tax on Construction, Works Contract & Rent a Property	Shri T. Gunasekaran, Advocate, Mumbai
Scrutiny Proceedings & Rejection of Books of Accounts	CA. Ashwin Sanghvi, Surat

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Hearty Congratulations

Hearty Congratulations to newly elected Office Bearers of Income Tax Bar Association, Ahmedabad for the year 2008-09.

President : Shri Bhupendra R. Patel
Vice President : Shri Hemang S. Patel
Hon. Secretary : Shri P.G. Mehta
Hon. Jt. Secretary : Shri Govindbhai N. Patel
Hon. Treasurer : Shri Mukesh A. Gandhi



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Thanking you,

For All India Federation of Tax Practitioners

Mukul Gupta
Secretary General

26-6-2008

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

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