



AIFTP TIMES

Price Rs. 5/-
(For Members only)

Volume III - No. 6 • June, 2008

Federation News

Shri Mukul Gupta, *Secretary General*

FORTHCOMING PROGRAMMES

Date & Months	Programmes
14th June, 2008	Annual General Meeting of AIFTP (Central Zone)
23rd June, 2008	Annual General Meeting of AIFTP (Western Zone)
12th July, 2008	Third National Executive Committee Meeting at Hyderabad
12th & 13th July, 2008	National Tax Conference in Hotel 'The Manohar', Begumpet, Hyderabad, AP. 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
26th & 27th November, 2008	AOTCA Shanghai Meeting 2008 at Shanghai International Convention Centre, 2727, Riverside Avenue, Pudong, Shanghai, China
19th, 20th & 21st November, 2009	AOTCA International Tax Conference 2009 at Taj Mahal Hotel, Mumbai.

AOTCA Shanghai Meeting 2008 (26-11-2008 to 27-11-2008)

Theme : The Chinese Tax System and its development and the situation of the Chinese Certified Tax Agents Industry and its development

Approximate cost for three days visit in Beijing, two days visit in Shanghai and two days Conference at Shanghai in Four Star Hotels will be Rs. 97,000/- on Single Sharing basis and Rs. 85,000/- on Twin Sharing basis.

In Five Star Hotels it will approximate Rs. 1,19,000/- on Single Sharing basis and Rs. 97,000/- on Twin Sharing basis.

Note: Delegate fees has to be paid separately and directly at the venue of the Conference. Those who desire to attend the Conference, may inform the office of the Federation at 215, Rewa Chambers, 31, New Marine Lines, Mumbai – 400 020.

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

Name	Tel. (O)	Fax	Mobile	E-mail
National President — Bharatji Agrawal, Sr. Adv.	0532-2601577	2610857	9415235429	bharatjiagrawal@yahoo.co.in
Deputy President — M. L. Patodi, Adv.	0744-2361179	2363637	9829035256	patodi_jp1@sancharnet.in
Secretary General — Mukul Gupta, Adv.	0120-2820380	2821407	9811023739	mukuladv@hotmail.com
Treasurer — CA. Janak Vaghani	022-22821978	—	9324680306	janakvaghani2004@yahoo.com

INAUGURAL ADDRESS AT THE SEMINAR

Organised by AIFTP (Eastern Zone) on 26-4-2008

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

India being a nation of multiple States has several enactments governed either by State Government or Central Government. The Constitution of India specifically designed to avoid conflict of interest between the States and the Centre. Both are given specific areas/matters for which they can frame laws and no more. The State Government derive exclusive powers to frame laws for the matters enumerated in List 2 of the Seventh Schedule appended to the Constitution of India known as State List. The Central Government derives powers to frame laws for the matters enumerated in List 1 in the Seventh Schedule appended to the Constitution of India. Presently the power to levy the tax on sale or purchase of goods other than newspapers is vested with the State Government vide entry 54 of the State List. This power has only one exception and that is Entry 92A of List 1; i.e., a Union list. Entry 92A is the sole discretion of the Central Government. This entry refers to levy of tax on sale or purchase of goods other than newspaper where such sale or purchase takes place in the course of inter-State trade or commerce.

The levy of tax on service is under Residuary Entry of the Constitution and therefore rather than having a separate enactment service tax was levied for the first time under Chapter 5 of the Finance Act, 1994.

This States power to levy the tax is further restricted by Article 286 under which Constitution of India prohibits imposition or authorizing the imposition of tax on sale or purchase of goods where such sale or purchase takes place outside the State or in the course of import of goods into or export of goods out of the territory of India. Only the Parliament has the power to formulate law to determine the principles as to when a sale or purchase of goods takes place in the course of import or export or outside the State.

Services constitute a very wide spectrum of economic activities. It is not only the growth of industrial sector but also growth of service sectors simultaneously which would help an economy to grow.

Value Added Tax which is stated to be prevalent in 131 countries or more is not the tax on only sale and purchase of goods but it is the tax on goods and services in those countries. India also aims at GST (Goods & Services Tax) in the year 2010. Of course much depends on political stability and political will.

For the proper implementation of the tax laws the society need efficient lawyers, tax consultants and the devoted departmental officials for the proper interpretation of the laws which are quite complex and complicated.

Steps must be taken for making simplified laws, which will make litigation in expensive, accessible free from

technicalities, by using expert knowledge of the lawyers and Chartered Accountants.

Taxation is a complex and complicated branch of law. The frequent changes add to the complexity. The ambiguity of taxation laws leads to increase litigation. Still we pay the taxes for the social welfare of the society.

It was said by Lord Homes that “**taxation is the price which we pay for civilization**” but whether it is really correct in the today’s atmosphere is difficult to say. It reminds me the address of Hon’ble Mr. Justice Arijit Pasayat few months back in a function of a Income Tax Bar Association at Varanasi.

When his Lordship said about the comments of Justice Holmes : I quote :-

“Taxation is price which pay for civilization has the reflection that if the price is too high, civilization will be threatened by corruption. If the price is too low, civilization will be threatened by violence. What is therefore, required is striking of proper balance. As observed in *Commissioner of Wealth tax Gujarat II vs. Shri Arvind Narottam, AIR 1988 SC 1824*, “unless waste and ostentatiousness are avoided or eschewed no amount of moral sermons will change peoples’ attitude to tax avoidance.”

Taxes are often perceived to be the measure for raising resources for the Government.

Even in the Ancient Indian economy, as mentioned in Kautilya’s Arthshastra, the primary object of taxation was to raise resources for the economy. The taxes not only produce revenue to the Government but it also effects the economic behaviour of the people and the economic activities of the State. It directly influences investment, distribution, prices as well as the efficiency of resources.

Various limits fixed before 30 years requires in the Income-tax Act, 1961 increase in the existing provision such as in section 40A (3) – The limit of Rs. 20,000 was fixed w.e.f. 1-4-1997, in section 44AB – The limit of sales of Rs. 40 lakhs was fixed w.e.f. 1-4-1985, in section 44AA – The limit for maintenance of accounts at Rs.1,20,000 for certain persons was fixed w.e.f.1-4-1976, in section 269SS – The limit for accepting loans or deposits in cash at Rs. 20,000 was fixed w.e.f. 1-4-1984 and in section 269T – Mode of payment of Loans or Deposit in Cash was originally fixed at Rs.10,000 which was revised to Rs. 20,000 w.e.f. 1-4-1989.

Deliberations are required at all levels for removing the anomalies by making suggestions for necessary changes.

Similarly, the decision of the Empowered Committee with regard to the implementation of VAT have not been properly followed by different States.

□□

NATIONAL TAX CONFERENCE, 2008

12th and 13th July, 2008

Venue : Hotel THE MANOHAR, Near Old Airport, Begumpet, Hyderabad

Theme: TAX PROFESSION – CHALLENGES & OPPORTUNITIES

Organized by

ALL INDIA FEDERATION OF TAX PRACTITIONERS – SOUTHERN ZONE

Jointly with

ANDHRA PRADESH SALES TAX BAR ASSOCIATION,

ANDHRA PRADESH TAX BAR ASSOCIATION

AND

TWIN CITY'S TAX PRACTITIONERS ASSOCIATION.

SATURDAY, 12th JULY, 2008

- 08-30 A.M. to 09.30 A.M. : **Registration & Breakfast**
- 09.30 A.M. to 11.00 A.M. : **Inaugural Session** :
- Chief Guest : Hon'ble Chief Justice Sri Anil R. Dave, Andhra Pradesh High Court.
- Guest of Honour : Hon'ble Justice Sri B. Prakash Rao, Judge, Andhra Pradesh High Court.
- Guest of Honour : Shri Konatala Ramakrishna, Hon'ble Minister for Commercial Taxes, Government of Andhra Pradesh.
- 11.00 A.M. to 11.15 A.M. : TEA
- FIRST TECHNICAL SESSION**
- 11.15 A.M. to 12.30 P.M. : **Recent Controversies under Direct Taxes**
- Chairman : Shri Pradeep P. Parikh, Vice President, Income Tax Appellate Tribunal, Hyderabad.
- Speaker : Shri Vipul Joshi, Advocate, Mumbai
- SECOND TECHNICAL SESSION**
- 12.30 P.M. to 01.15 P.M. : **'KNOW THYSELF'**
- Speaker : Shri Gampa Nageswara Rao
- 01.15 P.M. 02.15 P.M. : LUNCH
- THIRD TECHNICAL SESSION**
- 02.15 P.M. to 03.30 P.M. : **Assessments, Appeals & Revisions under APVAT Act vis-à-vis other State enactments**
- Chairman : Shri S. Venkataramani, FCA, Bengaluru
- Speaker : Shri MVJK Kumar, Advocate, Hyderabad.
- 03.30 P.M. to 03.45 P.M. : HIGH TEA
- FOURTH TECHNICAL SESSION**
- 03.45 P.M. to 05.00 P.M. : **Implications of Service Tax in Real Estate & Works Contract transactions.**
- Chairman : Shri Ashok Chandak, FCA, Nagpur.
- Speaker : Shri Madhukar N Hiregange, FCA, Bengaluru
- 07.00 P.M. to 08.30 P.M. : **CULTURAL PROGRAMME**

SUNDAY, 13th July, 2008

- 09.00 A.M. to 10.00 A.M. : Breakfast
- FIFTH TECHNICAL SESSION**
- 10.00 A.M. to 11.30 A.M. : **Works Contracts with reference to Development Agreements & liability of landlord**
- Chairman : Shri V. Ramachandran, Senior Advocate, Chennai
- Speaker : Shri P.S. Sarin, Advocate, New Delhi
- 11.30 A.M. to 11.45 A.M. : TEA
- SIXTH TECHNICAL SESSION**
- 11.45 A.M. to 01.15 P.M. : **Registration & Stamp Duty – Issues in Conveyance & Drafting**
- Chairman : Shri Bharatiji Agrawal, Senior Advocate, Allahabad
- Speaker : Shri Y. Ratnakar, Advocate, Hyderabad
- 01.15 P.M. to 02.15 P.M. : LUNCH

- 02.15 P.M. to 04.15 P.M : **BRAIN TRUST SESSION**
 Trustees – Shri N.M. Ranka, Senior Advocate, Jaipur
 Shri P.C. Joshi, Advocate, Mumbai
 Shri P.V.S.S. Prasad, FCA, Hyderabad
 Shri S.R.R. Viswanath, Advocate, Hyderabad.
 Shri P. Ramakrishna, Advocate, Hyderabad
- 04.15 P.M. to 05.00 P.M : **VALEDICTORY SESSION**
 Chief Guest : Smt. Ranjeev R. Acharya, I.A.S., Commissioner of Commercial Taxes,
 Hyderabad.

Note:-

1. Registration is compulsory for attending the Conference.
2. Delegate Registration Charges:-
 Delegate Rs.1,500, Accompanying spouse Rs.1000.
3. Crossed Demand Draft/Cheque should be drawn in favour of 'AIFTP South Zone, Hyderabad', and sent to the following address by 30-6-2008.
Sri V. Nagendra Prasad, Secretary,
 All India Federation of Tax Practitioners, Southern Zone,
 4-2-392, Above Liberty Opticians, Sultan Bazaar, Hyderabad – 500 095 (Phones: 040-24751978. M-09246367913)
4. The new Airport of Hyderabad is located at Shamshabad, which is at a distance of about 35 KMs from the Venue. Radio cabs are available at the Airport, which charge about Rs. 400 for transporting to Hyderabad Venue/Hotels.
5. The Venue is at a distance of about 3 KMs from Secunderabad Railway Station/Begumpet Railway Station.
6. RSVP : P. V. Subba Rao, Chairman, South Zone. M-09391018552 • E-mail: paramatmuni@yahoo.com
 Dr. M. V. K. Murthy, National Vice President. M-09849004423 • E-mail: advocatemoorthy@yahoo.com
 CA Hemendra V. Shah, National Joint Secretary. M-09849010484 • E-mail: hyd1_hvshah@sancharnet.in
 J. V. Rao, Chairman, Conference Committee. M-09848335519 • E-mail: jvrco@yahoo.co.in
 D. B. Prakash, Chairman, Accommodation Committee. M-09848036215/040-30282269 • E-mail: ipai@rediffmail.com

7. **HOTEL ACCOMMODATION** (All are AC Rooms):

S.No.	Name of Hotel	Room tariff		
		Single	Double	
1.	Hotel The Manohar, Begumpet, Hyderabad Ph: 040-27903333 & 66543021 • Fax-040-27902222	4500	5500	(VENUE)
2.	Hotel Minerva Grand, SD Road, Secunderabad • 040-66117373	4000	4400	
3.	Taj Tristar, SD Road, Secunderabad • 040-27812106	3300	3900	
4.	Inner Circle, SABOO Heights, Somajiguda, Hyderabad. 040-23302330. M-09951699516	2900	3500	
5.	Hotel Karan, SD Road, Secunderabad, 040-40223344	2600	3000	– Superior
		2000	2400	– Executive
		1500	1900	– Deluxe
6.	Hotel Baseraa, Clock Tower, Secunderabad. 040-27703200	3100	3900	– Deluxe
		2200	2400	– Standard
7.	Belsons Tajmahal Hotel, SD Road, Secunderabad. 040-27810810	2200	2600	– Deluxe
		2000	2400	– Executive
8.	Taj Mahal Hotel, Patny Circle, SD Road, Secunderabad. 040-27812106	1200	1400	– Deluxe
		750	1100	– Ordinary
9.	Hotel Dwaraka Heritage, SD Road, Secunderabad. 040-27841455.	1050	1200	
10.	Hotel Maya Deluxe, Ranigunj, MG Road, Secunderabad. 040-27711271	900	1100	
11.	Hotel Ambassador, Paradise Circle, Secunderabad. 040-27843760	750	1000	

- Note: 1. All Hotels are located within a distance of less than 5 KMs from the Venue.
 2. Tariff is exclusive of taxes, if any.

TAX SEMINAR 'GYANARJAN-2008'

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS (NORTHERN ZONE)
JOINTLY WITH
GHAZIABAD BAR ASSOCIATION

All India Federation of Tax Practitioners (Northern Zone) successfully organized 'Gyanarjan-2008', Seminar on Input Tax Credit and Deemed Sales under U.P. VAT with Ghaziabad Bar Association at Diamond Palace, Ghaziabad on May 24, 2008. The Conference was attended by about 445 delegates from several districts of Western Uttar Pradesh, Haryana and Delhi. There were large number of Corporate Delegates from Industry. The air conditioned Conference hall was filled to the capacity and extra sitting arrangement were made for the 150 delegates who made spot registration.

Shri Bharatji Agrawal, National President, All India Federation of Tax Practitioners was Chief Guest and Moderator of the Conference. In the Conference Shri P. S. Sarin, Advocate, Ex-Vice President, AIFTP was Key Note Speaker on the subject of 'Deemed Sales under VAT' wherein he pointed out several gray areas in the UP VAT Act. The subject of Deemed Sales was introduced by Shri D. K. Gandhi, Ex: President, Ghaziabad Bar Association, and Treasurer, AIFTP (NZ).

The subject of Input Tax Credit was introduced by Shri Mukul Gupta, Secretary General, AIFTP, who explained the complicated provisions of UP VAT regarding Input Tax Credit. He made several suggestions for improvement of the input tax credit system in U.P., VAT. The subject was discussed in detail by Dr. K. K. Srivastava, Joint Commissioner (Executive) Commercial Tax, Agra.

On the suggestion of National President, AIFTP, the organizers started Prashant Mishra, A young advocate of 2 years standing, started the technical session with a brief introduction of subject. It was widely appreciated by the audience.

The technical session was followed by lively Brain Trust Session wherein the questions were presented by another young advocate Diwakar. The questions were dealt by

Shri P. S. Sarin, Dr. K. K. Srivastava, Shri Keshav Dayal, Retired Member Tribunal and Ex-Advisor to U.P. Government on VAT as well as Shri Bharatji Agrawal, National President, AIFTP. There were flood of queries from the audience and only selected queries were taken up for discussion.

Shri Mukul Gupta, Secretary General, AIFTP introduced 'The Federation' as well as described the objectives and activities of the AIFTP to the delegates, which was appreciated by the delegates and many of participants individually as well as Associations and Corporates shown their desire to become the life members of AIFTP.

Shri G. S. Pathak, HJS, and Shri R. K. Tripathi, Members Tribunal, Commercial Tax, Ghaziabad were Guest of Honour of the Conference. Shri Anil Swami, Advocate, Patron, GBA was Seminar Chairman. Hon'ble Shri Surrendra Prakash Goel, Member of Parliament, Ghaziabad also addressed the Seminar and promised to raise the issue suggested before the concerned Authorities and Ministries.

Shri Arvind Agarwal, President, GBA and Shri Sandeep Sharma, GS, GBA inspired the Conference Committee led by Shri Ashwini Mittal and Shri Sunil Goel to make arrangements for very successful Seminar on VAT in U.P. Young members of Bar were wholeheartedly involved in the organization of seminar.

On this occasion a Souvenir was published which contained Papers of the Speakers and other legal and Social Articles. The Souvenir was edited by Shri Vishan Kumar Sharma, Advocate in association with Shri Vakeel Ahmed and Shri Harsh Pandey.

Shri Bharatji Agrawal praised the efforts of organizers and hoped that similar seminars will be organized regularly and young members of Bar will be encouraged to put forward their views in the Seminar.

Hearty Congratulations

Hearty Congratulations to newly elected Office Bearers of Chartered Accountants Association, Ahmedabad for the year 2008-09.

President : Shri Durgesh V. Buch

Vice President : Asutosh P. Nanavaty

Hon. Secretaries : Shri Nesar H. Shah & Shri Vasant L. Patel

REPORT OF ONE DAY SEMINAR
on "Natural Justice need to be observed in tax matters"
organized by AIFTP (Eastern Zone) on 26th April, 2008 at Kolkata.

The principles of Natural Justice need to be observed in tax matters, said **Justice Kalyan Jyoti Sengupta** of Calcutta High Court while inaugurating the Seminar on taxation organized by AIFTP, Eastern Zone on April 26, 2008 in Kolkata. Justice Sengupta said that for proper opportunity of hearing proper notice is necessary. At the same time natural justice also requires that one cannot be a Judge in his own case. But in case of tax matters generally the Officer is interested in revenue so he is practically a Judge in his own case. Though this peculiar situation is permitted in the tax laws, but this casts extra responsibility upon the tax Officers that they need to be cautious and reasonable in making assessments and deciding the matter. They should put themselves in place of the assessee and think for a while if any injustice is meted to them. Justice Sengupta said that even if there is no specific provision in some of the sections of the Income tax Act, it is deemed that the requirement of allowing opportunity of hearing is in-built.

Mr. Bharatji Agrawal, National President, AIFTP felt that the monetary limit for tax audit u/s 44AB should be increased 10 fold. He stated that the limit for VAT has already been considerably raised by most of the States.

Mr. N. M. Ranka, Senior Advocate from Jaipur deplored the trend of reversal of judicial decisions by legislative amendments and spoke in detail on the relevant amendments made by the Finance Bill, 2008.

Mr. R. Bhardwaj, Chief Commissioner of Income Tax-V, Kolkata assured that the department will tend to follow natural justice. Mr. Bhardwaj also enlightened the new policy of department in granting stay of disputed tax demands.

Speaking on the occasion tax consultant and author Prof. Narayan Jain stressed for simplification of tax laws and urged for withdrawal of the education cess as it complicates the whole process. Mr. Jain also highlighted provisions of disallowing expenses exceeding Rs.20,000/- and urged the Finance Minister to increase the limit from Rs.20,000/- to Rs.50,000/-.

Mr. R. D. Sharma, Chairman, Eastern Zone called for active involvement of all professionals for academic excellence. Mr. G. D. Agarwal, VP - ITAT, Mr. N. K. Poddar, Mr. Nirmal Sarkar Addl. Commissioner, Sales Tax also spoke on various subjects.

NOTICE TO MEMBERS

Notice is hereby given that the Annual General Meeting of the Members of All India Federation of Tax Practitioners (Western Zone) will be held on Monday, the 23rd June, 2008 at 215, Rewa Chambers, 31, New Marine Lines, Behind Aayakar Bhuvan, Mumbai – 400 020, at 4.00 p.m. to transact following business:

AGENDA

1. To read and approve the minutes of EGM held on 16th November, 2007.
2. To receive and adopt the Annual Report of the Managing Committee (WZ) for the year 2007-08.
3. To consider and adopt the audited accounts of the Federation (WZ) for the year ended 31st March, 2008.
4. To appoint Auditors for the year 2008-09 and fix their honorarium.
5. To transact any other business with the permission of the Chair.

Yours faithfully,
For A.I.F.T.P. (WZ)

Sd/-
Yatin K. Desai • Chirag S. Parekh
Hon. Jt. Secretaries

- Note.*
1. Accounts for the year ended on 31-3-2008 and the report of the Managing Committee for the Western Zone can be collected from the office of the Federation from 5th June, 2008 onwards between 11.30 a.m. and 5.00 p.m. The accounts and report can be made available to the members through e-mail on request to the office.
 2. If there is no quorum by 4.00 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

DIRECT TAXES

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

SUPREME COURT

1. MAT – S. 115J

While computing income u/s. 115J, the A.O. has only limited power to examine whether books of account are certified by authorities under Companies Act as properly maintained in accordance with the said Act and therefore does not have jurisdiction to go behind net profit shown in P & L A/c. except to the extent provided in Expl. to section 115J of the Act.

Malayala Manorama Co. Ltd. vs. CIT (2008) 169 Taxman 471 (SC)

2. Cash Credit – Share Application Money – S. 68

The amount of share application money received by a company from bogus shareholders cannot be regarded as undisclosed income under sec. 68 of Income tax Act for the simple reason that if the names of the alleged bogus shareholders are given to the AO, then the Department is free to proceed to re-open the individual assessments in accordance with law.

CIT vs. Divine Leasing & Finance
Source: www.itatonline.org

3. Rectification Application – S. 254

Once the assessee has moved the Rectification Application within four years from the date of the appeal order, the Tribunal cannot reject that application on the ground that the four years have lapsed, which includes the period of pendency of application before the Tribunal. The Tribunal is bound to decide the application on merits and cannot dismiss the same on the ground of limitation.

Sree Ayyanar Spinning vs. CIT
Source: www.itatonline.org

HIGH COURTS

4. Burden of Proof – Share Application Money

In a case where it is alleged that persons contributing share application moneys are bogus, it is quite obvious that is very difficult for the assessee-company to show the creditworthiness of strangers. If the Revenue has any doubt with regard to their ability to make the investment, their returns may be re-opened by the department. In any case, there is an additional burden on the Revenue. It must show that even if the applicant does not have the means to make the investment, the investment made by

the applicant actually emanated from the coffers of the assessee-company so as to enable it to be treated as the undisclosed income of the assessee-company.

CWT vs. Value Capital Services (Delhi High Court)
(www.itatonline.org)

5. Reopening Assessment under Wealth Tax on basis of valuation Report obtained after assessment – S. 17

i) It is not open to the WTO u/s 16A of the W. T. Act to call for the report of the Valuation Officer after the assessment proceedings are completed and use that report to commence proceedings for reassessment. The jurisdiction conferred on the WTO is limited to calling for the report when the proceeding are pending and not when the Wealth Tax Officer becomes functions officio.

ii) A report of the DVO called for after the assessment proceedings is without jurisdiction and consequently a nullity. Such report cannot give “reason to believe” to reopen the assessment u/s 17. The position in law in so far as a report which was called for but not received during the pendency of the proceedings but received subsequent to the proceeding will have to be treated differently. The fact that the assessment has been completed is not a bar to considering the DVO’s report and to be used as the basis for reopening the assessment.

CWT vs. Sona Properties (Bombay High Court)
(www.itatonline.org)

6. India – USA DTAA – Tax includes surcharge

The word “tax” in Articles 14(2) and 2(1)(b) of the India-USA DTAA includes “surcharge” and for purposes of Article 14(2) which provides that the rate of tax payable by a USA company shall not exceed 15% of the rate payable by domestic companies, the surcharge payable by domestic companies has to be included.

CIT vs. Arthusa Offshore (Uttarakhand High Court)
(www.itatonline.org)

7. Release of seized cash – S. 132B

During search conducted at business premises of petitioner, certain cash was found. Petitioner’s explanation regarding nature and source of acquisition of said cash was, on verification, found to be correct. Despite that,

Assessing officer seized said amount and also rejected petitioner's application seeking release of said cash.

Only reason given in the impugned order for rejecting the application was that the assessment made under section 153A was yet to be finalized.

It was held that Application under section 132B(1)(i) could be rejected only if the Assessing Officer had reason to believe that the seized cash represented the undisclosed income of the petitioner liable to the assessed in the year in which the search took place.

Bipin Vimalchand Jain vs. Asstt. DIT [2008] 169 Taxman 396 (Bom)

8. Constitutional Validity – S. 278E

The petitioners, who were facing prosecution for the offence under section 276CC, for their failure to file return of income despite several notices, filed writ petitions challenging the constitutional validity of section 278E. The case of the petitioners was that the expression 'wilfully' occurring in section 276CC indicates the *mens rea* element and this being the basis for the prosecution, the prosecution was bound to prove the existence of *mens rea* on the part of the accused beyond a reasonable doubt; however, by introduction of section 278E, which given rise to a presumption as to the culpable mental state of the accused, the entire basis of accusatorial jurisprudence, as accepted and recognized in India, has been shifted.

According to the petitioner, the impugned provision violated article 21 of the Constitution of India and their right to pray for discharge from the criminal proceedings had been negated merely on the basis of the impugned provision. According to the petitioner, by the said provision, the guarantee against self-incrimination protected by article 20(3) of the Constitution had also been taken away from them.

It was held that merely because Act requires assessee to prove that there were circumstances which prevented him from filing return, it would amount to violation of articles 20(3) of Constitution.

Selvi J. Jayalalitha vs. Union of India [2008] 169 Taxman 408 (Mad.)

TRIBUNAL

9. Block Assessment

Since it stood admitted by the revenue that no notice u/s 143(2) had been issued and served upon the assessee

within 12 months from the end of the month in which the return has been filed by the assessee as provided under proviso to section 143(2) of the Act, the block assessment framed by the Assessing Officer was held to be invalid and accordingly quashed.

CPR Capital Services Ltd. vs. DCIT, IT(SS)A No. 319/D/03, Bench – F, Block Assessment 1-4-1989 to 25-5-2000, dated 31-1-2008

10. Deduction – S. 80HHC

The premium paid by the export house or the trading house to a supporting manufacturer on FOB is an integral part of the turnover of the supporting manufacturer and was includible in the profits of the business and was eligible for deduction u/s 80HHC. It was also held that deduction u/s 80-IB would be allowable on DEPB receipts.

Flora Exports vs. ACIT, ITA No. 4522/Del/04, Bench–E, Assessment Year 2001-02, dated 31-1-2008

11. Time limit for Block Assessment

A revocation order does not amount to execution of a search as no asset is seized under that order and what happens is only a revocation of the prohibitory order passed earlier. In this situation, it cannot be said that there was an execution of search on 23-12-2000, so as to enable the reckoning of the period of limitation from the end of December, 2000.

Deepak Aggarwal vs. DCIT, IT(SS) No. 1/Del/2004, Bench – F, Block Assessment 1-4-1990 to 30-10-2000, dated 30-11-2007.

12. Time Limit for Block Assessment

Though there is no time limit prescribed under the Act for issue of notice u/s 158BD in case of a person other than the searched person, it has to be within reasonable time from the date on which the A.O. of the searched person he receives intimation from the A.O. of the person who was subjected to a search u/s 132 of the Act. Wherein a period of 19 months was considered well beyond reasonable time, block assessment framed u/s 158BD was annulled in this case.

Sh. Tahil Ram Moolchandani vs. ACIT, IT(SS)A No. 439/Del/2005, Bench–I, Block Period 1-4-1986 to 13-2-1997, dated 16-11-2007.

Hearty Congratulations

Hearty Congratulations to **Shri N. Subramoniya Sarma, FCA**, Member of the Federation has been elected as the Chairman of Thiruvananthapuram Branch of the SIRC of the ICAI for the year 2008-09.

INDIRECT TAXES – SALES TAX DECISIONS

P. C. JOSHI
Advocate

Amortisation cost

Before the Supreme Court, the question arose as to whether amortisation cost of tools, dies, moulds etc. was includible in the sale price of automobile components manufactured with its help. The said question arose under the provisions of U. P. Trade Act, 1948. The moulds in question were manufactured by the buyers; i.e., customers, so that the automobile components required by them can be manufactured by the assessee in accordance with the specification of the buyers. Since the cost of manufacture of the moulds were incurred by the buyer, not the assessee, the Apex Court held that the amortisation cost cannot be added to the sale price for the purpose of levying tax under the Trade Tax Act.

M/s Morioku UT India (P) Ltd vs. State of U. P. & Others (2008) 31 PHT 375 (SC)

Concessional rate

The Madras High Court held that when the concessional rate of tax was in respect of switching equipment, sound recording and transmitting and intercom devices including telephones, cables, optic fibre cables etc. when sold to BSNL. Such a concession cannot be available for diesel generating sets.

M/s Reliance Generators Pvt. Ltd vs. The Special Commissioner & Commissioner of Commercial Taxes, Chennai 2008-09 (14) TNCTJ 15.

'C' Form at later stage

The Haryana Tax Tribunal admitted certain declarations which were not produced before the lower stage, following the Delhi High Court judgment reported in 83 STC 485, wherein it was held that the declaration forms can be produced at any stage, even at the level of the High Court.

M/s Air Link Engineers (P) Ltd, Gurgaon vs. State of Haryana (2008) 31 PHT 456 (HTT)

Dealer – Sale

The Jharkhand High Court held that the hospital supplying medicines, surgical items, vaccines, X-ray items etc to its indoor patients during the course of their treatment were not carrying on transaction of sale nor were they dealer as defined under section 2(t) of the Bihar Finance Act, 1981.

M/s Tata Main Hospital vs. The State of Jharkhand & Others 2008 NTN (Vol. 36) – 149.

Deduction

The Supreme Court, while considering the provisions of section 5(1A) of the Punjab General Sales Tax Act, held that the words "subjected to tax" cannot be equated to the words "having suffered tax". While section 5(1) referred to the rate

of tax, section 5(1A) referred to the stage at which the tax was to be levied. Considering the distinction between the provisions of Punjab Act to those that prevailed under Rajasthan Sales Tax Act in the case of *M/s Gannon Dunkerley & Co. vs. State of Rajasthan (88 STC 204)*, it was held that the said judgment was not applicable to the provisions of the Punjab Act.

State of Punjab & Others vs. M/s Perfect Synthetics etc. (VSTI 2008 B-167).

Entries in Schedule

1. Writable compact disc

The Madras High Court held that writable compact disc cannot be classified as sound recording and reproducing equipments eligible for the reduced rate of tax.

M/s Kodak India Ltd vs. The Asst. Commissioner (CT), Chennai 2008-09 (14) TNCTJ-16.

2. Electronic goods

The Gujarat VAT Tribunal held that UPS (Uninterrupted Power Supply), AVR (Automatic Voltage Regulator/Corrector) and DPC (Digital Power Conditioner) which control the power supply to computers were not electrical goods, but computer peripherals liable to be taxed @ 4% as electronic goods.

M/s Amul Electronics vs The State of Gujarat.

Source : Sales Tax Journal, Vol. 47, Part 1, April 2008, Page 42.

3. Flat cables

The Gujarat VAT Tribunal held that specially manufactured flat cables by using special ingredients and material, so as to keep the supply uninterrupted even while kept in water along with the submersible pump, fell under entry 161 of Schedule 2A of the Gujarat Sales Tax Act, 1969. It cannot be equated with the ordinary cables which cannot work in water for a prolonged period.

M/s Jainson Insulation Pvt. Ltd. vs. The State of Gujarat.

Source : Sales Tax Journal, Vol. 47, Part 1, April 2008, Page 44.

4. Cooked food – Fryums

The Supreme Court, while considering the entries under the M. P. Commercial Tax Act, 1994, held that the term 'cooked food' was an inclusive definition which indicated by definition what the Legislatures intended to mean by the said phrase.

Considering that aspect of the matter, the Apex Court held that the fryums, before it was ready for consumption, required further cooking process and then fried and

therefore the said item did not fall within the term 'cooked food' under Item 2, Part I of Schedule II of the said Act. *Commissioner of Commercial Taxes vs. M/s T.T.K. Health Care Ltd. (2008) 16 KTR 179 (SC).*

5. Baby cycle

The Kerala High Court, while considering entries 161 & 177 of the First Schedule appended to the Kerala General Sales Tax Act, held that the legislation by using the expression "Toys of all kinds" intended to cover all kinds of toys which are conveniently used by a child. The material from which it was made was not relevant for the purpose of the said entry. The baby cycle, pedalling car etc. were therefore covered by Entry 161 relating to toys of all kinds.

Mr Sadeek K. A. vs. State of Kerala (2008) 16 KTR 198 (Ker).

6. Toughened glass

The Supreme Court, while considering the notifications under U.P. Trade Tax Act 1948, held that the phrase 'in all forms' widened the scope of the entry in an expansive manner. According to the Supreme Court, there was difference in the phraseology and its connotation when the words used were 'in all forms' and 'all kinds'. While the latter would multiply the items of the same kind, the former multiplied the same item in different forms.

M/s Trutuf Safety Glass Industries vs. Commissioner of Sales Tax, U. P. (2008) 16 KTR 238 (SC).

7. Poultry feed supplement

The Allahabad High Court, considering the language used in the exemption notification, held that Poultry feed supplement was covered by the entry relating to 'poultry feed' and therefore was exempt from tax under the notification dated 22nd May 2001.

M/s Tetragon Chemie (Pvt) Ltd vs. State of U. P. & Others (VSTI 2008 B 199)

8. Towel etc.

The U. P. Commissioner, while determining the question under section 59 of the U. P. VAT Act, held that towels, lungis and gumchhas were textile made ups if sold duly stitched from all sides, but when those items were not stitched, each of them would remain exempt from tax under section 7(b) of Schedule 1 of the Act.

M/s Mayfair Enterprises, Lucknow (decided on 29th February 2008).

Source : VAT & Sales Tax Interpretations 2008, Vol. II Part 9, Page C-115.

9. Gypsum board

The U. P. Commissioner, while determining the classification under section 59 of the U. P. VAT Act, held that Gypsum board was not covered by Entry 55 of Schedule II, Part A which described "Gypsum of all forms and description", since the Gypsum board was different commodity than Gypsum.

M/s Naveen Ply & Hardware (decided on 10th March 2008).
Source : VAT & Sales Tax Interpretations 2008, Vol. II Part 9, Page C-118.

• Note :-

• In the State of Maharashtra, the Commissioner of Sales Tax also took the same view in the determination application under section 56 of the Maharashtra VAT Act on 14th November, 2005. However, the Maharashtra Sales Tax Tribunal, in appeal against the said order, held on 30th October 2007 that the words "in all forms" would cover the Gypsum in all forms including the item of Gypsum board and therefore was liable to be taxed only at 4% and not at 12.5% as held by the Commissioner.

• The above decision was pronounced by the Maharashtra Sales Tax Tribunal in the case of M/s India Gypsum Pvt. Ltd (VAT Appeal No. 5 of 2007).

• 10. Ice cream

• The U. P. Commissioner, while deciding the determination application under section 59 of the U. P. VAT Act, held that ice cream was not covered by Entry 81 of Schedule II, Part A, relating to milk food and milk products, but was liable to be taxed @ 12.5% under Schedule V.

• *M/s R. P. Milkmade Products Pvt. Ltd, Agra (decided on 26th Feb., 2008)*

• *Source: VAT & Sales Tax Interpretations 2008, Vol. II Part 9, Page C-122.*

• Penalty

• The Supreme Court held that the existence of mens rea was required to be shown before imposing the penalty, especially when the authority had the discretion to impose or not to impose the penalty. In the case before the Supreme Court, the assessee effected the purchases on a concessional rate by undertaking that the goods so purchased were to be used for the manufacture of the goods. However, some of the materials so purchased were sold to another dealer. Since there was infraction of the undertaking while effecting the purchases, the Apex Court confirmed the imposition of penalty as the facts revealed the existence of mens rea on the part of the assessee.

• *M/s Bharjatiya Steel Industries vs. Commissioner, Sales Tax, U. P. (2008) 31 PHT 406 (SC).*

• Review

• The Haryana Tax Tribunal held that under the guise of review of a judgment delivered earlier, rehearing of the matter cannot be undertaken, and a fresh decision cannot be taken, in place of the earlier decision.

• *State of Haryana vs. M/s Hansa Tubes Pvt. Ltd., Panchkula (2008) 31 PHT 391 (HTT).*

• Raw material – Meaning of

• The Supreme Court, while deciding an appeal against the judgment of CEGAT, held that the expression 'raw material' was not a defined term and therefore it had to be construed in the ordinary well accepted connotation in the common

parlance, of those who deal with the matter. In other words, the dominant ingredient test had to be considered before arriving at the conclusion about the true nature of a particular item. In that regard, the Supreme Court also observed that the word 'consumable' take the colour from the words accompanying it, bearing in mind that the consumables and the raw material cannot be considered on par.

M/s Vanasthali Textiles Industries Ltd vs. Commissioner of Central Excise, Jaipur, Rajasthan. (2008) 51 S. T. A. – 207.

Recovery

The Andhra Pradesh High Court held that recovery proceedings under the Revenue Recovery Act should be initiated only against the property belonging to the defaulter and not against the property of others.

Dr. J. Sashikala, Hyderabad vs. Dy. Commercial Tax Officer, Hyderabad & Others 46 APSTJ (2008) 24.

Related person

The Andhra Pradesh High Court held that though more than 75% of the sales were effected to a particular distributor, it was not enough to establish that the said distributor was personally related to the seller company, under section 2(1)(s)(v) of the Andhra Pradesh Sales Tax Act.

M/s Pioma Industries, Secunderabad vs. Commercial Tax Officer, Secunderabad & Another 46 APSTJ (2008) 16.

Recharge coupons

The Andhra Pradesh Sales Tax Appellate Tribunal held that Recharge coupons that contained a silver/black panel, to view the 28 digit secret code, which on entering through the cell phone, enabled the user to access the service provided was only a means of accessing the service provided. It was not a case of the goods sold separately.

M/s Sri Padmavathi Venkataramana Traders, Kurnool vs. State of A. P. (STAT). 48 APSTJ (2008) 84.

Right of appeal

The Kerala High Court held that the provisions of section 17D(5) of the Kerala General Sales Tax Act which provided for the non-entertainment of an appeal without full payment of tax, was constitutionally valid and did not affect adversely the petitioner's right of appeal.

M/s Alikunji Haji V. C. & Sons vs. State of Kerala & Others (2008) 16 KTR 206 (Ker).

Renting – Lockers by bank

The Allahabad High Court held that the banks renting lockers to their customers, were not liable to pay trade tax under the U.P. Trade Tax Act, 1948. The State of U.P. was restrained from making any assessment against the bank charging rent to their customers for use of lockers. The High Court also held that there was no transfer of right to use any goods when the bank rented out lockers to its customers, but it was a case of a licence to use the locker and not any goods, especially when the safe deposit vault was embedded to earth in a strong room of the bank and therefore was an immovable property and not a movable one.

M/s Oriental Bank of Commerce & Others vs. State of U. P. & Others (VSTI 2008 B-180).

Scope of determination

The Commissioner of Commercial Taxes, while determining a question posed before him under section 80 of the Gujarat VAT Act, held that when the sales were fully covered by section 5(2) of the Central Sales Tax Act, 1956, no determination under section 80 of the local Act can be sought for. In other words, the transaction should be in relation to the sales or purchases made within the State only.

M/s Supreme Petrochem Ltd., Gandhidham (Order dated 17th April, 2008)

Source : Sales Tax Journal, Vol. 47, Part 1, April, 2008, Page 56.

May 28, 2008

NOTICE TO MEMBERS

Notice is hereby given that the Annual General Meeting of the Members of All India Federation of Tax Practitioners (Central Zone) will be held on Saturday, the 14th June, 2008 at Sales Tax Bar Room (Jal Ghar), Bharatpuri, Dewas Road, Ujjain (M. P.) at 5.00 p.m. to transact following business:-

AGENDA

1. To confirm the proceeding of its previous meeting.
2. To consider and adopt the audited accounts of the Federation (CZ) for the year ended 31st March, 2008.
3. To appoint Auditors for the year 2008 – 2009 and fix their honorarium.
4. To transact any other business with the permission of the Chair.

Yours faithfully,
For A.I.F.T.P. (CZ)

Sd/-

(Vijay Kumar Navlakha)

Secretary

Note. : If there is no quorum by 5.00 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.



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

The AIFTP Journal is the mouthpiece of the All India Federation of Tax Practitioners and it is also a source of information for updating our members with the latest developments on Direct and Indirect Taxes.

The unique feature of our Journal is that every quarter we publish the gist of important case laws published in 33 tax magazines. We publish at least 12 opinions of eminent professionals, thought provoking speeches of judges of Apex Court and High Courts, important articles on Direct and Indirect Taxes, articles on Wealth Management and Answers by eminent professionals on various controversial issues. We are sure that in the era of information technology, our journal would definitely help you to update your knowledge on latest case laws and development of law.

Please note that AIFTP Journal subscription for the year 1st April, 2008 to 31st March, 2009 falls due for payment on 1st April, 2008.

We have posted bill for renewal subscription of AIFTP Journal for Rs. 400/- for one year and Rs. 1000/- for three years and Palkhivala Foundation Rs. 300/- on 26th March, 2008. Members are requested to send the DD or Cheque in favour of "All India Federation of Tax Practitioners" payable at Mumbai at the earliest to the office of the Federation.

Members can also download the subscription and an appeal from our website; i.e., www.aiftponline.org and send us the subscription.

Thanking you,

For All India Federation of Tax Practitioners


Mukul Gupta
Secretary General

24-5-2008

Hearty Congratulations

Hearty Congratulations to Shri Narayan P. Jain, Vice Chairman – EZ, AIFTP has been nominated by the Government of West Bengal as the Member of West Bengal Minority Commission.

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

Printed & Published by Mitesh Kotecha on behalf of All India Federation of Tax Practitioners (name of owner) and printed at Finesse Graphics & Prints Pvt. Ltd., 309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai 400 013, Tel.: 24961605/85 • Fax: 24962297 (name of printing press) and published at 215, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020, Tel.: 22006342 • Fax: 22006343 (place of publication) • Editor : Dr. K. Shivaram

To

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

Date of Posting : 1st & 2nd June, 2008

If undelivered, please return to :



ALL INDIA FEDERATION OF TAX PRACTITIONERS
215, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020. • Tel.: 22006342
Telefax: 22006343 • E-mail: aiftp@vsnl.com • Website: www.aiftponline.org