



AIFTP TIMES

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Federation News

Mukul Gupta, Secretary General

We wish all our members and readers
A Happy New Year

FORTHCOMING PROGRAMMES

Dates & Months	Programmes
11th November, 2008	Foundation Day Programme at Hyderabad organised by AIFTP (SZ)
11th November, 2008	Foundation Day Programme at Kolkata organised by AIFTP (EZ)
11th November, 2008	Foundation Day Celebration at Ratlam organised by AIFTP (CZ)
14th November, 2008	Foundation Day Celebration at TPA Hall, Indore organised by AIFTP (CZ)
15th November, 2008	One Day National Tax Seminar & Honour of Dignitaries at Ujjain organised by AIFTP (CZ)
27th & 28th November, 2008	AOTCA Shanghai Meeting 2008 at Shanghai International Convention Centre, 2727, Riverside Avenue, Pudong, Shanghai, China
13th December, 2008	National Executive Committee Meeting at Kolkata
13th & 14th December, 2008	Two Days National Tax Conference at Kolkata organised by All India Federation of Tax Practitioners (Eastern Zone)
19th, 20th & 21st November, 2009	AOTCA International Tax Conference, 2009 at Mumbai.

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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FOUNDATION DAY PROGRAMMES

SOUTHERN ZONE

The Southern Zone of the All India Federation of Tax Practitioners shall be organising the following programme on the occasion of the Foundation Day on Tuesday, the 11th November, 2008 at Surana Udyog Hall, FAPCCI Building, Red Hills, Hyderabad.

- 04.00 pm to 04-15 pm – High tea
- 04.15 pm to 05.00 pm – Meeting of the AIFTP (Southern Zone)
- 05.00 pm to 06.00 pm – Speech by
Dr. Bipin Sethi, MD DM, Consultant Endocrinologist.
- 06.00 pm to 07.30 pm – Speech by
Dr. V. Nagesh, Psychologist & Hypnotist.

For further Details, please contact :

Shri P. V. Subba Rao, Chairman, AIFTP (SZ)

Tel.: 27718935 • (M) 9391018552 • (Email) paramatmuni@yahoo.com

EASTERN ZONE

Eastern Zone will celebrate Foundation Day of the Federation on 11-11-2008 by holding Half Day Seminar from 3.30 p.m. at Calcutta Chamber of Commerce at Park Street, Kolkata – 700 016. Members are requested to please attend the same.

For further Details, please contact :

Shri R. D. Sharma, Chairman, AIFTP (EZ)

Tel.: 22425905 • (M) 9830849419 • (Email) satishsharmacalcutta@gmail.com

CENTRAL ZONE

1. On 11th November 2008 at Ratlam
2. On 14th November 2008 at TPA Hall, Indore at 5 p.m.
3. **One Day National Tax Seminar and Honour of Dignitaries**
On 15th November, 2008
At Hotel Ashray, Dewas Road, Ujjain
Between 10.00 am and 5.00 pm
Registration Fees Rs. 300/-

Technical Sessions

1. Tax Implications for Charitable Institutions
2. Various issues under VAT and Tax Audit under VAT

Speakers

Shri N.M.Ranka, Sr. Advocate, Jaipur
CA P.D.Nagar; CA S.C.Bansal
Indore

For further details, please contact:

Mr. Murlidhar Sodani, Chairman, AIFTP (CZ)

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TWO DAYS NATIONAL TAX CONFERENCE

Organised By

ALL INDIA FEDERATION OF TAX PRACTITIONERS – EASTERN ZONE

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

DAY 1 – SATURDAY, 13TH DECEMBER, 2008

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

* Subject to confirmation



DAY 2 – SUNDAY, 14TH DECEMBER, 2008

- 8.30 am to 9.00 am : TEA
- 9.00 am to 11.00 am : **4th TECHNICAL SESSION**
Chairman : Shri P.C. Joshi, Advocate (Mumbai) and Past President, AIFTP
Topic : Recent Issues in VAT with reference to TDS, Input Tax Credit and Refund of VAT
Speaker : CA S. Venkataramani (Bangalore)
- 11.00 am to 1.00 pm : **5th TECHNICAL SESSION**
Chairman : Shri V.S. Chari, IAS, Commissioner, Service Tax, West Bengal
Topic : Issues in Service Tax
Speaker : Shri Vikram Nankani, Advocate (Mumbai) and Vice President, AIFTP (WZ)
- 1.00 pm to 2.00 pm : LUNCH BREAK
- 2.00 pm to 4.00 pm : **6th TECHNICAL SESSION**
Subject : Issues in Capital Gain Tax with reference to treatment of share transactions and on transfer of immovable property u/s 50C of the I.T. Act
Chairman : Shri V. Ramachandran, Sr. Advocate (Chennai) and Immediate Past President, AIFTP
Speakers : Shri N.K. Poddar, Sr. Advocate (Kolkata)
CA. Rahul Roy (Kolkata)
- 4.00 pm to 5.00 pm : **BRAINS' TRUST SESSION**
Chairman : Shri N.M. Ranka, Sr. Advocate (Jaipur) and Past President, AIFTP
Trustees : Shri P.C. Joshi, Advocate (Mumbai) and Past President, AIFTP
Dr. K. Shivaram, Advocate (Mumbai) and Past President, AIFTP
Shri N.K. Poddar, Sr. Advocate (Kolkata)
Shri S.K. Poddar, Sr. Advocate (Ranchi) and Vice President, AIFTP (EZ)
Shri G.C. Mookherji, Advocate (Kolkata)
- 5.00 pm to 6.00 pm : **VALEDICTORY SESSION**
Valedictory Address
Dr. Asim Dasgupta, Hon'ble Finance Minister of West Bengal
Mr. S. Radhakrishnan, President, Bengal Chamber of Commerce & Industries
Vote of Thanks
Shri S.K. Poddar, Sr. Advocate (Ranchi) and Vice President, AIFTP (EZ)
- Delegate Fees : Rs. 1,500/- for Members; Rs. 2,000/- for Non-members; Rs. 1,000/- for spouse.
- For further Details, please contact :*
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SOUTHERN ZONE

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

On 20-7-2008, Shri P.V. Subba Rao, Chairman, Southern Zone addressed a gathering of about 170 dealers (Distributors and Wholesale Stockists of FMCG) in Grand Nagarjuna Hotel, Guntur. It was exclusively a question and answer session on Andhra Pradesh VAT issues.

On 11-8-2008 the Executive Committee meeting of Southern Zone was held in Belson Taj Hotel, Hyderabad, where about 45 persons, including special invitees attended. Modalities for conducting Foundation Day of the Federation on 11-11-2008 were discussed. There was brief interaction on latest changes in the APVAT Act. The Meeting was followed by dinner.

On 30-8-2008, Shri P.V. Subba Rao, Chairman, Southern Zone addressed the joint meeting of members of ICWA and Institute of Company Secretaries at Vasavi Seva Kendra, Hyderabad on the "Works Contracts issues under the APVAT Act, 2005." There were about 90 participants. The Additional Commissioner, Commercial Taxes (Policy), Hyderabad was the Chief Guest.

Institute of Practical Accountancy, Hyderabad (15 year old Institute, imparting practical training to Commerce students for their employability) headed by Shri D.B. Prakash, National Executive Committee member of AIFTP are giving away awards to the best and senior tax professionals and academicians every year. Dr. M.V.K. Murthy, Vice President (SZ), Shri P.V. Subba Rao, Chairman (SZ), Shri J.V. Rao, Immediate Past Vice President (SZ), Shri V. Nagendra Prasad, Secretary (SZ) and Shri K.H. Rao, Past Chairman (SZ) are the members of the awards Selection Committee, among others. On 1-9-2008, in a glittering function held at Bharatiya Vidya Bhavan, Hyderabad, awards were presented, among others to Shri S.H. Rao, National Executive Committee

member of AIFTP, Shri Laxminivas Sarma, Chartered Accountant and former Chairman, AP Tax Bar Association and Shri Balakrishnaraj, STP, in the presence of Padmabhushan Shri I. Varaprasada Reddy. Congratulations to awardees.

On 6-9-2008, One Day Taxation Seminar jointly held by the AIFTP (SZ) and Revenue Bar Association, Chennai was inaugurated by Dr. M.V.K. Murthy, Vice President (SZ) at Deccan Plaza Hotel, Chennai. Shri P.V. Subba Rao, Chairman (SZ) welcomed the delegates. Shri K.J. Chandran, Chairman, Seminar Committee addressed and Shri VS Jayakumar, Vice Chairman (SZ) and President, Revenue Bar Association proposed Vote of Thanks. There were about 80 delegates, including 15 participants from Andhra Pradesh. Shri V. Ramachandran, Immediate Past President chaired the first session on Tamil Nadu VAT. There were four technical sessions.

The Executive Committee meeting of Southern Zone was held at Deccan Plaza Hotel, Chennai on 6-9-2008. The Committee requested the delegates from Kerala to consider organising Tax Seminar in the coming months in Kerala preferably at Trivandrum/Cochin. Dr. M.V.K. Murthy stressed the need to increase the membership and offered to tour Kerala and Karnataka, if group meetings are arranged. The Committee thanked Shri K.J. Chandran and Shri V.S. Jayakumar for coming forward to organise one day Seminar at Chennai. Shri P.V. Subba Rao informed the members about the proposed National Tax Conference at Mumbai being organised on the 17th and 18th October and appealed to make it a grand success by participating in large numbers. Shri V. Nagendra Prasad, Secretary (SZ) proposed vote of thanks.

No.: DIT(IT)/Sr. & Jr. Stand. Counsel./08-09
Dated : 30-9-2008

Engagement of Sr. Standing Counsels and Jr. Standing Counsels to represent Income Tax Department before ITAT, Mumbai

The Central Board of Direct Taxes (CBDT), New Delhi desires to engage Senior Standing Counsels and Junior Standing Counsels for representing I.T. Department before Income Tax Appellate Tribunal, Mumbai, for various reasons. For this purpose, the Chief Commissioner of Income-tax Mumbai has been authorised to draw a panel of standing counsels comprising a maximum of two Senior Standing Counsels and two Junior Standing Counsels for each bench. In this regard qualification of counsels has been indicated by the CBDT as under:

- A. Junior Standing Counsel:** In order to be eligible for appointment as Junior Standing Counsels a person should
- Be enrolled/registered as an advocate with the High Court.



- (ii) Have a minimum experience of three years handling preferably direct tax matters before High Courts or Tribunals.

OR

Have been officer of the income Tax Department who retired/resigned from the post of Additional CIT or below and is enrolled/registered as an advocate in the High Court provided that he has not been removed/dismissed or compulsorily retired from service on account of disciplinary action against him and no disciplinary proceedings under Service rules or Pension rules is pending against him.

B. Senior Standing Counsels: In order to be eligible for appointment as Senior Standing Counsels a person should

- (i) Be enrolled/registered as an advocate with the High Court
- (ii) Have a minimum experience of five years handling preferably direct tax matters before High Courts or Tribunals.

OR

Have been a Junior Standing Counsel of the department for three years.

OR

Have been officer of the Income Tax Department who retired/resigned from the post of Commissioner of Income-tax or above or retired/resigned as Member/Chairman of ITAT/Settlement Commission and is enrolled/registered as an advocate in the High Court. Provided that he has not been removed/dismissed or compulsorily retired from service on account of disciplinary action against him and no disciplinary proceedings under Service rules or Pension rules is pending against him.

The appointment would be for a period of three years, which can be renewed as per terms of appointment agreed upon. Details of eligibility criteria, terms and conditions of appointment can be obtained from the office of the undersigned Proforma-A for making application is appeared below.

(Girish Dave)
Director of Income-tax
(International Taxation, Mumbai)

PROFORMA 'A-I'

Proforma for application by officers who have retired/resigned from the Income Tax Department or retired/resigned as Member/Chairman of ITAT/Settlement Commission.

1. Name of the person
2. PAN – Permanent Account Number
3. Father's Name
4. Date of Birth
5. Address for correspondence
6. Permanent address
- 7*, Educational Qualification
8. Date of joining Government Service/Income-tax Department
9. Designation and office address of the last post held



10. Date of retirement/resignation from the service
- 11.* Date of enrolment in High Court as Counsel.
- 12.* Date of empanelment as member of Bar Council of High Court.
13. If a partner in a firm, name/names of the firm and other partners.
14. Category of counsel for which applied (Jr. Standing Counsel/Sr. Standing Counsel).

Verification

I _____ S/o. _____ do hereby declare that whatever has been stated in the above application is true to the best of my knowledge and belief. I further declare that I have not been removed from the service due to any disciplinary proceeding and no disciplinary proceedings under Service rules or Pension rules are pending against me as on date.

Signature

Dated:

Place:

* Appellant to submit documentary proof with respect to aforesaid.

Letter to the Editor

Dated : 22nd October, 2008

Reg : Palkhivala Memorial National Tax Moot Court Competition

Dear Dr. Shivaram,

It is a matter of great pleasure to have been received and greeted by young enthusiastic law students with smile at Government Law College and Hotel Westend on 16th and 18th October, 2008 at the inaugural and final competition-cum-vaedictory function of 5th Nani Palkhivala Memorial National Tax Moot Court Competition. It is highly appreciable to have found 26 colleges from all over the country participating and competing. In the finale, the students were short, precise, to the point, non-repetitive and persuasive. They knew the advocacy and the court craft. I express my sincere thanks for coinciding the Moot Court Competition with Two days 'National Tax Conference' affording an opportunity to me and members of the National Executive of AIFTP and others to witness the proceedings.

In the inaugural session as well as at the vaedictory, Mr. P.R. Rao, Principal, Government Law College, Prof. Sanjay Kadam, Chairman, Moot Court Association and Ms. Silva, Secretary Moot Court Association requested for granting renewal for another five years. It is worth for the two associations to extend the helping hand to the young law entrants and excel in their future career. It would be performing the objects of the two associations.

Your proposal to enlist minimum 50 Members to contribute Rs.25,000/- per annum for the five-year period is appropriate and appreciable. Looking to the number of members and their financial strength, such number would not be a large. I suggest and make an appeal to the Hon'ble Members of the two associations to accord renewal for a period of five years. I hereby express my consent for the same.

Before concluding, I express once again my sincere thanks with a humble request to continue and involve larger number of honourable members in a good cause.

With best wishes,

Yours sincerely,

(N.M. Ranka)

Senior Advocate, Past President, AIFTP

DIRECT TAXES

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

I. SUPREME COURT

1. Mistake apparent from record – S. 254(2)

Non consideration of a decision of jurisdictional High Court or Supreme Court is mistake apparent from record which can be rectified u/s. 254(2) of the Act.

Asstt. CIT vs. Saurashtra Kutch Stock Exchange Ltd. (2008) 173 Taxman 322 (SC)

2. Penalty u/s 11AC of Excise Act, 1944 – S. 271(1)(c)

The 3 Judges Bench in the context of Section 11AC of the Central Excise Act, 1944 {which corresponds to s. 271(1) (c)} held that:

1. In *Dilip Shroff vs. JCIT*, the SC held that the order imposing penalty was quasi-criminal in nature and thus the burden lies on the department to establish that the assessee had consciously concealed his income. **This view is not correct.**
2. The object behind enactment of s. 271(1) (c) read with Explanations indicate that the said section has been enacted to provide for a remedy for loss of revenue and they create the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing return. The penalty under that provision is a civil liability. Wilful concealment is not an essential ingredient for attracting civil liability unlike the matter of prosecution under Section 276C.

3. **Dilip N. Shroff's** case (supra) has not considered the effect and relevance of s. 276C.

4. It cannot be said that the absence of specific reference to mens rea is a case of casus omissus. The law on two principles of construction – one relating to casus omissus and the other in regard to reading the statute as a whole has been considered in detail.

UOI vs. Dharmendra Textile. Civil Appeal Nos. 10289-10303 of 2003 dt. September 29, 2008

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

3. Binding nature of circulars

The 5 Judges Bench, in the context of excise law, held that :

1. It cannot be said that the absence of specific reference to mens rea is a case of casus omissus.

The law on two principles of construction – one relating to casus omissus and the other in regard to reading the statute as a whole has been considered in detail.

2. While circulars and instructions issued by the Board are binding on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of the SC or the High Court.

3. The clarifications/circulars issued by the Central & State Government merely represent their understanding of the statutory provisions and are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.

4. To say that a revenue authority cannot question a circular would mean that the valuable right of challenge would be denied to him and there would be no scope for adjudication by the High Court or the Supreme Court. That would be against very concept of majesty of law declared by the Supreme Court and the binding effect in terms of Article 141 of the Constitution.

CCE vs. Ratan Melting & Wire Industries, Civil Appeal No. 4022 of 1999 dt. October 14, 2008

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

II. HIGH COURTS

4. Change in method of accounting

When the change in the method of accounting adopted by the assessee is genuine and bonafide, there is no reason for Assessing Officer to disapprove said change and make additions merely on the basis of such change.

Asst. CIT vs. Coromandel Investment (P) Ltd. Tax Appeal No. 585 of 1999 dated 28-7-2008 (Guj.)

5. Cross examination – Principle of natural Justice – S. 145

The legal effect of, the statement recorded behind the back of the assessee and without furnishing the copy

thereof to the assessee or without giving an opportunity of cross examination and the additions if made, the same is required to be deleted on the ground of violation of principles of natural justice.

Laxmanbhai S. Patel vs. CIT ITR No. 41 of 1997 dated 22-7-2008 (Guj.)

6. Investment in residential House – Exemption – S. 54F

For qualifying for exemption u/s. 54F it is necessary and obligating to have investment made in residential house in name of assessee only and not in name of any other person.

Prakash vs. ITO Ward No. 1(5) (2008) 173 Taxman 311 (Bom)

III. TRIBUNALS

7. Carry forward and set off of losses – Demerger – S. 72A

It was held that accumulated loss, unabsorbed depreciation and other unused amortization of expenses, etc., of demerged company are available to resulting company on transfer of undertaking in a scheme of demerger. It was further held that unabsorbed capital expenditure on scientific research under section 35(1)(iv) is not different from unabsorbed depreciation for purposes of section 72A(7) and, therefore, an assessee is entitled to carry forward unabsorbed scientific research expenditure.

ITO vs. Mahyco Vegetable Seeds Ltd. [2008] 25 SOT 46 (Mum)

8. Fixed Deposit Receipts are Business Income – Deduction available on amounts received in respect of DEPB & DRRC – (Assessment year 2001-02) – S. 80HHC

It was held that once fixed deposit receipts were utilized by assessee for purpose of its business by placing them with bank as marking money for purpose of availing of various credit facilities, fixed deposit ceased to be a mere investment and became a commercial asset and, therefore, interest income would be taxable as 'business income'.

It was further held that 90 per cent of interest amount would be excluded from profits of business for purpose of computing deduction under section 80HHC.

Assessee claimed deduction under section 80HHC on amounts received in respect of DEPB (Duty Entitlement Pass Book Scheme) and DFRC (Duty Free Replenishment Certificate). It was held that DEPB and DFRC incentives were provided to assessee only because of exports, in such circumstances,

assessee would be entitled to deduction under section 80HHC.

Mrs. Saroj Dassani vs. ACIT (2008) 25 SOT 1 (Del.)

9. Reassessment – Notice u/s. 148 during pendency of valid return – Invalid – S. 148

In the instant case not only assessment proceedings but proceeding under section 237 for determination of the claim for refund were pending on the date of issuance of notice under section 148.

Even after the amendment made by the Direct Tax Laws (Amendment) Act, 1987, to section 147, it is still a condition precedent that before reassessment proceedings can be resorted to, the original proceedings commencing with the filing of return must have terminated either by way of processing of return and issue of intimation under section 143(1), or by an assessment order passed under section 143(3) and if assessment proceedings are still pending before the Assessing Officer, he cannot resort to the provision of section 147.

Therefore, the intimation of reassessment proceedings by the Assessing Officer by issuing notice under section 148 during the pendency of a valid return along with the application filed under section 237, was not justifiable and, as such, was not a valid action in law. Accordingly, the reassessment proceeding initiated by the Assessing Officer were liable to be quashed.

Handloom Intensive Development Project (Bijnore) Ltd. vs. ACIT (2008) 25 SOT 5 (Luck.)

10. Depreciation – ATMs – S. 32

Since POS terminals and ATMs are neither a data processing nor a composite system output of which is data processing, they are not eligible for depreciation at rate of 60 per cent as provided for computers in Appendix I of Act.

Venture Infotek Global P. Ltd. vs. Dy. CIT [2008] 25 SOT 184 (Mum)

11. Penalty – Voluntary surrender of gifts to buy peace – No concealment – S. 271(1)(c)

In the instant case, there was no investigation of the assessee by the investigation wing of the department and also there was no information with the Assessing Officer that gifts / credits were fake or bogus on the dates when the assessee had surrendered the amounts voluntarily. Therefore, the onus was on the Assessing Officer to prove that the assessee had concealed his particulars of income.

However, the Assessing Officer had not brought any material on record to prove that the amount in question was concealed income of the assessee. There was also no material on record to establish that the assessee had

furnished inaccurate particulars of his income in the original return. Hence, the Assessing Officer had not discharged his burden of proving concealment and he had simply rested his conclusion on the act of voluntary surrender done by the assessee in good faith.

Further, there was no discussion in the assessment order or penalty order that the assessee had concealed the particulars of his income and furnished wrong statements with a *mala fide* intention to evade tax or the explanation given by him was not *bona fide* or false.

It was held that in the instant case the concealment of income and furnishing wrong statement were not found to be established from the material on record and further, since the surrender made by the assessee was voluntary and the Assessing Officer had failed to detect any concealment of income, the penalty levied by the Assessing Officer and confirmed by the Commissioner (Appeals) was not justified and was liable to be cancelled.

Santosh Narain Kapoor vs. Dy. CIT (2008) 25 SOT 26 (Luck)

11. Disallowance – S. 14A

Where the Special Bench had to consider whether s. 14A applied with respect to dividend earned by an assessee trading in shares and holding shares as stock-in-trade, HELD:

By the Bench:

- i. S. 14A has an overriding effect and applied have been allowable under other provisions such as 36(1)(iii);
- ii. Sub-sections (2) and (3) of s. 14A, though inserted

by the F. A. 2006 w.e.f. 1-4-2007, read with Rule 8D, are procedural and clarificatory in nature and apply to pending matters;

By the Majority

- iii. The words “in relation to” in s. 14A encompass not only the direct expense but also the indirect expense which has any relation to the exempt income. The argument that the words contemplate a “direct and immediate connection” between the expenditure and the exempt income cannot be accepted. Accordingly, the argument that s. 14A cannot apply to shares held as stock-in-trade cannot be accepted. The fact that the dividend income is “incidental” to the purchase of shares is also irrelevant. The question as to whether the onus is on the assessee or the AO for bringing an item of expenditure within s. 14A is also irrelevant in view of Rule 8D.

ITO vs. Daga Capital, I.T.A. No.8057/Mum/03 : A.Y. 2001-02 dt. 20th October, 2008

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

12. Mutuality – Non-occupancy charges – S. 4

Non-occupancy charges received by a commercial society from its members, even though in excess of 10% of the maintenance charges, are exempt on the principles of mutuality.

Note: The judgment of the Special Bench in *Walkeshwar Triveni 88 ITD 159* was distinguished.

Mittal Tower Premises vs. ITO, ITA No. 2906/Mum/2007 dt. 8th August, 2008

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

SALES TAX DECISIONS

P. C. JOSHI
Advocate

Benefits under the Package Scheme of Incentive

1. The Supreme Court, after considering the provisions of notification granting incentives, observed that whenever the period up to which exemption was to be obtained by the assessee, it was expressly stated. However, when no period was mentioned, the entry concerned has to be liberally construed.

State of Orissa & Others vs. M/s Tata Sponge Iron Ltd. (2008) 52 S. T. A. – 133.

2. The Supreme Court, while considering the Package Scheme of Incentive announced by the Union Territory of Pondicherry, held that once the Industry Department had recognised and certified a Unit as a Small Scale

Industrial Unit engaged in the activity of repacking edible oil, the State later on cannot be allowed to turn around and take a stand that the assessee was not entitled to the exemption on the ground that the assessee did not manufacture any goods.

M/s Pondicherry State Co-op. Consumer Federation Ltd. vs. Union Territory of Pondicherry. (2008) 52 S. T. A. – 142.

Discrimination

The Madras High Court held that if an earlier order was not appealed against by the revenue and the same had attained finality, it was not open to the revenue to accept



the judgment in one case and question the correctness in yet another case.

The State of Tamil Nadu vs. M/s Vaikundam Rubber Co. Ltd. & Others – 2008-09 (14) TNCTJ – 195.

Entries in Schedule

1. Marker Ink

The Hon'ble Supreme Court, while considering the classification under Central Excise Tariff Act, held that different kind of inks used in manufacturing various kinds of marker pens and sketch pens was similar to other inks mentioned in Chapter 32.15 under heading 3215.10 as writing ink. According to the Hon'ble Apex Court, when the entries in the HSN and the tariff entry were not aligned, reliance cannot be placed upon the HSN classification for the purpose of classification under the Central Excise Act. The order of the tribunal, therefore, impugned before the court was held to be vitiated and therefore was set aside.

M/s Camlin Ltd. vs. Commissioner of Central Excise, Mumbai. JT 2008 (10) SC 49.

2. Fertilizer

The Haryana Tax Tribunal held that Castor deoiled cakes, Neem deoiled cakes and Mahua deoiled cakes were organic manure and therefore covered by entry 27 of Schedule B of the Haryana VAT Act and therefore not liable to tax. The Tribunal reversed the opinion of the Financial Commissioner while replying to the questions posed under section 56(3) of the State Act.

M/s T. R. Solvent Oils Pvt. Ltd., Faridabad vs. State of Haryana – (2008) 32 PHT 389 (HTT).

Exemption

1. The Supreme Court, while construing the notification under the Central Excise Act, 1944, held that the exemption having been granted to the fabrics processed without the aid of power, no such benefit can be availed of by the assessee even where the power was used in certain ancillary and incidental areas. The Supreme Court, however, upheld the decision of the Tribunal and held that the benefit was correctly denied.

M/s Mathania Fabrics vs. Commissioner of Central Excise, Jaipur – (2008) 52 S. T. A. – 147.

2. The Allahabad High Court held that the Unit enjoying the benefit under the Incentive Scheme has not only to manufacture the goods during the exemption period, but also sell the same before expiry of the eligible period. In other words, any goods manufactured during the exemption period and sold after expiry of the said period, would not be eligible to any exemption and was liable to tax.

The Commissioner, Trade Tax, U. P. vs. M/s Mercury Lighting Fixtures 2008 NTN (Vol. 38) – 73.

Goods return

The Allahabad High Court held that the claim of goods return cannot be rejected on the ground that no defect in the goods returned were established. The court also held that no such requirement was provided in the law and therefore the claim must be allowed if goods were returned within time. The return of goods cannot be termed as colourful device to evade the tax, because an assessee was free to manage its affairs in such a manner that he pays minimum tax.

The Commissioner, Trade Tax, U. P., Lucknow vs. M/s Eicher Good-Earth, Ghaziabad – 2008 NTN (Vol. 38) – 9.

APPEAL TO MEMBERS

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