



AIFTP TIMES

Price Rs. 5/-
(For Members only)

Volume III - No. 10 • October, 2008

Federation News

Mukul Gupta, Secretary General

FORTHCOMING PROGRAMMES

| Dates & Months | Programmes |
|----------------------------------|---|
| 16th, 17th & 18th October, 2008 | 5th Nani Palkhivala Memorial National Tax Moot Court Competition organised jointly with ITAT Bar Association, Mumbai and Government Law College, Mumbai |
| 17th October, 2008 | National Executive Committee Meeting at Navin Thakkar Auditorium, Mumbai at 6.00 p.m. |
| 17th & 18th October, 2008 | Two Day National Tax Conference organised jointly with The Sales Tax Practitioners' Association of Maharashtra at Navin Thakkar Auditorium, Mumbai |
| 11th November, 2008 | Foundation Day Programme at Hyderabad organised by AIFTP (SZ) |
| 27th & 28th 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 Mumbai. |

FOUNDATION DAY PROGRAMME

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 QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

| Name | Tel. (O) | Fax | Mobile | E-mail |
|---|-----------------|---------|------------|-----------------------------|
| National President — Bharatji Agrawal, Sr. Adv. | 0532-2260576/77 | 2601389 | 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 |

NATIONAL TAX CONFERENCE

Jointly Organized by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WESTERN ZONE)

and

SALES TAX PRACTITIONERS' ASSOCIATION OF MAHARASHTRA

on Friday, 17th October, 2008 & Saturday, 18th October, 2008

at Navin Thakkar Auditorium, Shradhanand Road, Vile Parle (W), Mumbai - 400 057

DAY 1 - FRIDAY, 17TH OCTOBER, 2008

| Timing | Subject | Speakers | Chairmen |
|---|---|---|--|
| 9.30 a.m. to 10.00 a.m. | Inauguration | Commissioner of Sales Tax, Maharashtra State Chief Guest | |
| 10.00 a.m. to 1.15 p.m. Issues on Real Estate Transactions including Development & Redevelopment | | | |
| 10.00 a.m. to 11.00 a.m. | i) Under Income Tax | Mr. J. K. Ranka, Adv., Jaipur | Dr. K. Shivaram, Adv., Mumbai |
| 11.00 a.m. to 11.15 a.m. | Tea Break | | |
| 11.15 a.m. to 1.15 p.m. | ii) Under VAT | CA. S. Venkatramani, Bangalore | Mr. Bharatji Agrawal, Sr. Adv., Allahabad |
| | iii) Under Service Tax | CA. Keshav Maloo, Udaipur | |
| 1.15 p.m. to 2.15 p.m. Lunch Break | | | |
| 2.15 p.m. to 3.45 p.m. | Issues of ITC (Set Off) & Refund under MVAT | CA. Vikram Mehta, Mumbai | Mr. S. S. Gaitonde, Adv., Mumbai |
| 3.45 p.m. to 4.00 p.m. Tea Break | | | |
| 4.00 p.m. to 5.30 p.m. | Service Tax Issues relating to export-import of services | CA. Rajiv Luthia, Mumbai | CA. A. R. Krishnan, Mumbai |

DAY 2 - SATURDAY, 18TH OCTOBER, 2008

| | | | |
|--|---|---|----------------------------------|
| 9.30 a.m. to 10.30 a.m. | Issues relating to WCT - MVAT & CST (other than Real Estate but including construction) | Mr. Santosh Gupta, Adv., Nagpur | Mr. P. C. Joshi, Adv., Mumbai |
| 10.30 a.m. to 11.30 a.m. | Branch Transfer vs. Interstate Sales | Mr. Nayan Sheth, Adv., Ahmedabad | Mr. M. L. Patodi, Adv., Kota |
| 11.30 a.m. to 12.30 p.m. | Issues under Income Tax on Shares & Securities Transactions | CA. Gautam Nayak, Mumbai | CA. Kishor Karia, Mumbai |
| 12.30 p.m. to 1.30 p.m. Lunch Break | | | |
| 1.30 p.m. to 3.30 p.m. | Brains' Trust Session | Trustees | |
| | Survey, Search, Seizure, Business Audit and Check Post (under Income Tax, Sales Tax, Service Tax and Excise Laws) | Mr. B. C. Joshi, Adv., Mumbai (VAT & Sales Tax) Mr. N. M. Ranka, Sr. Adv., Jaipur (Income Tax) Mr. S. N. Inamdar, Adv., Mumbai (Income Tax) Mr. Vikram Nankani, Adv., Mumbai (Excise & Service Tax) | |
| 3.30 p.m. to 4.30 p.m. | Valedictory Session | Hon'ble Supreme Court Judge Shri Markandey Katju | |

**Delegate Fees : Members : Rs. 2,000/- ; Non-Members : Rs. 2,500/- ; Accompanying spouse : Rs. 1,000/-
(including Breakfast, Lunch and Afternoon tea on both days)**

Cheque/DD may be drawn in favour of "All India Federation of Tax Practitioners - Western Zone". Outstation members are requested to pay DD payable at Mumbai only.

NATIONAL TAX CONFERENCE

Jointly Organized by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WESTERN ZONE)
and
SALES TAX PRACTITIONERS' ASSOCIATION OF MAHARASHTRA

on Friday, 17th October, 2008 & Saturday, 18th October, 2008
at Navin Thakkar Auditorium, Shraddhanand Road, Vile Parle (W), Mumbai - 400 057

HOTEL TARIFF

| Sr. No. | Name of Hotel | Room Tariff / Excluding Tax | | Extra Person | Distance from venue |
|---------|---|-----------------------------|----------------------------|--------------|---------------------|
| | | Standard | Deluxe | | |
| 1 | Hotel Rama Krishna 148, Nehru Road, Vile Parle (E), Mumbai - 57 Tel : 26177777 / 8888 • Fax - 26146666 Email : reservation@rkhotels.com Website : www.rkhotels.com | Single 2000 Double 2500 | Single 2500 Double 3000 | 750 | 5 mins. walk |
| 2 | Hotel Columbus Prop. Hotel Jyotdeeo, Palace Pvt. Ltd., 344, Nanda Patkar Road, Vile Parle (E), Mumbai - 57 Tel : 26182029 / 26184357 - 59 / 32468713 - 14 Fax : 26163086 • Email : hotel_columbus@rediffmail.com | Single 3000 Double 3000 | Single 3500 Double 3500 | 600 | 5 mins. walk |
| 3 | Quality Inn Parle International B. N. Agarwal Commercial Complex, Vile Parle (E) Mumbai - 57 Tel : 26162476 / 85 / 26102122 / 24 Fax : 26128215 • Email : info@hotelparleinternational.com Website : www.hotelparleinternational.com | Single 5400 Double 6400 | Single 8000 Double 9000 | 1000 | 6 mins. walk |
| 4 | Hotel Atithi Blink Hotels Pvt. Ltd. 77A-B, Nehru Road, Vile Parle (E) Mumbai - 99 Tel : 26187941-43, 26116124-25, 26130874-75 Fax : 26111998 • Email : atithihotel@vsnl.net Website : http://fhraindia.com/hotel/mumbai/atithi | Single 4000 Double 5800 | Single 4800 Double 6500 | 800 | 10 mins. walk |
| 5 | Hotel Bawa International Nehru Road Extension, Nr. Domestic Airport, Vile Parle (E), Mumbai - 99 Tel. : 26113636 / 26114015 / 26114024 Fax : 26107096 • Email : reservations@bawahotels.com Website : www.bawahotels.com | Double 9900 | | | 10 mins. walk |
| 6 | Hotel Park View 37, Lallubhai Park Road, Andheri (W), Mumbai - 58. Tel: 26287222 • Fax :26249340 Email : parkview@viewhotelsinc.com Website : www.viewhotelsinc.com | Single 3400 Double 4000 | | 600 | 2 kmts. |
| 7 | Hotel Karl Residency 36, Lallubhai Park Road, Andheri (W), Mumbai - 58. • Tel : 26250550 Fax : 26250551 / 26702823 Email : karlresidency@karehotel.com Website : www.karehotels.com | Single 5000 Double 6000 | | 1000 | 2 kmts. |

For Further details, please contact:

- | | |
|--|--|
| 1. Nikita Badheka, 9821037885 • nikita_badheka@vsnl.net | 5. Deepak R. Shah, 9820148536 • deepakshah@vsnl.net |
| 2. Deepak Bapat, 9820528006 • dkbapat2002@yahoo.co.in | 6. Chirag Parekh, 9821634128 • chiragnp7@gmail.com |
| 3. J.D. Nankani, 9821034867 • jagdish@nankanis.com | 7. Pravin R. Shah, 9821476817 • shahpravinr@indiatimes.com |
| 4. Kishor Vanjara, 9820186480 • k_vanjara@rediffmail.com | 8. S. G. Khushalani, (O) 25426980 • sunstax@yahoo.co.in |

215, Rewa Chambers, 31, New Marine Lines, Mumbai - 400 020
Tel.: 22006342 • Fax: 2200 6343 • E-mail: aiftp@vsnl.com

DIRECT TAXES

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

SUPREME COURT

1. Provision for bad and doubtful debts – Cannot be added to the “book profits” for purposes – S. 115JA

There are two types of “debt”. A debt payable by the assessee is different from a debt receivable by the assessee. A debt is payable by the assessee where the assessee has to pay the amount to others whereas the debt receivable by the assessee is an amount which the assessee has to receive from others. In the present case “debt” under consideration is “debt receivable” by the assessee. The provision for bad and doubtful debt, therefore, is made to cover up the probable diminution in the value of asset, i.e., debt which is an amount receivable by the assessee. Therefore, such a provision cannot be said to be a provision for liability, because even if a debt is not recoverable no liability could be fastened upon the assessee. In the present case, the debt is the amount receivable by the assessee and not any liability payable by the assessee and, therefore, any provision made towards irrecoverability of the debt cannot be said to be a provision for liability.

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

CIT vs. HCL Comnet; Source: www.itatonline.org

2. Subsidy to encourage the setting up of sugar factories – Capital in nature

Where the Government formulated a scheme of subsidy to encourage the setting up of sugar factories and to make them viable under which new sugar factories were entitled to a subsidy in the form of enhancement of free sale sugar quota and excise duty rebate thereon which could only be used for repayment of loans taken for the unit and the question arose whether such subsidy was taxable HELD, in determining whether the subsidy is capital or revenue, the “purpose” test had to be adopted. The source of the subsidy, its form and the point of time when it is paid are irrelevant. On facts, held, following **Sahney Steel** 228 ITR 253 that the subsidy was capital in nature.

CIT vs. Ponni Sugars; Source: www.itatonline.org

3. SLP against ruling of AAR – Not maintainable

Where the assessee had filed a SLP in the Supreme Court to challenge the ruling of the AAR without first filing

• a writ petition in the High Court, it was directed to withdraw the SLP and file a writ petition.

• *Foster’s Australia vs. CIT; Source: www.itatonline.org*

HIGH COURTS

1. Dividend Stripping

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

(i) S. 94(7) was inserted prospectively w.e.f. 1-4-2002 to disallow dividend stripping losses. If the argument of the Revenue that even transactions prior to s. 94(7) can be disallowed is accepted, it will render s. 94(7) redundant and also lead to anomalous results.

(ii) CBDT Circular No. 14 of 2001 makes it clear that prior to s. 94(7) the loss was allowable. This Circular is binding on the revenue and they cannot argue contrary to that.

(iii) Even otherwise, it was not established that the motive was to earn a loss. The allegation that there was complicity between the mutual funds, the brokers and the assessee was also without merit. **McDowell** 154 ITR 148 (SC) and **Azadi Bachao Andolan** 263 ITR 706 (SC) considered.

(iv) The alternative argument that the loss should be treated as expenditure incurred to earn dividend and disallowed u/s 14A is also without merit.

• *CIT vs. Wallfort Shares & Stocks*
• *Source: www.itatonline.org*

2. Depreciation Mandatory – Ss. 80-IB, 80 HHC

• In arriving at the extent of the permissible deduction under section 80 IB and section 80HHC, the income which is to be considered is that which is calculated in accordance with the provisions of the Act alone. Thus, in calculating profits and gains of business “derived” from the industrial undertakings i.e, eligible businesses, under section 80-IB or export business under section 80 HHC, we would have to bear in mind the provisions of sections 30 to 43D as referred to in section 29, section 80AB and section 80B(5). A conjoint reading of these provisions

leads to the conclusion that depreciation allowance under section 32 will have to be deducted in arriving at the “profits and gains” of business derived by an Assessee, from an industrial undertaking specified under section 80-IB or export business under section 80 HHC.

Hence, while computing normal profits which do not involve Ch VI-A relief, an assessee is entitled not to claim depreciation. However, where deduction under Ch VI-A is claimed depreciation is mandatory.

Dabur India Ltd vs. CIT; Source: www.itatonline.org

3. Loss due to infraction of law – Not allowable

- (i) Where the assessee is carrying on an illegal activity which is treated as a business, any loss arising in such business as a result of confiscation by the authorities is an allowable loss. However, where the assessee is carrying on a lawful business, any loss arising as a result of infraction of the law is not allowable.
- (ii) The amount assessed as undisclosed income u/s 69A has to be assessed as ‘income from other sources’ and not as ‘business income’.

Mahendra D. Jain vs. ITO; Source: www.itatonline.org

4. Principle of mutuality – Not applicable to Interest on Bank Deposit

Where an assessee deposits money in the bank for earning interest, their relations are not based on mutuality but they are of customer and banker – Principle of mutuality is totally absent in such transaction – A transaction of such nature which gives rise to some income can always be separated from other income notwithstanding existence of mutuality vis-à-vis other income of the assessee – Further, the object of the assessee company formed for the benefit of member shopkeepers is also to carry on the business of manufacture of thread, art, silk, nylon, synthetic, fibre, etc. – Besides, the memorandum and articles of association also set out other kinds of businesses which can be carried on by the assessee – These facts clearly show that the interest income earned by the assessee can be utilized for carrying on various kinds of business activities which involve commercial element – Therefore, principle of mutuality is inapplicable to the transaction in question on this ground too.

Devi Ahilya new Cloth Market Co. Ltd. vs. CIT (2008) 12 DTR 33

5. Grant of right of development – No transfer of capital asset

Grant of mere right of development of plot of land with possession to facilitate development under a joint

collaboration agreement against receipt by way of security to be adjusted in future against transfer of built up area allocable to assessee on completion of development did not involve transfer of capital asset giving rise to chargeable capital gains, more so, when neither the registered sale deed was executed nor construction was completed nor permission for construction was granted by the Government.

CIT vs. Atam Prakash & Sons (2008) 12 DTR 1 (Del.)

TRIBUNALS

1. No deduction to non resident – Not Discriminatory – S. 80HHE

Where the assessee, a US company, claimed that non-grant to it of deduction u/s 80HHE on the ground that it was a non-Indian company violated the non-discrimination provision in Article 26 of the India-USA DTAA, HELD, rejecting the claim that:

(i) In order to attract the non-discrimination clause in Article 26, mere differential treatment is not enough. The assessee has to show that not only has it been subjected to differential treatment vis-à-vis others but also that the ground for this differentiation in treatment is unreasonable, arbitrary or irrelevant and that the basis of differentiation lacks any coherent relationship with the object sought to be achieved by that provision.

(ii) Though s. 80HHE is available only to Indian companies and not to foreign companies, the differentiation is on the basis of residential status of the assessee and not on the place of incorporation. Further, though other fiscal incentives for exports like ss. 10A and 10B as well as deductions u/ss 80-I and 80-HH are available to non-residents as well, the denial of deduction u/s 80HHE cannot be said to be unreasonable. The differentiation on the basis of residential status cannot be said to be arbitrary or irrelevant and it has a reasonable relationship with the object sought to be achieved by the incentive deduction. Accordingly, though there is a differentiation, there is no discrimination.

(iii) The OECD Model Convention Commentary has a limited role to play in view of the Technical Explanation on the India-USA DTAA. The Technical Explanation is of significant persuasive value and is the best guide for interpreting this DTAA. If there is a conflict between the OECD Commentary and Technical Explanation, the latter will prevail.

(iv) The fact that different tax treaties have different words and phrases does not necessarily mean that

a different interpretation is warranted in view of the fact that treaties are, unlike a statute, the result of bilateral negotiations and the wordings thereon depend on the comfort levels of the treaty partners.

Automated Securities vs. ITO (itatonline.org)

2. Grant of stay beyond 365 days by ITAT – Permissible before 1-10-2008

As the 3rd Proviso to s. 245 (2A) {restricting the right of the Tribunal to grant stay beyond 365 days even if the delay is not attributable to the assessee} comes into force on 1-10-2008, there is no bar on the Tribunal before that date to grant stay beyond 365 days.

UPS Freight Services vs. ACIT; Source: www.itatonline.org

3. Exchange rate gain difference – Allowable in the year in which exports are made.

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

include it in the income of the year of exports and allow deduction u/s 80HHC accordingly.

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

4. Deduction – Deduction u/s. 80-IB has to be reduced – Ss. 80HHC, 80-IB

Deduction under s. 80HHC – Computation – Treatment of deduction under s. 80IB- In view of s. 80-IA(9) where an assessee is entitled to deduction under s. 80HHC as well as deduction under s. 80-IA, deduction under s. 80HHC is allowable on profits derived from export business after reducing the amount of deduction allowed under s. 80-IA – Since the provisions of s. 80-IA(9) are applicable to s. 80-IB by virtue of provisions of s. 80-IB(13), the amount of deduction allowable under s. 80-IB has to be reduced from profits derived from export business for the purpose of deduction under s. 80HHC.

Nodi Exports vs. ACIT (2008) 12 DTR 1 (Del.)

5. Reassessment – Change of status

Notice under s. 148 having been issued in the status of HUF, AO had no jurisdiction to make assessment in the status of individual – I.T. Act recognizes the status of the HUF different from individual status of Karts of the HUF – Therefore, it is necessary that notice under s. 148 should be sent in the correct status because jurisdiction to make assessment is assumed by issuing valid notice.

Rajkumar Dugar (HUF) vs. ITO (2008) 12 DTR 16 (Del.)

◆◆

Hearty Congratulations

Hearty Congratulations to newly elected Office Bearers of The Cuttack Tax Bar Association for the period 2008-2010.

| | |
|-----------------|---------------------------------------|
| President | : Shri Prasanna Kumar Ray, Advocate |
| Vice President | : Shri Jay Prakash Saha, Advocate |
| Secretary | : Shri Aptakama Mishra, Advocate |
| Joint Secretary | : Shri Nihar Ranjan Mohanty, Advocate |
| Hon. Treasurer | : Shri Sajjan Kumar Agarwal, Advocate |

INDIRECT TAXES – SALES TAX DECISIONS

P. C. JOSHI, Advocate

Branch Transfers

The Allahabad High Court, while considering the impact of the provisions of section 6A of the Central Sales Tax Act 1956, held that unless the declaration in Form 'F' was found to be incorrect, forged, fabricated or not fulfilling the requirement of law, the claim of branch transfer duly supported by declarations in Form 'F' alongwith the evidence of despatch of goods cannot be rejected.

M/s North Star India Pvt. Ltd. vs. Commissioner of Trade Tax, U. P., Lucknow. 2008 NTN (Vol. 37) – 199.

Compounding Scheme

The Allahabad High Court held that the compounding scheme under section 7-D of the U. P. Trade Tax Act was a privilege given to an assessee and was neither attached to business nor was transferable alongwith the business to a successor thereof. In view of that position, the reconstituted firm was held to be not eligible to the benefit of compounding a payment enjoyed by the erstwhile firm.

M/s Shri Narain Mahabir Prasad Sugar Cottage Industries, Shahjanpur vs. State of U. P. & Others. 2008 NTN (Vol. 37) – 209.

Circular

The Allahabad High Court held that a Circular issued by the Commissioner was binding upon the authorities of the department, even when the same was erroneous or contrary to the statutory provisions.

M/s Shiva Electronics (India) Pvt. Ltd. vs. The Commissioner of Trade Tax, U. P., Lucknow. 2008 NTN (Vol. 37) – 223.

Dealer

1. VAT Act – Charitable Trust

The Commissioner, under section 80 of the Gujarat VAT Act, held that a general hospital conducted by Charitable Trust, duly registered under the Public Charitable Trust Act and enjoying income-tax exemption, was a dealer for running a medical store supplying medicines and surgical goods to indoor patients as well as to outsiders. It was in that connection held that such an activity was a commercial activity and therefore the said hospital was required to be registered under the VAT Act and consequently liable to tax under Gujarat VAT Act, 2003.

M/s Bhailal Amin General Hospital, Baroda.

Source : Sales Tax Journal, Vol. : 47, Part : 4, Page 242.

2. Financial Company

The West Bengal Taxation Tribunal, considering the inclusive part of the definition under the amended West Bengal Taxation Law 1941, held that a company, even though not engaged in the business of selling and purchasing goods, was still a dealer qua its transaction of sale of office materials, waste paper, broken furnitures and other unserviceable materials.

M/s Peerless General Finance & Investment Company Ltd & Another vs. State of West Bengal & Another. (2008) 52 S.T.A. – 18.

Double Taxation

The Commercial Tax Tribunal at Ghaziabad held that section 3(5) of the U. P. Trade Tax Act, 1948 was not a charging section, but it avoided double taxation. Between the principal and commission agent, whoever effected the first sale after the goods were imported, would be liable to tax, but the liability of payment of tax was joint and several. Therefore, when the commission agent was assessed to tax, the principal cannot be assessed.

M/s Indian Petro-Chemicals Corpn. Ltd., Ghaziabad vs. Commissioner of Trade Tax, U. P., Lucknow. 2008 NTN (Vol. 37) Tribunal – 89.

Exemption – Scrap

Before the Supreme Court, the assessee had claimed exemption on the clearance of steel bars, rods and steel ingots manufactured by them on the footing that the input material were duty paid goods.

The goods so purchased were iron and steel scraps including turning and boring, old dismantled machinery, old broken engineering goods, punch steel metal, containers and other broken articles of iron and steel including small pieces of rods, flats end cutting. The Supreme Court, considering the language of the notification granting exemption, held that the materials so purchased cannot be proved to be duty paid goods and therefore, the exemption was held to be correctly disallowed.

M/s Bhupendra Steel (P) Ltd vs. Commissioner of Central Excise. JT 2008 (7) SC 520.

Entries in Schedule

1. Hair dye

The Supreme Court held that a colouring material used for blackening grey hair was not hair lotion required for

cleansing the hair or for skin disorders, but was taxable under the residuary entry 68 of the Excise Act.

M/s Godrej Industries Ltd. vs. Shri D. G. Ahire, Asst. Collector of Central Excise. JT 2008 (7) SC 628.

2. Plastic hangers

The West Bengal Taxation Tribunal held that the plastic hangers used basically for keeping the readymade garments in a crease-free condition, cannot be treated as packing material and therefore was liable to be taxed @ 12.5% under the West Bengal VAT Act, 2003.

M/s Thakur Das Chotrani vs. S. T. O., Rajakatra Charge & Others. (2008) 52 S. T. A. – 62.

3. Ayurvedic medicine

In a proceeding under section 80 of the Gujarat VAT Act 2003, it was held that Vicco Vajradanti Ayurvedic Paste and Vicco Vajradanti Ayurvedic Powder were covered by entry 28A(1) relating to drugs, medicines etc. and therefore were liable to be taxed @ 4%.

M/s Kunj Corporation Agency, Jetalpur, Ahmedabad.

Source : Sales Tax Journal, Vol. : 47, Part : 4, Page 245.

4. Electronic cash register

In the proceedings under section 80 of the Gujarat VAT Act 2003, it was held that electronic cash register was nothing but IT product covered by entry 45 of Schedule II and hence liable to be taxed @ 4%.

M/s Prompt Sales and Service, Old Wataj, Ahmedabad.

Source : Sales Tax Journal, Vol. : 47, Part : 4, Page 248.

5. Steel tubes

In the proceedings under section 80 of the Gujarat VAT Act 2003, held that steel tubes, welded and seamless of all diameters and lengths including the tube fittings, were declared goods covered by entry 46 of Schedule II read with notification under section 5(2) of the said Act and therefore liable to be taxed @ 4%.

M/s Parekh Engineering Co., Rajkot.

Source : Sales Tax Journal, Vol. : 47, Part : 4, Page 260.

6. Orthopaedic Appliances

In the proceeding under section 80 of the Gujarat VAT Act 2003, it was held that orthopaedic electric heating belt / pad were covered by the notification dated 31st March 2006 relating to orthopaedic & fracture appliances and therefore liable to be taxed @ 4% under entry 28 of Schedule II.

M/s Home Care Remedies, Valsad.

Source : Sales Tax Journal, Vol. : 47, Part : 4, Page 264.

7. Stirring Machine

In the proceedings under section 80 of the Gujarat VAT Act 2003, it has been held that the Stirring machine with 1 HP electric motor and working on 250W electricity with the capacity of stirring 100 litres curd and butter in one

hour, was nothing but machinery covered by entry 58 of Schedule II liable to be taxed @ 4% alongwith the liability of 1% additional tax from 1st April 2008.

M/s Shrirang Industries, Visanagar, Gujarat.

Source : Sales Tax Journal, Vol. : 47, Part : 4, Page 269.

8. Generating Set

The Commissioner, under section 59 of the U. P. VAT Act, held that the generating set was a machinery from which electrical energy was produced. Therefore, the same was liable @ 4% under entry 26 of Second Schedule Part C.

Commissioner, Trade Tax, U. P. vs. S/S Handa Sale Power Product Ltd. 2008 NTN (Vol. 37) – 114.

9. Methyl Alcohol & Methanol

The Allahabad High Court held that Methyl Alcohol & Methanol represented the same product and therefore the sale of Methanol was liable to be taxed at the same rate as was applicable to Methyle Alcohol.

Commissioner of Sales Tax, U. P., Lucknow vs. M/s Swadeshi Polytext Ltd. 2008 NTN (Vol. 37) – 207.

10. Potato Chips

The VAT Tribunal, Punjab, held that the potato chips cannot be said to be covered under entry 88 of Schedule B relating to processed fruits and vegetables and therefore was liable to be taxed @ 12.5% under the Punjab VAT Act, 2005.

M/s Pepsico India Holdings Pvt. Ltd, Jalandhar vs. State of Punjab. 2008) 32 PHT 159 (PVT).

11. Leather cloth

The Allahabad High Court held that the leather cloth having been used commonly as a textile for making coats, jackets, table sheets etc., were nothing but water-proof fabric and therefore fell under the term 'textile'.

Commissioner of Sales Tax, U. P., Lucknow vs. M/s Laxmi Leather Cloth Industries Pvt. Ltd. Source : Sales Tax Matters, June 2008, Vol. 11 Part 6, Page 665.

12. Disposable syringe

The Kerala High Court held that the disposable syringe was covered by the entry relating to drugs as defined in the Drugs & Cosmetics Act, 1940 and therefore was not covered under the entry relating to plastics and articles made of plastics.

State of Kerala vs. Shri N. D. Narayanan Nambiar.

Source : Sales Tax Matters, June 2008, Vol. 11 Part 6, Page 692.

Export

The West Bengal Commercial Tax Appellate & Revisional Board held that in absence of the original documents showing sale in the course of export to Bhutan, the xerox copies thereof along with affidavit was sufficient

compliance in view of the fact that Article 286 (1)(b) was applicable to such transactions.

M/s Garden Reach Ship Builders & Engineers Ltd vs. D.C.C.T. Corporate Division. (2008) 52 S. T. A. – 85.

'F' Form – Transfer for job work

The Allahabad High Court stayed the operation of the order passed under Central Sales Tax Act, raising demand in absence of form 'F' for the return of goods to the owner from another State; after completing the job work. The impugned order was passed on the basis of the division bench judgment of the Allahabad High Court in the case of *M/s Ambica Steels Ltd (12 VST 216)*. However, the said decision was not accepted to be the correct interpretation of section 6A of the Central Sales Tax Act by other States, leading to the inability of the transferee branch or principal to issue the Form for the job work so done.

M/s P. Tax Industries Ltd & Another vs. Union of India & Others. VSTI 2008 ... B-379.

Interest of refund under CST Act

The Gujarat VAT Tribunal, while disposing of several second appeals, held that after the amendment of the CST Act by Finance Act 2000, the assessee was entitled to get the refund with interest for its delayed grant, as provided under section 54 of the Gujarat Sales Tax Act, 1969.

M/s Jagdish Export Industries, Ahmedabad vs. State of Gujarat & Others.

Source : *Sales Tax Journal, Vol. : 47, Part : 4, Page 279.*

Interpretation

The Kerala High Court held that beneficial notification issued in public interest has to be liberally constructed, but at the stage of ascertaining the applicability of the notification, the same should be construed strictly.

M/s Cochin Cements Ltd vs. State of Kerala (2008) 16 KTR 332 (Ker).

Inter-State Works Contract

The Kerala High Court held that inter-State purchases, of machineries and equipments; required for works contract, can be effected on 'C' Form at the concessional rate by a works contractor engaged in the business of building flats and houses. According to the Hon'ble Court, construction of a building amounted to manufacture.

M/s DLF Laing O'Rourke (India) Ltd vs. State of Kerala. (2008) 16 KTR 380 (Ker).

Jurisdiction – Taxation tribunal

The Supreme Court held that the West Bengal Taxation Tribunal do not have any jurisdiction, power and authority over any investigation, enquiry or proceeding conducted under Criminal Procedure Code, nor does it have any power to interfere with the order of the lower court even upto the stage of commencement of the trial also.

State of West Bengal vs. Mr Pranab Kumar Saha. VSTI 2008 .. B-348.

Judicial discipline

The Supreme Court held that the High Court ought to have referred to the ratio of the decision of the coordinate bench in relation to the earlier assessment years when the same was brought to its notice. The Supreme Court, finding that the judicial discipline having not been adhered to, set aside the judgment of the High Court.

CCT Orissa & Others vs. M/s Indian Explosives Ltd. VSTI 2008 .. B-350.

Limitation

1. Date of Order

The Supreme Court, while considering the provisions of limitation for assessment under section 29(8)(b) of the Rajasthan Sales Tax Act 1994, held that the time limit for passing the consequential order to the order passed by the Appellate Authority would be two years from the date of communication of the order in appeal; to the assessing authority and not from the date of the order in appeal.

M/s Deepak Agro Foods vs. State of Rajasthan & Ors. VSTI 2008 .. B-369.

2. Notice for assessment

The VAT Tribunal, Punjab, held that if the notice for assessment was issued within the limitation period of five years from the last date of filing the return for the period under assessment, the same can be completed any time thereafter, since the Act did not provide for any limitation for completing the assessment proceeding.

M/s Mollins of India Engg. Ltd, Mohali vs. State of Punjab (2008) 32 PHT 113 (PVT)

3. Assessment – Limitation

The VAT Tribunal, Punjab, while interpreting section 11(3) of the Punjab General Sales Tax Act 1948, held that the period of limitation for completing the assessment that prevailed during the relevant period, was applicable and therefore, the order passed beyond the period of three years; was held to be barred by limitation.

M/s Ranbaxy Laboratories Ltd., Mohali vs. State of Punjab. (2008) 32 PHT 149 (PVT).

Liability for lease transaction

The West Bengal Commercial Tax Appellate & Revisional Board held that the painting and display charges did not involve any transfer of right to use any goods nor was there any conditional transfer of right to use goods and therefore the assessee was not liable to pay any tax under section 2(g)(ii) of the Bengal Finance (Sales Tax) Act, 1941.

M/s Display Pvt. Ltd. vs. A. C. C. T. Chowringhee Circle. (2008) S.T.A. – 81.

Manufacture

The Customs, Excise & Service Tax Appellate Tribunal, Bangalore, while considering the liability of service tax, held that the assessee engaged in the activity of powder

coating of furniture did not undertake an activity of manufacture. Therefore the assessee was liable to pay service tax on such activity.

M/s A. G. Shibu & Another vs. Commissioner of Customs, Excise & Service Tax, Cochin. 2008 NTN (Vol. 37) – 161.

Maintainability of Appeal

The Madras High Court held that the original order of assessment, if not challenged in appeal, cannot be agitated in an appeal against a later rectification order.

M/s Sunmangala Steels Ltd vs. The Chairman, Tamil Nadu Sales Tax Appellate Tribunal, Chennai & Others. 2008-09 (14) TNCTJ – 132.

Natural justice

The Allahabad High Court held that the entries found in the diary, at a third party's business place; alleging certain transactions to be with the assessee; cannot be considered against the assessee unless and until the assessee was given an opportunity to cross examine the author of the diary – third party.

M/s Vishambhar Nath Ravindra Kumar vs. Commissioner of Sales Tax, U. P., Lucknow. Source : Sales Tax Matters, June 2008, Vol. 11 Part 6, Page 665.

Order in appeal – Reasons must

The Supreme Court disapproved the manner of disposing the appeal in a casual manner without due application of mind. It also observed that reasons for arriving at a conclusion was the heart-beat of the judicial process leading to clarity in the order when challenged before the higher authority.

M/s Steel Authority of India Ltd vs. Sales Tax Officer, Rourkela – I Circle & Others. VSTI 2008 .. B-374.

Packing material

The Allahabad High Court, after considering the provisions of the U. P. Trade Tax Act 1948, held that the sale of edible oil, in tin containers purchased from local market by the manufacturer of edible oil, was not liable to tax for the value of the tin container; shown separately in the bill.

M/s Prag Ice Oil Mills vs. Commissioner, Trade Tax, U. P., Lucknow. 2008 NTN (Vol. 37) – 158.

Penalty under section 10(b) of the CST Act

The Orissa High Court held that the show cause notice proposing the imposition of penalty under section 10(b) of the CST Act should be specific, so as to give the assessee a clear idea of the case that had to be met by him. In other words, a vague notice cannot be said to be a notice as contemplated under the Act, therefore the penalty imposed was deleted.

M/s South Eastern Coal Fields Ltd. vs. Sales Tax Officer Source : Sales Tax Matters, August '08, Vol. 11 Part 8, Page 841.

Penalty under section 10(d) of the CST Act

The Allahabad High Court held that no penalty under section 10(d) was imposable when the goods purchased on 'C' Form with an undertaking 'for use in manufacture' were sold because the same were damaged and hence were not usable. The Court held such a cause to be a reasonable excuse.

M/s Asiatic Agro Product Pvt. Ltd vs. Commissioner, Trade Tax, U. P. Lucknow. Source : Sales Tax Matters, Aug. '08, Vol. 11 Part 8, Page 892.

Penalty under section 10-A of the CST Act – Branch Transfer

The Allahabad High Court held that there was no prohibition under the Central Sales Tax Act, 1956 against the transfer to a branch in another State, the goods that were purchased by issuing declaration in form 'C'. In absence of any violation, the penalty imposed under section 10-A was deleted.

The Commissioner of Trade Tax, U. P. vs. S/s Tribhuvana Wires Pvt. Ltd., Mirzapur. 2008 NTN (Vol. 37) – 212.

Purchase Tax

The Punjab & Haryana High Court, after considering the case law on the point, held that no purchase tax was payable under the Haryana General Sales Tax Act 1973, where the raw material purchased were used in the manufacture of goods sold to an exporter from other State who in his turn exported the same out of the country.

M/s G. Poly Flex vs. State of Haryana. Source : Sales Tax Matters, June 2008, Vol. 11 Part 6, Page 685.

Revision

The Madras High Court held that once the payment at the compounded rate was made by the assessee under section 7-C of the Tamil Nadu Act, it was not open to revise the same on the pretext that the transaction was not that of works contract, but a pure and simple sale, on the basis of the judgment of the Supreme Court in the case of M/s Kone Elevators (140 STC 22).

Sinetch vs. The Commercial Tax Officer, Chennai. 2008-09 (14) TNCTJ-122

Reference – Scope

The Supreme Court approved the decision of the Andhra Pradesh High Court in which it had rejected the revision application by the Andhra Pradesh Commissioner against the decision of the Tribunal. The Supreme Court in that regard reiterated that a finding of fact in regard to the nature of the process undertaken by the assessee cannot be interfered with either by the High Court or Supreme

Court. In that case, the assessee had undertaken a process on the LDPE granules purchased by it, which did not produce any new product.

State of Andhra Pradesh vs. M/s Repute Plastic Colours Ltd.

Source : Sales Tax Matters, Aug. '08, Vol. 11 Part 8, Page 959.

Reassessment

While disposing of several writ petitions, the Allahabad High Court disapproved the reopening of the assessment on the basis of a circular issued by the Commissioner. The notices in question were issued merely on change of opinion without any fresh material *de hors* the record. The Court, therefore, quashed the reassessment in each of the cases before it.

M/s Aryaverth Chawal Udyog & Others vs. State of U.P. & Others. 2008 NTN (Vol. 37) – 231.

Refund – Adjustment

The Supreme Court reversed the decision of the Allahabad High Court and held that an assessee cannot, on his own, adjust the undetermined amount of refund against the future liability, because under the proviso to section 29(1) of the U. P. Trade Tax Act, the power of adjustment lay with the authority and the date of refund shall be the date when the intimation regarding the refund voucher was sent to the dealer in the prescribed manner.

Commissioner of Sales Tax, U. P., vs. M/s Hind Lamps Ltd. 2008 NTN (Vol. 37) – 262.

Rectification

The Allahabad High Court held that the scope of section 22 of the U. P. Trade Tax Act, 1948 was very limited to rectify any mistake apparent on record. Therefore, such

an action cannot be sustained when the same was initiated by change of opinion occasioned on the basis of subsequent development after the original assessment order was passed.

M/s Shiva Electronics (India) Pvt. Ltd. vs. The Commissioner of Trade Tax, U. P., Lucknow. 2008 NTN (Vol. 37) – 223.

Sale Price

1. The Allahabad High Court held that the duty of paying export pass fee was that of the buyer / purchaser and therefore even if the export duty was deposited by the seller, it cannot form part of the sale consideration as defined in section 2(g) of the Central Sales Tax Act, 1956.

M/s Sir Sadi Lal Enterprises Ltd, Muzaffarnagar vs. Commissioner of Sales Tax, U. P., Lucknow. VSTI 2008 .. B-367.

2. The Kerala High Court held that the excess amount collected from the purchaser, on account of variation in exchange rate and the consequent variation of customs duty; formed part of sale price for the sale of goods under section 2(h) of the Central Sales Tax Act, 1956.

M/s Keltron Controls Division vs. State of Kerala. (2008) 16 KTR 360 (Ker).

Sale

The Gujarat High Court held that the sale of the entire business on discontinuation, did not amount to sale in the course of business and therefore was not liable to tax under the provisions of Gujarat Sales Tax Act, 1969.

State of Gujarat vs. M/s Sayaji Mills No. 1. Source : Sales Tax Matters, June '08, Vol. 11 Part 6, Page 701.



5TH NANI PALKHIVALA MEMORIAL NATIONAL TAX MOOT COURT COMPETITION

| | |
|--------------------|--|
| 16th October, 2008 | Inauguration – 6.00 p.m. to 8.00 p.m. at Government Law College, Mumbai Chief Guest – Hon'ble Justice Mr. F. I. Rebello, Bombay High Court Guest of Honour – Hon'ble Mr. M. A. Bakshi, Vice President (M), ITAT* |
| 17th October, 2008 | Preliminary Rounds after 2.00 p.m. at Income Tax Appellate Tribunal, Mumbai |
| 18th October, 2008 | Semi Finals – 10.00 a.m. to 12.30 p.m. at Income Tax Appellate Tribunal, Mumbai |
| 18th October, 2008 | Finals – 6.00 p.m. onwards at Hotel West End, New Marine Lines, Mumbai |

Judges for the Finals

Hon'ble Justice Mr. S. J. Kathawalla, Bombay High Court
Hon'ble Justice Mr. V. C. Daga, Bombay High Court
Hon'ble Justice Dr. S. Radhakrishnan, Bombay High Court

Chief Guest

Hon'ble Justice Mr. Markandey Katju, Supreme Court of India

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* Subject to confirmation



Hearty Congratulations

Hearty Congratulations to newly elected Office Bearers of The Sales Tax Practitioners' Association of Maharashtra for the year 2008-09.

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Obituary

We deeply mourn a sudden demise of Shri S. P. Chhajed on 18-09-2008 at Mumbai.

He was Past President of Institute of Chartered Accountants of India and Member, ITAT Co-ordination Committee of Federation.

We pray God to rest his soul in eternal peace.

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 October, 2008

If undelivered, please return to :



ALL INDIA FEDERATION OF TAX PRACTITIONERS
 215, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020. • Tel.: 22006342
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