



All India Federation of Tax Practitioners

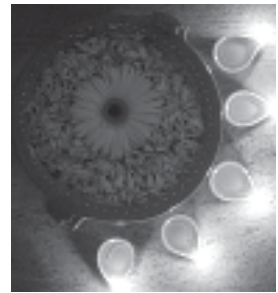
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AIFTPtimes

Volume IV - No. 10 • October, 2009



*We Wish all our members
and readers
A
Very Happy Diwali and
Prosperous New Year*



Federation News

Mukul Gupta, Secretary General

FORTHCOMING PROGRAMMES

Dates & Months	Programmes
2nd & 3rd October, 2009	Two Days National Tax Conference at Nagpur
7th & 8th November, 2009	Two Days National Tax Conference at Bangalore
19th, 20th & 21st November, 2009	AOTCA Mumbai Meeting, 2009 – International Tax Conference at Hotel Trident, Mumbai
3rd to 5th December, 2009	6th Nani Palkhivala Memorial National Tax Moot Court Competition at Mumbai
18th December, 2009	National Executive Committee Meeting at Hotel Om Tower, M.I. Road, Jaipur
18th December, 2009	Extraordinary General Meeting at Hotel Om Tower, M.I. Road, Jaipur
18th December, 2009	Election of office bearers at Hotel Om Tower, M.I. Road, Jaipur
19th & 20th December, 2009	15th National Convention at B. M. Birla Auditorium, Statue Circle, Jaipur

INTERNATIONAL STUDY TOUR TO USA

We are pleased to inform you that Federation is organising an International Study tour to USA during the month of May, 2010. Further details will be circulated in next issue of AIFTP Times. Interested participants are requested to contact office of the Federation.

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	2408389	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



NOTICE

Notice is hereby given that a General Body Meeting of the Members of Eastern Zone of AIFTP will be held at the Conference Hall of Calcutta Chamber of Commerce, 18/H, Park Street, Kolkata, on Saturday the 7th November 2009 at 2.00 p.m. to elect Members of the Managing committee (35 Nos.) and thereafter to elect office bearers for the term 2010 & 2011 amongst the elected members.

Details of posts of office bearers:-

- | | | |
|---------------------------------|---------------------------------------|------------------------------------|
| (1) Chairman 1 (One) post | (2) Vice-chairmen 5 (Five) Posts | (3) Secretary (one) post. |
| (4) Treasurer 1 (One) post | (5) Jt.Secretaries 2 (Two) Posts | (6) Committee Members 25 Nos. |

PROGRAMME

- (A) Last date of receiving Nomination Papers 31-10-2009 at 5.00 pm
(B) Last date of Withdrawal 02-11-2009 at 5.00 pm
(C) Scrutiny of Nomination Papers 04-11-2009 at 4.00 pm
(D) Address for obtaining Nomination Forms, receiving Nomination Forms, and all other matters is Eastern Zonal Office at P-36, India Exchange Place, 2nd Floor, Room No. 40, Kolkata – 700 001.
(E) Date of Election, if necessary On 7-11-2009 at 2.30 P.M. as mentioned in Notice.

Note:

Members present in the meeting shall elect 35 members. The elected Members then elect office bearers as noted above amongst themselves.

25th September, 2009

C. K. Chatterjee
Zonal Secretary

Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Sales Tax Practitioners' Association of Maharashtra for the year 2009-10.

- President : Shri Mayur R. Parekh
Vice President : Shri Hiten S. Shah
Hon. Jt. Secretaries : Shri Dilip V. Parekh and Shri Kishor T. Lulla
Hon. Treasurer : Shri Hemant D. Save

Hearty Congratulations to the newly elected office bearers of Karnataka State Chartered Accountants Association for the year 2009-10.

- President : Shri Marulaisiddaiah M.
Vice President : Shri Allama Prabhu M.S.
Hon. Jt. Secretaries : Shri Manoj Kumar G. and Shri Anant Mutalik
Hon. Treasurer : Shri Maddanaswamy B. V.

We wish them all the success.



REPORT ON TWO DAY NATIONAL TAX CONFERENCE, 2009

held on 29th & 30th August, 2009 at Jamshedpur

by R. N. Gupta, Advocate

A Two Day National Tax Conference was held at Jamshedpur on 29th & 30th August, 2009. This Conference was organised by All India Federation of Tax Practitioners – Eastern Zone, jointly with Jamshedpur Taxation Bar Association, Federation of Jharkhand Commercial Taxes Bar Association, Commercial Taxes Bar Association, Jamshedpur, Jamshedpur Branch of CIRC of ICAI and Jamshedpur Chartered Accountants Society.

The quest for learning to achieve professional excellence, in a march ahead to establish Rule of law had prompted the organiser to organise this National Tax Conference at Jamshedpur, the DREAM CITY OF VISIONARY & PATRIOT, “JAMSHEDJI NUSSERWANJI TATA” Jamshedpur earlier known as KALIMATI, is also known as TATANAGAR a GREEN CITY & CLEAN CITY OF EASTERN INDIA and the INDUSTRIAL CAPITAL OF Mines & Mineral rich JHARKHAND STATE.

The Conference was attended by legal luminaries from across the country, including the State of West Bengal, Rajasthan, Gujarat, Uttar Pradesh, New Delhi, Maharashtra, Orissa, Bihar, Assam, Andhra Pradesh & Karnataka and was glamourised with the presence of Hon’ble Chief Justice of Jharkhand High Court, Ranchi, Judge Supreme Court, Chairman Jharkhand Commercial Taxes Tribunal, Income Tax Commissioners, Registrar Jharkhand, High Court, President District Bar Association besides the large number of National Executive Committee Members, National President, Secretary General & Vice Presidents of AIFTP, Smt. Meena Lal, Chief Legal, Tata Steel. Other senior representatives from Corporate Sector, Coal India Ltd., Tayo Ltd., Uranium Corporation of India Ltd., Tata Steel Ltd., Tinsplate Co. of India Ltd., TRF Ltd., Usha Martine Ltd. also attended the Conference as delegate.

Hon’ble Past Presidents of AIFTP, Shri. P. C. Joshi, Mumbai, and Shri N. M. Ranka, Jaipur, also blessed the Conference. Total numbers outnumbered the capacity of venue, situated in the heart of town, and the auditorium was jam packed with the presence of large number of senior authorities and tax-payer invitees.

Inaugural Session

Hon’ble Chief Justice of Jharkhand High Court Smt. Gyan Sudha Misra, was the Chief Guest of the session, Hon’ble Mr. Justice S.B. Sinha, Judge Supreme Court of India (Retd.) was the Key Note Speaker. Shri Bharat Ji

Agrawal, National President of AIFTP presided the function. Conference was inaugurated by the Chief Guest Hon’ble Justice Smt. Gyan Sudha Misra, Chief Justice Jharkhand High Court by lighting the lamp. Hon’ble Mr. Justice S.B. Sinha, Judge, Supreme Court of India (Retd.), Shri Bharat Ji Agrawal, National President AIFTP, Shri S.K. Poddar, Vice President AIFTP, Shri R. D. Sharma, Chairman AIFTP (EZ) and Shri M. D. Kedia, Chairman Conference Committee also lighted the lamp. After lighting up of the lamp melodious Saraswati Vandana was recited. Shri M. D. Kedia, Advocate, Jamshedpur, Chairman of the organising committee, presented Welcome Address. Shri R. D. Sharma, Advocate, Chairman AIFTP (EZ) also welcomed the dignitaries and delegates on behalf of the AIFTP (EZ).

In her Inaugural address, Hon’ble Chief Justice stressed the need of realistic approach by the Tax Administration to reduce unnecessary load of pending cases before High Court and other appellate authorities. She quoted that even for Refund matters the Tax-payers have to move High Court; the matter is further prolonged by the claim of interest payment for delayed refund. She also desired that “LOK ADALAT” should also be established / created for quick / faster disposal of largely pending tax matters. This will help the State Exchequer in getting its due revenue quickly and relieve the tax-payers from unduly loaded tax liabilities. She expressed happiness for attending the Tax Conference of National stature in her State of Jharkhand and congratulated the organisers.

Hon’ble Mr. Justice S.B. Sinha, Judge Supreme Court of India (Retd.) in his eloquent Key Note Address thrown elaborate light on the tax matters travelling up to Supreme Court and still the “mouse & cat” play is continuing and the pending litigations are quite high. He desired the need of self introspection by all, Tax-payers, Tax Administrations and the Tax Practitioners.

Shri Bharat Ji Agrawal, National President AIFTP in his address welcomed the Govt’s intention to simplify the tax laws by introducing GST (Goods & Service Tax) w.e.f. 1-4-2010 (as announced) and Direct Tax Code w.e.f. 1-4-2011 (after incorporation of the suggestions received from different nook and corners) but was concerned as to whether the introduction of New Laws would really be simple for the tax-payers (also Tax Administrators) in the way they are propagated or would have the FATE of VAT Laws, which are different in different States although announced to be transparent, Simple and Identical through- out the Country. He also expressed concern in the matter of Service Tax, introduced as back as in 1994

by the Finance Act, and having undergone numerous changes with Clauses, Sub-Clauses, Explanations, Provisos etc. but does not have independent code till date. He congratulated the organisers for organising this tax conference and hoped that each one participating in the Seminar will be enriched with the deliberations/talks of the Eminent & Senior, Paper Writers from across the country.

Shri Lalit Bajala and Shri M.S. Mittal, Advocates of Jharkhand High Court, introduced the Chief Guest and Key Note Speaker.

Shri M. D. Kedia, Chairman, organising committee, in his welcome address also expressed serious concern regarding the problems faced by Tax Practitioners practising in the Lower Courts, where the Rule of law is not always seen prevailing and wanted directions from the senior colleagues in the conference, in this regard.

Shri Mukul Gupta, Gen. Secretary, AIFTP, presented detailed report, through Power Point Presentation of the activities carried out by All India Federation of Tax Practitioners in different parts of the country and also highlighted the purpose and vision with which the AIFTP was formed.

Shri R. M. Agarwal, Advocate, Co-Chairman of organising committee, and President Commercial Taxes Bar Association, CA Rama Kant Gupta, Chairman Jamshedpur Branch of CIRC of ICAI and, CA Jagdish Khandelwal, President Jamshedpur Chartered Accountants Society were also on the dais.

Senior Tax Practitioners of Eastern Zone, having practice of more than 50 years were felicitated by Hon'ble Chief Guest Smt. Gyan Sudha Mishra, Chief Justice Jharkhand High Court, by offering a Sawl and the citation certificates. They were Advocates Shri Binod Bihari Das, Balasore (Orissa), Shri L. N. Rastogi and Shri K.N. Jain (Patna) Shri S.B. Garodia, Ex-Advocate General Jharkhand High Court, Ranchi, Shri Atma Ram Shah, Ranchi, Shri R. L. Agarwal, Hazaribagh, Shri K.M. Lal, Ranchi, and Shri J.K. Bhoot, Bokaro and Shri R.D. Sharma, (Chairman AIFTP – EZ), Kolkata.

Souvenir published to commemorate the event (Tax Conference, 2009) was presented by CA Gopal Harlalka and Shri K.Tripathi, Advocate, Chairman & Convener of Souvenir Committee for release and was released by the Chief Guest & Key Note Speaker Mr. S.B. Sinha. Another book – “HUF – 152 frequently asked questions and answer” published by AIFTP Mumbai was also released by the Guest DUO.

Shri S. K. Poddar, Advocate, Vice President, AIFTP, presented Vote of thanks to all the Dignitaries, Guests and Delegates present and also the largely present Print

and Electronic Media with a note of joys and happiness. The master of ceremony was conducted by Shri R. N. Gupta, Advocate, General Secretary of the conference committee.

1st Technical Session (29-8-2009)

After the lunch break the delegates gathered for the 1st Technical Session on a Three-in-one subject “Important issues relating to Real Estate Transaction under Income Tax, VAT and Service Tax”. The session was chaired by Shri N.M. Ranka, Sr. Advocate, Rajasthan High Court and Past President of AIFTP. Papers were presented by Mr. N.K. Poddar, Sr. Advocate, Kolkata on “Income Tax”, CA S. Venkatramani, Bengaluru, on “VAT” and “Mr. Mukul Gupta, Advocate, Gaziabad (also Secretary General, AIFTP) on “Service Tax” discussing all major issues arising under three Acts. And advised special care while drafting the agreements. Chairman Shri N.M. Ranka, Sr. Advocate moderated the issues deliberated by his elderly experience.

2nd Technical Session (29-8-2009)

After a short tea break the delegates gathered in equally large number for the 2nd Technical Session. The session was chaired by Shri P.C. Joshi, Sr. Advocate, Mumbai High Court, also Past President AIFTP. The subjects discussed were under C.S.T. Act., 1956 (with regards to works contract and the second interstate sales) and important changes made by Finance Act, 2009 along with a short view of incoming “Direct Tax Code, 2009”.

Mr. P.S. Sarin, Sr. Advocate, Delhi High Court, a senior member of AIFTP, presented the paper styled “Uncertainty the only certainty in Works Contract under C.S.T. Act” most elaborately, while Mr. K.N. Jain, Sr. Advocate, Patna High Court, presented the paper on “Second Inter state Sales – Emerging controversies” and discussed the issues in detail. Mr. Narayan Pd. Jain, Sr. Avocate, Kolkata, also Co-Chairman AIFTP – EZ, presented papers on “Important changes made by the Finance Act, 2009 (as passed by Lok Sabha) and also incoming new Direct Tax Law – Direct Tax Code 2009” with the help on power point presentation and highlighted important changes / issues / precautions to be taken. Chairman Shri P.C. Joshi, moderated the issues deliberated under C.S.T. Act (both works contract & second interstate sales) with his elderly experience on the subject and desired thorough / elaborate discussion of the changes sought to be made through Direct Tax Code 2009 as a measure to simplify the Direct Tax Laws and make valuable suggestions to the Govt. of India for incorporation in the new Direct Tax Code / laws.

Organising Committee as a gesture, has printed the Direct Tax Code 2009 with Discussion paper and the Books was



been placed in KIT Bags presented to all delegates and dignitaries, for studying and suggesting.

Annual General Meeting & National Executive Committee meeting of AIFTP were also held in Board Meeting Hall of the Venue itself.

Cultural Programme (29-8-2009)

Immediately thereafter an enchanting cultural programme was presented by Shri Hari Mittal, President Sanskar Bharti and also director with his team. A satire "TAJ MAHAL KA TENDER" was presented commenting sharply on the present political and social scenario involving politicians, bureaucrats, contractors, middlemen and the contractee (public).

The programme was rejoiced by each and every one present in the jam packed Auditorium. The artists and the Director were commended and congratulated. Shri M.D. Kedia Advocate, Chairman organising committee and Shri N.M. Ranka, Past President AIFTP jointly presented the memento to the President Shri Hari Mittal (also the Director of the play).

The delegates, dignitaries and invitees dispersed for dinner, arranged at the venue site itself, and for the other sessions to be held on 30-8-2009.

3rd Technical Session (30-8-2009)

The delegates and dignitaries assembled at the venue for 3rd Technical Session followed by the morning Breakfast. The subjects discussed were "Share securities & Derivatives transactions under Income-tax Act" and Input Tax Credit under VAT Act, TDS & Refunds under VAT Act". The session was chaired by Dr. M.V.K. Moorthy, Advocate, Supreme Court of India from Hyderabad (also Vice – President AIFTP – SZ) and the paper writers were Shri Anil Kumar Singh, Advocate, Varanasi and Shri S. K. Modi, Advocate, Ranchi respectively. The paper writers with their large experience over the subject, deliberated the issues most aptly. Chairman with his experience moderated the issues and replied, all the queries raised by the delegates satisfactorily.

4th Technical Session (30-8-2009)

After a short break for tea the delegates gathered in large numbers for the 4th Technical Session. The session was chaired by Hon'ble National President Sri Bharat Ji Agrawal, Sr. Advocate Allahabad and the paper presenters were CA Pulak K. Saha, Kolkata with his paper " CENVAT Credit in a Service Tax on Indirect Expenses – controversial issues in Service Tax (levy and abatements)" and Shri J.N. Pandey, Advocate, Jharkhand High Court with his paper on "Over View of GST." Both

the subjects were important and most current and were presented elucidely / explicitly by the duo paper writers. Chairman moderated the issues with his vast experience over the subjects and was deeply concerned with the fate of the incoming new Direct / Indirect Tax Law in the name of simplification as whether it will be introduced w.e.f. 1-4-2010 (as promised) or deferred for another one / two year and more particularly as to whether the Centre and States would arrive at any conscenculous over the administration / execution part of it or this newly designed levy would have the same fate as that of the Value Added Tax.

He once again congratulated the organizers of the Tax Conference for organising a most successful (in all respects) Tax Conference of the near past.

BRAINS' TRUST SESSION (30-8-2009)

After lunch break the delegates assembled for the BRAINS' TRUST SESSION (the exclusive attraction episode of any conference organised by AIFTP). The Session was chaired by Shri N.M. Ranka ji, Sr. Advocate, Rajasthan High Court, Jaipur. The other trustees were Sri K.N. Jain, Sr. Advocate, Patna, CA Ashvin C. Shah, Ahmedabad, CA Gopal Harlalka, Jamshedpur, CA Pulak K. Saha, Kolkata, Shri S. N. Sahu, Advocate, Cuttack and Sr. R. K. Mishra, Advocate, Rourkela.

All the queries raised on Income Tax, Sales Tax, VAT and Service Tax matters were aptly and explicitly replied. Hon'ble Chairman Shri N.M. Ranka ji, moderated the answers of the queries wherever necessary and desired that the queries, in writing, should be sent to the organisers, sufficiently in advance so that the queries and their replies could be printed and circulated for the benefit of all the delegates.

Validictory Session

The concluding session was chaired by Shri K. Sarkar, IRS Commissioner of Income Tax, Jamshedpur and Shri N. M. Ranka, Sr. Advocate, Jaipur, jointly. Both the chairpersons dwelt upon the importance of such conferences, which updates and enriches the participants, tax-payers and also tax administrators and helps them in better compliance of tax laws for proper discharge of their duties. Shri Sarkar desired that such conferences should be regularly held at shorter intervals.

Shri Sarkar and Sri Ranka Ji extended wholehearted thanks for the organizers, for most successfully organising the conference in all respects, venue, menu, subjects chosen, the paper writers, the deliberations, the participation by delegates and above all for a very good team work.



Shri M.D. Kedia, Advocate, Chairman of the conference committee proposed a vote of thanks to all concerned for helping in organising the National Tax Conference 2009 at Jamshedpur valued as successful. He also apologized for the inconvenience, if any, caused to any of the dignitaries or delegates for any failure on the part of organising committee or otherwise.

At the last, Shri S.K. Poddar, Advocate, Ranchi, Vice President of AIFTP, proposed vote of thanks to each and everyone contributing for successful and organising the conference and for best participation by the delegates and dignitaries from across the country. Extended special thanks to Tata Steel Ltd. for making valuable contributions, President of Tata Workers Union for providing excellent venue (Michel John Auditorium) at subsidized charges, all participants, members of press print & electronic media, and event manager The Concern Shows India (P) Ltd.

He then presented mementos to Shri M. D. Kedia, Advocate, Chairman organising committee, Shri R. N. Gupta, Advocate, General Secretary organising committee, Shri K.L. Mittal, Chairman, Cultural Programme Committee, Shri H.C. Agarwal, Chairman, Food Committee, Shri P.S. Sen, Chairman Auditorium Committee, Shri Rajesh Mittal, Advocate, Chairman, Hotel Accommodation Committee, on behalf of the National President Shri Bharaj Ji Agrawal, Advocate, for their untiring efforts in organising the conference with the support of a very good team of Tax Practitioners, Advocates, Chartered Accountants.

At the end, National Anthem was recited and the conference concluded with High Tea, Food packets were also provided to outstation delegates.

JAI HIND.

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A HUMBLE APPEAL

All India Federation of Tax Practitioners, constituted on 11th November, 1976, has its purposive existence for the last about 33 years. Presently, it has 114 professional associations as its affiliated members, over and above about 4350 life members consisting of designated Senior Advocates, Senior Chartered Accountants and Tax Practitioners from 24 States and 4 Union Territories. The Federation is a symbol and spirit of national integration.

National President is assisted by a Deputy President, one Secretary General, five Vice-Presidents and five Joint Secretaries, one from each zone and a National Treasurer. It has a National Executive consisting of 35 elected members and 14 co-opted members apart from the office bearers. The 5 zones created for administrative convenience have their own elected Chairman, assisted by Vice Chairmen, one from each State and other office bearers and members. Tenure is now two years, against earlier 3 years upto 2005. The President is elected by rotation, from each zone. The Deputy President is elected as President for the next term. National Executive meet once in a quarter to coincide with National Tax Conference. No travel or stay expenses are reimbursed. All are working in full co-ordination and serving the tax fraternity.

The National President and Chairmen are well known Tax experts at National and Zonal level with innovative ideas, good vocabulary and clean image; men of integrity, well groomed over years, closely associated with the activities of the Federation and persons of eminence, who can run the Federation efficiently and effectively. Same are the

norms for election of other office bearers and members, who have vast experience to serve. The Past Presidents continue to actively and constructively assist, advise and guide the office bearers and Executives Committees.

Since 1994 the Federation has become a vibrant and unique association at National level, with the following activities:

Organising Seminars in association with its affiliated members, other Tax Bar Associations, Institute of Chartered Accountants of India, Income Tax Settlement Commission, Income Tax Appellate Tribunal/Universities of Bombay, Allahabad and Rajasthan, Rajasthan Chamber of Commerce & Industry, Maratha Chamber of Commerce, Agriculture & Industry, Pune, Chandigarh Judicial Academy and many more tax and accountancy associations of repute. Continual organization of Two Day and One Day National Tax Seminars and Tax Conferences practically every month, sometimes twice a month at various destinations all over India, with participation exceeding 1000 at Varanasi in 2009 and at Jaipur exceeding 1200 in the year 2000. Such seminars/conferences are attended by members as well as non-members. The participants actively indulge in deliberations and discussions. The Conferences, Seminars have been inaugurated by the Hon'ble Chief Justices and Justices of Supreme Court and High Courts, Governors, Chief & Finance Ministers, Senior Tax Administrators, and high dignitaries. Souvenir containing papers and articles of day-to-day importance are printed. No alcohol or non-vegetarian food is served.



Has published more than 25 Tax Books in simple questions and answers form with moderate price. Many of its publications are sold out in short time and are being revised, enlarged and reprinted. The Federation has associated **Ranka Public Charitable Trust** for publication on 'No gain-no loss basis'.

In order to get tax laws simplified and rational has filed more than 20 Writ Petitions in public interest. Representations are made to the Central and State Governments and higher tax administration for redressal of grievances and simplification of tax laws.

Has adopted the convention that the office bearers and members of the National Committee, Zonal Committees, Chairman, Faculty at the seminars and Conferences bear their own travel and stay costs, pay registration fee and do not claim any reimbursement. They serve smilingly with devotion and dedication, at their own cost.

Organizing N. A. Palkhivala National Tax Moot Court at Mumbai since 2004 and Shri Rajaram Agarwal Memorial National Tax Moot Court Competition at Allahabad, since 2009.

Publishes monthly AIFTP Journal and AIFTP Times for its members and subscribers. The AIFTP Journal covers the latest reported and unreported decisions of the Courts and Tribunals including the articles, opinions and latest developments on direct and indirect taxes. The unique feature is that every quarter, is publish the gist of important case laws published in 33 Tax Magazines from all over the country. East Zone also issue AIFTP Times East.

Is actively considering to start one year "Tax Diploma Course" in association with Government Law College, Mumbai for Law Graduates and Chartered Accountants.

Has voluntarily adopted the Code of Ethics for its members in its Constitution. Ethics is the way of life Code of Standard formulated by the Federation has been adopted by the Income Tax Appellate Tribunal for its members.

Developing brotherhood, fraternity, affinity and family relationship between the members and live in cordial atmosphere as members of a joint Hindu family upholding dignity of all.

The tenure of the present National Executive and Zonal Committee is to end by 31st December, 2009. It is a convention that the same person be not elected consecutively for two term. It is desirable that dual office/ membership of National Executive and Zonal Committee is avoided. Elections of the Zonal Committees are likely to be held in the month of November, 2009 so that persons who are elected/co-opted in the Zonal Committee would not be elected or co-opted at the National Executive election whereof would be on 18th December, 2009 at the 15th National Tax Convention at Jaipur. Requisite notices shall be published in the month of October/November, 2009 in its publications.

To promote two day Tax Seminars/Conferences the Federation has installed '**Ranka Tax Best Seminar Award**' since 1994 and on the suggestion of Shri M. D. Sodani, Chairman, Central Zone, for the day as well from 2008. The Federation has also set up '**Ranka Best Chairman Award**' to be judged on the working of each zone, since 2006. The organizers and the Zone Chairmen are advised to send complete information about such seminars, held during the tenure 2008 and 2009, by 10th November, 2009 to enable the selection committee to select. Winners shall be awarded the Award by '**Ranka Public Charitable Trust**' on 19th December, 2009 at the National Convention at Jaipur.

I humbly appeal to elect such member who are willing to serve the tax fraternity, by expanding the Federation quantitatively as well as qualitatively and make it an unified strong institution to reckon. Members who have no time or desire to discharge their bounden duty religiously and expeditiously would not contest and the members need not elect such busy bee. I request to serve with dedication, devotion and determination, to make the Federation an unique and strong institution at the National Level.

N. M. Ranka

Sr. Advocate & Past President, AIFTP



Hearty Congratulations

We are happy to hear that one of our member Hon'ble Mr. Justice Kamal M. Mehta, Gujarat High Court (Retd.) have been appointed as the President of The Gujarat Value Added Tax Tribunal. We wish him all the success in his new assignment.

AOTCA

MUMBAI MEETING 2009

INTERNATIONAL TAX CONFERENCE

19-21 NOVEMBER, 2009
Trident, Nariman Point, Mumbai, India

The International Tax Conference will be hosted by the Asia-Oceania Tax Consultants' Association (AOTCA) which is the international body for tax professionals in the Asia-Oceania region – in association with the All India Federation of Tax Practitioners (AIFTP). This Conference will provide the perfect opportunity to facilitate the exchange of knowledge and to developing interpersonal relationships on an international level.

Day 1 : Thursday, 19th November, 2009

Registration – 4.00 p.m. to 6.00 p.m.
INAUGURAL FUNCTION – 6.15 p.m. to 8.00 p.m.
Hon'ble Judge, Bombay High Court.
Mr. Gil Levy, *President, AOTCA, Australia*
Mr. Bharatji Agrawal, *National President, AIFTP, India*
Dr. K. Shivaram, *Chairman, Asia Tax Conference, India*

Day 2 : Friday, 20th November, 2009

Time : 8.30 a.m. to 6.00 p.m.

SESSION 1
India Advantage
Mr. Mahendra Kumar Singhi, *B.Sc., LLB, F.C.A., E.D., Shree Cement Ltd., Beawar, Rajasthan, India*
Doing Business in Australia
Mr. Gil Levy, *President, AOTCA, Australia*
Chairman : Mr. N. M. Ranka, *Sr. Advocate & Past President, AIFTP, Jaipur, India*

SESSION 2
Current Development in International Tax vis-a-vis Doing Business in India
Mr. Nishith Desai, *Sr. Partner, Nishith Desai Associates (Legal and Tax Counselling Worldwide), Mumbai, India*

SESSION 3
Transfer Pricing
Mr. Vispi Patel, *Partner, Economic Law Practice, Mumbai, India*
Mr. Khoo Chin Guan, *Dy. President, Chartered Tax Institute of Malaysia*

Chairman : Mr. V. Ramachandran, *Sr. Advocate & Past President, AIFTP, Chennai, India*

SESSION 4
VAT – Comparison
Dr. Ashok Saraf, *Sr. Advocate, Guwahati, India*
Mr. Hideaki Mitani, *Japan Federation of Certified Public Tax Accountants Association*
Mr. Nguyen Van Nam, *Member of Executive Board of VTCA, Vietnam*
Chairman : Mr. P. C. Joshi, *Advocate & Past President, AIFTP, Mumbai, India*

SESSION 5
Mergers & Amalgamation – Indian Perspective
Mr. Girish Vanvari, *Partner, KPMG, Mumbai, India*
Mergers & Amalgamation in USA
Mr. Morris DeFeo, *Senior Corporate Partner, Crowell & Moring LLP, Washington, USA*
Chairman : Mr. Gautam Doshi, *Chartered Accountant, Group Head, Reliance ADA, Mumbai, India*

Day 3 : Saturday, 21st November, 2009

Time : 8.30 a.m. to 1.30 p.m.

SESSION 1
Double Taxation Agreements – Controversial issues – Comparison with Asian Countries
Mr. Dinesh Kanabar, *Sr. Partner, PWC, Mumbai, India*
Mr. Lee Hyung-soo, *Korean Association of Certified Public Tax Accountants*
Mr. Thomas Lee, *Hong Kong - Dy. President, AOTCA*

SESSION 2
Current Developments
Mr. Prijohandojo Kristanto, *Indonesian Tax Consultants' Association, In SGATAR*
Mr. Stephen Colecoough, *President, CPE – Within CFE and the OECD*
Chairman : Mr. Y. P. Trivedi, *Sr. Adv., Member of Parliament and Director, Reliance Industries Ltd., Mumbai, India*

REGISTRATION : Each delegate is requested to fill in the Event Registration Form available on the website and send to AIFTP by email or fax on or before 30th October, 2009.

DELEGATION FEE : Indian Delegates: Rs. 10,000 (till 30th Oct, '09) | Rs. 12,000 (After 30th Oct, '09) | For Spouse: Rs. 6,000



For more details contact :

ALL INDIA FEDERATION OF TAX PRACTITIONERS

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TWO DAY NATIONAL TAX CONFERENCE AT BANGALORE

Jointly organised by



**ALL INDIA FEDERATION OF TAX
PRACTITIONERS (SOUTHERN ZONE)**



**KARNATAKA STATE CHARTERED
ACCOUNTANTS ASSOCIATION**

on 7th and 8th November, 2009

DAY 1 : 7-11-2009, SATURDAY

08.45 am to 09.15 am	Registration
09.15 am to 10.15 am	Inaugural session Welcome Address, Key Note Address, Release of Souvenir, Vote of Thanks
	FIRST TECHNICAL SESSION
10.30 am to 12.00 Noon	GST – A Road Map – CA. Venkataramani, Bangalore
	SECOND TECHNICAL SESSION
12.00 pm to 01.00 pm	Subsequent Sales under CST & Recent Controversial Issues – Shri P.C. Joshi
01.00 pm to 01.30 pm	Question & Answers
01.30 pm to 02.15 pm	LUNCH
	THIRD TECHNICAL SESSION
02.15 pm to 03.45 pm	Issues in Works Contract – Shri P.S. Sarin
	FOURTH TECHNICAL SESSION
04.00 pm to 05.15 pm	Panel Discussion on Works Contract Panelists : – Shri P.C. Joshi – Shri P.S. Sarin – CA.Venkataramani – Shri Bharat Ji Agrawal – CA. Sanjay Dhariwal - Moderator

DAY 2 : 8-11-2009, SUNDAY

08.45 am to 09.30 am	Breakfast
	FIRST TECHNICAL SESSION
09.45 am to 10.45 am	Introduction to IFRS
	SECOND TECHNICAL SESSION
11.00 am 01.30 pm	Recent Trends in Construction Contracts, Renting & I.T. Services under the Service Tax – Shri K.S. Ravi Shankar, Advocate, Bangalore
01.30 pm 02.15 pm	LUNCH
	THIRD TECHNICAL SESSION
02.15 pm 04.45 pm	Direct Tax Code – The Salient Features – CA. H. Padamchand Khincha (includes 15 Minutes tea break, in between)
	FOURTH SESSION
04.45 pm to 05.15 pm	Valedictory Session

For details please contact :

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Note : Detailed Programme will publish in the next AIFTP Times.



15th NATIONAL TAX CONVENTION 2009

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS

Jointly with
**RAJASTHAN TAX CONSULTANTS' ASSOCIATION, TAX CONSULTANTS ASSOCIATION, JAIPUR,
JAIPUR BRANCH OF CIRC OF ICAI, JAIPUR TAX BAR ASSOCIATION & TAX BAR ASSOCIATION, KOTA**

DECEMBER 19 – 20, 2009
AT B. M. BIRLA AUDITORIUM, STATUE CIRCLE, JAIPUR

THEME : "TAXATION POLICY – ECONOMIC DEVELOPMENT"

HOTEL ROOM TARIFF

S.No.	Name of Hotel	Distance	Contact No.	Single A/C	Double A/C
Category 1 Below Rs.5,000/- Per Day					
1	HOTEL ARYA NIWAS		2372456	1000	1400
2	REX HOTEL		5127315	1000	1500
3	ARCHANA HOTEL		2378436	650	750
4	GOYAL HOTEL		2361709	850	1200
5	UMAID BHAWAN		2316184	2400	3500
* 6	IMPERIAL HOTEL		2378651	1500	2000
7	HOTEL RAWAT		2367460	850	1100
8	JAI NIWAS		2363964	1200	1300
9	TARA NIWAS		2206823	990	1600
10	LMB HOTEL		2565844	2325	2525
* 11	HOTEL MAURYA PALACE		5101414	4000	5000
12	HOTEL KHASA KOTHI		2375151	1150	1475
13	HOTEL TEEJ		2203199	1750	2100
* 14	HOTEL RATNAWALI	1 KM	2377487	1795	1,850
15	GEM HOTEL		5127315	1500	1800
16	HOTEL NATRAJ		2361348	2000	2500
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* 18	HOTEL SHIKHA	1/2 KM	2228227	2200	2500
* 19	HOTEL KALA RESIDENCY	1/2 KM	9887514131	1500	1750
* 20	HOTEL JAISINGH PALACE		2372635	1500	1800
Category 2 Below Rs.10,000/- Per Day					
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2	CLARKS AMER		2560616	8500	9000
3	LEMERIDIAN		5114455	8500	8500
4	HOTEL JAIPUR PALACE		2743181	5000	5000
5	HOTEL MAN SINGH		2378771	9000	10000
6	HOTEL OM TOWER		4046666	3000	3500
* 7	HOTEL WALL STREET		3928188 – 4098188	5700	6300
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DIRECT TAXES

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

SUPREME COURT

1. Business Expenditure – replacement of old machine – enduring benefit – Repairs – S. 31, 37

Replacement of an old machine in a textile mill with a new one amounts to bringing in to a new asset and it also gives an enduring benefit to assessee hence such expenditure can not be considered as repair of old machinery hence neither deduction can be allowed under section 31 nor under section 37.

CIT vs. Sri Mangayarkarsasi Mills (P) Ltd (2009) 315 ITR 114 (SC) / (2009) 182 Taxman 141 (SC).

2. Business Expenditure – Provision for Warranty – S. 37

Provision for warranty is deductible, provision is not a contingent liability. The provision will depend upon, the nature of business, nature of sales, nature of product manufactured and sold and the scientific, method of accounting adopted by the assessee besides, the historical trend in the quantum of articles produced and sold.

Rotork Controls India P. Ltd. vs. CIT (2009) 314 ITR 62 (SC)

HIGH COURT

3. IT authorities – Transfer of case – Opportunity of being heard

There being nothing to show that there was deliberation on the written objections filed by the petitioner and that the petitioner had appeared pursuant to the notice of hearing, the impugned order passed under section 127 by respondent No.1 is set aside the quashed and the respondent No.1 is directed to proceed afresh in accordance with law.

Singhal Enterprises (P) Ltd vs. CIT and Ors. (2009) 27 DTR 212 (Cal.)

4. Appeal (Tribunal) – Condonation of delay – Reasonable cause

Assessee's counsel who was given charge to file appeal had died one year after the last date for filing appeal and thereafter assessee took six months to file appeal, there was no reasonable cause and therefore Tribunal rightly refused to entertain the appeal filed after inordinate delay of 558 days.

Madhu Dadha vs. ACIT (2009) 27 DTR 182 (Mad.)

5. Liability in special cases – Assessment of trust

Applicability of section 161(1A) Court having already held that the assessment of the assessee trust must be made only in the hands of the beneficiaries and not in the status of AOP, and that the charge of tax has to be in terms of section 161(1A) and Explan. 2 below section 164(3), it is sufficient to direct the assessing authority to consider as to whether the assessee has earned income only from house property or any other income other than the house property was earned.

Subbanna Gowramma Family Trust vs. CIT (2009) 27 DTR 192 (Kar.)

6. Business expenditure – Disallowance

Commissioner (Appeals) deleting additions on ground that assessment order failed to justify additions. Tribunal restoring assessment order on ground that additions made on basis of admissions by assessee in its returns. Admission not conclusive evidence – Tribunal's order set aside – Tribunal to rehear parties – Income tax Act, 1961.

Ester Industries Ltd vs. CIT (2009) 316 ITR 260 (Del.)

7. Invalid return

Return filed in name of assessee after death of assessee is null and void. Return was not signed or verified by legal heirs. Assessment made on invalid return not valid.

CIT vs. Moti Ram (Deceased) (2009) 316 ITR 321 (P&H)

TRIBUNAL

8. Appeal (Tribunal) – Power – S. 132(1), 254(1)

Tribunal can go into the question of limitation being extended or not on account of subsequent alleged warrant of authorisation not being executed by the competent authority.

Additional CIT vs. Dr. D. P. Agrwal (2009) 26 DTR 63 (Lucknow) (Trib)

9. Business expenditure – Issue of shares under ESOP at below market price – Not allowable – S. 37

Issue of shares under ESOP at less than market price only results in short receipt of share premium and not incurring of any expenditure within the meaning of section 37, and therefore such notional loss is not allowable as deduction.

Ranbaxy Laboratories Ltd. vs. Addl. CIT (2009) 26 DTR 420 (Del.) (Trib.)

10. Business – Disallowances – S. 40A(3)

Disallowance under section 40A(3) is applicable for each payment and not aggregate of the various payments made to same party during one day. In view of the above, disallowance under section 40A(3) sustained by CIT(A) was not justified.

Shanti Ram Mehata vs. ACIT (2009) 119 ITD 62 (Kol.) (TM)

11. Business Income – Waiver of loan – S. 28(iv), 41(1)

Waiver of loan by creditor not being in respect of trading liability, neither section 28(iv) nor 41(i) would apply.

Mindteck (India) Ltd. vs. ITO (2009) 26 DTR 125 (Mum.) (Trib.)

INTERNATIONAL TAXATION

CA. DHANESH BAFNA, CA. MADHAV KHANDELWAL, SUJEETH KARKAL, Advocate

(A) AUTHORITY OF ADVANCE RULING

1. Determination may not relate to the tax liability of a non-resident – S.245 N (a) – Income Tax Act, 1961

There was no specific requirement in sub-clause (i) of section 245N (a) that determination should relate to the tax liability of a non-resident. It was clear that the capital gain tax issue arising in the case of the acquired Indian company had a direct and substantial impact on the applicant's business in view of the stipulations in share purchase agreement. Sub clause (i) had to be construed in a wider sense and moreover a remedial provision should be liberally construed. Therefore, the question raised by the applicant falls within the definition of 'advance ruling' under section 245N (a) of the Act.

M/s. Umicore Finance AAR No. 797 of 2009 [(2009)-TIOL-22-ARA-IT]

2. Permanent Establishment – Article 5(2)(i) & 7(2) – India Germany DTAA

It was not disputed that clause (i) of Article 5.2 gets attracted to the present case as the contract awarded to the applicant related to installation and assembly project, and, therefore, the duration test of six months should necessarily be applied even if the applicant at one point of time or the other may set up a fixed place of business for the purpose of monitoring and supervising the installation. The concept of PE conveys the idea that the enterprise's presence had to be "visible" through an establishment in the other country. The entirety of work of fabrication and assembly was carried out by the sub-contractor at the workshop set up by him at a place far away from installation site and run by him independent of any control of the applicant. Such a place of business of sub-contractor could not be regarded as the PE of applicant. It is not possible to hold the applicant had a PE in India. Hence the business profits arising from the periodical payments made by TPT as a consideration could not be subjected to tax under the income Tax Act as per Art. 7(1) of India-Germany DTAA. The component

of technical or consultancy services incidental to the execution of project could not be segregated and brought within the scope of FTS.

Pintsch Bamag AAR No. 790 of 2008 [(2009)-TIOL-23-ARA-IT]

(B) TRIBUNAL

3. Attribution of Income – Section 5(2) read with Section 9(1)(i) – Income Tax Act, 1961

The Tribunal, in this case, held that reliance was placed on the decision of Tribunal in the assessee's own case for earlier years wherein it was held that majority of the assets i.e., host computer which was having very large capacity which processes information of all participants was situated outside India. The Computer Reservation System was developed and maintained outside India as the risk entirely rests with the appellant in USA. However, it was equally important to note that but for the presence of assessee in India and the configuration and connectivity being provided in India, the income would not have generated. Thus, the initial cause of generation of income was in India also. Therefore, the Tribunal had reasonably attributed 15% of the revenue accruing to the assessee in respect of bookings made in India as income accruing to the assessee in India and chargeable under section 5(2) read with section 9(1)(i) of the Act. As in the present case assessee paid 60% on the receipts which is far in excess of 1/3rd in case of overseas receipts and 25% of the receipts accrued to the assessee and therefore, no income would be chargeable to tax in India.

Sabre Inc vs. DCIT [2009-TIOL-488-ITAT-Del]

(Editorial note: Also refer Sabre Inc vs. DDIT (International Taxation) & American Airlines Inc vs. DCIT [2009-TIOL-525-ITAT-Del])

4. Fees for Technical Services & Make Available – Article 13(4)(c) of India-UK DTAA.

The assessee is a 100 % export oriented undertaking, exporting service to UK and USA by entering into a

Master Service Agreement with KGL Ltd., U.K. to arrange client relationship and systems to promote publishing related to services in UK and US market. The payments are included in 3 components i.e. (i) compensation fee to the extent of 2 % on the gross revenue received from the client; (ii) reimbursement of specific expenses incurred for providing services as per the agreement (iii) mark-up of 5 % on expenses paid back by way of equivalent sum. The assessee contends that the service does not fall within the ambit of Art. 13(4)(c) for the reason that the person rendering technical and consultancy services are not making available technical knowledge, expertise and skill, know-how or process. The Tribunal held that the 3 components i.e. commission/marketing fee, reimbursement of expenses and mark up could not be brought into the tax net since no technical knowledge, expertise, skill, know-how or process consisting of the development and transfer of technical plan or technical design has been transferred to the assessee, so that the assessee could use that knowledge, expertise, skill etc. in future and also rejected the AO contention on "make -available" technical knowledge by relying on the decision of the **Kolkata Bench in the case of DCIT vs. ITC Ltd. (2002) 82 ITD 239 , Tekniskil (serdirian) Berhard vs. CIT (1996)222 ITR 552 & the Special Bench case of Mahindra & Mahindra Ltd. vs. DCIT (2009) 313 ITR 263 (AT).**

Income Tax Officer vs. M/s. Cepha Imaging Pvt. Ltd. [2009-TIOL- 588-ITAT-Bang]

5. Profits derived by assessee's PE in USSR – Art. 7 & Art. 22 – India & USSR DTAA

The profits derived from business carried on through a PE in a Contracting State by a resident or an enterprise of the other Contracting state is liable to be taxed in state to the extent the same is directly or indirectly attributable to the PE and the same thus shall not be taxable in other contracting state. The provision of the articles is similar. The relevant Art 7 applicable in the present case clearly provides that the income earned by the assessee being a resident of India in USSR was chargeable to tax in USSR as the same was entirely attributable to the PE in USSR and this being the position, there was no question of juridical double taxation of the said income and consequently no occasion to invoke Art 22. to claim the credit for the tax paid in USSR. Since assessee has earned entire profits in USSR through its PE in that country, t TAA and AO was justified in making addition of impugned profit to the income of assessee.

Dy. CIT vs. Mideast India Ltd. [(2009) 28 DTR (Del) (Trib) 105]

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Book Release Announcement

We are pleased to make the announcement of the release of publication of the All India Federation of Tax Practitioners titled "HUF 152 Frequently asked Questions and Answers". Hon'ble Mrs. Justice Gyan Sudha Misra, Chief Justice, Jharkhand High Court and Hon'ble Mr. Justice S. B. Sinha, Supreme Court of India (Retd.) released the publication on 29th August, 2009 at Jamshedpur in a conference organised by the AIFTP (Eastern Zone).

This publication is an unique publication in a questions answers format explaining the provisions and various controversies relating to HUF. In this publication 152 questions of practical importance are answered in a simple and lucid language by eminent professionals. Important issues discussed are status of HUF, Partition, Reunion, Family arrangement, Clubbing of income, Stamp duty, Right of coparceners, members, provisions of Hindu Succession Act applicable to HUF etc. Specimen Deed is also part of this publication. It is divided into 15 Chapters. It deals with all important issues relating to HUF and its constitution, such as HUF Property, Doctrine of blending or impressing with the Character of HUF, Gifts to and from HUF, Karta/Manager, Members, their rights and obligations, Partition, Reunion, Family Arrangement – Family Settlement, Succession, Adoption, Maintenance, Marriage & Guardianship, Other tax related issues, Computation of Stamp Duty, Specimen Drafts. It also includes a special chapter on Amendments in Hindu Succession Act, 2005.

This publications is dedicated to Late Shri Sanat P. Mehta.

This publication is authored by CA Anant Pai, Mumbai, Mr. B. V. Jhaveri, Advocate, Mumbai, Mr. Pravin Veera, Advocate & Solicitor, Mumbai and Mr. Vipul Joshi, Advocate and is edited by Mr. N. M. Ranka, Sr. Advocate, Jaipur, Dr. K. Shivaram, Advocate, Mumbai & CA Pradip Kapasi, Mumbai.

This publication will be a useful guide to tax payers and tax consultants.

This publications is in association with Ranka Public Charitable Trust.

The price of publication is Rs. 170/-.

For members of the Federation, the same is available at a price of Rs. 130/-.
Outstation members are requested to add Rs. 40/- per publication as courier charges.

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INDIRECT TAXES

SALES TAX DECISIONS

P. C. JOSHI, Advocate

Benefits under Incentive Scheme

The Bombay High Court followed its earlier judgment in the case of *Commissioner of Sales Tax vs. M/s Pee Vee Textiles Ltd [(2008) 110 (10) Bombay Law Report 3547]* and another judgment in the case of *M/s Mirc Electronic Ltd. vs. State of Maharashtra* (Writ Petition No. 818 of 2001 decided on 19th June 2009) and declared that the Petitioner was eligible to avail full benefits arising out of the amended Package Scheme of Incentives, 1993 without having any regard to the percentage of the additional production made by it. The court also declared the circular dated 17th January 1998 issued by the Commissioner of Sales Tax to be contrary to the provisions of the amended Package Scheme of Incentives, 1993 as well as the provisions of the Acts & Rules framed thereunder.

M/s DGP Hinoday Industries Ltd & Others vs. The Commissioner of Sales Tax, Maharashtra & Others (Writ Petition No. 836 of 2000 decided on 17th July 2009).

Commencement of proceedings

The Madras High Court held that in respect of an unregistered dealer, 'lis' commenced only when the notice for assessment was issued and not on any date prior thereto.

M/s Ad Add vs. Additional Appellate Assistant Officer of Commercial Taxes & Another. (2009) 34 PHT 219 (Mad).

Entries in Schedule

1. Public Call Office Monitor

The Kerala High Court, applying the popular sense test, observed that various entries in the Schedule have to be harmoniously construed. The user test, though logical, was not conclusive. In other words, a particular use to which an article may be applied by a specific consumer, was not determinative of the nature of the goods. After considering the above principles, the Hon'ble High Court held that Public Call Office Monitor was covered by an entry relating to electronic equipment and not under the entry relating to computers.

Mr Eldho Paul vs. State of Kerala (2009) 17 KTR 432 (Ker).

2. Dettol

The Kerala High Court held that the item 'dettol' was not a medicament but was covered by residuary entry under the Kerala VAT Act, 2003 and liable to be taxed @ 12.5%.

M/s Reckitt Benckiser (India) Ltd. vs. Commissioner, Commercial Taxes (2009) 17 KTR 443 (Ker)

3. Scientific & Biological equipments

The Allahabad High Court held that the instruments used mainly by bio-scientists for research purposes were exempt by virtue of the notification under U. P. Trade Tax Act as scientific and biological equipments/instruments.

M/s Kartos International vs. Commissioner of Trade Tax, U. P. 2009 NTN (Vol. 40) – 301.

Exemption

1. Industrial Units

The Allahabad High Court, finding that the Directors of two adjoining Units were separate and though both the Units were manufacturing Ice cream, varieties thereof were different under different code numbers; held that both the Units cannot be considered to be one Unit and the Unit and the Divisional Level Committee was not justified in rejecting the application for grant of exemption.

Commissioner, Trade Tax, U. P., Lucknow vs. M/s Majestic Farm House (P) Ltd., Bareilly 2009 NTN (Vol. 40) – 263.

2. Purchase Tax

The Punjab & Haryana High Court held that when the exemption was granted from payment of Sales Tax, it cannot be inferred that similar exemption was also available for payment of Purchase Tax.

M/s Aggarwal Rice & General Mills vs. State of Haryana & Others. (2009) 34 PHT 252 (P&H).

Inter-State sale

The Supreme Court, while interpreting Section 3(a) of the Central Sales Tax Act 1956, held that where the purchasing dealers were contractually obliged to remove the goods from the Works of the seller to the assigned territories and when in fact the goods were actually removed, the movement of goods can be said to be in pursuance to the contract of sale. The transactions were therefore held to be inter-State transactions under Section 3(a) of the Central Sales Tax Act.

M/s DCM Ltd vs. Commissioner of Sales Tax (2009) 17 KTR 423 (SC).

Interest

The Punjab & Haryana High Court held that no interest was chargeable for the short payment of tax, when the returns were filed without adding excise duty, the taxes were paid accordingly and on assessment, the amount of excise duty was added to the turnover of sales. The High Court for the

said purpose, followed the principles of Supreme Court in the case of *M/s J. K. Synthetics Ltd (94 STC 422)*.

M/s Doaba Co-operative Sugar Mills Ltd., Nawanshahar vs. State of Punjab. (2009) 34 PHT 157 (P&H).

Interpretation of Statute

The Supreme Court held that a statute must be read in its entirety and the rules validly made form part of the Act.

State of Maharashtra & Others vs. M/s Swanstone Multiplex Cinema (P) Ltd. (2009) 34 PHT 225 (SC).

Incentive Schemes

The State of Andhra Pradesh, in the past, were issuing periodical Government orders providing several Incentives to Units that may be established in backward areas. In the latest Government order, it had used the word 'modification' of the earlier policy decision. The question before the Supreme Court was whether the word 'modification' can be referred to as that of earlier policy decisions or whether the policy was a new one. The Apex Court held that the word 'modification' was referred only for the purpose of tracing the history and to lay emphasis on the fact that the Government had in the past issued appropriate notifications from time to time with a view to implement its liberalised incentive schemes. In other words, each scheme operated in different fields and therefore the earlier one cannot be said to have been continued with modifications.

Assistant Commissioner (CT) LTU & Another vs. M/s Amara Raja Batteries Ltd. (2009) 34 PHT 241 (SC).

Input Tax Credit

The VAT Tribunal, Punjab, while considering the provisions of Section 13(5) of the Punjab VAT Act 2005, held that the assessee was eligible to get input tax credit for the taxes paid on the purchase of diesel used in the generation of electric power for captive use in the factory for the manufacture of taxable goods.

State of Punjab vs. M/s Malwa Cotton Spinning Mills Ltd., Barnala (2009) 34 PHT 269 (PVT).

Natural Justice

The Kerala High Court held that when the petition was heard by one officer and the order was passed by another officer, there was flagrant violation of principles of natural justice. The impugned order therefore was held to be illegal.

Mr Subair Haji K. P. vs. Secretary to Government, Revenue (S) (2009) 17 KTR 448 (Ker).

Purchase Tax

Before the Bombay High Court, the assessee had purchased gold from MMTC under a Replenishment Licence. Such purchases were used in the manufacture of gold ornaments which were exported. The assessee happened to be a 100% Export Oriented Unit. Since the gold so purchased from MMTC was not resold, purchase tax under Section 13AA under the Bombay Sales Tax Act, 1959

was levied. That was challenged before the Bombay High Court in its writ jurisdiction. The Bombay High Court referred to the notification under Section 41 issued by the Government of Maharashtra on 25th June 1990 inserting entry 289 in the Government notification dated 28th December 1959. By the said notification, sale of gold bullion by MMTC to GEM & Jewellery Units of SEEPZ was exempt from whole of tax. Considering the fact that the definition of the term 'tax' do include purchase tax, the High Court held that the assessee was not liable to pay any purchase tax.

The assessee had also purchased a vehicle from an unregistered person. However, in absence of the assessee's proving that the said person was not a dealer, the High Court held that the assessee was not entitled to get the benefit of the Saving clause that formed part of the amendment by Maharashtra Act XII of 1996. The said decision was taken also because the assessee had not objected in writing in terms of the Section. The levy of purchase tax under Section 13 on purchase of vehicle was therefore confirmed.

M/s Inter Gold India (Ltd) & Others vs. State of Maharashtra & Others. (Writ Petition No. 1140 of 1998 decided on 21st August 2009).

Reference – question of law

The Punjab & Haryana High Court held that a question of law does arise where case involved interpretation of the provisions of the Act and / or interpretation of entries under which the particular item would fall.

M/s Skol Breweries Ltd vs. State of Haryana & Another. (2009) 34 PHT 181 (P&H).

Re-assessment

The Central Sales Tax Appellate Authority held that when the Assessing Authority, while passing the original order had recorded a finding in regard to the correctness of 'F' Forms produced before him, the said order cannot be reopened later on, on the basis of additional material. The re-assessment proceedings were therefore quashed.

M/s Ricoh India Ltd., Noida vs. The Commissioner of Trade Tax, U. P., Lucknow & Ten others. 2009 NTN (Vol. 40) – 277.

Turnover Tax

The Rajasthan Tax Board held that the amount of stock transfer, branch transfer and inter-State sale was not required to be included in the total annual turnover for computation of liability of turnover tax.

CTO (AE), Kota vs. The Associated Cement Companies Ltd., Lakheri.

Source : Tax World, August 2009, Vol. XLII, Part-2, Page 9.

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**APPEAL TO MEMBERS**

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