



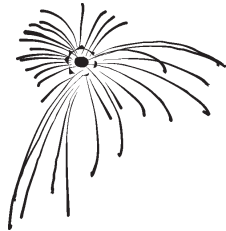
All India Federation of Tax Practitioners

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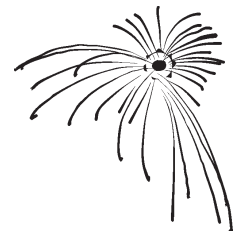
# Aiftptimes

Volume I - No. 1 • January, 2010

*Editor-in-Chief, National President,  
Members of the National Executive Committee and Journal Committee  
Wish all our members and readers*



*A Happy and Prosperous New Year*



## Federation News

Mukul Gupta, Secretary General

### FORTHCOMING PROGRAMMES

Date & Month	Programme
20th May, 2010 to 4th June, 2010	International Study Tour to USA & Canada

### WORKSHOP ON MVAT & ALLIED LAWS JOINTLY WITH BCAS, CTC & STPAM

**Date** : 9th, 16th, 23rd, 30th January, 2010, 6th, 13th, 20th, 27th February, 2010 and 6th March, 2010.  
**Time** : 2.30 p.m. to 5.00 p.m.  
**Venue** : The S.T.P.Association Library Hall, R.No. 104, 1st Floor, Vikrikar Bhavan, Mazgaon, Mumbai 400010.  
**Fees** : Rs. 1,000/- for Members & Rs. 1,250/- for Non-members.

*For further details, please contact office of the Federation.*

### FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

Name	Tel. (O)	Fax	Mobile	E-mail
<b>National President</b> — M. L. Patodi, Adv.	0744-2361179	2363637	9829035256	patodi_jp1@sancharnet.in
<b>Deputy President</b> — S. K. Poddar, Adv.	0651-2202787	2309407	9431115265	sheojipoddar@rediffmail.com
<b>Secretary General</b> — J. K. Ranka, Adv.	0141-2379203	2379204	9829010593	ranka@datainfosys.net
<b>Treasurer</b> — Nikita R. Badheka, Adv.	022-22030011	22030012	9821037885	nikita.badheka@gmail.com

## PRESIDENT'S MESSAGE

I wish a VERY HAPPY & PROSPEROUS NEW YEAR to all the respected Past Presidents, Office Bearers and Members of All India Federation of Tax Practitioners.

I am extremely grateful to the members of the All India Federation of Tax Practitioners for unanimously electing me as National President for the term 2010 & 2011. It was a great privilege for every member associated with the 15th National Tax Convention – 2009 held on 18th, 19th & 20th December, 2009 at Jaipur. On this occasion new National Executive Committee has been constituted on 18th December, 2009 for the terms 2010 & 2011. I assure you that All India Federation of Tax Practitioners' heights which have been achieved under the guidance of outgoing President Shri Bharat Ji Agrawal, Sr. Advocate, will continue.

The new National Executive Committee and Zonal Committees have taken over the responsibility to maintain high standards set up by the predecessors which will depend upon full support from AIFTP members.

The 15th National Tax Convention – 2009 was inaugurated by the Hon'ble Mr. Justice Dalveer Bhandari, Judge, Supreme Court of India presided over by Hon'ble Mr. Justice G.S. Singhvi, Judge, Supreme Court of India & Guest of Honour Hon'ble Mr. Justice Jagdish Bhalla, Chief Justice, Rajasthan High Court and Shri H.M. Bangur, Managing Director, Shree Cement Ltd.

In the recent years the Federation has travelled beyond the boundary of the country and extends its horizon to various countries in co-ordination with the professional bodies of various countries and AOTCA has organized

Conference in Mumbai for the first time on 18th, 19th & 20th November, 2009 in which representatives of 14 countries attended. In the era of globalization, the challenges are before the professionals :

1. New State GST and Central GST for the Indirect Taxes.
2. Direct Tax Code to replace the existing Income-tax Act.
3. New Companies Act in place of existing Companies Act.
4. New limited liability for partnership law.
5. International Financial Reporting Standards (I.F.R.S.) in place of the existing Accounting Standards.

We are in the process to finalise various committees to serve the members in a better manner.

I, on my own behalf and on behalf of the new Executive Committee shall try our level best to ensure that the flag of the Federation flies high for ever and this object can be achieved by regular interaction through conferences, workshops, study circle meetings and study tours. I shall be in constant touch with the Past Presidents Shri P.C. Joshi, Shri N.M. Ranka, Dr. K. Shivaram, Shri V. Ramchandran, Shri Bharat Ji Agrawal for guidance and with all the members.

With personal regards to every member of the Federation and good wishes for New Year,

**M. L. PATODI, Advocate**  
National President, AIFTP

## NEWS FROM CENTRAL ZONE

### FOUNDATION DAY

Foundation Day celebrated at the following places and following Senior Members practising for more than 40 years have been felicitated with Shawl, Shrifal, and Samman Patra.

S.No.	Date & Place	Felicitated
1.	8th November, 2009 at Ratlam	Shri Arif Beg, <i>Advocate</i>
2.	10th November, 2009 at Khandwa	1. Shri Swaroopchand Jain (87 years old), <i>Advocate</i> 2. Shri T.M. Mashruwala, <i>Advocate</i> , Burhanpur
3.	12th November, 2009 at Shajapur	Shri Ramanlal Soni, <i>Advocate</i>
4.	13th November, 2009 at Indore	Shri B.L. Bansal, C.A.
5.	14th November, 2009 at Mandsaur	1. Shri C.M. Jain, <i>Advocate</i> 2. Shri Anil Khabia, <i>Advocate</i> , <i>Neemuch</i>

**M. D. Sodani**  
Chairman, AIFTP (CZ)

## REPORT

### India Advantages Vision - 2020 — First International Tax Conference of All India Federation of Tax Practitioners (AIFTP)

First International Tax Conference of All India Federation of Tax Practitioners (AIFTP) in association with Asia Oceania Tax Consultants Association (AOTCA) was held at Hotel Trident, Mumbai from 19th to 21st Nov., 2009. Theme for the Conference was “India Advantages – Vision 2020”. Chief Guest for the Inaugural Session Hon’ble Mr. Justice F. I. Rebello, Judge, Bombay High Court delivered a thought provoking speech which was very well appreciated by the Foreign and Indian delegates. For the benefit of readers, the speech is published in the Journal. Guest of Honour for Inaugural Session Hon’ble Mr. Vimal Gandhi, President of ITAT, highlighted the contribution of ITAT in the development of International Taxation. Hon’ble President also stated that a number of judgments of ITAT on International Taxation are reported in leading International Tax Magazines and well known authors from various countries have appreciated the quality of judgments rendered by the ITAT in the field of International Taxation. Mr. Gil Levy, President of AOTCA from Australia after visiting Bombay High Court and ITAT, highly appreciated the manner of conducting the Court proceedings in India. The inaugural session was graced by various dignitaries, including the Hon’ble Members of ITAT and Sales Tax Tribunal.

It is heartening to note that the 55 foreign delegates from following 14 countries and 100 delegates from India participated in the discussion.

1. Australia	5. Japan	9. Pakistan	13. USA
2. Hong Kong	6. Korea	10. Philippines	14. Vietnam
3. India	7. Malaysia	11. Taiwan	
4. Indonesia	8. Mongolia	12. U. K.	

The following subjects were discussed in the Technical Sessions.

1. India Advantages
2. Doing Business in Australia
3. Current Development in International Tax vis-à-vis Doing Business in India
4. Transfer Pricing
5. VAT – Comparison
6. Mergers & Amalgamation – Indian Perspective
7. Mergers & Amalgamation in USA
8. Double Taxation Agreements – Controversial Issues – Comparison with Asian Countries
9. Current Developments in SGATAR & within CFE & the OECD.

Each technical session was chaired by eminent professionals and each subjects were presented by Indian and foreign professionals from different countries.

The Guest of Honour for the concluding session was Mr. Vimal Gandhi, Hon’ble President, ITAT. The presence of Hon’ble Members of ITAT at the Inaugural and Concluding sessions was very well appreciated and acknowledged by the Indian and foreign delegates.

For the benefit of the foreign delegates a cultural programme was organised on the theme of “One India”, which was presented by the organisation called Nrityanjali.

Foreign and Indian delegates had an opportunity of interacting with one another for three memorable days of the Conference. Organising the International Conference was a great challenge. However, this was possible due to team work of Asia Tax Conference Committee. According to me, the 1st International Tax Conference of the AIFTP will be remembered in the history of AIFTP.

**6TH NANI PALKHIVALA MEMORIAL NATIONAL TAX MOOT COURT COMPETITION, 2009****Report of the 6th Nani Palkhivala Memorial National Tax Moot Court Competition, 2009 –  
3rd-5th December, 2009**

**Pranay Aggarwal, General Secretary, Moot Court Association**

The 6th Nani Palkhivala Memorial National Tax Moot Court Competition was organised by Moot Court Association of Government Law College in association with the All India Federation of Tax Practitioners (AIFTP) and the Income Tax Appellate Tribunal (ITAT) Bar Association from 3rd-5th December, 2009, in the memory of one of India's foremost jurists – Late Mr. Nani A. Palkhivala. This venerated Moot Court competition enjoys the distinction of being India's first and only Moot Court Competition based exclusively on the subject of 'Taxation'.

The Inaugural Function of the competition was held on 3rd December, 2009 at the Government Law College Auditorium. The Chief Guest for the function was Hon'ble Mr. Justice V. C. Daga, Judge, Bombay High Court and the Guest of Honour was Hon'ble Mr. R. V. Easwar, Senior Vice-President, Income Tax Appellate Tribunal. The other esteemed dignitaries at the Inaugural Function included Mr. Dinesh Vyas, President, Income Tax Appellate Tribunal Bar Association, Mr. Arun Sathe, Vice President, Income Tax Appellate Tribunal Bar Association and Dr. K. Shivaram, Chairman, Palkhivala Foundation and Research Committee. The Hon'ble Members of the Income Tax Appellate Tribunal and members of the All India Federation of Tax Practitioners and Income Tax Appellate Tribunal Bar Association also graced the occasion. The Competition Souvenir was released on this momentous occasion by the Chief Guest Hon'ble Mr. Justice V. C. Daga.

This year the competition saw a high participation of 16 illustrious Law Colleges from across India.

- |  |   |
|--|---|
| 1. Amity Law School, New Delhi                             | 9. National Law University, Jodhpur                         |
| 2. Chanakya National Law University, Patna                 | 10. National University of Advanced Legal Studies, Kochi    |
| 3. Dr. Ram Manohar Lohiya National Law University, Lucknow | 11. Rajiv Gandhi National University of Law, Punjab         |
| 4. Government Law College, Mumbai                          | 12. Rizvi Law College, Mumbai                               |
| 5. Gujarat National Law University, Gandhinagar            | 13. School of Excellence in Law, Chennai                    |
| 6. Indian Law Society, Pune                                | 14. School of Law, Christ University, Bengaluru             |
| 7. NALSAR, University of Law, Hyderabad                    | 15. Shri Vile Parle Kelvani Mandal's College of Law, Mumbai |
| 8. National Law Institute University, Bhopal               | 16. Symbiosis Society's Law College, Pune                   |

**The Preliminary Rounds** of Argument were conducted on 4th December, 2009 in the Income Tax Appellate Tribunal (ITAT) Court rooms. The competition provided the mooters a once-in-a-life time opportunity of being judged by the Hon'ble Members of the ITAT, Eminent Tax Practitioners and Chartered Accountants in the ITAT Court rooms itself. This stimulated court room atmosphere coupled with the outstanding advocacy and oratory skills displayed by the participants ensured that the Preliminary Rounds of Argument were well contested by all the teams. The competition provided all the participants not only a platform to hone their mooted and reasoning skills but also an opportunity to enhance their interest in Tax Law.

**The Semi-final Round** of Argument was conducted on 5th December, 2009. The four teams qualifying for the Semi-Finals included:

Symbiosis Society's Law College, Pune  
School of Excellence in Law, Chennai,  
School of Law, Christ University (SLCU), Bengaluru and  
The Indian Law Society (ILS) Law College, Pune

The Semi-final Rounds were judged by the Hon'ble Members of the Income Tax Appellate Tribunal in the ITAT Court rooms. The standard of mooted between semi-finalists was phenomenal. The two teams that qualified to the Final Rounds were Symbiosis Society's Law College, Pune and School of Excellence in Law, Chennai.

**The Final Rounds of Argument and the Valedictory Function** was held at Hotel West End, New Marine Lines, Mumbai. The Final Rounds of the competition were judged by Hon'ble Mr. Justice R. S. Mohite, Hon'ble Mr. Justice J. H. Bhatia and Hon'ble Mr. Justice S. J. Kathawalla of the Bombay High Court. The finalists displayed immense knowledge, confidence, intellect and poise. After a well contested round the team from School of Excellence in Law, Chennai was conferred with the coveted Best Team Award and Symbiosis Society's Law College, Pune came a close second.

The members of the winning team from School of Excellence in Law, Chennai received a cash prize of Rs. 7,500/- and an opportunity to intern with the law firm Economic Law Practice or Nishith Desai & Associates. Partners from the



firm Economic Law Practice were present to hand over the letters of internship. The members of the 2nd Best Team from Symbiosis Law School, Pune were awarded a cash prize of Rs. 5,000/- and were offered an internship with the law firm Nishith Desai & Associates. The winners of the Best Memorial Team Award – NALSAR, Hyderabad University of Law was awarded a cash prize of Rs. 3,000/-.

Ms. Prabjyot Chabbra from Symbiosis Law School, Pune was adjudged as the Best Speaker of the competition. She was awarded with a cash prize of Rs. 2,000/- and an offer to intern with Mr. Dinesh Vyas, Advocate, Mumbai. The 2nd Best Speaker Award was Mr. Pranay Kapoor, School of Law, Christ University, Bengaluru. He received a cash prize of Rs. 1,500/-.

Mr. Kishor Vanjara, Member, National Executive Committee, AIFTP presented the Life Membership of AIFTP to all the students of Winning team.

Mr. P. C. Joshi, Past President, AIFTP presented the publication of AIFTP to all the students of Winning and Runner-up teams. Mr. Janak Vaghani, Treasurer, AIFTP presented the AIFTP Journal and AIFTP Times to all the students of Winning team.

The Moot Court Association of Government Law College is indeed privileged to co-host this venerated moot court competition with the All India Federation of Tax Practitioners (AIFTP) and the Income Tax Appellate Tribunal (ITAT) Bar Association and is committed to take this acclaimed Moot Court Competition to scale newer heights with each passing year.

The entire programme was **co-sponsored by Mr. B. A. Palkhivala., M/s. Nishit Desai & Associates and Mr. R. K. Jhunjhunwala.**

#### **5TH NANI PALKHIVALA MEMORIAL RESEARCH PAPER COMPETITION 2009**

The 5th Nani Palkhivala Memorial National Tax Moot Court Competition, 2009 was an astounding success. The competition has received an overwhelming response from law schools across the country. Over the past years we have received several well-researched entries that reflect the calibre of the participants and the high standard of the competition.

The topic for the competition was “Transfer Pricing Regulation – Confluence & Conflict between India, OECD and other countries – A Comparative Study”.

The Judges for the Research Paper Competition were Mr. Percy Pardiwalla, Sr. Advocate and C.A. Vispi T. Patel.

The prize winners for the competition are:—

1. Suvinay Dash & Shraddha Krishnan, Symbiosis Society's Law College, Pune
2. Rajat Mittal & Aditya Shrivasan, National Law Institute University, Bhopal
3. Gautami S. Tondapu, Gujarat National Law University, Gandhinagar

All prizes were generously sponsored by Mr. Arvind Sonde, Advocate and Mr. Aurobindo Pooniah, Kuala Lumpur, Malaysia on behalf of M/s. International Bureau of Fiscal Documentation (IBFD).

### **INTERNATIONAL STUDY TOUR — USA & CANADA (ALASKA & CRUISE)**

Duration : 20th May, 2010 to 4th June, 2010

Ex Mumbai

**Airline — Lufthansa**

Tour will start with boarding at Mumbai for CALGARY in CANADA

Other places — BANFF, LAKE LOUISE, (JEWEL OF ROCKIES) JASPER (Columbia Ice Fields), VANCOUVER (3 Days) ..... Seattle.....And then CRUISE — 7 Days Ship..... NORWEGIAN STAR (LUXURIOUS multi-storied ship)

Cost Approx Rs. 2,18,000/- (Subject to confirmation) on Twin Sharing Basis. Aboard the Ship..... Category D/E/G....Ocean view Cabins.

Those interested may contact the AIFTP Office for further details.

## Hearty Welcome Congratulations and Expectations

**N. M. Ranka, Chief Election Officer & Past President**

An Extraordinary General Meeting of the Federation was held at Hotel Om Tower, Jaipur on Friday, on 18th December, 2009 at 3.30 PM, to transact the agenda notified in the notice dated 3-10-2009. Shri P. C. Joshi, Past President usually shares voluntarily pleasure of functioning as a "Chief Election Officer". However, as on account of unavoidable reasons, he could not make it, the sacred duty was entrusted to me. 33 valid nominations were received at the Federation office and found valid by Shri P. C. Joshi. Further nominations were received by me till 5 P.M. on 17th December, 2009. List of valid nominations was declared at Ranka House at 7.00 P.M.

Only 11 valid nominations were received from West Zone against 14. Shri Bharatji Agrawal, President of the Federation was empowered to fill up the vacancy. Names of the valid nominations were called. Some of the candidates were not personally present, as required and had not sought leave for absence. Such persons were disqualified. There was contest in Central and Eastern Zones. However, with the good offices of the Deputy President and Zone Chairmen, 2 members from each zone withdrew. Following were declared unanimously as members of the National Executive, for the term 1-1-2010 to 31-12-2011.

Sr. No.	Name of the Member	Zone	City
1.	Shri Achintya Bhattacharjee	Eastern	Kolkata
2.	Shri Amit Nagarsheth	Western	Baroda
3.	Shri Arvind Shukla	Northern	Varanasi
4.	Shri Ashvin C. Shah	Western	Ahmedabad
5.	Dr. Ashok Saraf	Eastern	Guwahati
6.	Shri C. K. Chatterjee	Eastern	Kolkata
7.	Shri H. C. Bhatia	Northern	New Delhi
8.	Shri Hemendra V. Shah	Southern	Hyderabad
9.	Shri J. D. Nankani	Western	Mumbai
10.	Shri J. K. Ranka	Central	Jaipur
11.	Shri Janak K. Vaghani	Western	Mumbai
12.	Shri K. G. Vyas	Western	Pune
13.	Shri K. Sankaranarayan	Southern	Kochi
14.	Shri Kishor Vanjara	Western	Mumbai
15.	Shri M. D. Sodani	Central	Ujjain
16.	Shri M. L. Patodi	Central	Kota
17.	Shri M. Srinivasa Rao	Southern	Eluru
18.	Dr. M. V. K. Moorthy	Southern	Hyderabad
19.	Shri Mitesh Kotecha	Western	Mumbai
20.	Shri Mukul Gupta	Northern	Ghaziabad
21.	Smt Nikita R. Badheka	Western	Mumbai
22.	Shri P. V. Subba Rao	Southern	Secunderabad
23.	Shri Piyush Agrawal	Northern	Allahabad
24.	Shri Rajesh B. Shah	Western	Baroda
25.	Shri Ramesh M. Shah	Western	Ahmedabad
26.	Shri S. C. Goyal	Central	Ujjain

Sr. No.	Name of the Member	Zone	City
27.	Shri S. K. Poddar	Eastern	Ranchi
28.	Shri S. R. Wadhwa	Northern	New Delhi
29.	Shri Sarbeswar Sahoo	Eastern	Cuttack
30.	Shri Satya Narayan Sahu	Eastern	Cuttack
31.	Shri Sudhir Bhansali	Central	Jaipur
32.	Shri Suresh Chandar Garg	Eastern	Kolkata
33.	Shri Suresh Ramnani	Central	Indore
34.	Shri Vikram Nankani	Western	Mumbai

At the 1<sup>st</sup> meeting of the National Executive, the following members were co-opted:-

Sr. No.	Name	Zone	City
1.	Shri B. S. Rawat	Northern	Dehradun
2.	Shri Basudev Panda	Eastern	Cuttack
3.	Shri J. V. Rao	Southern	Hyderabad
4.	Dr. K. Shivaram	Western	Mumbai
5.	Shri K. L. Goyal	Northern	Chandigarh
6.	Shri L. N. Rastogi	Eastern	Patna
7.	Shri N. M. Ranka	Central	Jaipur
8.	Shri P.C. Joshi	Western	Mumbai
9.	Shri Pankaj Ghiya	Central	Jaipur
10.	Shri R. D. Sharma	Eastern	Kolkata
11.	Shri V. Ramchandran	Southern	Chennai

Office Bearers

The following members were elected unanimously as Office Bearers :-

Sr. No.	Name	Designation
1.	Shri M. L. Patodi	President
2.	Shri S. K. Poddar	Dy. President
3.	Dr. Ashok Saraf	Vice President, Eastern Zone
4.	Shri H. C. Bhatia	Vice President, Northern Zone
5.	Shri J. D. Nankani	Vice President, Western Zone
6.	Shri M. D. Sodani	Vice President, Central Zone
7.	Shri P. V. Subba Rao	Vice President, Southern Zone
8.	Shri J. K. Ranka	Secretary General
9.	Smt. Nikita R. Badheka	Treasurer
10.	Shri B. S. Rawat	Joint Secretary, Northern Zone
11.	Shri Basudev Panda	Joint Secretary, Eastern Zone
12.	Shri K. Sankaranarayan	Joint Secretary, Southern Zone
13.	Shri Ramesh M. Shah	Joint Secretary, Western Zone
14.	Shri Suresh Ramnani	Joint Secretary, Central Zone



I as Chief Election Officer and a humble soldier and Past President of the Federation, welcome the office bearers and members. I congratulate and pray, they shall serve the Federation with devotion, dedication and determination.

My expectations

1. The Federation should continue to organize continuous educational programmes in association with its association members. 'Two Day National Tax Conference' is to be organized every quarterly. The registration should exceed 300 to qualify for the 'Ranka Best Tax Conference Award'. A large number of 'One Day Tax Seminar' should be organized at small towns, with registrations exceeding 100, to qualify for the 'Ranka Best Tax Seminar Award'.
2. The Federation has adopted the convention that the office bearers and members of the National Executive, Zonal Committees, Chairmen, Faculty at the seminars and Conferences and meetings bear their own travel and stay costs, pay registration fee and do not claim any reimbursement. They would serve smilingly with devotion and dedication.
3. No alcohol or non-vegetarian food would be served. High standard of the functions would be preserved. Punctuality shall be maintained. Brains' Trust Session a unique creation of Federation should be planned, well managed and for minimum two hours before lunch on second day. Queries be sent sufficiently in advance to the trustee, to seek written reply with judicial precedents and to provide written reply to the participants immediately after the session. The organiser and trustees should preserve the spirit of the session.
4. Recently, two publications were published and released in association with Ranka Public Charitable Trust. A large number of authentic

publications need revised and enlarged and new publications with minimum 6 in a year deserve to be published, on no gain no loss basis.

5. Publication of directory of members is need of the hour. Federation should publish members' directory, as it is more than five years.
6. Federation has voluntarily adopted the Code of Ethics for its members, in its Constitution. ETHICS should be the way of LIFE. It deserves to be strictly adhered to. Laxity on the part of the member need be reported.
7. Develop brotherhood, fraternity, affinity and family relationship and live in cordial atmosphere as members of a joint Hindu family, upholding dignity of all.
8. Many new legislations like Direct Taxes Code, GST, etc. are in motion. Many grievances lie with the members. Representations be made to the Central and State Governments and higher tax administration for redressal to grievance and simplification of tax laws.
9. To increase life members and to exceed 7,000 by 31-12-2011.

SINCERE THANKS & HOPES

I am extremely happy, the Federation has maintained its tradition to 'Honour who serve'. Late Shri Anil Kumar Singh rendered memorable, unprecedented and unparalleled services selflessly. The Federation dedicated the Convention in his fond memory. It installed '**RANKA MAXIMUM MEMBERS ENROLMENT AWARD**' sponsored by Ranka Public Charitable Trust, which was posthumously awarded to Late Shri Anil Kumar Singh — "Super King" at the Inaugural Session, through his young and energetic son dear Puneet Singh. The Federation jointly with Income Tax Bar Association, Varanasi, installed following Awards, which were presented to:—

Award	Name of the Recipients
Advocate Anil Kumar Singh Memorial Award — Outstanding Person Award, 2009	Shri N. C. Mehta, Founder President, AIFTP
Advocate Anil Kumar Singh Memorial Award — Largest Membership Enrolled Award, 2009	Shri V. Nagendra Prasad, Secretary (SZ), Hyderabad
Advocate Anil Kumar Singh Memorial Award — Largest Registration	National Tax Conference, 2009, Varanasi

Hon'ble Shri Bharatiji Agrawal, President of the Federation though a extremely busy professional, devoted sufficient time and energy; took keen interest, expanded activities and successfully carried the Federation to further heights, as detailed in my '**A Humble Appeal**' published in the October Issue of AIFTP Journal.

I have equal hopes from the newly elected President Shri M. L. Patodi and team of service oriented dedicated office bearers and members. I am sure they would work wholeheartedly, with missionary zeal, serve the tax fraternity and make the Federation an unique and strong institution at the National Level.



## Zonal Managing Committee Elected and Co-opted for the term 2010-2011

### CENTRAL ZONE

Sr. No.	Name	Designation	City
1	Shri P. M. Chopra	Chairman	Jodhpur
2	Shri Vijay Navlakha	Vice Chairman	Ujjain
3	Shri Ashok R. Jangid	Vice Chairman	Rajasthan
4	Shri Paras Chhajer	Vice Chairman	Rajnandgaon
5	Shri Deepchand Mali	Secretary	Jodhpur
6	Shri S. R. Soni	Jt. Secretary	Indore
7	Shri P. R. Golecha	Jt. Secretary	Raipur
8	Shri Mahesh Gehlot	Treasurer	Jodhpur
9	Shri Ajay Godha	Member	Kota
10	Shri B. V. Maheshwari	Member	Kota
11	Shri C. M. Jain	Member	Mandsore
12	Shri Dilip Patni	Member	Ratlam
13	Shri Dinesh Vijay	Member	Jaipur
14	Shri G. N. Sharma (Jangir)	Member	Jaipur
15	Shri I. M. Sethiya	Member	Chittorgarh
16	Shri Indermal Jain	Member	Ratlam
17	Shri Jugalkishore Satrawala	Member	Indore
18	Shri Mahesh Agrawal	Member	Indore
19	Shri Neeraj Jain	Member	Kota
20	Shri O. P. Garg	Member	Ujjain
21	Shri Padam Chand Baradia	Member	Durg
22	Shri R. K. Parakh	Member	Bhopal
23	Shri Rajendra Sodani	Member	Ujjain
24	Shri Rajesh B. Doshi	Member	Raipur
25	Smt. Ritu G. P. Das	Member	Kota
26	Shri Shrawan Kumar Kejriwal	Member	Jhunjhunu
27	Shri Sumer Patwa	Member	Jodhpur
28	Shri Suresh Ojha	Member	Bikaner
29	Shri T. C. Jain	Member	Bharatpur
30	Shri Tarachand Airan	Member	Neemuch
31	Shri V. K. Jolly	Member	Jaipur

### EASTERN ZONE

Sr. No.	Name	Designation	City
1	Shri Narayan Prasad Jain	Chairman	Kolkata
2	Shri Indu Chatrath	Vice Chairman	Kolkata
3	Ms. Nitu Hawelia	Vice Chairperson	Jamshedpur
4	Shri D. B. Gupta	Vice Chairman	Patna
5	Shri Murlidhar Kedia	Vice Chairman	Jamshedpur
6	Shri B. N. Mahapatra	Vice Chairman	Bhubaneswar
7	Shri C. K. Chatterjee	Zonal Secretary	Kolkata
8	Shri Sajjan Kumar Sultania	Treasurer	Kolkata
9	Shri Sanjay Bajoria	Joint Secretary	Kolkata
10	Shri Ram Krishna Mishra	Joint Secretary	Rourkela
11	Shri Ajay Kumar Sinha	Member	Bokaro
12	Shri Anand Kumar Tibrewal	Member	Kolkata

Sr. No.	Name	Designation	City
13	Shri Arvind Agarwal	Member	Kolkata
14	Shri B. L. Kheria	Member	Kolkata
15	Shri B. P. Dalmia	Member	Dhanbad
16	Shri B. P. Sinha	Member	Ranchi
17	Shri Bishnu Kumar Loharuka	Member	Kolkata
18	Shri D. K. Seth	Member	Cuttack
19	Shri D. N. Agrawal	Member	Kolkata
20	Shri Deepak Jain	Member	Kolkata
21	Shri G. C. Mookerji	Member	Kolkata
22	Shri Gajanand Sawdia	Member	Bargarh
23	Shri Girdhari Lal Sharma	Member	Kolkata
24	Shri Jagdish Kumar	Member	Patna
25	Shri Jagdish Prasad Agarwal	Member	Bolangir
26	Shri L. P. Patnaik	Member	Rourkela
27	Shri M. C. Jagwayan	Member	Kolkata
28	Shri Matadeen Udaipuria	Member	Cuttack
29	Shri N. D. Saha	Member	Kolkata
30	Mrs. Nilima Joshi	Member	Kolkata
31	Shri Pawan Kumar Agarwal	Member	Kolkata
32	Shri R. K. Chatterjee	Member	Kolkata
33	Shri R. N. Gupta	Member	Jamshedpur
34	Shri R. N. Rustogi	Member	Kolkata
35	Shri Rabindra Nath Pal	Member	Cuttack
36	Shri Rakesh Jain	Member	Kolkata
37	Shri Rakesh Kumar Nahar	Member	Kolkata
38	Shri Ram Chandra Agarwal	Member	Kolkata
39	Shri Ram Deo Kakra	Member	Kolkata
40	Shri S. M. Surana	Member	Kolkata
41	Shri Sandip Choraria	Member	Kolkata
42	Shri Sanjeev Kumar Anwar	Member	Muzaffarpur
43	Shri Sanjoy Bhattacharya	Member	Kolkata
44	Shri Santosh Maheshwari	Member	Kolkata
45	Shri Saptarshi Kumar Mitra	Member	Kolkata
46	Shri Satish Chandra Sharma	Member	Kolkata
47	Shri Sidhartha Mukhopadhyay	Member	Kolkata
48	Mrs. Sonu Jain	Member	Kolkata
49	Shri Subash Chand Agarwal	Member	Kolkata
50	Shri Subhasis Mallik	Member	Dhanbad
51	Shri Subrata Bhattacharjee	Member	Kolkata
52	Shri Subrata Kumar Sen	Member	Kolkata
53	Shri Sukhamoy Karmakar	Member	Kolkata
54	Shri Supriyo Gupta	Member	Kolkata

### NORTHERN ZONE

Sr. No.	Name	Designation	City
1	Mrs. Premlata Bansal	Chairperson	Delhi
2	Shri V. P. Gupta	Vice Chairman	New Delhi
3	Shri H. L. Madan	Vice Chairman	Delhi
4	Dr. Navin Rattan	Vice Chairman	Amritsar
5	Shri S. K. Kaushik	Vice Chairman	Haryana

Sr. No.	Name	Designation	City
6	Shri Sanjay Kumar	Vice Chairman	Allahabad
7	Shri Mukesh Aggarwal	Vice Chairman	Dehradun
8	Shri S. K. Kaul	Vice Chairman	Jammu & Kashmir
9	Shri D. K. Gandhi	Secretary	Ghaziabad
10	Shri Sanjay Sharma	Joint Secretary	Delhi
11	Shri Rakesh Agrwal	Treasurer	Ghaziabad
12	Shri Anil Kumar Bajpai	Member	Bareilly
13	Shri Arvind Kumar Sharma	Member	Ghaziabad
14	Shri Atul Jain	Member	Chandigarh
15	Shri D. M. Sinha	Member	Delhi
16	Shri Naveen Garg	Member	Ghaziabad
17	Ms. Neetika Khanna	Member	Delhi
18	Shri O. P. Shukla	Member	Varanasi
19	Shri Puneet Singh	Member	Varanasi
20	Shri Ram Avtar Bansal	Member	Delhi
21	Shri S. K. Sarwal	Member	Faridabad
22	Shri S.M.K. Choudhary	Member	Lucknow
23	Shri Sandeep Goel	Member	Chandigarh
24	Shri Sunil Aggarwal	Member	Delhi
25	Shri Sunil Maheshwari	Member	Modinagar
26	Shri Suresh Aggarwal	Member	Delhi
27	Shri Vinod Dhingra	Member	Delhi

### SOUTHERN ZONE

Sr. No.	Name	Designation	City
1	Shri P. V. S. S. Prasad	Chairman	Hyderabad
2	Shri H. Padamchand Khincha	Vice Chairman	Bengaluru
3	Shri P. Purushottam	Vice Chairman	Chennai
4	Shri Sanjay Dhariwal	Vice Chairman	Bengaluru
5	Shri A. Retnakumar	Vice Chairman	Thiruvananthapuram
6	Shri M. V. Purushottama Rao	Vice Chairman	Hyderabad
7	Shri V. Ahalada Rao	Secretary	Hyderabad
8	Shri G. Bhaskar	Joint Secretary	Chennai
9	Shri S. S. Satyanarayana	Treasurer	Hyderabad
10	Shri A.V.Chalam	Member	Visakhapatnam
11	Shri B. Pavan Kumar	Member	Hyderabad
12	Shri B. S. Seethapathi Rao	Member	Kakinada
13	Shri B. Sekkizher	Member	Hyderabad
14	Shri B.V.S. Chalapati Rao	Member	Vijayawada
15	Shri D. Venkata Ramana	Member	Nizamabad
16	Shri G. Buchanna	Member	Kurnool
17	Shri Gali Narayana Rao	Member	Hyderabad
18	Shri K.C. Devdas	Member	Hyderabad
19	Shri Kantilal Jain	Member	Hyderabad
20	Shri L.N.Modi	Member	Pondicherry
21	Shri M. Amarender	Member	Hyderabad
22	Shri M. Ramachandra Murthy	Member	Hyderabad
23	Shri M. V. L. Narsimha Rao	Member	Hyderabad
24	Shri Narasimham PL	Member	Hyderabad

Sr. No.	Name	Designation	City /State
25	Shri Neelesh Vithlani	Member	Hyderabad
26	Shri R.V.L.N. Sharma	Member	Karimnagar
27	Shri S. Venkatramani	Member	Bengaluru
28	Shri S.S.R. Koteswara Rao	Member	Hyderabad
29	Shri Saju K Abraham	Member	Kochin
30	Shri T. V. Subba Rao	Member	Hyderabad
31	Shri V. Bhaskar	Member	Chennai
32	Shri V. Bhaskar Reddy	Member	Hyderabad
33	Shri V. Ch. Narsi Reddy	Member	Hyderabad
34	Shri V. Nagendra Prasad	Member	Hyderabad
35	Shri Venkata Raja Bapatla	Member	Hyderabad

### WESTERN ZONE

Sr. No.	Name	Designation	City
1	Shri Harish N. Motiwalla	Chairman	Mumbai
2	Shri Vinayak Patkar	Vice Chairman	Mumbai
3	Shri Chirag Parekh	Secretary	Mumbai
4	Shri Avinash Lalwani	Joint Secretary	Mumbai
5	Shri Hardik Marfatia	Treasurer	Mumbai
6	Shri Ajit N. Rohira	Member	Mumbai
7	Shri Ajit Tiwari	Member	Baroda
8	Shri Anil Vakharia	Member	Pune
9	Shri Ashvin Acharya	Member	Mumbai
10	Shri Atul Parikh	Member	Baroda
11	Shri C. B. Thakar	Member	Mumbai
12	Shri Deepak Bapat	Member	Mumbai
13	Shri Deepak R. Shah	Member	Mumbai
14	Shri Hitendra Upadhaya	Member	Baroda
15	Shri Hitesh R. Shah	Member	Mumbai
16	Shri Jayant R. Bhatt	Member	Mumbai
17	Shri K. Gopal	Member	Mumbai
18	Shri K. K. Ramani	Member	Mumbai
19	Shri Keshav Bhujle	Member	Mumbai
20	Shri Kishor Lulla	Member	Sangli
21	Shri Mitesh Modi	Member	Surat
22	Shri Paras Tater	Member	Mumbai
23	Shri Pranay Marfatia	Member	Mumbai
24	Shri Pravin R. Shah	Member	Mumbai
25	Shri Pravinchandra Veera	Member	Thane
26	Shri Rajesh Muni	Member	Mumbai
27	Shri Rajesh S. Shah	Member	Mumbai
28	Shri Samir Jani	Member	Junagarh
29	Shri Santosh Gupta	Member	Nagpur
30	Shri Shailesh Sheth	Member	Mumbai
31	Shri Suhas Padhye	Member	Pune
32	Shri Suresh Keswani	Member	Mumbai
33	Shri T.R. Jalnawala	Member	Aurangabad
34	Shri Tushar P. Joshi	Member	Mumbai
35	Shri V.R. Bhojwani	Member	Pune
36	Shri Vipul B. Joshi	Member	Mumbai
37	Shri Yatin K. Desai	Member	Mumbai

## DIRECT TAXES

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

### SUPREME COURT

1. Deduction of tax at source — Ad-interim — Stay recovery granted — S. 195

In a SLP filed against the judgement of the Karnataka High Court in *CIT vs. Samsung Electronics Co. Ltd. (2009) 185 Taxman 313 (Kar.)*, the court held that liability cannot be avoided on ground of non taxability of receipt, the Supreme Court, by an ad-interim order dated 18.12.2009 directed issue of notice to the Respondents and also directed “Stay of recovery till further orders”.

*G.E. India Technology vs. CIT (SC)*

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

### HIGH COURT

1. Charitable Trust — Exemption — S. 11

Repayment of bank loan taken for construction of commercial complex for augmenting the income of the trust is an application of income for charitable purpose.

*DIT(Exemption) vs. Govindu Naicker Estate (2009) 227 CTR 283 (Mad.)*

2. Interest waiver or reduction — Ss. 234A, 234B, 234C

Assessee filing returns voluntarily and paying taxes due to his overbusy schedule during the relevant assessment years constituted as ‘unavoidable circumstances’ within the meaning of cl. 2(e) of CBDT Notification No. 400/234/1995-IT(B) and entitle him for waiver of interest under Ss. 234A, 234B, 234C levied upon by him for failure to file returns within the time allowed u/s. 139(1)/(4).

*S. Nagoor Babu @ Mano vs. CCIT & ANR (2009) 227 CTR 287 (Mad.)*

3. Assessment of Trust — Applicability in special cases — Ss. 21(1), 21(1A)

Official trustee cannot be said to a person appointed under a trust “declared by a duly executed instrument in writing” and consequently section 21(1) which is the main charging section cannot be applied to the official trustee; section 21(1A) is also not applicable to him and therefore assessment of the official trustee appointed under the Official Trustee Act could not be made under S.21.

*The Official Trustee, Maharashtra State vs. CWT (2009) 227 CTR 15 (Bom.)*

4. Capital or Revenue Expenditure — Payment of royalty — Deductible — S. 37

Where payment of royalty for technical service at percentage of domestic and export sales for seven years was held to be deductible under section 37 of the Income-tax Act, 1961.

*Climate Systems India Ltd. vs. CIT (2009)319 ITR 113 (Del.)*

5. Right to Practice law — Eligibility — Foreign Law Firms — RBI Act, FERA Act - S. 29

Foreign Law Firms are not eligible to open liaison offices or to practice law in India. Even giving an opinion on a legal matter amounts to “practise of law”, Non-Advocates cannot practice law.

*Lawyers Collective vs. Bar Council (Bom.)*

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

### TRIBUNAL

1. Undisclosed Income - S. 139(1)

Where return not filed on due date does not ipso facto result in income being treated as undisclosed income.

*Smt. Jyoti Harshad Mehta vs. CIT (2009) 319 ITR 107 (Mum.) (AT) Block Period ending 22-2-1996.*

2. Penalty — Addition based on valuation obtained from Sub-registrar office — Not maintainable — S. 271(1)(c)

Where additions based on valuation obtained from sub registrar’s office in preference to valuer’s report. Guideline value cannot be the basis and acceptance of addition do not amount to furnishing of inaccurate particulars. Hence, Penalty cannot be imposed.

*ACIT vs. Mrs. N. Meenakshi (2009) 319 ITR 262 (Chennai)*

3. Book Profit — Exempt Capital Gain Included — S. 115JB

The Assessing Officer has no jurisdiction to make adjustments to the “book profits” other than what was provided in the Explanation to section 115JB. There is no scope for excluding non-taxable profits from the “book profits”.

*Growth Avenue Securities vs. DCIT (Delhi) ITA No. 3912/Del / 2005.*

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

## 4. Capital Gain — TDR — FSI — Consideration — Not Chargeable – S. 45

Consideration received for permission to use TDR/FSI not chargeable to tax as the cost of acquisition being nil.

*Om Shanti Co-op. Society vs. ITAT (Mum.)*

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

## 5. Assessment Records – Demand by the Third Party – RTI Act – Ss. 3, 8, 9.

The Appellant, as informer, is assisting the Department by bringing instances of tax evasion to its notice, and if

he is using information that he has received through RTI Applications for this purpose, it cannot be considered to be misuse of information in any way, nor can it be considered to be an unwarranted invasion of privacy of the assessee. Accordingly PIO was directed to provide inspection of records and the other information sought by the applicant.

*Rakesh Kumar Gupta vs. PIO*

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



## INTERNATIONAL TAXATION

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

### ADVANCE RULING

## 1. Absence of consideration – Sec. 45 of the IT Act not attracted

The Authority held as follows:

- The profits or gain envisaged under section 45 of the Act is not something which remains ambivalent or interminable. The profits or gain cannot be arrived at on notional or hypothetical basis. The profits or gain to the transferor must be a distinctly and clearly identifiable component of the transaction.
- When the entire assets and liabilities of Dana Corporation had been taken over by Dana Holding Corporation (which is neither transferor nor transferee) in order to reorganize the business, it is difficult to envisage that a proportion of liabilities constitutes consideration for transfer, notwithstanding the fact that such consideration was never defined nor identified.
- There was no consideration for the transfer or the consideration was indeterminable and therefore the charging provisions under section 45 of the Act became inapplicable.
- In the absence of chargeable income, the provisions of section 92 of the Act do not operate.

***Dana Corporation [32 DTR 1 (AAR)]***

## 2. Make available – Article 12(4)(b) of India-US DTAA

The applicant entered into two agreements with University of Texas (UT) (i) to provide certain managerial, technical and consultancy services and (ii) to carry out lab nomination, global screening of nominated technologies, Quickscan and commercial assessment and to provide Programme Manager to design and implement the programme.

The authority ruled as follows:

- Explaining broadly the principles involved in technology commercialization and making the participants familiar with various aspects of the programme did not *prima facie* amount to making available technical knowledge or expertise possessed by the instructors of UT. It was not

possible to split up the service and apportion a part of consideration received to 'training', even if it had the flavour of 'included services'.

- Acting as a facilitator and technical consultant for the purpose of commercialization of identified technologies, screening and assessment of technologies by deploying the expertise and resources which UT had, and preparing technical reports including market analysis could not be legitimately brought within the purview of para 4(b) of Article 12 of the India-US DTAA.
- The services/activities provided by UT to Defence Research Development Organisation pursuant to the Agreement entered into between applicant and UT did not fall within the purview of Article 12(4)(b) of the DTAA and the payments received under the Agreement were not liable to be taxed as fees for technical services under the domestic law. They could not be subjected to tax as business profits in view of the undisputed and undeniable fact that UT had no permanent establishment in India and the services were not carried out through a PE in India.

***Federation of Indian Chambers of Commerce and Industries (FICCI) [32 DTR 73 (AAR)]***

## 3. Applicability of Section 44BB of the IT Act

Applicant is a tax resident of Poland and provided onshore seismic data acquisition and other related services to oil and gas industry. The applicant sought advance ruling on whether the activities fall within the ambit of sec. 44BB of the IT Act. The Authority ruled that the applicant nearly fits into section 44BB and all the ingredients of that section are satisfied. It was crystal clear that the services offered by the applicant were in connection with the prospecting for or extraction of mineral oils. The real, intimate and proximate nexus between the services performed by the applicant in India and the prospecting for or extraction of mineral oils was very much present in the case. The existence of PE was a common feature both in 44DA as well as 44BB, though there was an explicit reference to PE under section 44DA. If the business is of the specific nature envisaged by 44BB, the

computation provision therein would prevail over the computation provision in section 44DA. If all the services that are in the nature of technical services within the meaning of Explanation 2 to section 9(1)(vii) are to be computed in accordance with section 44DA, very little purpose will be served by incorporating a special provision in section 44BB. The income had to be computed in terms of section 44BB.

**Geofizyka Torun SP. ZO.O. [2009-TIOL-31-ARA-IT]**

TRIBUNAL

4. Payment to non-resident for approval of symbol without deduction at source – S. 195(2)

The assessee company made the payment to non-resident for approval of its symbol, without deduction of tax at source and therefore, the AO invoked provisions of sec. 40(a)(i) to disallow the expenditure. The disallowance made u/s. 40(a)(i) of the Act was set aside by the Id. CIT(A). The Tribunal on an appeal by revenue held that, in the light of decision of Hon'ble Karnataka High Court and also in the absence of any contrary decision on this issue, the assessee could not escape from taxation, by virtue of provisions of sec. 40(a)(i) of the Act, in the event of non payment of tax at source u/s. 195 of the Act without obtaining

clearance u/s. 195(2) of the I.T. Act. Therefore, the order of the Id. CIT(A) was set aside and the appeal filed by the Revenue was allowed.

**ACIT vs. Anchor Health & Beauty Care P. Ltd. [2009 TIOL – 767 – ITAT Mum].**

5. **No indexation benefit to FIIs – Section 115AD r.w. section 48**

The assessee company is incorporated in USA and registered with the Securities and Exchange Board of India (SEBI) as a Foreign Institutional Investor (FII). The assessee incurred a capital loss on sale of securities during the previous year and was allowed to carry forward this loss to be set off against capital gain of subsequent years. While computing capital loss, the assessee claimed that it was entitled to the benefit of indexation on the cost of acquisition as per second proviso to section 48 of the Act. The Tribunal held that FII has to be assessed with regard to capital gains/loss under section 115AD and is not entitled to opt out and claim to be assessed under section 48, read with section 112 with indexation provisions in case of assessment resulting into capital loss.

**Advantage Advisors Inc vs. Dy. Director of Income Tax [2009 TIOL – 757 – ITAT-Mumbai]**



### BOOK RELEASE ANNOUNCEMENT

We are pleased to make the announcement of the release of publication of the All India Federation of Tax Practitioners titled **“Media & Entertainment Industry”**. Hon'ble Mr. Justice Dalveer Bhandari, Hon'ble Mr. Justice G. S. Singhvi, Judges, Supreme Court of India & Hon'ble Mr. Justice Jagdish Balla, Chief Justice, Rajasthan High Court released the publication on 19th December 2009 at 15th National Convention at Jaipur organised by the AIFTP (Central Zone) in alliance with various prominent local associations.

The Publication encapsulates various tax, legal, accounting and commercial aspects of the multiple segments of the Indian Media and Entertainment industry. This is an unique publication on Media & Entertainment Industry in questions and answers format (Over 400 FAQs) with exhaustive coverage on subjects of Accounting, Costing, Dispute Resolutions, Entertainment Laws, Entertainment Policies, Entertainment Tax, FEMA & RBI Guidelines, IFRS, Income Tax, International Taxation, Management, Overview on GST, Prevailing Practices, Service Tax, Transfer Pricing, Value Added Tax and Sales Tax. The diverse issues addressed in this book by 34 authors, would benefit almost everyone who is a partaker in the industry – the industry and professionals alike. This book may also be a useful reference to the Revenue authorities and facilitate an enhanced understanding of the constantly evolving media and entertainment industry. The publication is edited by C.A. Pradip Kapasi, Mumbai and Dr. K. Shivaram, Advocate, Mumbai. Convenors for the publication are Mr. Ajay Sekhri and Ms. Isha Sekhri, Chartered Accountants, Mumbai.

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

This publication is in association with Ranka Public Charitable Trust.

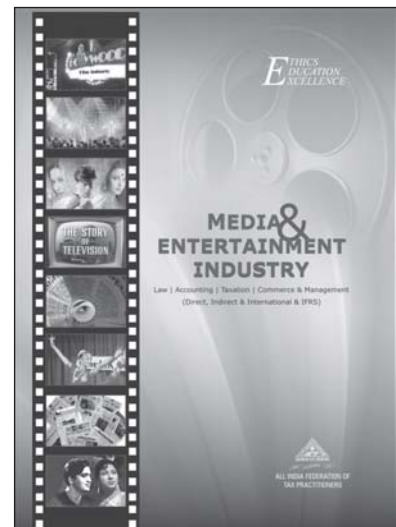
**The price of the publication is Rs. 350/- for Normal Bound & Rs. 450/- for Hard Bound. For members of the Federation, the same is available at a price of Rs. 280/- & Rs. 360/- respectively. Outstation members are requested to add Rs. 70/- and Rs. 90/- per publication as courier charges for Normal Bound and Hard Bound respectively.**

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## INDIRECT TAXES — SALES TAX DECISIONS

P. C. JOSHI, Advocate

### Appeal – Maintainability

The larger Bench of the Maharashtra Sales Tax Tribunal, after exhaustively considering the object behind the changes in the language used under Bombay Sales Tax Act, 1959, as compared to the earlier enactments i.e. Bombay Sales Tax Act, 1953 and that of 1946, in regard to the provisions relating to the hierarchy of appeals, held that against an order of revision under section 57 of the Bombay Sales Tax Act, 1959, an appeal under section 55 was maintainable before it. Such a controversy arose because of a passing observation made by the Nagpur Bench of the Bombay High Court while rejecting the objection of the State in regard to the maintainability of the writ petition; to the effect that the order in revision was not 'an original order' and since the expression used in Section 55 referred to only 'an original order' against which the appeal was provided, no appeal was possible against a revision order. Such an observation had created devastating effect on large number of appeals pending before the Tribunal as well as at the lower stage. The uncertainty that prevailed during past three years is now removed by the aforesaid larger Bench judgment.

*M/s Schenectady Beck (India) Ltd. & Others vs. The State of Maharashtra. (Appeal Nos. 98 & 99 of 2007 decided on 6th November, 2009).*

### Constraint on litigation

Finding that a revision was filed by the Commercial Tax department for a small quantum of tax, the Allahabad High Court dismissed the revision in question observing that such litigation by the department have wasted man power and money without examining the cost efficiency while initiating the litigation. Secondly, because of large pendency of cases before the High Court, the matter came up before the court for hearing only after two decades. In that matter, the High Court also recommended that the department should prescribe a monetary limit for filing appeal/revision similar to the provisions of section 268 A of the Income-tax Act, 1961.

*Commissioner of Trade Tax, U. P., Lucknow vs. M/s Laxmi Narayan Bhang Dealer, Sultanpur (2009) 34 PHT 515 (All).*

### Deduction of tax at source

The West Bengal Taxation Tribunal held that the provisions of deduction of tax at source was not applicable to a transaction of sale. The transaction

involved supply of furnace, while the petitioner undertook the erection and commissioning also.

*M/s Jainex Metaliks Ltd vs. C. T. O., STDS Cell & Others (2009) 54 S. T. A. – 251.*

### Entries in Schedule

#### 1. HDPE Woven Fabrics

The Joint Commissioner of Commercial Taxes (Legal), in determination proceedings under section 80 of the Gujarat VAT Act, held that the motor car covers and tarpaulin prepared from HDPE fabrics were covered by entry 60 of Second Schedule relating to ready made garments and articles from any textile.

He also held that the pipes prepared from HDPE for the purpose of conveying water from one place to another was covered by entry 58 of Second Schedule relating to pipes of all varieties. Accordingly, both the items were held to be taxable @ 4%, but from 1st April 2008 @ 1% only.

*(Order dated 17-9-2009 in the case of M/s Vinav Plastic Pvt. Ltd., Rajkot). Source : Sales Tax Journal, October 2009, Vol. 48, Part 7, Page 582.*

#### 2. Cast iron/Soil pipes

Commissioner, Commercial Taxes, Jammu & Kashmir, clarified under Section 87 of the J & K VAT Act that Cast Iron/Soil pipes were covered by entry 161 of Schedule D, liable to be taxed @ 12.5%.

*(Order dated 24th September 2009 in the case of M/s Shakeel Constructions Co., Srinagar). 34 PHT 128 (JS).*

#### 3. Raw sugar

The Allahabad High Court, after considering the provisions of the U. P. Entry Tax Act, held that raw sugar was a raw material for manufacturing of white sugar. Raw sugar was neither sold in the open market nor was it directly consumable. The court, therefore, held that no entry tax was payable on such raw material.

*The Commissioner, Commercial Tax, Lucknow vs. M/s Bhawana Sugar Works Ltd., Meerut. 2009 NTN (Vol. 41) – 199.*

#### 4. White oats

The Kerala High Court held that white oats sold without any brand name was a fruit product similar to corn flake. The item was held to be covered by entry 49(2) of the Third Schedule to the Kerala VAT Act and therefore, liable to be taxed @ 4%. The court, however, rejected the claim of the assessee that the item in question was free from tax under entry 12 of the First Schedule relating to grain specified therein.

*M/s Thomson Paper Products vs. Commissioner, Commercial Taxes & Another (2009) 17 KTR 615 (Ker).*

#### 5. PVC Sticker

The Commissioner of Commercial Taxes, while determining a classification under section 94, held that Flexible Sun Controlled Film was covered by eight digit HSN Code appended to the Customs Tariff Act as well as entry 60 of List A of the Third Schedule to the Kerala VAT Act. The Commissioner, therefore, held that the said item was taxable at 4%. The Commissioner also held that PVC stickers were covered by entry 138(2) of List A of the Third Schedule liable to 4% tax.

*Source : Kerala Tax Reporter, Vol. 17, Nov. 2009, Page 150.*

#### 6. Software paper licence

The Commissioner of Commercial Taxes, while clarifying under section 94, held that the software paper licence was on par with intangible goods like REP Licence, Patent, Copyright etc., as mentioned in entry 68 of Third Schedule and therefore was taxable @ 4%.

*Source : Kerala Tax Reporter, Vol. 17, Nov. 2009, Page 157.*

#### Inter-State Works Contract

Before the West Bengal Taxation Tribunal, the petitioner was engaged in the manufacture of parts and components of lifts/elevators as well as its erection, installation and commissioning in a building belonging to its customer. After receipt of the order for installation of one passenger elevator, the petitioner had placed order with the suppliers from other States in regard to the parts and other components required for the lift. After receipt of such material, the petitioner completed the installation of the elevator in the State of West Bengal.

After considering the terms and conditions of the contract, the Taxation Tribunal held that the nature of the transaction was that of inter-State Works Contract and the

State of West Bengal cannot levy tax, simply because the lift was installed thereat.

*M/s Otis Elevator Company (India) Ltd vs. State of West Bengal & Others (2009) 54 S. T. A. – 239.*

#### Input tax credit – Loss of original invoice

The VAT Tribunal, Haryana, allowed the assessee to submit the prescribed application along with Indemnity Bond in the prescribed form for the amount equal to the amount of input tax credit claimed on the basis of a duplicate invoice, where the original VAT Invoice was lost or mutilated.

*M/s Jindal Saw Industries, Mansa vs. State of Punjab (2009) 34 PHT 526 (PVT).*

#### Law applicable

The Allahabad High Court, after considering the text of the amendment with effect from 1st September, 1978 in the U. P. Trade Tax Act, 1948, held that the said amendment was not expressly retrospective and therefore cannot apply to the proceedings relating to earlier periods.

*Commissioner, Trade Tax, U. P., Lucknow & Others vs. M/s Tata Engg. & Locomotive Co. Ltd. & Others (2009) 34 PHT 550 (All).*

#### Nature of transactions – Works Contract or Sale

The assessee before the West Bengal Commercial Tax Appellate & Revisional Board, received helicopters for repair. The assessee used its own parts required to be replaced or repaired in the course of fulfilling its contractual obligation with the Defence Ministry. Since property over such materials was transferred by way of accession, the nature thereof was held to be that of a Works Contract and not a transaction of sale.

*M/s Hindustan Aeronautics Ltd vs. A. C. C. T., 24 Parganas Circle (2009) 54 S. T. A. – (Board – 105).*

#### Need for written contract

The Allahabad High Court held that in the age of electronic era, it was not mandatory for a written contract between the commission agent and his principal.

*Commissioner, Trade Tax, U. P., Lucknow & Others vs. M/s Nav Durga Galla Bhandar & Others (2009) 34 PHT 523 (All).*

#### Purchase tax

The Kerala High Court, after considering the provisions of section 5A of the Kerala General Sales Tax Act, held that purchase tax was payable in the event the goods were consumed in any manner other than it used in the

manufacture of other goods. Therefore, when the water was consumed in the construction of building, it ceased to exist and therefore was not available for sale. The court, therefore, held that water charges paid by the assessee was liable to purchase tax under section 5A of the Act.

*State of Kerala vs. M/s Cochin Shipyard Ltd. (2009) 17 KTR 621 (Ker).*

Package Scheme of Incentive, 1979

The Bombay High Court (Nagpur Bench), after considering the Package Scheme of Incentive, 1979, held that the Scheme did not provide for any ceiling on production and therefore the benefit of exemption cannot be denied to the assessee only by showing that there was a condition placed on the ceiling of annual production and that condition was breached. The High Court also observed that neither in the Eligibility Certificate nor in the Entitlement Certificate issued to the assessee, as also in the Scheme, was there any term providing for such a ceiling on production and therefore, it was not open to the Revenue to put such an additional instruction.

*M/s Maharashtra Metal Powders Pvt. Ltd., Nagpur vs. The State of Maharashtra & Others (Writ Petition No. 896 of 1993 decided on 4th November, 2009).*

Recovery

The Allahabad High Court held that merely because the company failed to pay the Government dues, the department cannot take help of the doctrine of piercing the veil by ignoring the statutory corporate personality of the company. The court also held that the Directors individually cannot be held responsible for the dues of the company. If, however, it was found that any individual director was in possession of an asset or property of the company, then it was open to the department to press for recovery against such assets or property.

*M/s Niranjan Lal Agarwal & Another vs. Deputy Commissioner (Assessment) & Others 2009 NTN (Vol. 41) – 132.*

Refund – Doctrine of undue enrichment

The Allahabad High Court held that the taxes already deposited were not available to be refunded to the dealer who had collected the same from its customers. For the aforesaid purpose, the High Court referred to various judgments by the Apex Court and other Courts on the doctrine of undue enrichment.

*M/s Shiv Gram Udyog Sansthan & Another vs. State of U. P. & Others 2009 NTN (Vol. 41) – 159.*

Review

The Punjab & Haryana High Court, after considering the provisions of Haryana General Sales Tax Act, held that neither an Assessing officer nor any other higher officer in the hierarchy of administration had any power to review the assessment order nor can such an officer ignore the previous order.

*M/s Raghbar Dass Hukam Chand vs. State of Haryana & Others 2009 NTN (Vol. 41) – 213.*

Sales price

The Supreme Court, after considering the terms of the bid submitted by the assessee, held that the term relating to tax mentioned that the price was inclusive of C.S.T. and the customer was to give concessional Form 'C' under the Central Sales Tax Act. After examining the terms, the Apex Court observed that the price being inclusive of C.S.T., the same even if payable at higher rate in absence of 'C' Form, would also be inclusive of the price quoted.

*M/s BECIL vs. M/s Arraycom India Ltd. & Others (2009) 34 PHT 627 (SC).*

Sales price for advance tax

The Kerala High Court held that the power conferred on the Commissioner under section 47(16A) of the Kerala VAT Act was only for determining the provisional sale price for the purpose of collecting advance tax. It was only a measure to protect Revenue and prevent evasion of tax. The actual tax payable by an assessee necessarily will have to be determined later on, on the basis of the sale price of the goods sold. The Hon'ble High Court applied the principle of interpreting the provision of bearing in mind the purpose behind such a provision. The court also held that demanding of tax in advance did not amount to levy of tax which the State was not authorised to levy.

*Shiji M. R. M/s Mridhul Timbers vs. Inspector, Sales Tax Check Post, Meenakshipuram (2009) 17 KTR 571 (Ker).*

Service of notice

The Allahabad High Court held that before proceeding to serve the notice by pasting, the other modes of service have to be complied with. In absence of such an attempt by the department, the service of notice was held to be no service to the assessee.

*M/s Shree Balaji Traders vs. State of U. P. & Others 2009 NTN (Vol. 41) – 196.*

## Turnover

The Allahabad High Court held that the turnover of two companies having independent legal entity, cannot be clubbed up simply on the basis of visiting cards.

*Commissioner, Trade Tax, U. P., Lucknow & Others vs. M/s Brindavan Bottlers Pvt. Ltd. & Others (2009) 34 PHT 518 (All).*

## Transfer of right to use goods Installed Machinery

1. The Haryana Tax Tribunal held that when the machinery sought to be given on lease was fully installed in the land, it cannot be said that there was a transfer of right to use the machinery embedded in the land as chattel for use in the manufacture of goods. The Tribunal also held that the machinery and plant did not become part of the transferable property.

*M/s Ram Rajya Clothing Pvt. Ltd., Gurgaon vs. State of Haryana (2009) 34 PHT 583 (HTT).*

2. The Delhi High Court was concerned with a composite contract involving goods as well as services. Following the Supreme Court judgment in the case of M/s BSNL, the court observed that the transactions which were other than those specified in Article 366(29-A) (b) & (f) cannot be split up for taxing the sale element, with the result the State legislature was not competent to levy sales tax on such transactions.

*Commissioner, VAT, Trade & Taxes Department vs. M/s International Travel House Ltd. (2009) 34 PHT 612 (Del).*

## News from Union Territory – Chandigarh

The Government of India approved an amendment in the Punjab VAT Act as applicable to the Union Territory, so as to facilitate the implementation of deemed assessment scheme under which the pending assessments would be cleared.

*Source : Punjab & Haryana Taxes, Vol. 34, November 2009. (2009) 34 PHT 175 (JS).*

## News from Himachal Pradesh

For enforcing the transparency in the tax administration, the State of Himachal Pradesh prescribed the time frame, within which the various requisitions received under the Himachal Pradesh VAT Act and Central Sales Tax Act were to be complied. As for example, for issuance of duplicate Registration Certificate, the period of three days have been prescribed, while for issuing statutory forms like 'C' forms, 'H' forms etc., the officer have to issue the

same on the very same day when the application was received. This is a welcome measure adopted by the Himachal Pradesh Government. We hope other States will emulate suitably.

*Source : Punjab & Haryana Taxes, Vol. 34, November 2009. (2009) 34 PHT 174 (JS).*

## News from London

### 1. Voluntary Disclosure Scheme

The Revenue announced the details of new disclosure opportunity scheme, so as to encourage taxpayers to disclose their undisclosed offshore income and gains, under which a penalty of only 10% was to be paid in addition to the tax as per the provisions of the law.

### 2. Increase in the rate of VAT

The Revenue circle issued guidance for the taxpayers in regard to the increase in standard rate of VAT from 15% to 17.5% which will be effective from 1st January, 2010. Simultaneously, the charges were also explained in regard to supply of services. The aforesaid measures were to be introduced for simplification or modernising the VAT system for cross-border trading and to counter fraud across the European Union countries.

*Source : Both the above news — eBulletin – September 2009 by Lubbock Fine Chartered Accountants, London.*

## News from Punjab

The Governor of Punjab declared the Industrial Policy for 2009 to facilitate the development of industry in the State of Punjab.

*Source : Punjab & Haryana Taxes, Vol. 34, October 2009, Page 133 (JS).*

## News from Uttar Pradesh — Job work – no 'F' Form

Mr Rishi Raj Kapoor, Advocate from Allahabad, has intimated that the requirement of furnishing Form 'F' for the goods sent for job work, as also for the goods returned have been quashed by the Division Bench of the Hon'ble Allahabad High Court by following the ratio of the Supreme Court decision in the case of *M/s Ambica Steels vs. State of Uttar Pradesh*.

*Source : Mr Ashwani Kumar Tyagi, Managing Editor, National Law Book Publications (e-mail dated 2nd December, 2009).*





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