



All India Federation of Tax Practitioners

**Price ₹ 5/-**  
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# AIFTP TIMES

Volume 2 - No. 4 • April, 2011

FORTHCOMING PROGRAMMES	
Date & Month	Programme
15th January to 30th April, 2011	Workshop on MVAT and Service Tax at Mumbai
22nd April, 2011	National Executive Committee Meeting at Jodhpur
23rd & 24th April, 2011	Two Days National Tax Conference at Jodhpur
13th August, 2011	National Executive Meeting at Kochi
13th & 14th August, 2011	Two Days National Tax Conference at Kochi

## FEDERATION NEWS

J. K. Ranka, Secretary General

### FULL DAY SEMINAR ON "DIRECT TAXES" HELD AT RAIPUR ON 6-3-2011

By Shri G.S. Agrawal, Member, NEC

#### SUMMARY

A One-day Seminar on Direct Taxes was organized on 6th March, 2011 jointly by Income-tax Bar Association, All India Federation of Tax Practitioners (CZ) and Chhattisgarh Income-tax Bar Council at Hotel Babylon, VIP Road, Raipur (C.G.). The seminar was inaugurated by Shri K.K. Sharma, Commissioner of Income Tax, Raipur (C.G.). He expressed that tax laws are changing very fast. He said that, with regard to penalty u/s 271(1)(c), change is observed in judicial pronouncements after the judgment of Apex Court in the case of Anwar Ali as compared to present scenario. He wished the Seminar a success.

National President - AIFTP, Shri M.L. Patodi in the inaugural session informed about the activities of AIFTP. Shri Moolchand Jain, President - Chhattisgarh Income-Tax Bar Council discussed the strength of tax practitioners in Chhattisgarh and various Bar Associations affiliated to the Council. Shri Ravi Agrawal, President - Income Tax Bar Association briefly discussed the selection of subjects for the Seminar and the faculties.

The First Technical Session was chaired by Shri G.S. Agrawal, Member - National Executive Committee - AIFTP and past Chairman of CIRC of the Institute of Chartered Accountants of India (ICAI). Shri Sanjay K. Agarwal, Central Council Member of ICAI presented his paper on "Survey & Consequential Proceedings". He presented a very comprehensive paper on the subject. He explained, where to keep books of account and other records and how to maintain the same, powers of various tax authorities in this regard and their jurisdiction u/s 133A(1). With support of various case laws and circulars, he discussed various provisions concerning survey contained u/s 133A with regard to entry into business premises, its restriction, covering other places, powers of survey team u/s 133A(5), impounding and detention of books of account and other records, etc. He explained the precautions to be taken while recording statement u/s 133A(3)(iii). He also

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

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<b>National President</b> — M. L. Patodi, Adv.	0744-2361179	2363637	9829035256	patodiml@bsnl.in
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referred the circular of the Board dated 10-3-2003 in No. 286/2/03. He also discussed the evidenciary value of the statement recorded during survey proceedings by citing recent judgment of various authorities, including *CIT vs. Dhingra Meter Works*, Delhi High Court – reported in 196 Taxman 488 and other case laws and retraction of income surrendered in the statement recorded by referring various case laws.

Shri Manoj Fadnis, Central Council Member, Indore of ICAI presented his paper on provisions of Sec. 56(2) (vii) and (viii). He initiated his discussion with brief history of the provisions and amendments from time to time. He explained in detail the meaning of money, immovable property and other specified properties referred in the section. He also discussed the recently prescribed Rules 11U and 11UA for valuation of shares or securities and the list of relatives as referred in sec. 56(2)(vii) and compared the list as contained in sec. 41(2) of the Income-tax Act.

The session ended with live floor participation.

The Second Technical Session was chaired by Shri M.L. Patodi, National President of AIFTP. Dr. Rakesh Gupta, Advocate, New Delhi ex-Member of Income Tax Appellate Tribunal discussed the provisions contained in Union Budget – 2011 with regard to Direct Taxes. He discussed the monetary limit enhanced in case of individuals and the provisions of MAT in the case of companies and in case of LLPs. He discussed the provisions introduced with regard to Infrastructure Debt Fund and the provisions concerning receipt of foreign dividends at reduced rate. These two provisions were akin to concessions provided in voluntary disclosure schemes which was opposed by the Apex Court. He also discussed the proposed provisions in the Tool Box to counter measures in respect of transaction with persons located in notified jurisdictional area. He discussed the provisions in the Budget with regard to collection of information from tax authorities outside India and the extension of powers of the Transferring Pricing Officer and explained the rigours of this and also welcomed some provisions. He explained that the time extended for filing of the Returns in case of companies having foreign transaction. He was of the opinion that assesseees other than companies having foreign transaction also face similar difficulty, therefore, the extension of time limit should also be allowed to them. The learned speaker also discussed the provisions with regard to condition for filing of application before Settlement Commission as well as the power contained with the Settlement Commission to rectify its order. The Learned Speaker also discussed the rolling back of provisions contained in sec. 282B. He suggested that instead of withdrawing the same, the time limit could have been extended.

Dr. Rakesh Gupta also discussed the change in judicial approach in case of penalty proceedings u/s 271(1) (c). He referred various judgments in this regard, starting from the judgment of Apex Court long back in Anwar Ali's case. He briefly discussed the case of *Dilip N Shroff – reported in (2007) 291 ITR 519* and the case of *Union of India vs. Dharmendra Textile Processors – reported in 306 ITR 277 SC* wherein it was held that penalty is a civil liability, and the element of *mens rea* referred in Dilip N. Shroff's case was wrongly decided. He then referred the other judgments in *Siddharth Enterprises – reported in 104 Taxman 460*; *VIP Industries – 21 DTR Mumbai 153*; *Kanbey Software India Private Limited – reported in 31 SOT 153 (Pune)*; *Union of India vs. Rajasthan Spinning & Weaving Mills – reported in 224 CTR SC 1*; *CIT vs. Reliance Petro Products – reported in 322 ITR 158 (SC)*. He explained that in Reliance Petro Products' case the Apex Court took the stock of earlier decision and held that mere disallowance of a claim does not mean that inaccurate particulars were furnished so as to attract penalty u/s 271(1)(c). He explained that word "concealed" itself means deliberate action on the part of the assessee, and therefore, even deletion of word "deliberate" from above section does not change the meaning.

The Seminar ended by proposal of vote of thanks by Shri Ramesh Agrawal, Shri Gopalji and Shri Mahendra Agrawal. The Seminar was attended by Chartered Accountants, Advocates and Income Tax Practitioners in large number.

Shri M.L. Patodi discussed about the provisions related to Excise contained in the Budget Proposals – 2011.

□□

## **BUDGET SEMINAR AT UJJAIN ON 5-3-2011**

AIFTP (CZ) held Budget Seminar at Ujjain along with Tax Practitioners Association, Ujjain and at Ratlam with Kar Salahkar Parishad Ratlam, Ratlam Branch of CIRC of ICAI and State Bank of India on 5-3-2011. The main Speakers on Direct Taxes were CA Abhishek Nagori Baroda, CA Manoj Fadnis Indore and on Indirect Taxes CA Govind Agrawal Indore. At both the places large number of Professionals and at Ratlam particularly Members of Industry of Commerce, Bank Officers, Industrialists, and Businessmen attended the seminar. The Seminar was arranged by Shri M.D. Sodani, Vice President, AIFTP (CZ), Shri Subhash Maheshwari, President, Tax Practitioners Association, Ujjain, CA Anurag Chaplot, Shri Deepak Purohit and others from Ratlam.

**ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)**

*Organised by*

**WORKSHOP ON MVAT & SERVICE TAX**

*Jointly with*

**BCAS, CTC & STPAM**

Venue : STPAM Library-104, Vikrikar Bhavan, Mazgaon, Mumbai - 400 010

Time : 2.30 p.m. to 5.00 p.m.

We request all our members to take benefit of the Workshop organised by AIFTP (WZ) along with BCAS, CTC & STPAM on the subject of MVAT and Service Tax. The details are as under:

<b>Sr. No.</b>	<b>DATE</b>	<b>DAY</b>	<b>SUBJECT</b>	<b>MONITOR &amp; SPEAKER</b>
	<b>Service Tax</b>			
1	2nd April, 2011	1st Saturday	Construction Services, Works Contract Services, Management, Maintenance & Repair Services, Renting of immovable Property	CA. Naresh Sheth
2	16th April, 2011	3rd Saturday	Information Technology Services, Health Services, Commercial Coaching & Training, Supply of Tangible Goods Services	CA. Ashit Shah
3	30th April, 2011	5th Saturday	CENVAT Credit Rules, 2004	CA. Rajiv Luthia

Fees : ₹ 1,750/- for Members & ₹ 2,500/- for Non-Members.

Please enroll early as limited seats are available.

The following topics have been already covered the part of this Workshop in earlier month. Workshop of 15th January 2011, i.e., Intricate Issues under MVAT Act, 2002 by C. B. Thakar, Workshop of 29th January, 2011 on Filing of Returns (including E-filing and payment of taxes, Assessment Procedures, Interest, Penalties and Prosecutions by Ashvin Acharya, Workshop of 12th February, 2011 on Practical Aspects under Business & Refund Audit by Deepak Bapat, Workshop of 19th February, 2011 on Intricate Issues under Input Tax Credit & Refunds (Set-off) by Kiran Garkar, Workshop of 12th March, 2011 on Intricate Issues under Works Contracts/Lease Tax & Provisions of Composition Schemes under MVAT Act by CA Mayur Parekh and Workshop of 19th March, 2011 on Export & Import of Services, Valuation of Services Rules, 2006 by CA Manish Gadia.

**For All India Federation of Tax Practitioners (Western Zone)**

**Harish N. Motiwalla**  
*Chairman*

**Chirag S. Parekh & Avinash Lalwani**  
*Jt. Secretaries*

**Note: Cheque/DD to be drawn in favour of "All India Federation of Tax Practitioners-Western Zone", payable at Mumbai.**

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

Dear Members,

We have posted bill for renewal subscription of AIFTP Journal and Palkhivala Foundation on 24th March, 2011. Members are requested to send the DD or Cheque in favour of "All India Federation of Tax Practitioners' payable at Mumbai on or before 15th April, 2011.

Members can also download the subscription and an appeal from our website; i.e., [www.aiftponline.org](http://www.aiftponline.org) and send us the subscription.

Thanking you,

**For All India Federation of Tax Practitioners**

**J. K. RANKA**  
*Secretary General*

## **NATIONAL TAX CONFERENCE–JODHPUR**

April 23rd – 24th, 2011

*Organized by*

**ALL INDIA FEDERATION OF TAX PRACTITIONERS [CZ]**

*Jointly with*

**JODHPUR BRANCH OF CIRC OF ICAI**

**RAJASTHAN TAX CONSULTANTS' ASSOCIATION**

**&**

**TAX BAR ASSOCIATION, JODHPUR**

**THEME : ROLE OF PROFESSIONALS IN CHANGING SCENARIO**

**Venue : Dr. S.N. Medical College Auditorium, Residency Road, Jodhpur – 342 003. Rajasthan**

**SATURDAY, 23rd APRIL, 2011**

08.00 a.m. to 09.00 a.m. : Registration & Breakfast

09.00 a.m. to 10.30 a.m. : **INAUGURAL SESSION**

Chief Guest : \* Hon'ble Mr. Ashok Gehlot, Chief Minister, Rajasthan

Presiding Guest : \* Hon'ble Mr. Justice G.S. Singhvi, Judge, Supreme Court of India

Guest of Honour : \* Hon'ble Mr. Justice Arun Mishra, Chief Justice, Rajasthan High Court

\* CA G. Ramaswami, President, The Institute of Chartered Accountants of India

Dr. Abhishek Manu Singhvi, Sr. Adv. (SC) (M.P.)

Shri H.M. Bangur, MD, Shree Cements Ltd., Beawer

10.30 a.m. to 10.45 a.m. : Tea Break

10.45 a.m. to 12.30 p.m. : **FIRST TECHNICAL SESSION**

Chairman : Adv. S.K. Poddar

Guest of Honour : Hon'ble Dr Justice Vineet Kothari

Subject : Direct Taxes Code

Speaker : CA Harish N. Motiwalla, Mumbai

M.O.C. : CA Vishnu Prakash Daga

12.30 p.m. to 01.30 p.m. : **SECOND TECHNICAL SESSION**

Chairman : CA K. Sampath, New Delhi

Guest of Honour : Hon'ble Mr. A.L. Gehlot, Member, ITAT, Rajkot

Subject : Issues & Recent Judgments in TDS on Resident & Non-Resident payments

Speaker : \* CA H. Padamchand Khincha, Bengaluru

Speaker : CA Sanjay Jhanwar, Jaipur

M.O.C. : Adv. Dr. S.L. Jam, Jaipur

01.30 p.m. to 02.30 p.m.: Lunch

02.30 p.m. to 04.30 p.m. : **THIRD TECHNICAL SESSION**

Chairman : Adv. P.C. Joshi, Mumbai  
Guest of Honour : Niranjana Arya, IAS, Commissioner - Commercial Taxes,  
Govt. of Rajasthan  
Subject : Recent issues & judgments on Central Sales Tax Act  
& Works Contract  
Speaker : Adv. I.C. Jam, Jaipur  
Speaker : Adv. Nikita R. Badheka, Mumbai  
Subject : Road Map of GST  
Speaker : CA Sanjay Dhariwal, Bengaluru  
M.O.C. : Adv. PM. Chopra

04.30 p.m. to 04.45 p.m. : Tea/Coffee Break

04.45 p.m. to 06.30 p.m. : **FOURTH TECHNICAL SESSION**

Chairman : Sr. Adv. Bharatji Agrawal, Allahabad  
Guest of Honour : \* Shri K.L. Goyal IRS, Commissioner, Central Excise &  
Customs, Thane Range  
Subject : Service Tax with reference to Builders & Contractors  
Speaker : Adv. Gajendra Maheshwari, Ernest & Young, New Delhi  
M.O.C. : CA Pradeep Jain

07.00 p.m. to 10.00 p.m. : Cultural Programme followed by DINNER

Chief Guest : CA Rahul Mohnot, Senior President, Birla White,  
Khariya  
Guest of Honour : CA Kailash Bhansali, MLA, Jodhpur City  
M.O.C. : CA S.M. Daga

**SUNDAY, 24TH APRIL, 2011**

08.00 a.m. to 09.00 a.m. : Breakfast

09.00 a.m. to 11.15 a.m. : **FIFTH TECHNICAL SESSION**

Chair Person : Sr. Adv. Prem Lata Bansal, Delhi High Court  
Guest of Honour : Hon'ble CA R.C. Sharma - Member ITAT, Indore  
Chief Guest : \* Hon'ble Prof. M.C. Joshi - Member CBDT, New Delhi  
Subject : Issues & recent Judgments in Capital Gains  
Speaker : CA Ashvin C. Shah, Ahmedabad  
Subject : Limited Liability Partnership  
Speaker : CA Pankaj Jain, New Delhi  
M.O.C. : Adv. Dinesh Mehta

11.15 a.m. to 11.30 a.m. : Tea Break

11.30 a.m. to 01.30 p.m. : **SIXTH TECHNICAL SESSION**

Chairman : Sr. Adv. N.M. Ranka, Jaipur  
Subject : Brains' Trust Session  
Trustees : Adv. S.R. Wadhwa, New Delhi  
: Adv. V.P. Gupta (Delhi High Court, Supreme Court)  
: Adv. H.C. Bhatia, New Delhi  
: Adv. R.C. Agarwal, Jaipur  
: CA Amit Kothari  
M.O.C. : Adv. Sandeep Bhandawat

01.30 p.m. to 02.30 p.m. : Lunch

02.30 p.m. to 03.30 p.m. : **SEVENTH TECHNICAL SESSION**

Chairman : Prof. Narayan P. Jain (Chairman, Eastern Zone, AIFTP)  
Guest of Honour : CA Anand Rathi  
Subject : Capital Market  
Speaker : CA Sumer Patwa  
Convener : CA Suresh Gang (President, TBA)  
M.O.C. : CA Dr. Nirmal Kunawat, Udaipur

03.30 p.m. to 03.45 p.m. : Tea/Coffee Break

03.45 p.m. to 05.45 p.m. : **VALEDICTORY SESSION**

Chairman : N.N. Mathur (Vice Chancellor NLU Jodhpur)  
Guest of Honour : \* Hon'ble Mr. R.V Easwar, President, ITAT, Mumbai  
Adv. Ranjeet Joshi (Member Bar Council of Raj.)  
M.O.C. : Adv. Sanjeev Johari

<b>DELEGATE FEES</b>	<b>MEMBER</b>	<b>NON-MEMBER</b>	<b>SPOUSE</b>
Up to 31-3-2011	₹ 1,500	₹ 1,700	₹ 1,000
After 31-3-2011	₹ 1,750	₹ 1,850	₹ 1,250

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**UCO Bank : Sardarpura Branch Jodhpur (Raj)**  
**IFSC Code : UCBA 0000569**  
**Current Account No. 05690210001349**

- Special arrangements have been made for sightseeing for Spouse & Kids for two hours on 23rd & 24th April, 2011
- CA delegates can claim Unstructured CPE 12 Hours on self declaration basis as per Rules of ICAI
- Delegates are requested to send their queries in regard to Brains' Trust by April 10, 2011 positively

**CONFERENCE SECRETARIAT**

**CA Jagdish Mal Lodha**  
*Conference Chairman*  
(M) 9929486399

**CA Sudhir Bhansali**  
*Conference Secretary*  
(M) 9413801080

**Adv. D. R. Bohra**  
*Co-ordinator*  
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**REPORT OF FULL DAY SEMINAR ON DIRECT & INDIRECT TAXES AT JUNAGADH  
(GUJARAT) ON SATURDAY, 12TH MARCH, 2011**

By CA. Samir Jain, Secretary, TAA, Junagadh

A Full Day Seminar on Direct & Indirect Taxes was organized by AIFTP (WZ) jointly with Taxation Advisers Association, Junagadh & AGFTC. The seminar was inaugurated by Hon'ble Mr. A. L. Gehlot, Member, ITAT, Rajkot.

The topics discussed were on Finance Bill 2011, Tax Planning in respect of HUF, CST Changes & 'C' Form Implications & Capital Gain on Residential Property. Speakers from Mumbai were Dr. K. Shivaram, Advocate, Mrs. Nikita Badheka, Advocate, Mr. Vipul Joshi, Advocate and CA. H. N. Motiwalla. Mr. S. K. Poddar, Advocate & Dy. President, AIFTP from Ranchi and CA. Upendra J. Bhatt, Ahmedabad were also present on the occasion as Chairmen of the session.

Seminar was attended by around 180 delegates from Junagadh, Rajkot, Jamnagar, Veraval, Una, Jetpur, Dhoraji, Upleta & Ahmedabad. The house had good academic environment and also had 15 minutes interaction from floor. House also unanimously resolved to agitate against the levy of Service Tax on legal profession and send telegram & representation to Finance Minister and strongly support the moment of AIFTP.

**Congratulations**

CA (Dr.) O. P. Chaplot has been awarded PhD on a subject of Jainism "The Philosophy of Thanang Suttam a Comparative Study" from Mohal Lal Sukhadia University, Udaipur. We wish him all the success.

**DIRECT TAXES**

**Ajay R. Singh, Paras Savla, Rahul Hakani & Renu Choudhari**  
Advocates

**SUPREME COURT****S. 9(1)(vii)(b) : Validity challenged – Parliament’s power to make laws with extra-territorial effect**

The constitutional validity of section 9(1)(vii)(b) was challenged by way of an appeal to the Supreme Court so as to determine the extent to which laws enacted by Parliament can have extra-territorial effect under Article 245. The Constitution Bench held that Parliament is constitutionally restricted from enacting legislation with respect to extra-territorial aspects or causes that do not have, nor expected to have any, direct or indirect, tangible or intangible impact(s) on or effect(s) in or consequences for: (a) the territory of India, or any part of India; or (b) the interests of, welfare of, well-being of, or security of inhabitants of India, and Indians. In all other respects, Parliament may enact legislation with extra-territorial effect. All that is required is that the connection to India be real or expected to be real, and not illusory or fanciful. Parliament can only make laws for India and any law which has no impact on or nexus with India would be *ultra vires*.

*GVK Industries Ltd. vs. ITO (SC) 5 member bench*  
Source: [www.itatonline.org](http://www.itatonline.org)

**Appeal – Inter departmental litigation – Public sector undertakings – Clearance from committee on Disputes – Supreme Court recalls law requiring PSUs to obtain COD approval**

Larger Bench of Supreme Court recalled its order laid down in *ONGC vs. CCE 104 CTR (SC) 31 and ONGC vs. CIDCO (2007) 7 SCC 39*, that no litigation could be proceeded with in the absence of COD approval in case of dispute between Government and PSUs. It was held that the mechanism was set up with a laudatory object. However, the mechanism has led to delay in filing of civil appeals causing loss of revenue. Thus, in view of the said circumstances it was decided by Larger Bench to recall the directions of this court.

*Electronics Corporation of India Ltd. vs. UOI (SC)/ CCE vs. Bharat Petroleum Corpn Ltd (2011) 51 DTR 193 / 238 CTR 353 (SC). (5 Member Bench)*  
Source : [www.itatonline.org](http://www.itatonline.org)

**HIGH COURT****S. 28(iv) : Business Income – Benefit arising out of business – Bank loan – Waiver of loan by Bank – [S. 41(1)]**

The assessee was not trading in money transactions. A grant of loan by a bank cannot be termed a trading transaction nor construed to be in the course of business. Indisputably, the assessee obtained the loan for the purpose of investing in capital assets. A part of this loan with interest was waived under agreement between the parties. The amount referable to the loans obtained by the assessee towards the purchase of its capital asset could not constitute a trading receipt. Therefore, the facts were totally different from the facts in *CIT vs. T. V. Sundaram Iyengar and Sons Ltd (1996) 222 ITR 344 (SC)*.

*Iskaraemeco Regent Ltd. vs. CIT (2011) 331 ITR 317 (Mad.)*

**S. 260A : Appeal – Monetary limit – CBDT Circular – Filing appeals – Pending appeals**

The Department filed an appeal in the year 2008 where the tax effect was less than ₹ 10 lakhs. The question arose whether in view of Instruction No. 3/2011 dated 9-2-2011 the appeal was maintainable. HELD dismissing the appeal:

In view of *CIT vs. P. S. Jain & Co.* (included in file) which followed *Pithwa Engineering 276 ITR 519 (Bom.) & Ashok Patel 317 ITR 386 (MP)* and where it was held that the CBDT Circular imposing limits on the filing of appeals by the department applied to pending appeals, Instruction No. 3/2011 dated 9-2-2011 also applied to pending appeals and as the tax effect was less than ₹ 10 lakhs, the appeal was not maintainable.

*CIT vs. Delhi Race Club Ltd. (Delhi High Court)*  
Source: [www.itatonline.org](http://www.itatonline.org)

**TRIBUNALS****S. 2(22)(e) : Deemed dividend – Debenture – Loan – Investment**

Debenture is a loan account and therefore, debentures subscribed by the assessee shareholder are to be taken in to account for ascertaining his indebtedness to the company vis-à-vis the loan or

advance taken by him and determining deemed dividend under section 2(22)(e).

*Anil Kumar Agarwal vs. ITO (2011) 51 DTR 251 (Mum.)(Trib.)*

**S. 14A : Business expenditure – Exempted income – Appellate Tribunal – Power – Applicability of provision of section 14A for the first time before Tribunal – [S. 254(1)]**

Issue of disallowance under section 14A, cannot be raised for the first time before the Tribunal where the provision of section 14A, was not invoked against the assessee by the Assessing Officer while making disallowance of interest expenditure under section 36(1)(iii) and CIT(A) also at no stage considered the application of section 14A.

*ACIT vs. Delite Enterprises (P) Ltd. (2011) 135 TTJ 663 / 50 DTR 193 (Mum.) (Trib.)*

**S. 40(a)(ia) : Amounts not deductible – Tax deduction at source – Interest commission – Sub-contractor – Freight Charges**

Assessee deducted the tax at source and paid to Government beyond date stipulated in section 200 but before the due date of filing of his return of income for the year under consideration. Finance Act, 2010 had made amendments to provisions of section 40(a)(ia) as per which if tax has been deducted in relevant previous year and same has been paid on or before due date of filing of return of income for said previous year as specified in section 139(1), corresponding amount from which

tax has been deducted shall be allowed as deduction. Said amendment was remedial/curative in nature, it would apply retrospectively with effect from 1-4-2005.

*Bansal Parivahan (India) (P) Ltd. vs. ITO (2011) 43 SOT 619 (Mum.) (Trib.)*

**S. 54EC : Capital gain – Investment in certain bonds – Cheque issued within six months – Cleared after six months**

For the purpose of computation of LTCG in case of NABARD bonds which were not specified asset as on 1-4-2006 and investment was not within 6 months of transfer, the law has to be read as it stood on the date of transfer of capital asset. Thus, section 54EC relief is available even though cheque was encashed and bonds were allotted later.

*Kumarpal Amrutlal Doshi vs. Dy. CIT (ITAT - Mumbai)*

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

**S. 271(1)(c) : Penalty on Concealment – No penalty – Depreciation on car purchased in the name of partner**

There can be no penalty levied under section 271(1)(c) in case of disallowance of depreciation on car used for the purpose of business on the ground that the same is merely owned and registered in the name of the partner instead of the firm.

*M/s. S. S. Builders vs. ITO, ITA No. 485/M/2008, dt. 18-3-2011, Bench "J".*



## INTERNATIONAL TAXATION

CA Dhanesh Bafna, CA Madhav Khandelwal, Advocate Sujeeth Karkal

### SUPREME COURT

**1. Extra-territorial nexus – S. 9(1)(vii)(b) – Income-tax Act, 1961**

The Supreme Court while upholding the legislative competence of the Parliament to enact laws with respect to extra-territorial jurisdiction, had made the following important observation and had remanded matter back to the appropriate bench to dispose of the issue of constitutional validity of section 9(1)(vii)(b):

- i. Extra-territorial aspects or causes having a nexus with India should be considered as being within the domain of legislative competence of the Parliament, except to the extent specified in the Constitution.
- ii. The powers of legislation (of the Parliament) with regard to aspects or causes that are within the purview of its competence, including

with respect to extra-territorial aspects should not be subjected to a-priori quantitative tests such as "sufficiency" or "significance" or in any other manner requiring a pre-determined degree of strength. However, the connection to India should be real or expected to be real, and not illusory or fanciful.

- iii. Also, the laws enacted by the Parliament may enhance the welfare of people in other countries too; nevertheless, the fundamental condition remains that the benefit to or of India remains central and primary purpose. Hence, an exercise of legislative powers by Parliament cannot extend to extra-territorial aspects that do not have nexus with India. Consequently, the Parliament's powers to enact legislation would not extend to extra-territorial aspects or causes that have no impact or nexus with India.

*GVK Industries vs. ITO (332 ITR 130)(SC)(LB)*

**HIGH COURT****2. Interest payment by the PE to its HO – Article 5 and 7 of the India Netherlands DTAA**

In this case, the assessee ('HO'), a Netherlands Bank, received certain interest on funds borrowed by its permanent establishment ('PE') in India. The High Court as regards the deductibility of the interest in the hands of the PE is concerned held that, though a branch and the HO are the "same person" in general law, Articles 5 & 7 of the India Netherlands DTAA provides that the PE shall be assessable as a separate entity and therefore, the interest paid by the PE to the HO is deductible in computing the PE's profits. Further, the interest amount paid by the PE to HO is not chargeable to tax in India in the hands of the HO and hence, the PE is not under any obligation to deduct tax at source under section 195.

*ABN Amro Bank NV vs. CIT (2011-TII-09-HC-Kol-Intl)*

**TRIBUNAL****3. Non-discrimination – Article 26 – India US DTAA**

The assessee, an American national, was carrying on the activities of export of software through its PE in India. The Special Bench had held that:

- i. An Indian Company or any other resident person carrying on the business of export out of India of computer software or its transmission from India to a place outside India by any means is entitled to deduction u/s 80HHE.
- ii. The language employed in Article 26(2) of the India US DTAA which deals with non-discrimination, means that taxation of a PE of the USA shall not be less favourable than the taxation of resident enterprise carrying on the same activities;
- iii. Therefore, the deduction admissible to an Indian company or a person resident in India will also be allowable to the assessee who is an American national.

*Shri Rajeev Sureshbhai Gajwani vs. ACIT (52 DTR 201)(Ahd)(SB)*

**INDIRECT TAXES**

**P. C. Joshi, Advocate**

**1. Appeal Entertainment**

While considering the provisions of sec. 45(5) of the Delhi Sales Tax Act, the Supreme Court held that the Appellate Authority had a discretion of not insisting on payment as a condition precedent for entertaining the appeal but under those circumstances, the reasons have to be recorded in writing. The Supreme Court also observed that while considering the application for stay of recovery of Sales Tax dues, *prima facie* case, balance of convenience and irreparable loss were to be considered by the Tribunal, The Supreme Court in that regard further observed that the discretion under the Act had to be exercised judicially and the stay application should not be disposed of in a routine manner. Where the demand raised was not sustainable, it was undesirable for the Appellate authority to insist for payment either full or part thereof, of the dues challenged in appeal. In all cases of that nature, the authority concerned should bear in mind that while passing an order, it should not be such which cannot be sustained on the touchstone of fairness, legality and public interest.

*Ravi Gupta vs. Commissioner of Sales Tax, Delhi & Anr. (2011)-19 KTR 122*

**2. Cancellation of tax concession**

The Punjab & Haryana High Court disapproved the cancellation of registration and denial of concession

by the authorities to a unit in pipeline, on the footing that the registration with Industries department was a condition precedent. In fact, the Ministry of Industries had already given acknowledgement Number after receiving the prescribed form of application for registration; the same was treated as registration; with the result, the cancellation of tax concession was held to be unjustified.

*Johnson Matthey India Pvt. Ltd. vs. State of Haryana & Others (2011) 38 (PHT 264)(P&H)*

**3. Commencement of Amending Act**

The Supreme Court held that where the section concerned was substituted retrospectively by an Ordinance followed by the Amending Act, the date of commencement of the said Amending Act, was the date when the Ordinance was promulgated.

*United Riceland Ltd vs. State of Haryana & Anr. 2011 NTN (Vol. 45) – 52.*

**4. Club whether liable**

The Andhra Pradesh Sales Tax Tribunal held that under the AP VAT Act, the term 'club' was preceded by the word 'any' to a supply of or as part of any service or any other manner whatsoever and not to the word 'sale' the club was liable to pay tax without any distinction as to whether it was a Members' Club or

an Incorporated one, when the supplies of foods and drinks were for human consumption.

*The Nizam Club, Hyderabad vs. State of Andhra Pradesh (2011) 52 APSTJ P.10*

#### **5. Declared Goods – Stainless Steel Wire**

The Allahabad High Court held that the stainless steel wire was not covered under the sub-item (ix) u/s 14(v) of the CST Act as 'alloys and special steel' and therefore stainless steel wire was not 'iron and steel' under the said section of CST Act. Consequently provisions to sec. 15 of that Act was also held to be not applicable.

*Bansal Wire Industries Ltd., Ghaziabad & Anr. vs. State of U.P. & Ors. (2011) 38 PHT 356 (All)*

#### **6. Declared Goods – Welding Wire**

The Haryana Tax Tribunal had earlier held that welding wire coated with carbon, manganese, silicon sulphur & phosphorus, was covered by entry (xv) of clauses (iv) of section 14 of the CST Act and therefore the limitations mentioned in sec.15 was applicable. At the instance of the assessee a Reference was submitted to Hon'ble Punjab & Haryana High Court where the matter was not attended to for long nine years by the assessee. The High Court therefore returned the reference unanswered. In view of that development the Tribunal disposed of the pending matter before it.

*Indian Oxygen Limited, Faridabad vs. State of Haryana (2011) 38 PHT 378 (HTT)*

#### **7. Entries in Schedule – Jaljeera – Masala**

The Supreme Court while disposing of several similar appeals regarding classification of jaljeera and similar other products described by the assessee as masalas in their invoice. The jaljeera in question was a mixture of masalas and other materials required for quick digestion. Each of the ingredients however, used in the manufacture was nothing but spices grinded and mixed. Such grinding and mixing resulted in a new product. In other words, in the process of grinding, different ingredients lost their own identity and character, with the result the mixed masala was different commercial commodity obtained after grinding and mixing the spices. In that connection, the Supreme Court observed that when a particular item was covered by one of the specified entries, the revenue cannot travel and treat the item to be covered by a residuary one. Finding that the mixture in question was of spices, it was held to be nothing but a masala packed into packets of different quantity and sold as such. Entry 184 under the Rajasthan Sales Tax law referred to 'packed masala' specifically in the said entry relating to 'all kinds of eatable and non-alcoholic potable liquids such as fruit, syrup, distilled juice, jam, fruit juice, dry milk powder, drink concentration, essence, corn flakes, wheat flakes, custard powder, baking powder, ice cream, etc.'

The Supreme Court in that regard also referred to a letter dated 12th November, 2001 issued by the Deputy Secretary, Finance Department clarifying that packed masalas under the said entry meant a masala where two or more ingredients were mixed and sold in packed condition. The Supreme Court also held that though the said letter was inter- departmental, the concerned revenue authorities were bound by the said letter even when the same was not circulated amongst the assessees.

Prayer of the assessee that the item in question was covered by residuary entry was rejected upholding the decision of the revenue in treating jaljeera as covered by entry relating to 'packed masala'.

*Commercial Tax Officer vs. M/s. Jalani Enterprise. Civil Appeal No. 2558 of 2011 decided on 17th March, 2011.*

#### **8. Entries in Schedule**

##### **a) Physician samples**

The Supreme Court while deciding a group of appeals under the Central Excise Act held that even though, the physician samples were statutorily prohibited from being sold under the provisions of Drugs and Cosmetics Act, 1940, the manufactured goods were excisable goods to be valued on *pro rata* basis for the purpose of levying excise duty. The Apex Court have referred to all relevant case law in relation to the meaning of the word "Goods" and its marketability.

*Medley Pharmaceuticals Ltd vs. The Commissioner of Central Excise, Gujarat 2011 (2) GSTJ P.57*

##### **b) Old automobile spare parts**

The Kerala High Court held that, though the Invoice showed that the sales were by weight; but the price was per unit; though the spare parts were second hand, they were useable as such and therefore the Court confirmed the action of the local authorities in levying tax as auto spare parts and not as scrap.

*Jainulavudheen vs. State of Kerala 2011 19 KTR 109 (Ker.)*

##### **c) Medicine**

The Allahabad High Court held that the 'medicine' would cover a substance (liquid or solid) that cure or mitigate disease or that was administered in the treatment of disease. The varying proportion of different drugs or the percentage of medicament being less had no relevance while considering the nature of the goods. Applying the above principle, it was held that Himani Boroplus antiseptic cream was an ayurvedic product.

*(All) Himani Ltd. vs. Commissioner of Commercial Tax, U.P. (2011) 18 STJ 209*

**d) Rate of Tax – Push button telephone**

The Kerala High Court held that the two entries one relating to push button telephones and other electrical push button telephone were both related to functionally the same item. Therefore the inter-State sales of electrical push button telephone were held to be liable to 2% tax as provided under the SRO 1731-93.

*Itel Industries Ltd. vs. State of Kerala (2011) 19 KTR 98*

**9. Liability of licensee**

The Supreme Court while considering an appeal under the Service Tax held that the licensee, as an authorised person, providing the taxable services on behalf of the Principal, was liable for payment of the service tax when the service was provided by such licensee.

*P. C. Paulose, M/s. Sparkway Enterprises vs. Commissioner of Central Excise & Customs - 2011 (2) GSTJ P. 73.*

**10. Export u/s. 5 (3) of CST Act**

The Madras High Court following the judgment of the Supreme Court in the case of *State of Karnataka vs. Azad Coach Builders Pvt Ltd.*, held that a local manufacturer was entitled to claim an exemption u/s. 5(3) of the CST Act when the penultimate sale was integrally or inextricably connected with the export of goods outside the country.

*M/s. Sri Rama Vilas Services Ltd vs. The Tamil Nadu Taxation Special Tribunal 2011 (2) GSTJ P.78.*

**11. Exemption**

After considering the language used in the Notification granting the exemption of sales tax u/s 5 to a new industrial unit on goods manufactured Supreme Court held that such a notification did not include the tax on purchases or turnover tax under other sections of the Karnataka Sales Tax Act, 1957. The claim of the assessee therefore for exemption of the purchase tax u/s 6 of the said Act was held to have been correctly disallowed.

*Malnad Areca Processing & Marketing Ltd. vs. Deputy Commissioner of Commercial Taxes (Assmt.) & Anr. Others 2011 (19) KTR 88*

**12. Interpretation of statutes**

The Madhya Pradesh High Court held that the levy of tax cannot be held to be invalid for want of the machinery provisions or the rules thereunder.

The Court also held that the effect of non obstante clause was not to ignore the other applicable provisions of the Act, but in case of conflict the said clause will prevail.

*Lilasons Breweries Ltd. & Ors vs. State of M.P. & Ors (2011) 18 STJ P.125*

**13. Interpretation of entries**

**Impact of Notification**

Even after the Supreme Court judgment in the case of *Gopuram Gram Mill Ltd. in 1994, (95 STC 358) (SC)*, the notification dated 31-3-1984 issued by the Karnataka Government holding that Bengal gram and fried gram were the same commodity; continued without any amendment. The Karnataka High Court on the above facts held that if the Government allowed the earlier notification to be continued even after the judgment of the Supreme Court, the assessee cannot be asked to suffer by denying the benefit that was available under the notification.

*State of Karnataka vs. Ratna Industries (2011) 18 STJ 309 (Kar.)*

**14. Penalty under section 10A r/w.10(B) of CST Act**

The Allahabad High Court confirmed the imposition of penalty when the assessee had effected purchases on C form, goods which were not even remotely covered by the items mentioned in the certificate. The Court therefore held that the element of 'Mens rea' was completely established in such a case.

*Commissioner, Trade Tax, U.P. Lucknow vs. M/s. Saraswati Trading Company 2011 NTN (Vol. 45) – 50.*

**15. Penalty**

The Madhya Pradesh High Court followed well laid down principle and held that unless the assessee failed to carry out a statutory obligation or acted deliberately in defiance of law, no penalty can be imposed.

*Indian Exports Ltd. vs. Assistant Commissioner of Commercial Tax and Ors. (2011) 18 STJ 289 (MP)*

**16. Purchase Tax**

The Karnataka High Court held that the assessee was liable to pay tax u/s 3(2) when the taxable goods were sold by an unregistered dealer to a registered dealer. The Court also held that the standard deduction of 30% for labour charges was available to a contractor for the execution of works contract where the quantum of labour charges was not ascertainable from the books.

*Concorde Hitech City P. Ltd. vs. State of Karnataka and Anr. 2010-11 (15 KCTJ) P. 115*

**17. Purchase on 'C' form**

The Andhra Pradesh High Court held that in arriving at a conclusion in regard to the inclusion of the items intended to be used in the generation of electricity, a broader and benevolent view should be adopted and not the narrower one. Therefore the machinery equipments, building materials which were integrally connected with the generation and distribution of electricity cannot mean "intended to be used in the business of generation of electricity."

The Hon'ble court referred to the provisions of electricity Act and the language used by section 8(3)(b) of CST Act and held that the items which were required for the actual activity of generation of electricity would be eligible to be included in the certificate.

*Coastal Andhra Power Ltd vs. State of Andhra Pradesh (2011) 52 APSTJ P.23.*

### 18. Production of Form 'C' – Finance Act, 2002

No substantial Question of law for Appeal to High Court.

The Punjab & Haryana High Court after considering the impact of amendment to CST Act by Finance Act, 2002 and the continuation of the notification issued prior thereto without any amendment, held that the said notification did not provide for any requirement of production of "C" form and therefore the benefit of reduced rate of tax cannot be denied to the assessee on the footing that sec. 8(5) of Central Sales Tax Act was amended by Finance Act, 2002. The High Court therefore affirmed the decision of the Tribunal and held that no substantial question of law arose for decision by the High Court.

*State of Punjab vs. Shreyans Industries Ltd. (2011) 38 PHT 262 (P&H)*



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