



All India Federation of Tax Practitioners

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(For Members only)

# AIFTP TIMES

Volume 3 - No. 1

January, 2012

We wish all our members and readers  
A Happy & Prosperous New Year

## FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
7, 21-1-2012, 4, 18-2-2012, 17, 31-3-2012	Workshop on MVAT & Allied Laws	Mumbai
4-2-2012	Extraordinary General Meeting of AIFTP (NZ)	New Delhi
16-3-2012	National Executive Committee Meeting	Guwahati
17, 18-3-2012	Two Day National Tax Conference	Guwahati

## FEDERATION NEWS

J. K. Ranka, Secretary General

### REPORT OF THE ACTIVITIES FROM DECEMBER 2009 TO DECEMBER 2011

J. K. Ranka, Secretary General

The activities in brief in the last 24 months are that National Tax Convention, 2009 was organized at Jaipur between 18th – 20th December, 2009 where Hon'ble Mr. Justice Dalveer Bhandari, Judge, Supreme Court of India was the Chief Guest. Hon'ble Mr. Justice G.S. Singhvi, Judge, Supreme Court of India presided over the Inaugural Session. Hon'ble Mr. Justice Dr. AR. Lakshmanan, Retd. Judge, Supreme Court of India and Former Chairman of Law Commission of India was the Chief Guest of the Valedictory Session. Chairman, Central Board of Direct Taxes, Hon'ble Mr. S.S.N. Moorthy, many Senior Advocates, other Senior Officials were Speakers or Chairman in different Technical Sessions. One session was kept where all the Speakers, Chairperson were all women. A Workshop was organized on "MVAT & Allied Laws" jointly with Bombay Chartered Accountants' Society, The Chamber of Tax Consultants and The Sales Tax Practitioners' Association of Maharashtra at Mumbai on 9th, 16th, 23rd and 30th January, 2010. Hon'ble Mr. Justice T.S. Thakur and Hon'ble Mr. Justice Swatanter Kumar, both Judges of Hon'ble Supreme Court of India were felicitated on their elevation to the Apex Court on the 13th February, 2010 at New Delhi. One day Seminar on Union Budget was organized at Kolkata on 27th February, 2010. A Workshop was organized on "MVAT & Allied Laws" jointly with Bombay Chartered Accountants' Society, The Chamber of Tax Consultants and The Sales Tax Practitioners' Association of Maharashtra at Mumbai on 6th, 13th, 20th, 27th February, 2010 and 6th March, 2010. One day Seminar on Union Budget was organized at Indore and Ujjain on 6th March, 2010. One day National Tax Conference was organized at Varanasi on 7th March, 2010 which was inaugurated by Hon'ble Mr. Justice Rakesh Tiwari, Senior Judge, Allahabad High Court. Two day National Tax Conference

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was held at Cuttack on 10th & 11th April, 2010 which was inaugurated by Hon'ble Mr. Justice A.K. Patnaik, Judge Supreme Court of India. The Hon'ble Chief Minister of Orissa Shri Naveen Patnaik was the Chief Guest. Hon'ble Mr. Justice Arijit Pasayat, Former Judge Supreme Court of India and presently Chairman of the Competition Law Tribunal was the Special Guest. Hon'ble Shri Sheikh Naimuddin, Member, Central Board of Direct Taxes, several Ministers and other officials also attended both from Direct and Indirect Taxes. Two day National Tax Conference was held on 3rd & 4th July, 2010 at Hyderabad where Hon'ble Mr. Justice Anil R. Dave, Judge Supreme Court of India was the Chief Guest. Various important issues on Direct and Indirect Taxes were discussed and deliberated. Two day Mega Seminar was organized at Siliguri on 17-18th July, 2010 which was largely attended by number of professionals and others. Hon'ble Shri Ashok Bhattacharya, Minister for Urban Development, Government of West Bengal inaugurated the Seminar. A full day Workshop was organized at Mumbai on "Investment in India – Tax & Regulatory Aspects" on 7th August, 2010. Two day National Tax Conference was held on 2nd & 3rd October, 2010 at Chennai which was inaugurated by Hon'ble Mr. Justice H.L. Gokhale, Judge, Supreme Court of India. Many other Judges, Members of the Income Tax Appellate Tribunal were present. Hon'ble Shri R.V. Easwar, President, Income Tax Appellate Tribunal was the Chief Guest of the Valedictory Session. Respected Shri K.J. Chandran, Senior Member of the Federation was felicitated on completion of his Golden Jubilee Years in the profession. 7th Nani Palkhivala Tax Moot Court Competition was organized at Mumbai jointly with the ITAT Bar Association, Mumbai and Government Law College on 7th, 8th and 9th October, 2010. The Foundation Day Celebration was organized on or about 11th November, 2010 at various places in the country namely at Kolkata, Orissa, Ujjain and at Surajkund, (New Delhi). At Surajkund, (New Delhi) Hon'ble Mr. Justice T.S. Thakur, Judge Supreme Court of India was the Chief Guest. Hon'ble Mr. Justice Deepak Mishra, the Chief Justice of Delhi High Court was the Chief Guest at the Valedictory Session. In this Valedictory Session one hour was totally devoted on the doyen of the Bar Late Shri Nani A. Palkhivala. The Speakers highlighted the key skills of advocacy and shared their memories of Late Shri Nani A. Palkhivala. Two day National Tax Conference was held on the 13th & 14th November, 2010 at Bengaluru which was inaugurated by Former Judge of Supreme Court of India Hon'ble Mr. Justice N. Venkatachala inaugurated. Two day Conference was organized by AOTCA at Sydney, Australia on 25th & 26th November, 2010 where some of our members represented. Two day National Tax Conference was organized at Indore on 11th and 12th December, 2010 which was inaugurated by Hon'ble Mr. Justice Syed Rafat Alam, Chief Justice of Madhya Pradesh High Court was the Chief Guest. Two day National Tax Conference was organized at Ahmedabad on 8th and 9th January, 2011 where Hon'ble Mr. Justice Anil R. Dave, Judge, Supreme Court of India was the Chief Guest. A full day Seminar on MVAT and Income Tax was organized at Jalgaon on 15th January, 2011 where Hon'ble Shri Eknathrai Khadse, Leader Opposition, Maharashtra was the Chief Guest. A Workshop was organized on "MVAT & Allied Laws" jointly with Bombay Chartered Accountants Society, Chamber of Tax Consultants and Sales Tax Practitioners Association of Maharashtra at Mumbai on 15th & 29th January, 2011, 12th & 19th February, 2011, 11th & 12th March, 2011, 2nd, 16th & 30th April, 2011.

On 5th March, 2011 one day National Tax Seminar was organized by the All India Federation of Tax Practitioners (Eastern Zone) at Kolkata along with local Associations which was inaugurated by Hon'ble Shri B.R. Mittal, Senior Member, Income Tax Appellate Tribunal, Kolkata. Hon'ble Shri ALKB Chand, Chief Commissioner of Income Tax, Kolkata was the Guest of Honour. The Chief Guest of the Valedictory Session was Hon'ble Mr. Justice Kalyan Jyoti Sen Gupta, Judge, Kolkata High Court. The unique feature of the Seminar was that 3 young lady Professionals spoke on different aspects. A full day Seminar on Direct Taxes was organized at Raipur on 6th March, 2011. Two day National Tax Conference was organized at Junagarh on 11th & 12th March, 2011 where Hon'ble Shri A.L. Gehlot, Member ITAT was the Chief Guest.

Two day National Tax Conference was organized at Jodhpur on 23rd-24th April, 2011 where Hon'ble Mr. Justice Deepak Verma, Judge Supreme Court of India was the Chief Guest, Hon'ble Mr. Justice Arun K. Mishra, Chief Justice of Rajasthan presided over the Inaugural Session, Hon'ble Shri H.M. Bangur, Managing Director, Shree Cement Ltd. was the Guest of Honour.

Two day National Tax Conference was organized at Mumbai on 17th – 18th June, 2011 jointly with the Sales Tax Practitioners Association of Maharashtra where Hon'ble Shri A.D. Babrekar, President, Maharashtra Sales Tax Tribunal, Mumbai inaugurated the two day Tax Conference.

Two day Workshop on Drafting of Agreements, Deeds and Documents including Taxation of Real Estate Transactions was held jointly with The Chamber of Tax Consultants and Bombay Chartered Accountants' Society on 19th and 20th August, 2011 at Mumbai which was inaugurated by Shri K.K. Ramani, Past Chairman, AIFTP (WZ). He also delivered the key note address.

8th Nani Palkhivala Tax Moot Court Competition was organized at Mumbai from 13th – 15th October, 2011 jointly with Income Tax Appellate Tribunal Bar Association in association with Government Law College, Mumbai. The same was inaugurated by Hon'ble Shri R.V. Easwar, President, Income Tax Appellate Tribunal, Mumbai, Hon'ble Shri D. Manmohan was the Guest of Honour of the Inaugural Session. The Final round was judged by Hon'ble Mr. Justice Mohit S. Shah, Chief Justice of Bombay High Court along with Hon'ble Mr. Justice Dr. D.Y. Chandrachud and Hon'ble Mr. Justice Sawant, Judges of Bombay High Court. All the 3 Judges appreciated the great efforts. In all 26 Teams participated from all over the country.

The All India Federation of Tax Practitioners has celebrated the historic 35th Foundation Day Celebrations at New Delhi from 11th – 13th November, 2011 along with National Tax Conference – 2011 on the Theme "A Vibrant India – Through Tax Reforms" by AIFTP, North Zone. Hon'ble Mr. Justice T.S. Thakur, Judge, Supreme Court of India inaugurated and was the Chief Guest. Shri P.H. Parekh, President, Supreme Court Bar Association was the Guest of Honour. In the said Celebration and Conference, Senior Judges of High Courts, Senior Members of the Federation Chaired the various different sessions. It was heartening to note that younger professional brothers were given chance in all the Technical

Sessions to say a few words on the topics chosen. A Special Session was held on the last day on "Fighting Corruption – Time for Self Retrospection" where the Chief Guest was Hon'ble Mr. Justice Kailash Gambhir, Senior Judge, Delhi High Court, Guest of Honours were Hon'ble Mr. Justice R.V. Easwar, Judge, Delhi High Court and Hon'ble Shri Virbhadrappa, President, Income Tax Appellate Tribunal. All the 3 Speakers along with the Past Presidents of the Federation spoke extensively on the subject and material put with figures which was shocking and all were requested to curb this menace of corruption. At the foundation day function following jewels of federation were felicitated:-

- |   |   |
|---|---|
| 1. Late Shri A.K. Singh                       | 10. Shri Mitesh Kotecha                       |
| 2. Shri Balram Sangal                         | 11. Late Shri N.C. Mehta, Founder President.  |
| 3. Shri B.C. Joshi, Past President            | 12. Shri N.M. Ranka, Past President           |
| 4. Shri Bharatji Agrawal, Imm. Past President | 13. Shri P.C. Joshi, Past President           |
| 5. Shri D.K. Jain                             | 14. Shri P.S. Sarin                           |
| 6. Dr. K. Shivaram, Past President            | 15. Shri R.D. Sharma                          |
| 7. Shri Govind G. Goyal                       | 16. Shri S.R. Wadhwa                          |
| 8. Shri Kishor Vanjara                        | 17. Shri U.M. Loonawat                        |
| 9. Late Shri M.D. Sodani                      | 18. Late Shri V. Ramachandran, Past President |

National President, Past National Presidents and two Senior Members, in all 5, attended the AOTCA International Tax Conference at Bali, Indonesia from 16th to 19th November, 2011.

The 16th National Tax Convention at Ranchi was organized in a grand manner from 9th December to 11th December. On 9th Extra Ordinary General Meeting was held with Elections and National Executive Committee Meeting both existing and after elections joint NEC of existing & elected. More than 700 delegates were enrolled. On 10th December the Convention was formally inaugurated by Hon'ble Mr. Justice S. J. Mukhopadhyaya, Judge, Supreme Court of India, Hon'ble Mr. Justice Deepak Verma, Judge, Supreme Court of India was the Chief Guest. Hon'ble Mr. Justice R.K. Agrawal, Judge Allahabad High Court, Hon'ble Mr. Justice I.A. Ansari, Judge, Guwahati High Court, Hon'ble Mr. Justice Rajesh Bindal, Judge, Punjab & Haryana High Court were the Guests of Honour. The various Technical Sessions were chaired by Hon'ble Judges of various High Courts and our Past National Presidents. Paper Writers & speakers were all eminent professionals in their respective fields. Shri S.K. Poddar, Senior Advocate and Chairman National Tax Convention from Ranchi was elected as incoming National President for the term 2012-13. Shri J.D. Nankani, Advocate from Mumbai was elected as Dy. President for 2012-13. On all other posts elections were held unanimously, co-options were also made to fill up the vacancies. The Convention was dedicated to our Founder President Late Shri N.C. Mehta who passed away recently.

One day National Tax Seminar was held at Thiruvananthapuram by AIFTP (SZ) jointly with CA Branch of Thiruvananthapuram where more than 105 delegates enrolled. This mega seminar was dedicated to our Past National President Late Shri V. Ramachandran who passed away recently. Respected Mrs. Padma Ramachandran and Smt. Anita Sumanth, (Advocate) wife & daughter of Late Shri V. Ramachandran graced the occasion. Paper Writers were eminent and the seminar was a grand success.

The Life Membership of the Federation :

	<b>As on 31st December, 2009</b>	<b>As on 20th December, 2011</b>
Northern Zone	780	859
Eastern Zone	811	1003
Western Zone	1540	1639
Central Zone	660	766
Southern Zone	685	777
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	4476	5044
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i.e. we have crossed the magic figure of 5,000 on the Foundation Day Celebrations at New Delhi, a dream fulfilled. Thus, during this term 568 new Life Members were enrolled.

During the term, we have published the following publications:

- (1) 151 FAQs on Survey – Direct Taxes was released at Hyderabad on 3rd July, 2010
- (2) Wills & Bequests – Strategies – 151 Questions & Answer with 6 specimens was released at Ahmedabad on 8th January 2011
- (3) 155 Frequently Asked Questions & Answers – HUF was released at Ranchi on 10th December, 2011.

The present Committee of the Federation has tried to build up the assets of the Federation and has gained substantially during this term.

We thank all the esteemed Past National Presidents, all the Office-bearers, all the esteemed colleagues in the National Executive Committee, who were active all throughout during this term. We also thank all the organizers of the National Tax Conferences, National Executive Committee Meetings, organizers of one day/half day Seminars and for other functions who have kept the flag of the Federation flying high. In the end we congratulate the incoming team and wish the new team our heartiest congratulations under the dynamic leadership of Shri S.K. Poddar, incoming National President and we are confident the Federation shall reach great heights under his dynamic leadership. We shall be happy to extend all the assistance, guidance and active co-operation to Shri S.K. Poddar and his team. In case we have hurt the feelings of any of the Members in the Federation, we feel sorry from the core of our heart.

## NOTICE OF EXTRAORDINARY GENERAL MEETING OF AIFTP (NORTHERN ZONE)

Notice is hereby given to all the members of Northern Zone that an Extraordinary General Body Meeting of All India Federation of Tax Practitioners (N.Z.) will be held on Saturday, the 4th day of February, 2012 at Indian Medical Association House, adjacent to C.R. Building, I.P. Estate, New Delhi – 110 002 at 1.00 PM to transact the following Agenda:

1. To elect the members of Managing Committee of Northern Zone for the term 2012 & 2013.
2. To elect the Office Bearers for the term 2012 & 2013.
3. The members interested to join as Members of the Managing Committee for the term 2012 & 2013 are requested to file their nomination on or before 23rd January, 2012 before the Chairperson (N.Z.), Ms Prem Lata Bansal, G-1, Vishwa Apartment, Civil Lines, Delhi – 110 054. The Nomination Form may kindly be downloaded from our website: [www.aiftponline.org](http://www.aiftponline.org).
4. Scrutiny of Nomination Papers will be on 24th January, 2012, at 5.00 PM.
5. Any member willing to withdraw his/her Nomination Paper, should withdraw it on or before 30th January, 2012.
6. Total 21 members will be elected to the Managing Committee. These 21 members shall, amongst themselves, elect the office bearers.
7. Dr. Ashok Saraf, Vice-President, Eastern Zone has been appointed as Election Officer.

**PREMLATA BANSAL**  
Chairperson (N.Z.), AIFTP

Note: Programme scheduled on 4-2-2012.

1.00 p.m. to 2.00 p.m. – Lunch; 2.00 p.m. onwards – Election

## REPORT OF ONE DAY SEMINAR AT TRIVANDRUM, KERALA HELD ON 17-12-2011

Dr. M.V.K. Moorthy, Chairman-Elect, AIFTP (SZ) (2012-13)

I am pleased to inform you that the One day Seminar at Thiruvananthapuram in the State of Kerala held on 17-12-2011, the last conference in 2011 before closure of the year, went off very well and successfully. More than 105 delegates from different parts of Kerala State as well as 5 delegates from the State of Tamil Nadu, one delegate from Karnataka and 3 delegates from the State of A.P. have attended the seminar. The Southern zone of the Federation and the Federation at the National level is very much grateful to Mr. C.A. Retna Kumar of Thiruvananthapuram, the Vice Chairman from Kerala State for the Southern Zone, for his excellent support extended and the co-ordination, he has exercised with the local leaders of Thiruvananthapuram branch of the Institute of Chartered Accountants of India. In connection with the seminar, we are also able to obtain 8 new membership from Thiruvananthapuram.

The seminar was Chaired by the present Zonal Chairman C.A. P.V.S.S Prasad and the seminar was dedicated in the name of the former National President Late Shri V. Ramachandran Sr. Advocate of Chennai. All the delegates have appreciated and commended the kind gesture shown by the Federation as a mark of respect and honour shown to the late leader. Respecting our invitation the spouse of Late Shri V. Ramachandran, Dr. Padma Ramachandran and his daughter Dr. Anita Sumanth have graced the function. Mr. K.J. Chandran, Advocate from Chennai who was the Secretary General under the Presidentship of Late Shri V. Ramachandran also attended the seminar.

Four technical sessions were organized and I have the opportunity of chairing the 3rd Technical Session on Service Tax and Issues in compliance with the Service Tax Rules and C.A. P.V.S.S. Prasad, the Zonal Chairman was the speaker for 2nd Technical Session on Transfer Pricing Assessments.

I had an interaction of most beneficial nature with the speakers and the delegates who participated from different parts of the Kerala State and emphasized the need for and benefit of all the professionals coming into the fold of the AIFTP and have also at the same time stressed the necessity to hold as many as One day National Seminars at different places of Kerala State and a proposal is emanated from Mr. Sankaranarayan, NEC member to organize Two day National Seminar at Kochi in August, 2012.

As already requested, the Southern Zone Karnataka State unit may pleased be accorded approval for holding Two day National Tax Seminar in June, 2012 at Bengaluru. I have requested the existing members of the Federation and other Chartered Accountants in Kerala State to cross the minimum target of 200 new members for Kerala State in my tenure, which was agreed by all.

**DIRECT TAXES**

**Ajay R. Singh, Paras Savla, & Rahul Hakani**  
Advocates, KSA Legal

**SUPREME COURT**

**1. S. 115JA: Company – Book profits – Computation – Export – Computer software. (S. 80HHE)**

In computing the book profit under section 115JA deduction u/s 80HHE has to be worked out on the basis of adjusted book profit under section 115JA and not on the basis of the profits computed under regular provisions of law applicable to computation of profits and gains of business. (A.Y. 2000-01)

*CIT vs. Bhari Information Technology Systems (P) Ltd. (2011) 62 DTR 337/ 245 CTR 1 (SC).*

**HIGH COURTS**

**2. S. 2(22) (e): Deemed dividend – Compensation for keeping the property as mortgage – By way of advance or loan**

Advance given by company to assessee share holder by way of compensation for keeping his property as mortgage on behalf of company to reap benefit of loan could not be treated as deemed dividend within the meaning of section 2(22)(e). Phrase 'by way of advance or loan' appearing in section 2(22)(e) must be construed to mean those advances or loans which a share holder enjoys for simply on account of being a person who is beneficial owner of share holding not less than 10 per cent of voting power, but if such loan or advance is given to such share holder as a consequence of any further consideration which is beneficial to company received from such a share holder, such advances or loan cannot be treated to be deemed dividend within the meaning of section 2(22)(e). (A.Y. 1999-2000)

*Pradip Kumar Malhotra vs. CIT (2011) 338 ITR 538/ 203 Taxman 110 (Cal) (High Court).*

**3. S. 2 (47): Transfer – Capital gains – Possession (S. 45)**

After introduction of deemed transfer under section 2(47)(v), of the Act, if the contract, read as a whole, passes or transfers complete control over the property in favour of developer, then the contract would be relevant to decide the year of chargeability. On the facts the actual

possession of property was handed over on 30-5-1996, hence the capital gain will be chargeable in assessment year 1997-98. (A.Y. 1997-98)

*CIT vs. T.K. Dayalu (Dr) (2011) 202 Taxman 531 (Kar)(High Court).*

**4. S. 4: Income – Accrual – Interest – Mortgage**

Assessee advanced certain amount against mortgage. Right from date of granting loan borrowers had neither paid principal amount nor interest amount. The guarantor company was declared as sick company. Assessee has not shown the interest on the ground that enforceability of mortgage as a mode of recovery being complicated. The court held that, mere difficulty in successfully enforcing mortgage does not make debt bad, therefore interest was assessable on accrual basis in assessment years 2000-01 to 2002-03 and amount of such interest would be reduced from amount of interest offered in assessment year 2003-04. (A.Ys. 2000-01 to 2003-04).

*Rohini Holdings (P) Ltd. vs. CIT (2011) 202 Taxman 341 (Mad) (High Court)*

**5. S. 6(1)(c): Residential status – Non-resident – Deputation – Period of visit to India**

Assessee was in India for a period of 78 days during the relevant assessment year and more than 365 days during the past four years. Tribunal held that the assessee was on deputation from April 2004 to January 2005 and his stay from 18th August, 2004 to 6th September 2004 was in respect of a visit to India and this is to be excluded while computing the applicability of section 6(1)(c), his status was to be non-resident. High Court affirmed the order of Tribunal. (A.Y. 2005-06).

*Director of IT vs. Manoj Kumar Reddy Nare (2011) 62 DTR 358 (Kar) (High Court).*

**6. S.10A: Exemption – Free trade zone – Reconstruction**

Assessee was a 100 per cent captive centre providing software design and development services to its parent company. Assessee claimed benefit under section 10A from 1-1-2003 to

31-3-2003 after getting approval from Director of software Technology Park of India (STPI) on 31-12-2002. Assessing authority declined to grant benefit under section 10A on ground that application filed before STPI was seeking approval to establish a new unit and not for recognizing an existing unit. In Appeal the CIT(A) and Tribunal has held that the undertaking of assessee in question was not formed by splitting hence entitled to under section 10A. High Court held that it was not a case of reconstruction which was supported by Circular No. 1/05 dated 6-1-2005 hence confirmed the order of Tribunal. (A.Y. 2003-04).

*CIT vs. Maxim India Integrated Circuit Design (P) Ltd. (2011) 202 Taxman 365 (Karn) (High Court).*

## TRIBUNALS

### **7. S. 2 (24): Income – Mutual concern – Trade – Professional association**

Since assessee had not been granted benefit of section 11 and it was also not an institution referred to in clause (21) or clause (23) or clause (23C) of section 10, provision of section 2(24)(ii) cannot be applied. (A.Y. 2005-06).

*Asst. DIT vs. Hologram Manufacturing Association (2011) 48 SOT 39 (Delhi) (Trib).*

### **8. S. 10B: Exempt incomes – Export oriented undertaking-‘Manufacturing’ includes ‘any Process’ – Conversion of gherkin into gherkin pickles – Manufacture – Law applicable when business started**

Assessee agricultural products processing company was engaged in manufacturing of gherkin pickles by purchasing raw gherkin and putting them through various process. Assessing Officer held that the assessee is not doing the manufacturing hence not entitled to exemption under section 10B. The Tribunal held that the assessee started its business on 1-4-1999, and current assessment years fell within the permissible period of 10 years, therefore the provision of section 10B as it stood before its substitution, section 10B and Explanation thereto had categorically held that manufacture include any ‘process’, therefore assessee is entitled exemption under section 10B. (A.Ys. 2005-06 to 2007-08)

*Sterling Agro Processing (P) Ltd vs. ACIT (2011) 48 SOT 80 (Chennai) (Trib).*

### **9. S. 17(3): Salaries – Profits in lieu of salary – Ex gratia payment**

Assessee took up post retirement as secretary of a club for a period of three years. Club also provided accommodation to assessee. Disputes arose between club and assessee. Assessee filed a police complaint for forcibly removing from club premises. Employment was terminated after end of first year. Termination provided withdrawal of allegations vacate premises allotted to assessee as service accommodation and club would pay ₹ 7.5 lakhs which was equivalent to salary for rest of period of three years. Assessee claimed said amount as exgratia as capital receipt. The Tribunal held that since the amount given to assessee for compensating loss of salary for 25 months. Same would fall within the ambit of expression “any compensation” used in sub clause (i) of section 17 (3) relating to “profits in lieu of salary” and taxable under said provisions. (A.Y. 2001-02).

*Yatinder Kumar vs. ITO ( 2011) 133 ITD 237 (Pune) (Trib).*

### **10. S. 32: Depreciation – Computer system – Trial period – VSAT – Equipments located in members premises**

Computer system which stood installed and used for trial period would also constitute “user” for purpose of depreciation under section 32. Assessee is entitled to depreciation in respect of VSAT net work equipment installed at the premises of members. (A.Ys 1997-98, 1998-99 and 2001-02).

*National Stock exchange of India Ltd. (2011) 133 ITD 27/62 DTR 329/142 TTJ 189 (Mum) (Trib).*

### **11. S. 37(1): Business expenditure – Loss on account of irrecoverable amount that were advanced to farmers**

Assessee advanced the amount to farmers as a measure to ensure continuous supply of raw materials, which was essential in nature of business of assessee, when raw materials were not received on such advances, it would be a loss in revenue field. Following the ratio of Apex court in *CIT vs. Wood ward Governor India (P) Ltd. (2009) 312 ITR 254 (SC)*, wherein the court held that the expression ‘any expenditure’ used in section 37 cover both ‘expression incurred’ as well as even if ‘loss’ amount had gone out of pocket of assessee, therefore the advances written off was allowable as business expenditure. (A.Ys 2005-06 to 2007-08)

*Sterling Agro Processing (P) Ltd. vs. ACIT (2011) 48 SOT 80 (Chennai) (Trib).*

## NEWLY ELECTED NATIONAL EXECUTIVE COMMITTEE AND OFFICE BEARERS OF AIFTP FOR THE TERM 2012 & 2013

<b>Name</b>	<b>Designation</b>
Shri S. K. Poddar (Ranchi)	National President
Shri M. L. Patodi (Kota)	Imm. Past President
Shri J. D. Nankani (Mumbai)	Dy. President
Dr. Ashok Saraf (Guwahati)	Vice President
Ms. Premlata Bansal (Delhi)	Vice President
Shri Ashvin C. Shah (Ahmedabad)	Vice President
Shri Ganesh Purohit (Jabalpur)	Vice President
Shri J. V. Rao (Hyderabad)	Vice President
Shri Narayan Prasad Jain (Kolkata)	Secretary General
Shri Harish Motiwalla (Mumbai)	Treasurer
Shri Achintya Bhattacharjee (Kolkata)	Joint Secretary
Shri Piyush Agarwal (Allahabad)	Joint Secretary
Shri Rajesh B. Shah (Vadodara)	Joint Secretary
Ms. Ritu G. P. Das (Kota)	Joint Secretary
Shri M. Shriniva Rao (Eluru)	Joint Secretary

### Advisors

Shri P.C. Joshi (Mumbai) • Dr. K. Shivaram (Mumbai) • Shri N.M. Ranka (Jaipur)  
Shri Bharatji Agrawal (Allahabad)

### Members Elected

Shri Amit Nagarsheth (Vadodara)	Shri O. P. Shukla (Varanasi)
Shri Basudev Panda (Cuttack)	Shri Pankaj Ghiya (Jaipur)
Shri Desh Bandhu Gupta	Shri P. M. Chopra (Jodhpur)
Ms. Gouri Chandnani (Ahmedabad)	Shri Prakash Gupta (Varanasi)
Shri Hemendra V. Shah (Hyderabad)	Shri Rabindra Nath Pal (Cuttack)
Shri H.L. Madan (Delhi)	Shri Rajesh Joshi (Indore)
Shri Janak Vaghani (Mumbai)	Shri Ramesh M. Shah (Ahmedabad)
Shri J. K. Ranka (Jaipur)	Shri Samir S. Jani (Junagadh)
Shri K. G. Vyas (Pune)	Shri Sanjay Kumar (Allahabad)
Shri Kishor Vanjara (Mumbai)	Shri Sanjay Sharma (Delhi)
Shri K. Sankarnarayan (Kochi)	Shri S.B. Kabra (Hyderabad)
Shri Mitesh A. Kotecha (Mumbai)	Shri S. L. Jain (Jaipur)
Shri Murli Dhar Kedia (Jamshedpur)	Shri Tayyab M. Khan (Azamgarh)
Ms. Nikita R. Badheka (Mumbai)	Shri V. Nagendra Prasad (Hyderabad)

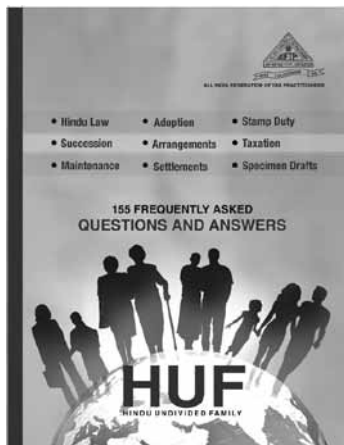
### Co-opted Members

Shri B. N. Mahapatra (Bhubaneshwar)  
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## BOOK RELEASE ANNOUNCEMENT



We are pleased to make the announcement of the release of publication of the All India Federation of Tax Practitioners titled "155 Frequently Asked Questions & Answers - HUF", which is dedicated to Late Shri N. C. Mehta, Founder President, AIFTP. Hon'ble Mr. Justice Deepak Verma, Judge, Supreme Court of India has released the publication on 10th December, 2011 at Ranchi in a 16th National Convention organised by the AIFTP (Eastern Zone) in association with local associations.

This publication is an unique publication in a questions answers format explaining the provisions and various controversies relating to HUF. In this publication 155 questions of practical importance are answered in a simple and lucid language by eminent professionals. It is divided into 13 Chapters alongwith 3 specimens.

It is divided into 13 Chapters alongwith 3 specimens. The highlights of the said publication are status of HUF, Partition, Reunion, Family Arrangements, Taxation and Clubbing of Income, Stamp Duty, Right of coparceners, Members, Provisions of Hindu Succession applicable to HUF Property, etc. Specimen Deeds are also part of this publication. It includes a special chapter which is devoted to Amendments in Hindu Succession Act, 2005.

This publication will serve as an useful reference for Tax Consultants, Tax-payers, Advocates, Chartered Accountants & Government Authorities as well as tax officials in understanding the various issues relating to Hindu Law & HUF.

This publication is authored by S/Shri Anant Pai, Chartered Accountant, Mumbai, B. V. Jhaveri, Advocate, Mumbai, N. M. Ranka, Sr. Advocate, Jaipur, Pravin Veera, Advocate & Solicitor, Mumbai, Vipul Joshi, Advocate, Mumbai. The same is edited by S/Shri N. M. Ranka, Sr. Advocate, Jaipur, V. H. Patil, Advocate, Mumbai, Dr. K. Shivaram, Advocate, Mumbai and Pradip Kapasi, Chartered Accountant, Mumbai. Chairman of the said publication is Mr. Mitesh A. Kotecha, Chartered Accountant, Mumbai.

**The price of publication is ₹ 250/-.**

For members of the Federation, the same is available at a price of ₹ 200/- and for non members, the same is for ₹ 225/-.

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***For further details please contact:***

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#### LIST OF PUBLICATIONS

Sr. No.	Name of Publication	Edition	Members	Price Non-Members	Courier Charges
1.	155 Frequently Asked Questions & Answers – HUF	Dec., 2011	200.00	225.00	50.00
2.	Wills & Bequests – Strategies – 151 Questions & Answers with 6 Specimens	Jan., 2011	160.00	180.00	50.00
3.	Media & Entertainment Industry (Normal Bound)	Dec., 2009	280.00	315.00	80.00

#### Notes:

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## INDIRECT TAXES

P. C. Joshi, Advocate

### 1] ENTERTAINMENT TAX

The Supreme Court affirmed the levy of entertainment tax under the provisions of Gujarat Entertainment Tax, 1977 where the assessee was a multi system operator transmitting signals to cable operators who in their turn transmitted the signals to individual subscribers. For the said purpose the Hon'ble Supreme Court applied its own decision in the case of *M/s. Purvi Communications (2005) 140 STC 154 (SC)*.

*Indusind Media & Communication Ltd & Anr. vs. Mamlatdar & Ors. (2011) 19 STJ 681 (SC)*.

### 2] ENTRIES TO SCHEDULE

#### i] AMUL MASTI SPICE BUTTERMILK

The Uttarakhand High Court held that the cultured buttermilk sold after pasteurization and adding plain water as well as masala, continued to be ordinary buttermilk as mentioned in serial No. 25 of Schedule 1 to the Uttarakhand VAT Act, 2005. The levy of tax was set aside.

*Gujarat Co-op. Milk Marketing Federation Ltd. vs. The Commissioner Commercial Taxes 2011 NTN (Vol. 47) - 260.*

#### ii] CATERING CONTRACT

The Karnataka High Court held that the catering contract was a composite contract and therefore it was not open to the Sales Tax authorities to levy sales tax on the entire value including the service portion on which the liability of paying service tax would arise. In other words, the submission of the revenue that the contract in question was an indivisible one was rejected.

*M/s. Sky Gourmet Catering Pvt. Ltd vs. The Asst. Commissioner of C.T. 2011-12 (16) KCTJ P. 247.*

#### iii] CUTTING OIL

The Gujarat High Court held that the cutting oil used as coolant in the motor vehicle as well as other processing industries was not a lubricant but a petroleum product covered by entry 34 in Part A of Schedule II of the Gujarat Sales Tax Act, 1969.

*Commissioner of Sales Tax vs. Hindustan Petroleum Corpn. Ltd Sales Tax Journal Vol. 50 P.846.*

#### iv) CHEWING GUM AND BUBBLEGUM

The Madhya Pradesh High Court at Indore held that the chewing gum and bubblegum have different ingredients taste, feature and characteristics then

the one possessed by 'lozenges' and therefore both cannot be treated on par for the purpose of classification.

*Perferri Van Melle India Pvt. Ltd. vs. Asst. Commissioner of Commercial Tax & Ors. (2011) 19 STJ 560 (MP)*.

#### v) COMPUTERISED EMBROIDERY MACHINE

The West Bengal Taxation Tribunal held that the computerised embroidery machine operated with force and power have got all the ingredients of a machine and therefore was covered by entry 54B of Schedule C, Part I, under item No. VIII. The rate of tax therefore was 4% and not 12.5% as levied by the authorities.

*Charu Home Products (P) Ltd vs. S.T.O. Fairlie Place Charge & Ors. (2011) 58 S.T.A. P.203.*

#### vi] RICE

The Allahabad High Court held that the provisions of section 15(c) of the Central Sales Tax Act was not available on the sale of rice within the State of U.P., that provide for the rebate when the tax was levied on paddy from which the rice was obtained.

*M/s. A.R.M. Rice Mills vs. The Commissioner of Trade Tax 2011 NTN (Vol.47) - 128.*

#### vii] SECONDHAND CAR

The Allahabad High Court held that secondhand car continued to be motor vehicle and therefore was liable to be taxed @ 10%. The claim of the assessee for concessional rate of 5% under notification in regard to old, discarded, obsolete unserviceable machinery was rejected.

*The Commissioner, Trade Tax vs. M/s. National Tubing Co. 2011 NTN (Vol. 47) - 118.*

#### viii) VACUUM CLEANER, SWEEPING MACHINE, SCRUBBER DRIERS, LAWN MOWERS, HIGH PRESSURE JET CLEANERS, RIDE-ON SWEEPING AND SCRUBBING MACHINE

The West Bengal Taxation Tribunal held that the abovementioned machines involved in cleaning activity were covered by the scope of entry No. 54 B of Part one of Schedule C appended to West Bengal VAT, Act. The said entry related to 'plant and machinery'. The Tribunal also held that the residuary entry can be applicable only when all the entries in all other schedules were not applicable. For the said purpose the Tribunal relied on the judgment of the Supreme Court in the case of *Bradma India Ltd. 140*

STC 17 SC. All the items therefore were held to be liable @ 4% only.

*Roots Multiclean Ltd. vs. S.T.O. Ultadanga Charge & Ors. (2011) 58 S.T.A. P.207.*

#### ix) PISTON RING

The Punjab and Haryana High Court held that the section 14(iv) of the CST Act include "discs, rings, forgings and steel castings". In view of such a specific entry for rings, the court held that a same would prevail over the residuary entry irrespective of the fact that the piston rings were used in automobiles.

*State of Punjab & Anr vs. Federal Gogul Goetze (I) Ltd. (2011) 19 STJ 717 (P & H).*

#### 3] INTEREST ON DELAYED REFUND

The Supreme Court held that the interest u/s. 11BB of the Central Excise Act was payable by the revenue for delay in grant of refund and the liability thereof commence from the date of expiry of three months from the date of receipt of refund application and not from the date on which the order of refund was passed.

*Ranbaxy Laboratories Ltd vs. Union of India & Ors 2011 (2) GSTJ P.297.*

#### 4] INPUT TAX CREDIT

The Punjab and Haryana High Court held that the input tax credit cannot be denied to the purchasing registered dealer on account of non-payment of tax by a selling registered dealer in the Govt. Treasury unless the case was a collusion or fraudulence or connivance between the parties. In other words, no liability can be fastened on such purchasing dealer.

*M/s. Gheru Lal Bal Chand vs. The State of Haryana & Ors. 2011 NTN (Vol. 47) - 245.*

#### 5] SET OFF - INPUT TAX CREDIT

Section 48(5) of the Maharashtra VAT Act, 2002 provided for restriction in the grant of input tax credit only to the extent of the amount actually paid into the government treasury by the vendor concerned from whom the claimant dealer had effected the purchases on which the input tax credit was claimed.

The assessee-purchaser had claimed the input tax credit but that was denied because the vendor had not effected the payment of VAT collected from him. The Hon'ble High Court have admitted the Writ Petition challenging the constitutional validity of the said section and have directed the notice to be issued to Advocate General.

*M/s. Franco Chemical Industries vs. The State of Maharashtra and Others. Writ Petition No. 9476 of 2011 decided on 24th November, 2011.*

#### 6] LIMITATION

Finding that majority of the matters filed by the Union of India were hopelessly barred by limitation without any satisfactory explanation for the delay, the Supreme Court dismissed the appeal by Union of India against the judgment of the Guwahati High Court which in its turn also was dismissed because of inordinate delay on the simple ground that the Govt. took its own time to decide whether to file appeal or not.

*Union of India & Ors. vs. Nripen Sarma (2011) 19 STJ 684 (SC).*

#### 7] MERGER

The Bombay High Court held that when the appeal order related to imposition of penalty and interest there was no merger of the order of assessment in relation to the quantum of tax. The revision of the assessment order taking the date of appeal order to be the starting point of limitation for issuing the notice u/s. 57 of the Bombay Sales Tax Act, 1959 was held to be barred by limitation of three years contained in the said Act.

*The Addl. Commissioner of Sales Tax VAT-I, Mumbai vs. Kirloskar Oil Engine Ltd. Sales Tax Application No. 14 of 2011 decided on 17th November, 2011.*

#### 8] MANUFACTURING - SUBSIDIARY PRODUCTS

Before the Supreme Court, the assessee was a manufacturer of cement. During the course of the year, the machinery used for manufacturing cement was damaged and therefore the same was repaired. In the course of such repairing work, certain metal scrap or waste was obtained and was sold. The controversy was in regard to the nature of the transaction namely whether the scrap so obtained by the assessee was a by product. The Supreme Court held that such a scrap generated while repairing the worn out machine cannot be said to be by product of manufacturing cement the main product.

*M/s. Grasim Industries Ltd vs. Union of India 2011 (2) GDTJ P. 289.*

#### 9] MANUFACTURE

The Allahabad High Court held that engraving and polishing of brassware does not change the identity, character and nature of the goods and therefore such an activity does not amount to manufacture as contemplated under the U.P. Trade Tax Act, 1948.

*The Commissioner, Trade Tax U.P. vs. Pioneer India 2011 NTN (Vol. 47) - 144.*

#### 10] NOTIONAL SALES TAX LIABILITY

The Punjab & Haryana High Court after considering the relevant provisions and the rules under the

Haryana General Sales Tax Act held that while calculating the notional sales tax liability for the purpose of its reduction from the quantum of benefits available to the assessee, the rate applicable to the transaction will have to be considered and not the Schedule rate. In the instant case the sales were made to the Government department against the declaration in 'Form D' whereby the reduced rate of tax of 4.4% was applicable and not the rate of tax shown in the Schedule against the items sold in question.

*State of Haryana vs. Sumitra Industries (2011) 40 PHT 393 (P&H).*

### 11] RECOVERY

- a) Before the Allahabad High Court, was a hospital providing medical services to patient. It was also supplying blood as and when needed by the patients or other hospitals from its blood bank. Considering the *prima-facie* merit of the case; the Hon'ble court directed the First Appellate Authority to decide the appeal pending before him without insisting on any payment of dues for which the stay was granted till the disposal of the appeal.

*M/s. Shekhar Hospital Pvt. Ltd. vs. Commercial Tax Tribunal, Bench 3, Commercial Tax Lko & Ors. 2011 NTN (Vol. 47) - 227.*

- b) The West Bengal Taxation Tribunal held that the authorities were not justified in initiating certificate recovery proceedings against the assessee before serving the copy of the order of assessment and the demand notice.

*Sri Harishankar Jaiswal & Anr. vs. STO Cossipore Charge & Ors. (2011) 58 S.T.A. P. 201.*

### 12] SERVICE CONTRACT

The Guwahati High Court held that the conversion of exposed photographic films rolls into negatives and then developing it into positive photograph was not a case of works contract but that of rendering the service involving skill and expertise. The test of marketability was considered to be applicable to the facts of the case.

*S.S. Photographic Lab Pvt. Ltd. vs. State of Assam & Ors. (2011) 19 STJ P. 569.*



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