



All India Federation of Tax Practitioners

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AIFTP TIMES

Volume I - No. 11 • November, 2010

FEDERATION NEWS

J. K. Ranka, Secretary General

FORTHCOMING PROGRAMMES

| Date & Month | Programme |
|----------------------------|---|
| 13th November, 2010 | One Day Residential Conference at The Atrium, Surajkund |
| 13th & 14th November, 2010 | Two Days National Tax Conference at Bengaluru |
| 11th December, 2010 | National Executive Committee Meeting at Indore |
| 11th & 12th December, 2010 | Two Days National Tax Conference at Indore |
| 8th & 9th January, 2011 | Two Days National Tax Conference at Ahmedabad |

We Wish all our members and readers

A

Very Happy Diwali

and

Prosperous New Year



FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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NATIONAL TAX CONFERENCE 2010

Organised by

**ALL INDIA FEDERATION OF TAX PRACTITIONERS (CZ)
TAX PRACTITIONERS ASSOCIATION, INDORE & INDORE BRANCH OF CIRC OF ICAI, INDORE
December 11th & 12th, 2010**

at
**ICAI AUDITORIUM, Scheme No. 78, Part-II, Near Prestige Public School,
Indore – 452 010 (M.P.)**

Theme: VISION 2020 – CHALLENGES FOR TAX PROFESSIONALS

DAY 1 – 11TH DECEMBER 2010, SATURDAY

| | |
|----------------------|---|
| 8.30 am to 9.30 am | Registration & Breakfast |
| 9.45 am to 11.15 am | Inaugural Session Chief Guest – Hon'ble Mr. Justice Syed Rafat Alam, Chief Justice of M. P. High Court, Jabalpur |
| 11.15 am to 11.30 am | Tea Break |
| 11.30 am to 1.30 pm | 1st Technical Session Direct Tax Code Bill 2010 – Conceptual Issues Chairman : Mr. S. K. Poddar, Advocate, Ranchi Speaker : CA Harish Motiwalla, Mumbai Limited Liability Partnership – Formation & Tax Aspects Chairman : CA Kemisha Soni, Chairman CIRC, Indore Speaker : CA (Mrs.) Ritu G. P. Das, Kota |
| 1.30 pm to 2.15 pm | Lunch |
| 2.15 pm to 3.30 pm | 2nd Technical Session Issues under section 56(2)(vii) and taxability of gift Chairman : Mr. N. M. Ranka, Sr. Advocate, Jaipur Speaker : CA Pradip Kapasi, Mumbai |
| 3.30 pm to 4.45 pm | 3rd Technical Session Controversial Issues under Service Tax with reference to Builders & Developers Chairman : Mr. Bharatji Agrawal, Sr. Advocate, Allahabad Speaker : CA Rajendra Kumar P., Chennai |
| 4.45 pm to 5.00 pm | Tea Break |
| 5.00 pm to 6.15 pm | 4th Technical Session Incidence of VAT and Entry Tax on Builders and Developers and on Special Economic Zone (SEZ) units in M.P. Chairman : Mr. M. L. Patodi, Advocate, Kota Speaker : CA P. D. Nagar, Indore |
| 6.30 pm onwards | National Executive Committee Meeting of AIFTP |
| 7.30 pm to 9.30 pm | Cultural Programme followed by Dinner |

DAY 2 – 12TH DECEMBER 2010, SUNDAY

| | |
|----------------------|---|
| 8.45 am to 9.30 am | Break Fast |
| 9.30 am to 11.15 am | 1st Technical Session Special Economic Zone (SEZ) – Tax Aspects Chairman : CA Manoj Fadnis, Indore Speaker : CA Dhinal Shah, Ahmedabad |
| 11.15 am to 12.30 pm | 2nd Technical Session Five Burning Issues under Capital Gains Tax Chairman : Mr. V. P. Gupta, Advocate, New Delhi Speaker : CA Aashish Goyal, Indore |

12.30 pm to 1.45 pm

Certain Issues relating to T.D.S.

Chairman : CA Rajendra Goyal, Indore

Speaker : CA Rajesh Doshi, Raipur

1.45 pm to 2.45 pm

Lunch

2.45 pm to 4.00 pm

3rd Technical Session

Road Map of G.S.T.

Chairman : P.C. Joshi, Advocate, Mumbai

Speaker : Mr. Mukul Gupta, Advocate, Ghaziabad

4.00 pm to 5.30 pm

Valedictory Session

Key Speaker – CA G. Ramaswamy, Vice President, ICAI

Delegates Fees ₹ 1,250/-; For Spouse ₹ 1,000/-

M.D. Sodani

Conference Chairman

S.N. Ramnani

Conference Co-Chairman

Hitesh Mehta

Conference Secretary

Conference Secretariat

319, City Center, 570 M.G. Road, Near High Court Building, Indore – 452 001 (M.P.)

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| | | |
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| Mr. Vijesh Khandelwal, Chairman, Indore Branch of CIRC of ICAI | 09826020596 | vijesh_shingu@rediffmail.com |

Hotels at Indore

| Name | Distance from Venue | Check out | Tariff | | Rooms Available | Rooms |
|-----------------------|---------------------|-----------|--------|---------|-----------------|--------------|
| | | | Single | Double | | |
| Infiniti | 3 KM | 9:00 AM | 3000 | +770 | 10-15 | 0731-2559514 |
| Hotel Paradise | 3 KM | 10:00 AM | 2600 | +490 | 15-20 | 0731-2309969 |
| Hotel Park | 2 KM | 9:00 AM | 1000 | 1200 | 2 | 0731-4005240 |
| Lemon Tree | 8 KM | 12:00 PM | 4499 | 5499 | 5 | 0731-4423232 |
| Crown Palace | 8 KM | 9:00 AM | 2300 | 3100 | 3 | 0731-2528855 |
| Shreemaya | 8 KM | 10:00 AM | 1850 | 2500 | 4 | 0731-2515555 |
| Omni Palace | 8 KM | 9:00 AM | 1200 | 1600 | 5 | 0731-2528500 |
| Princess Palace | 8 KM | 9:00 AM | 1750 | 2250 | 6 | 0731 2517940 |
| Hotel Surya | 8 KM | 9:00 AM | 1750 | 2250 | 10 | 0731-2517701 |
| Hotel Apna Avenue | 6 KM | 12:00 PM | 800 | 1000 | 12 | 0731-4055560 |
| Athithi Niwas | 4 KM | 10:00 AM | 850 | 1000 | 6 | 0731-2572009 |
| Kumars Atithi Niwas | 2 KM | 9:00 AM | 700 | 900 | 25 | 0731-4213600 |
| Hotel Elegant | 3 KM | 9:00 AM | 1500 | 1600 | 11 | 0731-4041830 |
| Hotel Country Inn | 3 KM | 12:00 PM | 4500 | 5500 | 25 | 0731-4266666 |
| Hotel President | 8 KM | 10:00 AM | 1500 | 2000 | 20 | 0731 2528866 |
| Hotel Sarover Portico | 7 KM | 10:00 AM | 2600 | 3000 | 10 | 0731-3072727 |
| Hotel Sayaji | 2 KM | 10:00 AM | 5500 | 6500 | 15 | 0731-4006666 |
| Hotel Amarvilas | 3 KM | 10:00 AM | 2400 | 2800 | 10 | 0731-4281111 |
| Hotel Shreemaya Res. | 3 KM | 10:00 AM | 2400 | 2800 | 12 | 0731-4700800 |
| Hotel Neelam | 9 KM | 10:00 AM | - | 450/750 | 5 | 0731-4046622 |
| Hotel Ashoka | 9 KM | 10:00 AM | - | 450/750 | 5 | 0731-4045291 |
| Hotel Surya | 8 KM | 10:00 AM | 1350 | 1600 | 10 | 0731-4079111 |

*Rooms are subject to availability at the time of booking.

TWO DAY NATIONAL TAX CONFERENCE AT BENGALURU

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS (SOUTHERN ZONE)
Jointly with
KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION

Date: Saturday, 13th & Sunday, 14th November, 2010
Venue : Auditorium-2, Nimhans Convention Centre, Bengaluru

PROGRAMME

Day 1 : 13-11-2010, Saturday

| | | |
|-----------------------|---|---|
| 08.45 am | Registration |  |
| 09.15 am – 10.45 am | Inaugural session Welcome Address – (Invocation and Welcome speech) Inauguration by Hon'ble Mr. Justice N. Venkatachala, Former Lokayukta of Karnataka and Former Supreme Court Judge. | |
| 10.45 am – 11.45 am | First Technical Session Wealth Management – Tips & Techniques by Shri Amit Rati, Mumbai | |
| 11.45 am 12.00 noon | Coffee Break | |
| 12.00 Noon – 01.30 pm | Second Technical Session Recent issues and judgements on Works Contract – A Panel discussion – by Shri P.C. Joshi, Advocate; Shri M.L. Patodi, Advocate; CA. T. R. Rajesh Kumar; CA. Naveen Rajpurohit Moderator : CA. Sanjay Dhariwal | |
| 01.30 pm – 02.30 pm | Lunch Break | |
| 02.30 pm – 04.00 pm | Third Technical Session Software Sector and Customs, Excise & Service Tax – by CA. K.S. Ravi Shankar | |
| 04.00 pm – 04.15 pm | Coffee Break | |
| 04.15 pm – 05.45 pm | Fourth Technical Session Tax & Accounting conflicts & Transitional issues under IFRS – by CA. M. Sarda | |

Day 2 : 14-11-2010, Sunday

| | |
|---------------------|--|
| 09.45 am – 11.15 am | First Technical Session Direct Taxes Code (2010) – A Panel Discussion on Salient Features – CA. S. Ramasubramanian; Shri N.M. Ranka, Sr. Advocate; CA. K.R. Sekar Moderator : CA. H. Padamchand Khincha |
| 11.15 am – 11.30 am | Coffee Break |
| 11.30 am – 12.45 pm | Second Technical Session Issues & recent judgments in TDS – on Resident Payments – by CA. D.R. Venkatesh – on Non-Resident Payments – by CA. D.S. Vivek |
| 12.45 pm – 01.15 pm | Sponsors Programme |
| 01.15 pm – 02.30 pm | Lunch Break |

02.30 pm – 03.45 pm **Third Technical Session**
K-VAT Audit – by CA. S. Venkataramani

03.45 pm – 04.00 pm Coffee Break

04.00 pm – 05.45 pm **Brains' Trust Session**

Trustees – Shri P.C. Joshi, Advocate
– Shri N.M. Ranka, Sr. Advocate
– CA. Madhukar Hiregange
– CA. K. Gururaja Acharya

Chairman : CA. S. Krishna Swamy

05.45 pm **Valedictory Session**

DELEGATE FEES : ₹ 2,250/-, Cheques/DDs in favour of KSCAA, payable at Bengaluru

The Fee covers Background Materials, Lunch & Coffee/Tea & Breakfast on Day 2

CA. Allama Prabhu M.S.

President – KSCAA

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Secretary – KSCAA

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M. L. Patodi

National President, AIFTP

P. V. Subbarao

Vice President, AIFTP (SZ)

P.V.S.S. Prasad

Chairman, AIFTP (SZ)

Conference Co-ordinators :

CA. Sanjay Dhariwal

Vice Chairman – AIFTP (Kar.) Cell: 9972070601, e-mail : sanjay@dnsconsulting.net

CA. Anant Mutalik

Vice President, KSCAA, Cell : 9448701370, e-mail : caanantmutalik@yahoo.co.in

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080-22222155, Telefax : 080-22274679, e-mail : info@KSCAA.COM

*Unstructured CPE Hours to be claimed on self declaration

**REGISTRATION CUT OFF : 210 Delegates
REGISTER IN ADVANCE (First come, First serve basis)**

APPEAL TO MEMBERS

Dear Members,

The journal has become monthly from January, 2002. We desire that the journal should become self-sufficient. Hence, we request you to send us advertisements for the journal. The rates of advertisement are as under:

- | | |
|--|-------------|
| 1. Quarter Page | Rs. 600/- |
| 2. Ordinary Half Page | Rs. 1,000/- |
| 3. Ordinary Full Page | Rs. 2,000/- |
| 4. Second and Third Cover Page | Rs. 2,500/- |
| 5. Fourth Cover Page – Three fourth page (in four colour) | Rs. 3,500/- |

J. K. RANKA
Secretary General

Membership of AIFTP as on 20-10-2010

Life Members

| | <i>Associate</i> | <i>Individual</i> | <i>Association</i> | <i>Corporate</i> | <i>Total</i> |
|--------------|------------------|-------------------|--------------------|------------------|--------------|
| Central | 1 | 692 | 21 | 2 | 716 |
| Eastern | — | 865 | 33 | 0 | 898 |
| Northern | — | 799 | 17 | 0 | 816 |
| Southern | — | 728 | 13 | 3 | 744 |
| Western | 3 | 1540 | 32 | 14 | 1589 |
| Total | 4 | 4624 | 116 | 19 | 4763 |

SUMMARY OF THE NATIONAL TAX CONFERENCE HELD AT CHENNAI ON THE 2ND & 3RD OF OCTOBER, 2010

By Mr. T. Vasudevan, Advocate, Chennai

Hon'ble President of ITAT Mr. R.V. Easwar, Hon'ble Members of the ITAT, delegates and guests, I am here to present a summary of the events and the technical sessions of the National Tax Conference 2010.

Before I unfold the events of last two days, I shall take a very short duration of the allotted time to say a few words on the behind scene preparations for the Conference. The events leading to the preparation for the seminar from the point of identifying the topics, the theme, the paper-presenters and actually putting all these into place were meticulously planned and executed. The topics and the theme were chosen with an eye on the current day relevance and the development of law in the near future and also their impact vis-à-vis global scenario. The paper presenters and the Chairperson of each session were of eminence from the respective fields and carried forward the theme of the seminar. The days leading up to the preparation for the seminar were hectic for the Core Action Committee, led by Mr. K.J. Chandran and he deserves an all-round applause for his 24 x 7 endeavour over the last 2 months on this front as also the other members of Action Committee from RBA, Chennai that has put in tremendous efforts.

Inauguration

I shall now move forward with the summation of the events of the 2nd and 3rd October. The inauguration of the National Tax Conference was itself a grand occasion. Hon'ble Justice Mr. H.L. Gokhale of the Supreme Court was the Chief Guest for the event and was given a very warm welcome by the office bearers of the organizing committee and led to the venue hall. The inaugural event commenced at 9.15 am with an invocation song by Smt. Subiksha Rangarajan. In his welcome address, the RBA President, Dr. Meenakshisundaram outlined the theme of the Conference. Mr. M.L. Patodi, President, AIFTP highlighted the role of AIFTP and its activities. Mr. J.K. Ranka, Secretary General, AIFTP also gave his welcome address. Mr. K.J. Chandran gave a brief idea on the technical sessions and the program for the 2 days.

Then, Hon'ble Justice Mr. Gokhale inaugurated the Conference and set the events in motion by lighting the Kuthuvilakku. The President of the RBA, Dr. Meenakshisundaram gave a brief introduction on Justice Gokhale. This was followed by the inaugural address by Hon'ble Justice Mr. Gokhale. Hon'ble Justice Gokhale in his address emphasized the need for speedy disposal and punctuality in the disposal of cases at all the Courts and at all levels. He spoke on his experiences in the Tax Benches in the various High Courts in the country. He also said that when he took over as the Chief Justice of Madras HC in March 2009, the primary task was to restore normalcy

in the court premises after a few volatile days. On the DTC, he said that it was the brainchild of Mr. P. Chidambaram, the then Finance Minister. Hon'ble Justice Gokhale said that a streamlined system of taxation was necessary to mobilize revenues for the State. So, equanimity should be reached between the need to tax and also exemptions that are required to be provided to various sections of the society and economy. He also said that DTC should result in good tax collection without unnecessary bureaucratic hassles and complications in the administration of the new tax code. He ultimately opined that DTC should open out a new approach and should not be a new wine in an old bottle. Lastly, he wished all success for the 2 day National Tax Conference. With this, the inaugural session was over at the scheduled time of 10.05 am. This was followed by a tea break and was an opportunity to exchange pleasantries with the Chief Guest.

1st Technical Session

With the grand inauguration behind us, the serious business of technical sessions commenced at 10.35 am. The topic for the 1st Technical Session was TEETHING PROBLEMS IN THE IMPLEMENTATION OF GOODS & SERVICES TAXES. The Chairman of the Session was Mr. P.C. Joshi, Advocate from Mumbai. The Speaker and Paper presenter was Mr. P.C. Anand, CA. The Chairman gave a brief introduction on the topic and said that the subject is a still-born child and only on implementation would the teething problems be felt. But, the session would discuss the problems that are anticipated in implementation of GST. Mr. P.C. Anand kept the audience in rapt attention for the duration of nearly 40 minutes. He said that w.e.f. April 2011, the GST would be put into place and become operational and the expectation is that it would remove a lot of complexity from the existing tax system. He said the Working Groups recommendation for dual GST had been accepted at the highest level. He said to clear anomalies, the proposed dual GST has to be made available for detailed discussions, reconciliation and finalization by all stake holders. Mr. P.C. Joshi took over the stage with his concluding remarks and the topic being of utmost interest to the professionals and the business community alike, was well received. The 1st session was over at 11.30 am.

2nd Technical Session

This session commenced at 11.35 am with the topic : SALIENT FEATURES OF DIRECT TAXES CODE. The Chairman of the session was Mr. V. Ramachandran, Sr. Advocate from Chennai. As the topic was quite extensive, there were two Speakers, Dr. K. Shivaram, Advocate, Mumbai and Mr. Harish Motiwalla, Chartered Accountant, Mumbai, Mr. V. Ramachandran set the tone ringing by his spirited

address saying that DTC was hastily conceived but sought to be delivered at ease. He said it would remain a question mark, if the DTC achieved the objectives sought for by it. It has been given a very long gestation period, unlike any other enactment. He highlighted three areas on DTC : 1) That seeks to settle certain unresolved issues. 2) That DTC has overreached in certain areas that requires reconsideration, and 3) That it is unsettling the settled legal propositions. To elaborate on these three areas, he also gave few instances. He left much area for the two Speakers to be handled. Dr. K. Shivaram gave a lucid presentation. He said that the 1922 Act was replaced by the 1961 Act after referring to expert Tax Committees. For DTC, no such elaborate opinion across the country is sought for and it is mainly a drafting by a few tax officials. He said it would have been better if amendments had been carried out in the 1961 Act itself. He said simplification is not the watch word as DTC contains 391 sections and a vast definition section and also lot of schedules. He said DTC takes care of only Department's point of view. In this regard, he highlighted certain provisions from DTC. On the issue of reopening, Clauses 159 and 163 says mere recording of satisfaction is sufficient and the objection of the audit party even on law and facts can be reason for reopening. On delay in filing, DTC says that condonation of delays beyond a particular period is not permissible by appellate authorities. Further, he said that Clause 182(6) of DTC provides for appointment of CJ of HC to head the ITAT. He said rather the present system was working well and there is no good reason for a change. He said Clause 234 provides for Bar of limitation on levy of penalties and it does not provide for any opportunity of hearing. Clause 286(3) provides for qualification of members to Settlement.

Commission as a mere 20 years of service for an IPS officer and appointment seems to be automatic on this eligibility criteria. So, he concluded that tax professionals should be involved in all the discussions, lest, DTC could suffer from a lop-sided approach. The other speaker, Mr. Harish Motiwala said that there are specific provisions in DTC where litigation is going to increase. He highlighted the contradictions in various provisions of DTC. He said that the provision on computation of book profit suffers from drafting problem. The Chairman Mr. V. Ramachandran gave his concluding remarks and the session was over at 12.55 pm.

This was followed by a sumptuous lunch and the anticipation of the delegates and guests was not thwarted and the menu had a wide variety of items to satisfy the varied tastes.

3rd Technical Session

After an absorbing first two sessions, the topic for the next session was : AMENDMENT BY THE FINANCE ACT, 2010 TO THE CST ACT, 1956 & CONTROVERSIES REGARDING EXEMPTION U/S. 6(2) OF THE SAID ACT. This session commenced at 2 pm. The Chairman of the session was Mr. M.L. Patodi, Advocate from Kota, Rajasthan and the Speaker on the topic was Mr. Vinayak Patkar, Advocate from Mumbai. The brief introductory remarks of the Chairman was followed by the paper presented by the speaker Mr. Vinayak

Patkar. He dealt at length on the newly inserted sec.18-A and the limitation provision incorporated in it. He said the provision has done away with the power to condone the delay before the Tribunal. He also explained the controversies surrounding the exemption u/s.6(2) of the CST Act with particular reference to the apex court judgment in the case of A & G Projects reported in 19 VST 239. After the address of the speaker, Mr. M.L. Patodi gave his impressions on the topic. The session was over at 3.05 pm.

4th Technical Session

The 4th technical session commenced at 3.10 pm and the topic was : CURRENT CONTROVERSIES IN SERVICE TAX. The Chairman of the session was Mr. Arvind P. Dattar, Senior Advocate from Chennai and the Speaker was Mrs. Jayashree, Advocate in BMR Advisors, Bangalore. Mr. Arvind Dattar introduced the topic and the speaker to the audience and left it to Mrs. Jayashree to take the centre stage with the burning topic of these days. Mrs. Jayashree combined her knowledge of the subject and the skill of presentation to make the audience listen with rapt attention. Her areas of focus were on the service tax implications on import and export of services, implication of CENVAT Credit 2002, Rule 5, ambiguity in the point of taxation, on the renting of immoveable property w.r.t. the recent retrospective amendment and its impact on the real estate sector. She also dealt with the taxation of software in the context of the Division Bench decision of the Madras HC in the case of Infotech Software Dealers Association. She said that the HC in that case had observed that while software is goods, the aspect of sale of service of a software transaction would depend on the terms of particular End User Licence Agreement. Mrs. Jayashree had submitted an elaborate paper on other controversies that have erupted recently in the matter of taxation of services. After her address, the Chairman of the session gave his concluding remarks. There were lot of enthusiastic delegates waiting to put their queries but the shortage of time was a deterrent factor. This session concluded at 4.10 pm.

With the conclusion of the 4th technical session, the serious affairs for the day came to an end.

Felicitation to Mr. K.J. Chandran

The organizing committee had conceived this as a befitting occasion to felicitate Mr. K.J. Chandran on his successful completion of 50 years at the Bar. It was a very grand function for the architect of many a seminars and conferences. Mr. K.J. Chandran was accompanied by his close family members and friends for the occasion. The speakers were led by Hon'ble Justice Mr. T.N.C. Rangarajan. He jocularly spoke on the robotic functioning of KJC and also as his class-mate, he said that KJC was an ever-lasting friend for him. Mr. M.L. Patodi gave his felicitations on behalf of AIFTP. Mr. V. Ramachandran spoke on his long association with KJC and said it was a flowering and fragrant one. Mr. R.L. Ramani, Sr. Advocate remembered his early days in practice under KJC and said he was meticulous in preparation, straightforward and fearless. Almost all the delegates wished him with shawls/bouquets. Mr. P.C. Joshi lauded the efforts of KJC in the conduct of cases and also his

efforts in organizing seminars. Then the spotlight was on Mr.K.J.Chandran to respond and accept the felicitations. He was emotive while tracing his early days in the Bar and shared a few interesting moments that he has faced in and off the Court.

Cultural Programme

The evening was reserved for a Carnatic violin performance by world renowned musicians Shri.G.J.R.Krishnan and his sister Smt.Vijayalakshmi. The concert started at 6.45pm and went on till 8.30 pm. The few delegates and guests who stayed behind to listen to the music were spellbound and nailed to their seats with only the heads nodding and the hands clapping to the ragas and thalams.

A very eventful first day came to an end with the dinner.

3-10-2010 – 2nd Day

5th Technical Session

The 5th technical session was on TAX ISSUES IN INTERNATIONAL FINANCIAL REPORTING STANDARDS (IFRS). This session commenced at 9.20 am after a breakfast. The Chairman of the session was Dr. M.V.K. Moorthy, Advocate and the Speaker of the session was CA. Chinnaswamy Ganesan. Mr. Ganesan in his address laid emphasis on the point of revenue recognition and treatment of extended period in IFRS. He dealt with Capital Vs Revenue Expenditure in IAS 16, with reference to, replacement of components, major overhauling expenses, capital reserve on a business combination, provision for constructive obligations. He also dealt with consideration of Fair Value Changes for tax purposes. He said the CBDT is working out the modalities on this with tax professionals and expect it to arrive at a reasonable structure. He also elaborated on the concept that Standards prevail over Law. He concluded that the implementation of IFRS in the Indian scenario lay entirely in the hands of the tax professionals. Dr. M.V.K. Moorthy as the Chairman of the session gave his concluding remarks. It was followed by an active floor participation and the Speaker readily answered the queries. The session was over at 10.25 am.

6th Technical Session

The topic for this session was TYPICAL TAX CHALLENGES IN A GLOBALISED BUSINESS. The session started at 11.05am. The Chairman of this session was Hon'ble Justice Mr. T.N.C. Rangarajan (Retd.). The speaker on the topic and the paper presenter was Mr. V. Ranganathan, CA, Director in E & Y. The Chairman gave an insight into the topic and said transparency could be a point of vulnerability. The Speaker in his address elaborated on the point that the topic assumes relevance in the context of MNCs originating in India. He said the tax rates should be so devised that there is no uncertainty and that the MNCs expect a tax regime in an organized manner. Mr. V. Ranganathan also gave some inputs on managing an uncertain tax system. He said there ought to be due diligence for MNCs to operate in a conducive atmosphere. He also said the problems likely to be faced by MNCs could be on transfer pricing, tax on dividend and the time taken for resolution of disputes in India. The Chairman, Justice

Mr. T.N.C. Rangarajan concluded his remarks fully endorsing the viewpoint of the Speaker. This session concluded at 12 noon.

As a lunch-on session, Mr.Bobby Srinivasan was requested to address the gathering on "Global Economic Environment". His words that India is economically well-off with a reserves of Rs.300 billion today from Rs.1 billion in 1991 and marching ahead of many other developed countries and also that India is now facing surplus on all fronts, from skilled manpower to manufactured goods to agriculture produce is till ringing in our ears. But he added a word of caution that it is upto the Indian intelligentsia to engage wholeheartedly in nation building by taking advantage of the present bright scenario. Being a very articulate and forceful speaker, in listening to him, the hall lost the need to go for the lunch and his very words that Indian economy is definitely and positively on the upswing was itself stomach filling. Mr. Bobby Srinivasan held the attention of the audience from 12.05 to 12.45pm.

The lunch was laid out from 12.50 pm to 1.30 pm.

After the lunch, the concluding session of the National Tax Conference 2010 was assigned for the BRAINS' TRUST SESSION. The trustees nominated were : Mr. P.C. Joshi, Advocate, Mr. S. Rajaratnam, Member, ITAT, Retd., Mr. T.N. Seetharaman, Advocate, Mr. Rajendrakumar, Advocate and Mr. Purushottaman, CA..

A volley of questions were before them from Income-tax, Sales tax and Service tax and were all answered to the fullest satisfaction of the delegates.

Thus, we reached the valedictory session and I am sure that the packed hall is waiting to hear our Hon'ble President of ITAT, Mr.R.V.Easwar, who was invited to give the valedictory address.

Valedictory Address by Mr. R.V. Easwar, President, ITAT

Mr. R.V. Easwar in his address traced his association with Revenue Bar Association, Chennai during his early days as an Advocate at the Bar. He said while his Senior Shri K. Srinivasan, Senior Advocate was once the President of RBA, at a later point of time, Mr. R.V. Easwar himself held the post of Secretary of RBA and so there was quite a bit of contribution from the office of Mr.K.Srinivasan to the activities of RBA. The President also said that in today's legal scenario, there was a need to have a well groomed Bar which can contribute effectively to the growth of Law in the country. Hence, he said, the professional bodies should think of organizing seminars and conferences, which would devote more time to inculcate court manners, improve the ability of legal fraternity to address arguments in courts and this would also be a morale-booster for the youngsters who would like to take up the subject of taxation as their profession. Mr. R.V. Easwar said that having heard the summary of the two-day National Tax Conference from Mr. T. Vasudevan, Advocate, he felt that it was well organized and some relevant topics have been taken up for discussion and this would benefit the delegates who had attended from a wide spectrum of the professional and business community. He concluded by wishing the RBA, Chennai in all its future endeavors.

REPRESENTATION TO HON'BLE UNION FINANCE MINISTER SHRI PRANAB MUKHERJEE

July 23, 2010

To,
Respected Shri Pranab Mukherjee,
Hon'ble Union Finance Minister,
Govt. of India,
North Block, 13, Talkotra Road,
New Delhi 110001

Hon'ble Sir,

1. Ours is an Apex Body of Tax Practitioner's Associations as well as Tax Practitioners individually on All India basis. Since 1976 it has been playing its vital role in spreading not only the knowledge in regard to Direct and Indirect Taxes, but also strives to keep its Members (over 4600 individuals with 116 leading Tax Associations) abreast about the latest developments on Direct and Indirect Taxes by holding quarterly seminars and conferences at various parts of the country. The Federation have on its roll leading Advocates, Chartered Accountants, Solicitors and Tax practitioners as its Members. Through its Educational Committee the publications in book form as well as monthly journal are circulated. The Federation is perhaps the only organization in India, which has adopted code of ethics for its members.
2. The Federation have been watching with great interest the development and progress made in regard to the implementation of the proposed uniform single levy of Indirect tax on Goods and Services.(GST)
3. After the publication of the first discussions paper by the empowered Committee of the Finance Ministers appointed to finalise the new enactment, no authentic information is made available to public in general and professional Associations like ours. We deferred our Memorandum of representation to your Honour, anticipating further developments in the form of publishing the promised Second Discussion Paper and the Draft of proposed enactment alongwith the format of constitutional amendments.
4. From the reports carried by the media we have noticed that the Union Government is really sincere and serious about introducing the GST from 1st April, 2011.
5. Placed in the above situation, we feel it necessary to bring to your kind notice some of the suggestions which may be considered while finalising the proposed law on Tax on Goods and Services.

Avoid Conflicting Reports

- I. As of today we regret to read conflicting versions on the Report of the 13th Finance Commission in response to first discussion Paper. Such a situation leads to uncertainty at large that ought to be avoided for getting the Assesseees ready with the follow up actions that may be required to be taken by them much before the proposed Act is implemented.

Threshold limit

- II. Consequent to the reported threshold limit to be uniform for both GST and Central GST at Rs.10 lacs, there would be large number of GST Assesseees who will have to be dealt with by the Administrators. The human resource as of today manning the State VAT Act as well as service Tax have to be properly trained and their performance should be judged with productivity coupled with accountability, revenue management and tax payers need.

List of Goods

- III. The list of goods and services eligible to exemption and the manner in which inter border transactions involving more than one State as well as country will be treated is required to be made known to all concerned with certainty about rates of taxes on all India basis on other goods and services.

Working Groups task

- IV. While we have been watching with great satisfaction, the progress made by all working groups formed so far, especially the vital group on Information Technology infrastructures under the leadership of well known I.T. wizard Nandan Nilekani's, much progress is required to be made by all the groups for effective implementation of GST from the commencement of next fiscal year. We are confident that all departments concerned under your able leadership would be working with a time bound program.

Litigation

V. The past experience in regard to litigations between the Tax payers and Tax administrators have been in and around the classification of items, grant of input tax credit and the treatment given to transactions involving both taxable and tax free goods and/or services. It is therefore very much vital and in fact necessary to take into confidence the professionals and other associations whose help can be well utilised for avoiding future litigation while finalizing the new enactment.

Fourth list & Council

VI. The news of introducing a fourth list in the Constitution with equal taxation powers with both the Central and the State is also a welcome step taken by your Honour for avoiding the unintended impression of Centre desiring to override the views of the individual States. Side by side it is also reported that an independent council is proposed to monitor the day to day implementation of GST with the power to vet the future changes that may be suggested by any individual State. In that regard we suggest that the clear picture as to the personnel who would be manning such a proposed council is also required to be published at the earliest so as to inculcate the much desired confidence amongst both the Tax payers and the tax administrators. We in that regard suggest that the Council should be a constitutional authority presided over by a Supreme Court Judge with some of the Economists or persons with knowledge of law preferably that of tax laws but in no case should it have any Politician as a member, else party politics will have its way.

Real Estate Transactions

VII. One of the great problems that have gained importance in the near past is the treatment offered to real estate transactions vis-à-vis levy of VAT and service tax and denial of input tax for the materials used in such projects. In that regard, the legal position ought to have been properly considered. Entry 54 of State List II refer to levy of tax on the sale or purchase of goods. Therefore such a levy on transactions involving immovable properties by no stretch of imagination could have been possible. Series of controversies have erupted all over the country consequent to the unchallenged insertion of definition of the term 'Works Contract' by the State of Karnataka. The leading case in that regard is that of M/s. K. Raheja, which is presently before the larger bench of the Supreme Court. Such controversies should not be allowed to continue any more. Therefore, while introducing the new GST enactment a complete certainty is required to be ensured in regard to the real estate transactions. In our opinion it should specifically be provided that all transactions covered by the new enactment would be limited to only moveable properties and not otherwise, by providing an overriding provision thereby excluding immovable property transactions from the levy.

VIII. Our comments on the Revenue Departments reaction to the first discussion paper on GST are as under :-

- I. For better and cohesive working, we suggest that there should be only one uniform rate of tax on transactions of goods and sales/services. Such a scenario would put a stop and avoid multifold increase of dockets before the Courts of law.
- II. Considering the GST format as implemented in other countries, we suggest that the input tax credit between Central GST and State GST should be allowed including the transactions of inter State nature. That will smoothen the tax administration in the country.
- III. We as a class of Practitioners oppose seriously the proposed issuance of registration without any physical verification about the informations given by the Applicant. If such certificates are issued then we fear that there will be thousands of fake certificates flowing from practice adopted by unscrupulous persons that we witness today both as Tax Administrators as well as Tax Payers. We therefore suggest that the registration, may be by a single agency for both SGST and CGST; should be handled with care and caution. Once such a certificate is issued, we feel that the certification from an outside agency like Service Centres / Professional would not be required specially when the electronic returns would be filed by the Assessees under their own digital signatures.
- IV. The honest study is required to be carried out at all levels of working of the present VAT system keeping in mind certain facts like accountability, cost of compliance and reducing scope of litigations.
- V. The present day scenario of the tax payer facing multiple audits should be avoided under the new regime. Even if any audit is desired the same should be conducted in an expeditious manner with humane treatment to tax payers. While dealing with Tax Payers some of the States under the VAT system have provided for the assessment to be on the basis of the Return period and not a yearly consolidated one. Yet some other States have provisions of transactions wise assessment. Such a scenario should be done away with for avoiding the multiplicity of unproductive work through litigation.

- VI. After the activation of the internet connections all throughout, the information should be made available to any one from any part of the country to have authenticated information about Dealer or Service provider from other States. There should also be a statutory obligation on all vendors of goods and services to intimate to the buyer concerned, the particulars of payments made by them to Government Treasury after collecting taxes from their respective Vendees or Beneficiaries, on the line of the present system of TDS certificate in the prescribed format under Income Tax Act 1961. Such a provision would avoid future litigations in regard to claims of Input tax credit.
- VII. All the above suggestions have been made by us after a detailed discussion amongst Executive Committee Members from all part of the country at the separately convened meeting at Hyderabad on 3rd July, 2010.
- VIII. We would very much like to associate ourselves with the finalization of the new enactment and for that purpose we on our own offer to depute our Senior Members who would be able to contribute their mite backed by their own long experience gained in practice as well as while dealing with the Tax Administration as well.
- IX. While concluding we would request your Honour to grant an appointment for personal discussions with your Honour or with the concerned personnel at the highest level.

Yours faithfully,
For All India Federation of Tax Practitioners

P.C. Joshi
Chairman
(Sales Tax Representation Committee - GST)
◆◆

ALL INDIA FEDERATION OF TAX PRACTITIONERS (NORTHERN ZONE)
celebrates
FOUNDATION DAY IN THE MEMORY OF LATE SHRI NANI A. PALKHIVALA

by organising
A ONE DAY RESIDENTIAL CONFERENCE
on 13-11-2010 at THE ATRIUM, SURAJKUND

Chief Guest : MR. DIPAK MISHRA, HON'BLE THE CHIEF JUSTICE, DELHI HIGH COURT
Guest of Honour: Hon'ble Mr. Justice Rajeev Shakdhar, Judge, Delhi High Court

PROGRAMME

Inaugural Session : 10.30 AM to 11.15 AM
Tea : 11.15 AM to 11.30 AM

Ist Technical Session

G.S.T.; Service Tax; Works Contract : 11.30 AM to 1.30 PM
Lunch : 1.30 PM to 2.30 PM

IIInd Technical Session

| | | | |
|----------------------|----------------------|------------------------------------|-----------------------|
| Direct Taxes Code | : 2.30 PM to 4.30 PM | Tambola | : 7.00 PM to 8.00 PM |
| Tea | : 4.30 PM to 5.00 PM | Dinner (with Ghazals) | : 8.00 PM to 9.30 PM |
| Hasya Kavi Sammellan | : 5.00 PM to 6.30 PM | Group Activity | : 9.30 PM to 10.30 PM |
| Light Refreshment | : 6.30 PM to 7.00 PM | (Antakshri, Jokes, Anecdotes etc.) | |

- Conference Fee :** 1. ₹ 5,000/- per couple (including accommodation, breakfast & dinner)
2. ₹ 2,500/- per person (including accommodation, breakfast & dinner on twin sharing basis)
3. ₹ 1,000/- per person for day conference only. (without accommodation)

For further details, please contact

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DIRECT TAXES

Ajay R. Singh, Paras Savla, Rahul Hakani & Rangesh Banka
Advocates

SUPREME COURT JUDGEMENTS

1. Settlement Commission – Pre-condition – Cannot revise the income

Section 245C(1) mandates 'full and true' disclosure of the particulars of undisclosed income and 'the manner' in which such income was derived and, therefore, unless the Settlement Commission records its satisfaction on this aspect, it will not have the jurisdiction to pass any order on the matter covered by the application.

Even when the Settlement Commission decides to proceed with the application, it will not be denuded of its power to examine as to whether in his application u/s. 245C(1) the assessee has made a full and true disclosure of his undisclosed income.

A 'full and true' disclosure of income, which had not been previously disclosed by the assessee, being a pre-condition for a valid application u/s. 245C(1), the scheme of Chapter XIX-A does not contemplate revision of the income so disclosed in the application against item No. 11 of Form 34B.

Ajmera Housing Corporation vs. CIT
Source : www.itatonline.org

HIGH COURT JUDGEMENTS

2. S. 263 : Revision – Lack of enquiry by Assessing Officer

Mere lack of inquiry by AO not sufficient for revision under section 263.

CIT vs. Vikas Polymers (Delhi High Court)
Source : www.itatonline.org

3. S. 119 : Delay in filing ROI – Delay in appointment of Statutory Auditor – Condonation

Delay in filing ROI due to late appointment of statutory auditor must be condoned.

Bombay Mercantile Co-op. Bank vs. CBDT (Bombay High Court) Source : www.itatonline.org

4. S. 133A : Survey – Confession – Not conclusive - Retraction

Confession made during survey is not conclusive and can be retracted.

CIT vs. Dhingra Metal Works (Delhi High Court)
Source : www.itatonline.org

5. S. 147 : Reassessment – Reasons recorded

If Assessing Officer does not assess income for which reasons were recorded under section 147, he cannot assess other income under section 147.

CIT vs. Jet Airways (I) Ltd. (Bombay High Court)
Source : www.itatonline.org

6. S. 194H : Tax Deduction at Source – Commission – Discount – SIM Card

"Discount" for supply of SIM Cards is "commission" for S. 194H is applicable.

Vodafone Essar Cellular vs. ACIT (Kerala High Court)
Source : www.itatonline.org

7. S. 234B : Interest – Deduction of Tax at Source – Non Resident – Advance Tax (S. 194, 234D, 209(1) (d))

Non-resident recipient is not liable to pay advance tax as under section 195, entire taxes have to be deducted at source by payee. Non-residents are not liable to pay interest under section 234B.

DIT vs. Jacobs Civil Incorporated (Delhi High Court)
Source : www.itatonline.org

8. S. 234D : Interest – Refund – Retrospective Effect

As section 234D was inserted w.e.f. 1-6-2003, it is not retrospective.

CIT vs. Bajaj Hindustan (Bombay High Court)
Source : www.itatonline.org

9. S. 234D : Interest – Refund – Retrospective

Section 234D applies from A.Y. 2004-05 and is not retrospective.

DIT vs. Jacobs Civil Incorporated. (Delhi High Court)
Source : www.Itatonline.org

TRIBUNAL JUDGEMENTS

10. S. 11 : Income – Charitable Trust – Non filing of Audit Report

Non-filing of audit report with ROI not fatal to section 11 exemption. Report filed in the course of assessment proceedings should be considered.

ITO vs. Sir Kikabhai Premchand Trust (ITAT, Mumbai)
Source : www.itatonline.org

11. S. 40(a)(i) : Expenses or payments not deductible – Double Taxation Avoidance Agreement – India & UK – Interest on damages

Interest on damages not assessable to tax under DTAA. If no PE, hence no disallowance can be made.

Goldcrest Exports vs. ITO (ITAT Mumbai)
Source : www.itatonline.org

12. S. 40(a)(i) : Expenses or payments not deductible – Non-residents – Double Taxation Avoidance Agreement – India & USA – [Article 26(3)]

Under Article 26(3) of India-USA DTAA payments to non-residents are equated with payments to residents and so section 40(a)(i) disallowance not valid.

Central Bank of India vs. DCIT (ITAT, Mumbai)
Source : www.itatonline.org

13. S. 115JB : Book profit – Banks – Minimum Alternative Tax

Banks are not liable to pay section 115JB MAT on "book profits".

Krung Thai Bank PCL vs. JDIT (ITAT, Mumbai)
Source : www.itatonline.org

14. S. 263 : Revision – Non application of mind – Licences & Approvals – Intangible Assets – Depreciation – IS. 32(1)(ii)

Revision only on ground of non-application of mind by Assessing Officer not proper. Licenses and approvals are "intangible asset" under section 32(1)(ii) and eligible for depreciation.

Piem Hotels vs. DCIT (ITAT, Mumbai)
Source : www.itatonline.org

INTERNATIONAL TAXATION

CA. Dhanesh Bafna, CA. Madhav Khandelwal & Sujeeth Karkal, Advocate

SUPREME COURT

1. Findings / directions by Delhi High Court on Marketing Intangibles to be ignored

The Supreme Court directed the Transfer Pricing Officer, who had already issued show cause, to proceed with the matter in accordance with law uninfluenced by the observations/directions given by the landmark decision of Delhi High Court on marketing intangibles.

Maruti Suzuki India Ltd. vs. ACIT [2010-TII-01-SC-LB-TP]

HIGH COURT

2. Finding in respect of different assessment year – Power of Tribunal

The High Court held that:

- i. The Tribunal cannot give a finding in respect of the assessment of a year which is not the subject matter of the appeal before it. The Tribunal can give a finding that the deduction/income does not belong to the relevant assessment year/years, but though it may incidentally find that the deduction/income relates to another assessment year, it cannot give a finding that the deduction/income belongs to another specific year.
- ii. The Tribunal in the instant case had incidentally observed that the argument of the appellant that it had made payment by way of incentive to its expatriate employees, though was not available to it in the assessment years under consideration of the Tribunal, may be available to it in the year of payment. Such an incidental finding, without any detailed examination of the matter, rightly did not prompt the Tribunal to issue a direction that the same be allowed for the next assessment year. Thus, the Tribunal could not be faulted for the same.

Marubeni India Pvt. Ltd. vs. CIT [2010-TII-18-HC-Del. Intl]

TRIBUNAL

3. Segregation of divisions – Rule 10(B)(2)(b) – Transfer Pricing Regulations

The Tribunal after rejecting the TPO's action of segregation of two divisions' results of the Appellant held that the trading functions of the two units having the same FAR and having closely linked transactions were to be taken as a whole and not separately, thereby creating artificial loss in one segment and profit in the other was not justified. Rule 10(B)(2)(b) provides that only reason for segregation is the FAR analysis and considering the provision of said rule, segregation of the divisions is totally artificial and uncalled for.

Panasonic India Pvt. Ltd. vs. ITO [2010-TII-47-ITAT-Del-TP]

4. Reimbursement of advertisement expenditure – Transfer Pricing Regulations

The Tribunal held that a local expenditure incurred for benefit of local sale which does not enure any benefit to associate enterprise but is still reimbursed by the associate enterprise can have either of the two effects i.e., one it may reduce the expenditure to the extent of reimbursement or it may have the effect of increasing the income. Looked from any angle, the advertisement reimbursement would definitely form a part of the operating profits of the assessee and would have to be taken for the purposes of transfer pricing analysis. Principles of FAR analysis as contained in Rule 10(B)(2) requires that either the entire advertisement expenditure of the comparable operating profits would have to be adjusted to bring it at par with the tested party to the extent of reimbursement, if not to the extent of entire advertisement expenditure of the assessee would have to be taken out because for the purpose of comparison between comparable companies and tested company, elements have to be more or less similar or same.

Panasonic India Pvt. Ltd. vs. ITO [2010-TII-47-ITAT-Del. TP]



Proforma for Members' Directory

The members are requested to check Proforma for Members' Directory which has been published in our AIFTP Times for the month of July & August, 2010 at page No. 11 of both the issues or are requested to download the same from Federation's website i.e., www.aiftponline.org.

INDIRECT TAXES

SALES TAX DECISIONS

P. C. JOSHI, Advocate

Assessment

The Kerala High Court held that the procedure for assessment in relation to the fast track assessment provided under Sec. 17D of the Kerala General Sales Tax Act was equally applicable to the assessment under the CST Act.

Wilson Joseph vs. Commercial Tax Officer & Ors. (2010) 18 KTR 335 (Ker)

Entries in Schedule

1) Pipe Koto Tape

While deciding the application u/s 80 of the Gujarat VAT Act, the designated authority have held that by Pipe Koto Tape of 4 mm thick paper from HDP sheet was covered by 342 (A) of Schedule 2 appended to the Act as also covered by the Notification entry GHN 33 of 31-3-2006 under entry 222 relating to Bituman.

A.R. Laminates, Order dated 1st July, 2010. Source - STJ Vol.49 September 2010 Pg.464

2) Margarine – Edible Oil

In the proceeding in term of determination u/s 80 of the Gujarat VAT Act, the Joint Commissioner of Sales Tax (law) held that margarine being an emulsion of eatable oil and fats with water was covered by Entry 30 (4) of Schedule 2 liable to be taxed @ 4% and additional tax of 1% from 1st April, 2008.

M/s. Gujarat Coop. Milk Marketing Federation Ltd. Ahmedabad. - STJ Vol. 49 September, 2010 pg.500

3) Margarine – Not Edible Oil

The Kerala Value Added Tax Appellate Tribunal held that margarine cannot be considered as edible oil under Entry 38 of Third Schedule to the Kerala VAT Act 2003, since there was another specific entry for margarine in notification relating to goods taxable at 12.5%

SSD Oil Co. Ltd. vs. State of Kerala - (2010) 18 KTR 361

4) Photographic Equipment

The Kerala High Court held that a camera though can be considered as photo machinery, was in common parlance not so described, therefore machinery for photography would include only all equipments and machineries used for taking photographs like developer, printer, etc. Without such photographic

equipments the colour combination of the photo cannot be had. The said equipment accordingly was held to be covered by Entry 83(60) of the third schedule of the Kerala VAT Act.

Jindal Photo Ltd., vs. Commissioner, Commercial Taxes - (2010) 18 KTR 341 (Ker)

5) Aluminium Household Utensils

The Supreme Court while considering the entries under the Kerala General Sales Tax Act 1963 held that the aluminum household utensils prepared out of the scrap of old utensils made of aluminum alloy were different commodities. Therefore the utensils would be covered by Entry related to household utensils while old utensils/scrap would be covered by Entry 83 of Schedule 2 relating to metal scrap.

Baby Varghese vs. State of Kerala - (2010) STA Aug 2010 Pg.73

6) Ultraheat treated sweetened milk (SF Milk)

The Full Bench of the Haryana Tax Tribunal held that addition of sugar and flavour so as to make milk more tasty, did not alter the basic characteristic of UHT milk. Therefore the sweetened and flavoured milk was covered by Entry 81 of Schedule 'C' of the Haryana VAT 2003 and liable to the tax @4%

Punjab State Cooperative Milk Producers Federation Ltd. vs. State of Haryana - (2010) 37 PHT 148 (HTT) FB

7) Industrial Cleaning Machines

The West Bengal Taxation Tribunal while considering the schedule appended to West Bengal VAT Act 2003 held that the Industrial cleaning Machines cannot be equated to the entry 54B of Schedule C Part 1 that described the item as Plant and Machinery. The Taxation Tribunal therefore held that the Industrial Cleaning Machines was taxable at 12.5%.

Manmachine India (P) Limited vs. Pro/Jt. Comm., CT, West Bengal & Others (2010) 56 S.T.A. Pg.141

Entry Tax – Use of wrong challan

Before the Gujarat High Court the Assessee had through oversight made the payment of entry tax by using challan under the Gujarat VAT Act instead of the appropriate form under the Entry Tax. Such a challan however, expressly mentioned that the payment was for entry tax only. The Assessing Officer

refused to consider the payment while the Assessing Officer under VAT Act disallowed the input tax credit of entry tax u/s 11 of the VAT Act on the ground of non-payment of Entry Tax. Consequently the interest and penalty was levied. The Assessing authority however, allowed the credit for payment made towards the payment under GVAT. Challenging both the actions, the Assessee approached the Hon'ble Gujarat High Court which by its order dated 15th July, 2010 held that the action of entry tax Officer in not giving credit of the amount paid though under a wrong Chalan was an hypertechnical one that led to avoidable litigation. The interest and penalty were quashed and the attachment of Bank account during the pendency of the petition was released. In order to regularize the payment, the sales tax Department was directed to refund the amount wrongly paid under the VAT challan and the Assessee was directed to deposit the same by using the correct form of challan immediately thereafter. The Assessment orders under both the Acts were quashed.

M/s. Gopal Rayon India P. Ltd. vs. State of Gujarat - STJ Vol.49 Pg.493

Goods

The Supreme Court while considering the case under the provisions of Central Excise Tariff Act, 1985, held that the unvulcanised sandwiched fabric/double textured rubberized fabric were intermediary products and not marketable or excisable. The Supreme Court further observed that marketability was an essential ingredient for holding an article to be excisable under the Act. In that regard the Supreme Court also held that the burden was on the Revenue to prove that the goods were marketable.

Bata India Ltd. vs. Commissioner of Central Excise, New Delhi. (2010) 56 STA Pg.102

Impact of General Clause Act – Repeal

The Punjab and Haryana High Court held that the appointment of a designated Officer under the ordinance, which was repealed later on would continue to be a valid appointment in view of the provisions of Sec.22 of the State General Clause Act which is *pari materia* with the provisions of Sec.24 of the General Clauses Act 1897.

Idasa India Ltd vs. State of Punjab and Ors. - (2010) 37 PHT 51 (P&H)

Input Tax Credit

The Punjab & Haryana High Court reversed the decision of the Tribunal and held that Input tax credit on purchase of diesel used in the manufacture of electrical generation which was captively used in the factory, for the manufacture of taxable goods, was not available especially when the said item namely

diesel was specifically excluded from the list of goods on which input tax credit was available.

State of Punjab & Ors vs. Malwa Cotton & Spg. Mills Ltd. - (2010) 37 PHT 121 (P&H)

Limitation

The Himachal Pradesh High Court held that the statutory period prescribed under the law, override the provision of Sec.5 to the Limitation Act 1963 and therefore when the legislature had granted limited power of condoning the delay only upto 60 days, the same beyond 60 days cannot be condoned by the Tribunal.

Excise & Taxation Commissioner, Shimla vs. Suraj Industries Ltd. and M/s. Suraj Industries Ltd. vs. State of HP & Ors. - (2010) 36 PHT HP

Interpretation of Entries

The Supreme Court held that the different interpretation of a particular entry by different authorities was not a violation of Article 14 of the constitution. However, two different interpretations by the same authority on the same set of facts cannot be sustained under the touch stone of Article 14

Jai Vijai Metal Udyog Pvt. Ltd., vs. Commissioner of Trade Tax, U.P. LKO - (2010) 36 PHT 497 (SC)

Manufacture

1) Cloth mounted foam

The Punjab and Haryana High Court held that the process of cutting bigger pieces of Foam into smaller pieces and covering the same with cloth amounted to manufacture.

Zenith India, Gurgaon vs. State of Haryana. - (2010) 37 PHT 42 (P&H)

2) Blank CD to loaded one

The Supreme Court while interpreting sec.80 – 1A (1) of the Income-tax Act, 1961 held that the transformation of Blank Compact Disc i.e. CD into software loaded disc constituted manufacturing or processing of goods.

Commissioner of Income Tax, New Delhi vs. Oracle Software (I) Ltd., - (2010) STA Vol. 2 Pg.79

Proprietary – Basic Principle of Natural Justice

The Bombay High Court quashed the order of the Tribunal passed in breach of principle of natural justice. The Bench which heard the Second Appeal before the Tribunal, was presided over by one of the member who happened to be the First Appellate authority before elevation to Bench and who had passed the order that was impugned before the



Tribunal. The High Court restored the matter before the Tribunal for deciding afresh.

HMG Industries Ltd. vs. Maharashtra Sales Tax Tribunal W.P.1595 of 2010 decided on 8-10-2010

Reassessment

The Allahabad High Court held that reopening of the proceeding only on change of opinion cannot be sustained. However, where the issue was not at all considered in the original assessment, it ceased to be change of opinion as no opinion was expressed in the order. Therefore in such cases action of Reassessment may be sustained.

M/s.Kesar Enterprises Ltd. vs. State of U.P. – (2010) NTN Vol. 44 Pg. 21

Remand

The Allahabad High Court disapproved the remand of the matter by the Tribunal, to the Assessing authority, instead of itself deciding the issue in the light of the decisions available till then, especially where all the relevant material was already on record needing no remand. The same was set aside with a direction to the Tribunal to decide the issue on merit at its end.

M/s. Indus Engineering Company vs. Commissioner of Trade Tax. – 2010 NTN Vol.44 Pg.30

Review

The Punjab & Haryana High Court held that Officer exercising the power of determining the amount of refund, cannot exercise the power of review or repeal or revision. He must respect the Order of Assessment and proceed to determine the refundable amount.

Jai Bharat Gum & Chemical Ltd. vs. State of Haryana & Ors. – (2010) 37 PHT 64 (PHH)

Subordinate legislation

The Punjab and Haryana High Court held that unless the statute conferred the power expressly, the subordinate legislation cannot provide the rule to be with retrospective effect.

Bhiwani Fibres Ltd. & Anr. vs. State of Haryana & Ors. – (2010) 37 PHT 25 (P&H)

News from U.P.

The U.P. VAT Act 2008 was amended so as to make consequential amendments relating to abolition of check posts as also limiting the input tax credit to the extent of tax payable on the sale value in case the goods were resold at a lower price than the Purchase price.

Source : NTN August 2010 Part 2 dated 25-8-2010 Pg.118.



Non-receipt of the Times must be notified within one month from the date of publication, which is 4th of every month.

Associate Editors of AIFTP Times : Mr. Kishor Vanjara & Mr. Deepak R. Shah

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