



All India Federation of Tax Practitioners

**Price ₹ 5/-**  
(For Members only)

# AIFTP TIMES

**Volume 2 - No. 9 • September, 2011**

<b>FORTHCOMING PROGRAMMES</b>	
<b>Date &amp; Month</b>	<b>Programme</b>
16th September, 2011	Annual General Meeting of AIFTP at Mumbai
8th October, 2011	Full Day Seminar for Basic Course on Taxation of Non-Residents and Application of Tax Treaty at Mumbai
13th, 14th & 15th Oct., 2011	8th Nani Palkhivala Memorial National Tax Moot Court Competition at Mumbai
15th October, 2011	National Executive Committee Meeting at Mumbai
11th November, 2011	Celebration of Foundation Day at Delhi
11th November, 2011	National Executive Committee Meeting at Delhi
12th & 13th November, 2011	Two Day National Tax Conference at Delhi (NZ)
16th to 19th November, 2011	AOTCA International Tax Conference at Bali, Indonesia
9th December, 2011	National Executive Committee Meeting and EGM at Ranchi
10th & 11th December, 2011	Two Days National Tax Convention at Ranchi (EZ)

## FEDERATION NEWS

J. K. Ranka, Secretary General

### AOTCA INTERNATIONAL TAX CONFERENCE AT BALI, INDONESIA

AOTCA Conference 2011 will be held from 16th to 19th November, 2011 at Hotel Melia, Bali, Indonesia. The following subjects will be discussed:-

1. "Update on MAP and APA in Indonesia" (Indonesia Tax Officials)
2. "Anti Tax Avoidance Rules from member countries" (Panel Discussion)
3. "Recent Tax Development in Europe" (Mr. Stephen Coleclough, President of CFE)
4. "Recent Developments in Transfer Pricing from member - countries" (Panel Discussion)
5. "Update on Tax Payers' Right" (CFE and AOTCA)

Federation has worked out the cost for 5 days visit to Bali, which will be approx. ₹ 1 lakh for single occupancy at Hotel Melia.

Delegate fee of US \$ 250 will have to be paid separately to AOTCA.

Those who desire to join the delegation, may inform the office of the Federation and also contact for further detailed information.

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

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

## TWO DAYS NATIONAL TAX CONFERENCE

Organised by  
**ALL INDIA FEDERATION OF TAX PRACTITIONERS (NORTHERN ZONE)**

on  
11th to 13th November, 2011  
at

Sathya Sai Centre, Lodhi Road, New Delhi.

**Hon'ble Law Minister Mr. Salman Khurshid  
has kindly consented to grace this occasion.**

### PROGRAMME

#### Friday, 11th November, 2011

4.00 – 4.30 p.m.	:	Registration & Tea
4.30 – 6.30 p.m.	:	Inaugural Session
6.30 – 7.00 p.m.	:	Tea
7.00 – 8.30 p.m.	:	National Executive Meeting & Hasya Kavi Sammelan
8.30 p.m. onwards	:	Dinner

#### Saturday, 12th November, 2011

09.00 – 10.00 a.m.	:	Breakfast & Registration
10.00 – 11.45 a.m.	:	1st Technical Session
11.45 – 01.30 p.m.	:	2nd Technical Session
01.30 – 02.30 p.m.	:	Lunch
02.30 – 04.00 p.m.	:	3rd Technical Session
04.00 – 05.30 p.m.	:	4th Technical Session
05.30 – 06.00 p.m.	:	Tea
06.00 – 08.30 p.m.	:	Cultural programme
8.30 p.m. onwards	:	Dinner

#### Sunday, 13th November, 2011

09.00 – 10.00 a.m.	:	Breakfast
10.00 – 12.00 Noon	:	5th Technical Session
12.00 – 01.00 p.m.	:	Valedictory Session
01.00 p.m. onwards	:	Lunch

**Prem Lata Bansal**  
Chairperson, AIFTP (Northern Zone)  
Mobile : 9811558194  
E-mail : premlatabansal2007@rediffmail.com

**H. C. Bhatia**  
Vice President  
Mobile : 9810082677  
E-mail : bhatia\_hc@hotmail.com

## hearty congratulations

Hearty Congratulations to the newly elected office bearers of All Gujarat Federation of Tax Consultants for the period 2011-12.

President	:	CA Jayesh R. Mor
Sr. Vice President	:	Shri Shailesh C. Desai
Secretary	:	CA Dipak D. Bhimani
Treasurer	:	CA Harsh Jani

We wish them all the success.

**FULL DAY SEMINAR FOR  
BASIC COURSE ON TAXATION OF NON-RESIDENTS  
AND APPLICATION OF TAX TREATY**

*Organized by*

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

on  
**Saturday, 8th October, 2011**  
from **9.00 a.m. to 5.30 p.m.**

at  
**M. C. Ghia Hall, Kalaghoda, Mumbai**

**Enrolment  
restricted to  
75 participants  
on first come  
first served  
basis**

**PROGRAMME**

9.00 am to 9.30 am	Registration and breakfast
9.30 am to 10.45 am	Nature of Income and its chargeability to tax for Non-Residents <i>Speaker</i> : CA Dhishat Mehta
10.45 am to 11.00 am	Tea break
11.00 am to 12.15 pm	Computation of Income of Non-Residents <i>Speaker</i> : CA Mayur Desai*
12.15 pm to 1.30 pm	Chargeability under IT Act and the provisions of the Tax Treaty <i>Speaker</i> : CA Harish Motiwalla
1.30 pm to 2.30 pm	Lunch break
2.30 pm to 4.00 pm	The Global Taxation of Residents – A Source and the Resident Rule <i>Speaker</i> : CA Paresh P. Shah
4.00 pm to 4.15 pm	Tea break
4.15 pm to 5.30 pm	Role of tax practitioners in International Taxation – A recent trend <i>Speaker</i> : CA Mayur Nayak

\* *Subject to confirmation*

**Delegate Fees :**  
**₹ 1,100 for Members and ₹ 1,300 for non-Members**  
**(including seminar material, tea, snacks and lunch)**

*Cheque/Draft may be drawn in favour of All India Federation of Tax Practitioners – Western Zone, payable at Mumbai. Outstation members are requested to send DD only.*

**H. N. MOTIWALLA**  
*Chairman*  
AIFTP (WZ)

## 8TH NANI PALKHIVALA MEMORIAL NATIONAL TAX MOOT COURT COMPETITION

ORGANIZED BY  
**ALL INDIA FEDERATION OF TAX PRACTITIONERS**  
JOINTLY WITH  
**INCOME TAX APPELLATE TRIBUNAL BAR ASSOCIATION**  
IN ASSOCIATION WITH  
**GOVERNMENT LAW COLLEGE, MUMBAI**

The dates for the National Tax Moot Court Competition are 13th, 14th & 15th October, 2011. The venue for the above function is as under:-

- i) Inauguration at Government Law College on 13th October, 2011 by the Hon'ble President and Hon'ble Vice President of ITAT from 5.30 p.m. onwards.
- ii) Preliminary Rounds on 14th October, 2011 at ITAT, Mumbai (Competition will be judged by the Members of the ITAT, Mumbai & Professionals)
- iii) Semi-finals on 15th October, 2011 at ITAT, Mumbai (Competition will be judged by the Member of ITAT, Mumbai)
- iv) Final on 15th October, 2011 in evening at Rangaswar Hall, 4th Floor, Y. B. Chavan Pratisthan, Mumbai (Competition will be judged by the Hon'ble Judges of Bombay High Court) from 6.00 p.m. onwards.

30 law colleges across India are expected to participate in the competition.

**Note:** National Executive Committee Meeting will be held on 15th October, 2011 from 2.30 p.m. to 5.00 p.m. at Income Tax Appellate Tribunal Bar Association's Library, Room No. 445 Old CGO Building, 4th Floor, 101, Maharshi Karve Road, Mumbai - 400 020.

## NANI PALKHIVALA 7TH RESEARCH PAPER COMPETITION

The topic for this year's Research Paper is "Piercing the Corporate Veil in Taxation Matters (Indian & International Transactions with special reference to DTC)"

Invitation will be sent to 125 law colleges for participating in the competition.

### SUBSCRIPTION RATES W.E.F. 1-4-2011

1.	Life Membership of the AIFTP		₹ 2,500/-
	Additional subscription of AIFTP Journal (for 1 year)		₹ 600/-
	Additional subscription of AIFTP Journal (for 3 years)		₹ 1,500/-
2.	For Non-Members		
	Subscription of AIFTP Journal (for 1 year)		₹ 800/-
	Subscription of AIFTP Journal (for 3 years)		₹ 2,000/-
	Single copy of the AIFTP Journal		₹ 50/-
3.	Corporate Membership		
	Nature of fees	Type I (5 Yrs.)	Type II (10 Yrs.)
		Type III (15 Yrs.)	Type IV (20 Yrs.)
		₹	₹
	Admission	500/-	500/-
	Subscription	5,000/-	15,000/-
	Total	5,500/-	15,500/-

*Note: Members may download the membership form from the website of AIFTP, i.e., [www.aiftponline.org](http://www.aiftponline.org)*

## **16TH NATIONAL CONVENTION 2011 AT RANCHI**

*Organised by*

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

*Jointly with*

**JHARKHAND INCOME TAX BAR ASSOCIATION, RANCHI  
JHARKHAND COMMERCIAL TAXES BAR ASSOCIATION, RANCHI  
RANCHI BRANCH OF CIRC OF ICAI**

on

9th, 10th & 11th December, 2011

at

Hotel Radisson Blu, Main Road, Ranchi, Jharkhand

**Theme : Professional's Role in Emerging Tax Laws**

### **PROGRAMME**

#### **Friday, 9th December, 2011**

Venue : Hotel Capitol Hill, Main Road, Ranchi

3.30 p.m. onwards : National Executive Committee Meeting 2010 and 2011  
Extra Ordinary General Meeting 2011  
Election of National Executive & Office Bearers 2012 and 2013  
National Executive Committee Meeting 2012 and 2013  
Followed by Dinner.

#### **Saturday, 10th December, 2011**

Venue : Hotel Radisson Blue, Main Road, Ranchi

8.30 a.m. – 10.00 a.m. : Registration & Breakfast  
9.45 a.m. – 11.30 a.m. : Inauguration of Convention  
12.00 Noon – 1.30 p.m. : 1st Technical Session  
1.30 p.m. – 2.30 p.m. : Lunch Break  
2.30 p.m. – 4.00 p.m. : 2nd Technical Session  
4.00 p.m. – 4.20 p.m. : Tea Break  
4.20 p.m. – 6.00 p.m. : 3rd Technical Session  
7.30 p.m. onwards : Dinner at Ranchi Club

#### **Sunday, 11th December, 2011**

10.00 a.m. – 12.00 Noon : 4th Technical Session  
12.00 Noon – 1.30 p.m. : 5th Technical Session  
1.30 p.m. – 2.30 p.m. : Lunch Break  
2.30 p.m. – 5.00 p.m. : Brain Trust & Valedictory High Tea

Payment Details: Member ; ₹ 2,000.00  
Spouse : ₹ 1,000.00  
Corporate Member : ₹ 3,000.00  
Student/Professional : ₹ 1,000.00 (Professional whose practice below 5 years)

**(Note : 10 per cent discount on Registration before 31-10-2011)  
Registration fee includes Kit, 2 Breakfasts, 2 Lunches and 1 Dinner)**

**Cheque/Draft may be drawn in favour of "AIFTP (EZ) Convention 2011" payable at Ranchi.**

#### **Correspondence address:**

S. K. Poddar, Chairman

Hardutt Rai Lane, Upper Bazar, Ranchi – 834 001

Tel.: 06512202787 / 2212477 • Mobile : 09431115265 • E-mail: sheojipoddar@rediffmail.com

### List of Hotels near the venue

Name	Distance	A.C.	Non A.C.
Hotel Radisson Blu (Venue)		4400-5500	
Hotel Capitol Hill, Main Road	1/2 km	4000-4400*	
Hotel Chinar, Main Road	1/2 km	1900-3900**	
Chanakya BNR Hotel, Stn. Road	1 km	2400-2800**	
Hotel Kwaliti Inn, Stn. Road	1 km	2400-2700**	
Capitol Residency, Stn. Road	1 km	2400-4000*	
Hotel Green Horizon, Stn. Road	1 km	2800-3600**	
Hotel Element, Stn. Road	1 km	2500-3000**	
Accord Hotel, Stn. Road	1 km	1100-2400**	
Hotel Embassy, Stn. Road	1 km	1000-1250**	
Hotel Amrit, Stn. Road	1 km	1000-1200**	500-800
Hotel Churuwala Inn, Main Road	1 km	2200-2800**	
Hotel Basera, Stn. Road	Walking	1000-1900**	
Hotel Sai Heritage, Stn. Road	Walking	1650-3250**	850-1000
Hotel Tribhuwan, Stn. Road	Walking	1290-1600**	535-650
Hotel Bridge View, Stn. Road	Walking	**	850-950
Hotel Aman Palace, Stn. Road	Walking	650-950**	350-450
Hotel Mayuri, Stn. Road	Walking	1050-1800**	450-900
Hotel Meera, Stn. Road	Walking	**	300-650
Hotel Kuber Palace, Stn. Road	Walking	1350-1900**	
Hotel Ujala, Stn. Road	Walking	**	400-550
Amar Heritage, Stn. Road	1 km	**	500
Hotel Raj Residency, Cir. Road	3 km	*	1500-2500
Note: * Discounted rate especially for AIFTP delegates. ** Special discount is being allowed after negotiation			

#### Contact Members

**S.K. Poddar** (Chairman), Hardutt Rai Lane, Upper Bazar, Ranchi. 06512202787 / 2212477,  
Mobile: 09431115265. • e-mail-sheojipoddar@rediffmail .com

**H.L. Patel** (Convenor), Patel Complex, 24 Circular Road, Lalpur, Ranchi-0651 2531822  
Mobile:09431 173567 • e-mail-hari@patelyahoo.com

**S.K. Sahu**, (Co-Convenor) Pyada Toli, Upper Bazar, Ranchi. 06512310295,  
Mobile: 09431109776 • e-mail- sanjay@sahuyahoo.co.in

**Suresh Saboo**, Kunjlal Street, Upper Bazar, Ranchi,  
Mobile: 09431103232. • e-mail- sureshsaboo@yahoo.com

**Sandeep Gadodia**, Gr. Floor, GEL Church Complex Main Road, Ranchi

**B.P. Sinha**, Indrapuri Marg-1, Ratu Road, Ranchi. 06512280826

**V.K. Verma**, 5, 1st Floor, A.C. Market, GEL Church Complex, Ranchi  
Mobile: 09431171605 • e-mail-vkverma.adv@gmail.com

**A.K. Pasari**, Shanti Kunj, Nilratan Street, Upper Bazar, Ranchi. 0651 2209612  
Mobile: 09431125350 • e-mail-anandpasari@rediffmail.com

## **ANNUAL GENERAL MEETING**

Notice is hereby given that the Annual General Meeting of the All India Federation of Tax Practitioners will be held on Friday, the 16th September, 2011 at 5.30 p.m. at 215, Rewa Chambers, 31, New Marine Lines, Mumbai - 400 020 to transact the following business:-

### **A G E N D A**

1. To read and approve the minutes of last Annual General Meeting held on 3rd August, 2010 at Mumbai and Adjourned Annual General Meeting held on 24th September, 2010 at Mumbai.
2. To receive and adopt the Annual Report of the National Executive Committee of AIFTP for the year 2011.
3. To consider and adopt the Audited Accounts of AIFTP for the year ended 31st March, 2011.
4. To appoint Auditors for the year 2011 - 12 and to fix their honorarium.
5. To transact any other business with the permission of the Chair.

Place: Mumbai

Date: August 24, 2011

**J. K. Ranka**  
*Secretary General*

*Note:*

1. The Annual Report and the Audited Profit and Loss Account and Balance Sheet will be circulated to the National Executive Committee Members by e-mail.
2. Accounts for the year ended 31st March, 2011 and the report of the National Executive Committee can be collected from the office of the Federation from 12th September, 2011 onwards between 11.30 a.m. to 5.00 p.m. The accounts and reports can be made available to the members through email on request to the office.
3. If there is no quorum by 5.30 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

## **REPORT ON ALL INDIA FEDERATION OF TAX PRACTITIONERS - SOUTHERN ZONE ACTIVITIES FOR THE YEAR 2011**

1. Meeting on Union Budget-Finance Bill-2011 was held on Tuesday, the 1st March, 2011 at 5.00 P.M at Expotel Hotel, Lower Tank Bund Road, Hyderabad
2. Seminar on International Taxation is organized on Thursday, 24th March 2011 at Hotel Taj
3. Deccan jointly by All India Federation of Tax Practitioners, South Zone and International Fiscal Association, Hyderabad Sub-chapter.
4. On the occasion of All India federation of tax practitioners foundation day. AIFTP-SZ conducted a social and charitable work at amanvedika rain bow home for girls at Musheerabad, Hyderabad .
5. The Secretary, Mr.V.Ahalada Rao, Secretary presented Union Budget at Osmania University and participated in the Round table discussion.
6. Interactive session with Income Tax officials in association with FAPCCI and CPE Study circle Himayatnagar held on Saturday, 8th January 2011 at 11-00 a.m at KLN Prasad auditorium, Federation House, FAPCCI.  
The following top officials interacted with the members.
  - a. Sri A.K.Basu, IRS; Chief Commissioner of Income Tax I and II.
  - b. Sri. S. C. Jaini, IRS; Chief Commissioner of Income Tax III.
  - c. Sri Mukesh Kumar, IRS, Director General of Income Tax.
7. The Annual General Meeting of the All India Federation of Tax Practitioners - South Zone for the financial year 2010-11 was held on 21st July , 2011 at 6.30 P.M at Taj Mahal Hotel Abids Road, Hyderabad .
8. A special meeting was held on Business Etiquette's by Sri. Rummy Sharma at 6.30 P.M on Thursday 21st July, 2011 at Taj Mahal Hotel Abids Road, Hyderabad
9. Conducted one day seminar on taxation on 5th August, 2011 at sri Vasavi kanyaka parameshwari Charitable trust at Basara.  
The following are the topics of the Seminar
  - a. An overview of Direct Taxes code
  - b. Capital Gains tax, registration and stamp duty implications in real estate transactions
  - c. Input tax credit under V.A.T Act

The above meeting attended by chartered accountants, companies secretaries, cost accountants, advocates and income tax practitioners.

Hyderabad, 12-8-2011

**V. Ahalada Rao, Hon. Secretary, AIFTP (SZ)**

## DIRECT TAXES

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

### SUPREME COURT

**1. S. 147 : Reassessment – Despite bar in Proviso to s. 14A, s. 147 reopening for earlier years – Valid**

The Apex Court dismissing the SLP held that the reopening of assessment for A.Y. 2000-01 in the facts of the case was completely justified as though the ROI was filed before S.14A was enacted, but the assessment order was passed subsequently. The object and the purpose of the proviso to S. 14A is to ensure that the retrospective amendment is not made as a tool to reopen past cases which have attained finality.

*Honda Siel Power Products Ltd. vs. DCIT (Supreme Court (www.itatonline.org))*

**2. CBDT directed to formulate uniform policy with strict parameters on appeal filing**

It is high time when the Central Board of Direct and Indirect Taxes comes out with a uniform policy, laying down strict parameters for the guidance of the field staff for deciding whether or not an appeal in a particular case is to be filed. We are constrained to observe that the existing guidelines are followed more in breach, resulting in avoidable allegations of mala fides etc on the part of the officers concerned.

*CCE vs. Doaba Steel Rolling Mills (SC) (www.itatonline.org)*

### HIGH COURT

**3. S.4 : Income – Interest earned – Performance guarantee**

Interest income earned by the assessee on the fixed deposit for performance of guarantee of contract was held to be capital in nature and cannot be assessed as income from other sources.

*CIT vs. Jaypee DSC Ventures Ltd. (2011) 53 DTR 305 (Del) (High Court)*

**4. S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services**

Income received by a US company, by way of fees for technical services could not be deemed to have accrued or arisen in India as the services under the agreement were not rendered within India even though services received from it may have been utilized by the Indian company in India

*Grasim Industries Ltd. vs. CIT (2011) 242 CTR 166 (Bom.)*

**5. S. 36(1)(iii) : Business Expenditure – Interest on borrowed capital – Suit filed by creditor bank**

Interest payable on loans raised by assessee from bank cannot be treated as a contingent liability and cannot be disallowed merely because bank has instituted a suit and not shown the accrual of interest in its books of account, more so when there is nothing to show that the bank has not claimed interest for all three years period i.e., pre suit pendent lite and future interest.

*Friends Clearing Agency (P.) Ltd. vs. CIT (2011) 58 DTR 109 (Delhi)*

**6. S. 80-IA : Deduction – Transport subsidy – Industrial Undertaking**

Transport subsidy received by the assessee under the scheme framed by the Central Government cannot be profits derived from the industrial undertaking and is not eligible for the deduction u/s 80-IA of the Act

*CIT vs Maharani Packaging (P.) Ltd. (2011) 55 DTR 340 (HP)*

### TRIBUNAL

**7. S. 10(23FB) : Exemption – Venture Capital Fund – Income from other sources**

It was held that exemption claimed with respect of any income from any VCF prior to 1-4-2008 was exempt as the amendment to s. 10(23FB), which is restricted to the exemption to income from investment by VCF, is with effect from 1-4-2008 and is prospective.

*ITO vs. Kshitij Capital Fund (2011) 131 ITD 290 (Mumbai) (Trib.)*

**8. S. 37 (1) : Business expenditure – Secret Commission for providing contract**

Secret commission paid by assessee to directors of the company giving construction to contract to assessee cannot be allowed as expenditure in view of Explanation 1 to section 37(1).

*J.K. Panthaki & Co. vs. ITO (2011) 57 DTR 233 (Bang.)(Trib.)*

**9. S. 40(a)(ia) : Business disallowance – Payable to a contractor or sub-contractor – Adjustment of refund – Deduction of tax**

Irrespective of the fact that an assessee entitled to claim refund of excess of tax paid or get adjusted against tax liability under the provisions of Act, assessee cannot withhold TDS deducted from

payment made to contractor so as to adjust same against excess taxes paid earlier and if an assessee does so then provisions of section 40(a)(ia) are attracted in respect of payment so made.

*HCC Pati Joint Venture vs. Asst. CIT (2011) 46 SOT 263 (Mum) (Trib.)*

**10. S. 80IA(4) : Deduction – Infrastructure development – Industrial Undertakings – Deduction available even to contractor who merely develop but does not operate and maintain the infrastructure facility**

The contractor who merely develops but does not operate or maintain the infrastructure facility is

eligible for deduction u/s 80-IA(4). Harmonious reading of the provision and the 2001 amendment led to a conclusion that three conditions of development, operation and maintainance were not intended to be cumulative in nature. A developer who is only developing the infrastructure facility cannot be expected to fulfil condition in sub-clause (c) which is an impossibility and requiring to be fulfilled will be an absurdity.

*B.T. Patil & Sons Belgaum vs. ACIT (126) TTJ 577 (Mum.) impliedly held not to be a good law.*

*Laxmi Civil Engineering P. Ltd. vs. ACIT (Pune) (ITAT) (www.itatonline.org)*



## INDIRECT TAXES

P. C. Joshi, Advocate

### 1) Appeal

The Kerala High Court held that the assessee cannot raise a technical objection at the Tribunal stage when such an issue was not raised before the assessing authority as well as first Appellate Authority.

*Sree Ramachandran Enterprises vs. State of Kerala (2011) 39 PHT 317 (Ker).*

### 2) Cess or fees – Distinction

The Punjab and Haryana High Court held that both cess and fees were for development of infrastructure in the State and therefore the legislature had full freedom while levying either of them; therefore the levy of tax on the declared goods under the guise of cess and fees were not violative of sections 14 and 15 of the CST Act, 1956.

*Food Corporation of India vs. State of Punjab and Anr. (2011) 39 PHT 453 (P&H).*

### 3) Concessional rate – C form

In the case before the Gujarat Value Added Tax Tribunal the assessee had submitted the original portion of C forms but the same were lost by the department. At the request of the assessing authority, the assessee produced the duplicate portion of the C form where upon the order of the assessment was passed. The revising authority however in absence of the original C forms on record, revised the order and taxed the turnover at the higher rate. After considering the prolonged correspondence that was exchanged with the department during the interim period, before producing the duplicate portion, the Tribunal disapproved the revision and held that the original

C forms were in fact produced before the assessing authority and the same were misplaced by the department and therefore the concessional levy of tax cannot be denied to the assessee. The Tribunal in that case also directed the Commissioner to institute an enquiry and take action against the concerned officers for causing the avoidable harassment to the assessee.

*M/s. Diamant Carbon & Graphics Products Ltd vs. The State of Gujarat (2011) Sales Tax Journal Volume 50 P. 426.*

### 4) Deduction

The Punjab and Haryana High Court held that the deduction u/s 27(1)(b) of the Haryana General Sales Tax Act, 1973 was an allowable deduction where the goods purchased in the State of Haryana, were sold to an exporter of Bombay as contemplated u/s. 5(3) of the CST Act.

*Dwarka Dass Trading Co. vs. State of Haryana, etc. (2011) 39 PHT 449 (P&H).*

### 5) Declarations – Extension of time

#### PRODUCTION OF C/F FORMS

The Madras High Court held that when the assessee requested for extension of time for producing the wanting declarations, the authority concerned was duty bound to intimate his acceptance or rejection of such a request. Delayed passing of order of assessment by him was no justification for not intimating the grant of extension as requested.

*Esjaypee Impex (P) Ltd vs. Commercial Tax Officer, Sowcarpet I, Assessment Circle (2011) 19 STJ 156 (Mad).*

## **6) Entries in Schedule**

### **1) Antiseptic Cream**

The Allahabad High Court held that the Himani Boro Plus antiseptic cream and turmeric cream satisfied the criteria for classifying it as medicaments therefore the same were not cosmetic as held by the department.

*Himani Ltd. & Ors. vs. Commissioner of Commercial Taxes & Ors. (2011) 39 PHT 407 (All).*

### **2) Moveable property**

The Supreme Court while considering the scope of applicability of excise law on the activity of setting up of a plant and its fixation on the foundation, held that the fixing of the plant was only for purpose of giving stability and vibration free operation of the plant. It can be easily moved after completion of the project therefore such plants cannot be termed per se as immovable property.

*Commissioner of Central Excise vs. Solid & Correct Engg. Works & Ors. (2011) 58 S.T.A. P. 1.*

### **3) Furniture**

The Supreme Court held that the items like desk, tables, chairs required for use in the office though fabricated at site and fixed to the wall or ground, cannot be considered to be immovable property.

*C.C.E. Visakhapatnam vs. Mehta & Co. (2011) 58 S.T.A. P. 17*

### **4) Peas**

The West Bengal Taxation Tribunal held that dun peas and yellow peas were pulse and therefore exempt from tax.

*MMTC Ltd vs. Sr. Jt. Comm., C.T. Corporate Division & Ors. (2011) 58 S.T.A. P. 64.*

### **7) Forfeiture**

The Allahabad high court held that in absence of any evidence showing realisation of tax in excess of amount due, there was no case for application of section 29A of the UP Trade Tax Act. The amount found to have been paid in excess was directed to be refunded to the assessee.

*Swadeshi Polyted Ltd vs. Commissioner of Trade Tax (2011) NTN (Vol. 46) - 150.*

### **8) Input Tax Credit – Cement**

The West Bengal Taxation Tribunal after considering the provisions of ITC under the West Bengal VAT Act, 2003 held that where the cement was purchased as building material and used in construction or repair

of civil structure, no input tax credit was available however where the cement was purchased as raw material for manufacturing items like PCC Poles; ITC would be available.

*Shree Balajee Udyog & Ors. vs. S.T.O. Asansol Charge & Ors. (2011) 58 S.T.A. P. 53*

### **9) Issue of C form**

The Madras High Court held that the provisions of the Central Sales Tax Act as well as Puducherry VAT Act, 2007 did not provide for refusal of issuance of C form for non payment of tax or penalty.

*Sri Rajeswari Agencies vs. Addl. Dy. Commercial Tax Officer II (2011) 19 STJ 79 (Mad.).*

### **10) Limitation**

The Karnataka High Court held that the objections submitted on the next working day when the last day for compliance happened to be a holiday, could not have been rejected. Such a rejection and passing of the reassessment order on the same day was contrary to the principles of the natural justice.

*Sarda Engineering Industries vs. State of Karnataka & Ors. (2011) 19 STJ 87 (Kar.).*

### **11) Manufacture**

The Supreme Court after considering the provisions of the Central Excise Tariff Act and the definition u/s. 2 (f), held that any activity or operation which was the essential requirement and was integrally connected with further operation for production of ultimate goods, but for which, the manufacture of the final product was not possible; was a process in or in relation to manufacture. Accordingly the water lifted with the aid of power and used for cooling the coils containing turpentine vapours was also a process in relation to manufacture.

*Commissioner of Central Excise vs. M/s. Gurukripa Resins Pvt. Ltd. 2011 (2) GSTJ P. 145.*

### **12) Penalty**

The Madras High Court held that for imposition of the penalty u/s. 12(3)(b) of the Tamil Nadu General Sales Tax Act, it was necessary to show that the particulars that were required to be furnished were either not disclosed, or were incorrect/incomplete. When the assessment was completed in accordance with the turnover shown in the books of account, no penalty can be imposed for filing incorrect returns. Claiming bona fide, an item to be not liable to tax; cannot be considered to be fatal for such imposition.

*State of Tamil Nadu vs. Vinayaka Engineering Works (2011) 19 STJ 14 (Mad.).*

### 13) Recovery

#### i) Director's liability

The Madhya Pradesh High Court at Indore held that the amount recoverable from a company cannot be recovered from individual director in absence of any statutory provisions empowering the Sales Tax department to do so.

*Kailash Chandra S/o Madanlal Agarwal vs. Commercial Tax Officer-cum-Additional Tahsildar & Ors. (2011) 19 STJ 144 (MP).*

#### ii) Recovery – Scope of BIFR

The Madras High Court held that once the proceedings were pending before BIFR, the protection u/s. 22 of the SICA, 1985 was available for the tax due not only for a period prior to the reference but also thereafter till the rehabilitation scheme was sanctioned.

*S.S.D. Spinning Mills vs. Commercial Tax Officer I (2011) 19 STJ 159 (Mad.).*

### 14) Retrospective subordinate legislation

i) The Andhra Pradesh High Court held that though the legislature did have the power of levying tax retrospectively the delegated authority cannot be exercised in the like manner unless the Act expressly provided for such delegation of power.

*Asian Peroxides Ltd & Ors. vs. State of Andhra Pradesh & Ors. (2011) 52 APSTJ P. 239.*

ii) The Punjab and Haryana High Court held that though the power to make rules retrospectively was conferred on the rule making authority, no reasons were given for exercise of such a power. The notification therefore was quashed to the extent it was operative for the period prior to its issuance.

*M/s. Goel Brick Industries & Ors vs. State of Haryana & Ors (2011) NTN (Vol. 46)-156.*

### 15) Transfer of Right to Use Goods

#### a) Hire of cement mixers

The Andhra Pradesh High Court after considering the relevant judicial decisions held that the deputation of the transit cement concrete mixers to the manufacturer of cement for transportation of cement, for a specified period, was the case of transfer of right to use the mixer though the same was maintained by the assessee and operated by his own drivers.

*G.S. Lamba & Sons vs. State of Andhra Pradesh (2011) 52 APSTJ P. 191.*

#### b) Inter State

The Punjab & Haryana High Court held that even where the machinery taken on lease at Delhi was used in the execution of works contract in the State of Haryana, no tax can be levied under the Haryana General Sales Tax Act, 1973 on the basis of clause (iv) of section 2(j) read with Note No. 4 creating a deeming fiction of treating a transaction to be within the State. According to the High Court the case was squarely covered by section 4(2) of the Central Sales Tax Act, 1956.

*M/s. Sadan Vikas (India) Ltd vs. The State of Haryana & Ors. (2011) NTN (Vol. 46)-164.*

### 16) Works Contract – Printing job

The Allahabad High court held that the printing ink used in printing job passed on to the customer in the process of printing job and therefore the value of such material was liable to tax.

*Commissioner, Trade Tax vs. Aristo Printers Pvt. Ltd. (2011) 19 STJ 93 (All.).*



**Dr. Ashok Saraf**, Senior Advocate and Vice-President, All India Federation of Tax Practitioners has been appointed as the Advocate General of Arunachal Pradesh. He has also been elected as the President of Tax Bar Association of Assam for the term 2011-12.

We wish him all the success.

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