

PROGRAMME REPORT (P-1148)

NATIONAL JUDICIAL ACADEMY



CONFERENCE FOR HIGH COURT JUSTICES ON DIRECT TAXES

11th to 13th January, 2019

At the National Judicial Academy, Bhopal

PREPARED BY
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The National Judicial Academy (NJA) organized a three day “Conference for High Court Justices on Direct Taxes” from *11 – 13 January, 2019* at the NJA, Bhopal.

The conference was conceived to facilitate deliberations among participant justices on contemporary issues and recent developments in direct taxation in India and globally. It provided a forum for discussing normative issues pertaining to the evolution of direct taxes, interpretation in tax statutes and treaty law, major dispute areas and the role of the High Court; along with case studies and an overview of the constitutional provisions for finance bills.

About 19 Hon’ble High Court Justices from different High Courts participated in the conference.

The conference was divided into eight sessions over the duration of 3 days on *following themes*.

SESSION 1

Burden of Proof and Law of Evidence in Tax Law

Speaker: Justice R.V. Easwar

SESSION 2

International Tax Treaty Law and Double Tax Avoidance Agreement: An Overview

Chair: Justice R.V. Easwar

Speaker: Mr V. Sridharan (Assisted by Mr. Amar Gahlot)

SESSION 3

Interpretational Issues in Tax and Treaty Law

Chair: Justice R.V. Easwar

Speaker: Mr V. Sridharan (Assisted by Mr. Amar Gahlot)

SESSION 4

History, Basic Feature and Constitutional Aspects of Tax Law

Chair: Justice R.V. Easwar

Speaker : Mr Arvind P. Datar

SESSION 5

Transfer Pricing, Basic Principles, Major Issues of Dispute & Role of High Court

Chair: Justice R.V. Easwar

Speaker: Mr V. Sridharan (Assisted by Mr. Amar Gahlot)

SESSION 6

Appellate and Writ Jurisdiction of High Courts: Powers/Jurisdiction and Limitations

Chair: Justice R.V. Easwar

Speaker: Mr V. Sridharan (Assisted by Mr. Amar Gahlot)

SESSION 7

Case Studies on High Court Appellate and Writ Jurisdictions

Floor Discussion

SESSION 8

Leading Cases and Precedents

Floor Discussion

PROGRAMME SCHEDULE (P-1148)

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TIMING	SESSION(S)
Friday	DAY-1: 11.01.2019
10:00AM -11:30AM	SESSION 1 Burden of Proof and Law of Evidence in Tax Law Speaker : Justice R.V. Easwar
11:30AM - 12:00PM	Tea Break
12:00PM - 13:30PM	SESSION 2 International Tax Treaty Law and Double Tax Avoidance Agreement: An Overview Chair : Justice R.V. Easwar Speaker : Mr V. Sridharan (Assisted by Mr. Amar Gahlot)
13:30PM - 14:30PM	Lunch Break
14:30PM - 16:00PM (In house tea at 15:30PM)	SESSION 3 Interpretational Issues in Tax and Treaty Law Chair: : Justice R.V. Easwar Speaker : Mr V. Sridharan (Assisted by Mr. Amar Gahlot)
Saturday	DAY-2: 12.01.2019
10:00AM - 11:30AM	SESSION 4 History, Basic Feature and Constitutional Aspects of Tax Law Chair: Justice R.V. Easwar Speaker : Mr Arvind P. Datar
11:30AM –11:45AM	In house tea break
11:45AM – 13:15PM	SESSION 5 Transfer Pricing, Basic Principles, Major Issues of Dispute & Role of High Court Chair : Justice R.V. Easwar Speaker : Mr V. Sridharan (Assisted by Mr. Amar Gahlot)
13:15PM - 14:15PM	Lunch Break
14:15PM -15:30PM	SESSION 6 Appellate and Writ Jurisdiction of High Courts: Powers/Jurisdiction and Limitations Chair : Justice R.V. Easwar Speaker : Mr V. Sridharan (Assisted by Mr. Amar Gahlot)
Sunday	DAY-3: 13.01.2019

10:00AM - 11:30AM	<p style="text-align: center;">SESSION 7 Case Studies on High Court Appellate and Writ Jurisdictions Floor Discussion</p>
11:30AM - 12:00PM	Tea Break
12:00PM-13:25PM	<p style="text-align: center;">SESSION 8 Leading Cases and Precedents Floor Discussion</p>
13:25PM - 13:30PM	<i>Audit of the Course by Participant Justices of the High Court</i>
13.30PM - 14.30PM	Lunch Break

SESSION 1

Burden of Proof and Law of Evidence in Tax Law

Speaker: Justice R.V. Easwar

- The session began with discussion on article 265 of the Constitution of India terming it as guiding principle for the entire tax assessment authority and courts. The term 'evidence' in context of its applicability in tax law was explained and discussed. Relevancy of some important judgement on 65B of Evidence Act was also highlighted during the session. Many issues with respect to applicability of evidence act in tax were raised & discussed during the session.
- It was stressed that evidence in tax must be confined to matters which are in issue, hearsay evidence is no evidence and authorities must try to place best evidence at earliest point of time and it must be based on oral, documentary and circumstantial evidence.

SESSION 2

International Tax Treaty Law and Double Tax Avoidance Agreement: An Overview

Chair: Justice R.V. Easwar

Speaker: Mr V. Sridharan (Assisted by Mr. Amar Gahlot)

- The Session began with explaining basics of treaty law and plurality of laws. History background through some landmark judgements on tax law from pre-independence was explained. It was pointed out that multiple taxation arose even prior to the enactment of modern day direct tax laws due to territorial nature of law.
- Thereafter, various sources of income such as royalty income, sale of employment services, sale of tangible goods or services, dividend income and Interest income were elaborated through examples and discussed in details.
- Two types of double taxation such as juridical double taxation and economic double taxation were highlighted during the session, thereafter; attention was drawn to remedying and overcoming double taxation through tax treaty. A comparison between treaty law and private international law was also discussed during the session.

SESSION 3

Interpretational Issues in Tax and Treaty Law

Chair: Justice R.V. Easwar

Speaker: Mr V. Sridharan (Assisted by Mr. Amar Gahlot)

- While discussing domestic law and treaty interplay, it was pointed out that tax treaties are part of international law. On the question of whether the domestic law or the treaty law would prevail, judgement of SC in Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey AIR 1984 SC 667 was discussed, wherein court recognizes applicability of international law but not if it is in conflict with national law.
- Attention was drawn to Article 246 (1), entry 14, list 1 of schedule VII of the constitution of India, wherein it was pointed out that parliament can make a law entering into a treaty as well as implementing it. Section 90 of the Income tax Act was also discussed in the session. On treaty applicability, article 1 & 2 of OECD convention was elaborated and discussed. Concept of equalizer levy was also discussed in the session.

SESSION 4

History, Basic Feature and Constitutional Aspects of Tax Law

Chair: Justice R.V. Easwar

Speaker: Mr Arvind P. Datar

- Session began with elaborating evolution of tax law in India under following heads.

Central Excise:

-Different products – different levies

-Central Excises & Salt Act, 1944

-Item 68 – “Goods, not elsewhere specified”

-Central Excise Act, 1944

-GST (1.7.2017) except petroleum products & tobacco

Customs:

-Sea Customs Act, 1878

-Customs Act, 1962

-After 1991, reduction in rates

-Huge reduction in litigation

Octroi:

-Levied earlier

-Entry Tax

- Attention was drawn to constitutional history of tax law. It was pointed out that there were no expressed or detailed provisions in the Government of India Act, 1915 & 1919, however in Government of India Act, 1935, there were expressive division of powers and

seventh schedule also introduced containing federal, provincial and concurrent list and in Constitution of India, 1950 part XII (taxes, limitation and restriction), part XIII (inter-state trade & commerce) and article 366 was introduced.

- Basic features under Article 265 and 366 (28) were highlighted and discussed in the session. Basic components of tax such as character (taxable event), person obliged to pay the tax, rate of tax and measure or value were pointed out during the discussion. Some important judgement of the SC such as *Govind Saran Ganga Saran v CST* AIR 1985 SC 1041, *Vijayalakshmi Rice Mill v CTO*(2006) 6 SCC 763 and *Dewan Chand Builders & Construction v UOI*, (2018) SCC Online 1087 were also highlighted in the session.
- While discussing the limitation on parliament and state legislatures, it was pointed out that the Parliament cannot levy taxes in the State List and State Legislatures cannot levy taxes which are in the Union List. Apart from this restriction, there are other limitations also imposed on the Parliament and the States under the constitution.

SESSION 5

Transfer Pricing, Basic Principles, Major Issues of Dispute & Role of High Court

Chair: Justice R.V. Easwar

Speaker: Mr V. Sridharan (Assisted by Mr. Amar Gahlot)

- The Session began with discussion on basics, meaning and rationale of transfer pricing. To elaborate it further, various scenarios and judgements were discussed and analyzed, thereafter, attention was drawn to the background and regulation of transfer pricing in India, wherein various provisions under the income tax Act and some important judgements were highlighted. Section 92, 92A & 92B was elaborated and discussed in detail.
- Concept of arm length price (ALP) under article 9, OECD and under Sec. 92F (ii), 92C was also discussed during the session. Discussing the concept of most appropriate method, it was pointed out that IT Act, 1961 does not provide any specific hierarchy of methods for transfer pricing, rule 10 C of income tax rules, however, specify factors for determining the most appropriate method. Steps involved in transfer pricing as per the Act were also highlighted during the session.

SESSION 6

Appellate and Writ Jurisdiction of High Courts: Powers/Jurisdiction and Limitations

Chair : Justice R.V. Easwar

Speaker : Mr V. Sridharan (Assisted by Mr. Amar Gahlot)

- Citing landmark judgements, brief history of writs and its scope and nature under article 32 and 226 of constitution of India was elaborated and discussed in the session. The difference between writ jurisdiction and appellate jurisdiction was also briefly discussed during the session.

SESSION 7

Case Studies on High Court Appellate and Writ Jurisdictions

Floor Discussion

SESSION 8

Leading Cases and Precedents

Floor Discussion

- It was an interactive session. Participant Justices discussed important judgements and issues on following areas.
 - Re-assessment;
 - Application of circulars and principles of consistency;
 - International tax treaty law; and
 - Transfer Pricing