All India Federation of Tax Practitioners

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AIFTP TIMES

Volume 5 - No. 3 | March 2014

Report of Two Day National Tax Conference held on 15th & 16th February, 2014 at Ludhiana

Amidst the ceremonials and the fragrant bouquets, the National Tax conference organized by the AIFTP, Punjab Tax Bar Association, District Tax Bar Association (Sales tax), Ludhiana and Taxation Bar Association (Direct Taxes), Ludhiana was held on the 15th and 16th of February, 2014 at Ludhiana, a city acclaimed for its industry and heavy tax payers. The theme of the conference was 'Existing and Emerging issues in Taxation'. It was inaugurated by one of the pillars of the Indian legal system, Hon'ble Mr. Justice J. S. Kheher, Judge Supreme Court of India, the conference chairman being Mr. K. L. Goyal, Senior Advocate and Chairman of the Punjab Tax Bar Association. The dignity and the decorum of the occasion was enhanced when Hon'ble Mr. Justice Kheher unveiled the souvenir. Hon'ble Mr. Justice S. K. Kaul, Chief Justice of Punjab & Haryana High Court and Hon'ble Mr. Justice S. K. Mittal of the Hon'ble High Court extended their unflinching support by being present throughout the session. To add to the grace and grandeur of the day many Hon'ble judges of the High Court and judicial members of the City were present. Around 425 delegates were enrolled from various parts of the country including advocates, chartered accountants and tax practitioners. The gathering also included officials, bureaucrats and business tycoons who filled the venue of Guru Nanak Dev Bhawan.

To add to the sumptuousness of the occasion, the delegates were served with food made from special delectables to make the atmosphere and the ambience just perfect and comfortable.

The first technical session consisted of highlights on "Input Tax Credit" and was chaired by Hon'ble Mr. Justice Hemant Gupta to be the beacon of light. Also Hon'ble Mr. Justice Rajesh Bindal added a refreshing touch with his illuminating, yet light and good humoured words. A number of speakers – Mr. V. Lakshmikumaran, Mr. Mukul Gupta, Dr. Naveen Rattan, Mr. Puneet Aggarwal adorned the dais.

In between, the audience was left spell bound hearing the most melodious flute recital rendered live before them.

The 2nd technical session consisted of a dialogue on "TDS/TCS Provisions and Cash Credit & Unexplained investments u/ss. 68 & 69" in which the leading tax gurus – Mr. Feroze B. Andhyarujina, Senior Advocate, Mr. Sudhir Sehgal, Mr. Ajay Vora, Mr. V. P. Gupta, Mrs. Radhika Suri, Mr. Sumit Khurana and Mr. Deepak Agarwal were present to usher in a brainstorming symposium on the topic. Hon'ble Mr. Justice A. K. Mittal, Judge Punjab & Haryana High Court chaired the session. Various speakers who travelled from far away corners of India kept the throng of people interested, excited and willing to be showered by their phenomenal words of wisdom. The sessions went on till late evening but the audience was more than enthusiastic to be enlightened by their reserves of knowledge.

For the amusement of all, there was a gala dinner along with the vibrating bhangra performance and live songs in the evening. The delegates were taken to Govind Godham, a temple in Ludhiana, for an ecstatic experience at sunrise.

The next day's session consisted of highlights on "VAT/Service tax on Works Contract & Real Estate Transactions" which was headed by Padam Shri Vijay Chopra, Editor-in-Chief, Punjab Kesri Group as Guest of Honour and Mr. Bharatji Aggarwal, Senior Advocate. Various speakers like Mr. H. C. Bhatia, Mr. Sujit Ghosh, Mr. Jagmohan Bansal, Mr. Sandeep Goyal, Mr. G. R. Sethi and Mr. Vivek Sharma kept up the zeal of the delegates by augmenting their comprehension on various issues.

FOR ANY QUERIES MEMBERS MAY CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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There was a Panel discussion on Punjab VAT Act with reference to the recent amendments under the torch bearer Mr. K. L. Goyal, Senior Advocate and with our Guest of Honour – Mr. Harish Rai Dhanda as well as under the valuable guidance of Mr. G. R. Sethi, Mr. Varinder Goyal, Mr. Naresh Kumar Garg, Mr. B. K. Gupta, Mr. Suresh Aggarwal, Mr. Ajay Choudhary, Mr. Rajesh Malhotra, Mr. Sushil Jindal, Mr. J. P. Dhiman and Mr. Sushil Ghai. The attendance of the people from within and outside the state went beyond expectation and was a real encouragement to the organisers.

In the end there was Valedictory Session were the Mayor, Mr. Harcharan Singh Gohalwaria embellished the dais along with Mr. S. R. Wadhwa, Mr. Anil Sareen (Member PPSC), Mrs. Surinder Kaur Riar, Mr. Mukul Gupta, Mr. Ajay Sinha, Mr. Arvind Sukla, Mr. Varinder Sharma and Mr. A. K. Srivastava. All the members of work committee were duly honoured for putting their shoulders to the wheel by presenting them mementos.

The organisers and the delegates stood firm as a solid rock in bringing success to this conference.

K. L. Goyal
Chairman, Conference Committee

Renewal Subscription to AIFTP Journal

Dear Members,

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Thanking you,

For All India Federation of Tax Practitioners

JANAK VAGHANI
Treasurer

WORKSHOP ON MVAT ACT & ALLIED LAWS

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)
Jointly with BCAS, CTC, MCTC, STPAM & WIRC of ICAI

Timing	2.30 P.M. to 5.30 P.M.	
Venue	Mazgaon Library, 1st Floor, 104, Vikrikar Bhavan, Mazgaon, Mumbai – 400 010.	
Delegate Fees	Members ₹ 1,686/- (incl. of Service Tax), Non-Members ₹ 2,247/- (incl. of Service Tax)	
Date (Saturday)	**Subject**	**Speaker**
15-3-2014	Issues in Place of Provision of Service Rules, 2012	CA. Rajiv Luthia
	Issues in Point of Taxation Rules, 2011	Eminent Faculty
29-3-2014	Issues in Definition of Service, Exempt & Declared Service	CA. Manish Gadia
	Issues in Valuation of Service, Abatement & Reverse Charge Mechanism	Shri Vidyadhar Apte Advocate
5-4-2014	Issues in Interest, Penalties and Show Cause Notices/Summons	CA. Jayesh Gogri
	CENVAT Credit Rules	CA. Naresh Sheth
19-4-2014	Filing of Returns (including E-Filing & Payment of taxes, Assessment, Interest, Penalties & Prosecutions, Maintenance of books, Registers) under LBT Act	Shri Deepak Bapat Advocate
3-5-2014	Input Tax Credit & Refunds under LBT Act	Shri Kishore Lulla Advocate

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D] AIFTP Times

Editor – Shri Kishor Vanjara, Mumbai

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E] Committees

The following committees were formed and their Chairmen and Co-Chairmen were appointed:

Sr. No.	*Committees*	*Chairmen*	*Co-Chairmen*
1.	ITAT Bar Associations' Co-ordination Committee	Dr. K. Shivaram, Mumbai	Shri Ashvin C. Shah, Ahmedabad
2.	Law & Representation	Shri S. R. Wadhwa, New Delhi (Direct Taxes) Shri M. L. Patodi, Kota (VAT)	Shri Mukul Gupta, Ghaziabad (Service Tax & CST)
3.	Journal	Shri Mitesh Kotecha	—
4.	Membership Development and Public Relation	Shri Narayan Jain, Kolkata	Shri K. L. Goyal, Chandigarh
5.	Website	Shri Kishor Vanjara, Mumbai	

PAPER BOOK OF 17TH NATIONAL CONVENTION

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DIRECT TAXES

Ajay R. Singh, Rahul Hakani, Rahul Sarda and Ms. Neelam Jadhav
Advocates, KSA Legal Chambers

SUPREME COURT

1. S.276CC: Failure to furnish return of income

Prosecution for offence u/s. 276CC for failure to file ROI can be initiated during the pendency of assessment proceedings. The statement in the individual returns of the partners that the firm has not filed a ROI as its accounts are not finalised does not absolve the firm of prosecution for non-filing of ROI

The assessee, a registered partnership firm, of which Ms. J and Mrs. N are partners, did not furnish returns of income despite several opportunities. The AO made a best judgment assessment u/s. 144 and filed a complaint with the Magistrate against the assessee for committing offences punishable u/s .276CC. The assessee challenged the filing of the complaint on the ground that as the assessment had not attained finality no offence had taken place and so the complaint was pre-mature. It was also pointed out that in the individual returns of the partners it was stated that as the accounts of the assessee-firm had not been finalised, its return of income could not be filed. The Magistrate and High Court dismissed the challenge to the complaint. On appeal by the assessee to the Supreme Court, HELD dismissing the appeal:

(i) The offence u/s. 276CC is attracted on failure to comply with the provisions of s. 139(1) or failure to respond to the notice issued u/s. 142 or s. 148 within the time limit specified therein. The contention that pendency of the appellate proceedings is a relevant factor for not initiating prosecution proceedings u/s. 276CC is not acceptable. S. 276CC contemplates that an offence is committed on the non-filing of the return and it is totally unrelated to the pendency of assessment proceedings except for second part of the offence for determination of the sentence of the offence, the department may resort to best judgment assessment or otherwise to past years to determine the extent of the breach. The language of s. 276CC is clear so also the legislative intention. If it was the intention of the legislature to hold up the prosecution proceedings till the assessment proceedings are completed by way of appeal or otherwise the same would have been provided in s. 276CC itself. Therefore, the contention that no prosecution could be initiated till the culmination of assessment proceedings, especially in a case where the appellant had not filed the return as per s. 139(1) of the Act or following the notices issued u/s. 142 or s. 148 does not arise;

(ii) The declaration or statement made in the individual returns by partners that the accounts of the firm are not finalised, hence no return has been filed by the firm, will not absolve the firm in filing the statutory return u/s. 139(1) of the Act. The firm is independently required to file the return and merely because there has been a best judgment assessment u/s. 144 would not nullify the liability of the firm to file the return as per s. 139(1) of the Act.

(iii) S.278E deals with the presumption as to culpable mental state. The question is on whom the burden lies, either on the prosecution or the assessee u/s. 278E to prove whether the assessee has or has not committed wilful default in filing the returns. Court in a prosecution of offence, like s. 276CC has to presume the existence of *mens rea* and it is for the accused to prove the contrary and that too beyond reasonable doubt. Resultantly, the appellants have to prove the circumstances which prevented them from filing the returns as per s. 139(1) or in response to notices u/ss. 142 and 148 of the Act;

(iv) The details of the various proceedings reveal the dilatory tactics adopted in these cases. Courts must be guarded against those persons who prefer to see it as a medium for stalling all legal processes.

Sasi Enterprises v. ACIT (Supreme Court) www.itatonline.org

HIGH COURTS

2. S.194J : Design & Engineering drawings are in the nature of "plant" and consideration thereof is not assessable as "fees for technical services" if delivered outside India

The assessee company provided design and engineering services, manufacture, delivery, technical assistance through supervision of erection and commissioning etc., to establish compressor house-I for RINL. The payments were made by RINL separately for each of the services/ equipments provided/supplied by the assessee. It, *inter alia,* included payment made towards supply of design and engineering drawings. The assessee company claimed the said payment is not taxable under the Indian Income-tax Act as it was a transaction of sale of goods that has taken place outside India.

By relying on the decision of Delhi ITAT and reliance was placed by Learned DR, was not applicable to the facts of the present case. The decision was rendered on the basis of the terms of the contract which provided that technical services shall include supply of design and drawings. Hence on the facts of present case, the Tribunal held that design and drawing charges are in the nature of fee for technical services. However, it may be pertinent to note that the Tribunal in that case,

accepted the alternative contention of the assessee that the said fee cannot be assessed in India, unless it is shown that some part of work has emanated from Indian territories. Hence, the Hon'ble High Court on a conspectus of the matter held that the amount received by the assessee for supply of design and engineering drawings is in the nature of plant and since the preparation and delivery has taken place outside Indian territories, the same cannot be subjected to tax in India.

DIT v. Nisso Lwai Corporation, Japan (Andhra Pradesh High Court) www.itatonline.org

TRIBUNALS

3. S.263: CIT cannot revise the TPO's transfer pricing order passed u/s. 92CA(3). CIT also cannot revise s. 143(3) order because such order is not erroneous if it follows binding order of TPO

The AO made a reference u/s. 92CA(1) to the TPO for the computation of arm's length price ("ALP") in relation to the international transactions in A.Y. 2005-06 & 2006-07. Pursuant thereto, the TPO passed an order u/s. 92CA(3) proposing an adjustment for A.Y. 2005–06 & for A.Y. 2006–07. The AO computed the income of the assessee in conformity with the ALP determined by the TPO. Thereafter, the CIT passed an order u/s. 263 by which he held that the order passed by the TPO was erroneous and prejudicial to the interests of the revenue and that the s. 143(3) assessment order was also erroneous & prejudicial to the interests of the revenue. He set aside the assessment order with a direction to refer the issue of adjustment of arm's length value of international transactions to the TPO for reconsideration and to pass an appropriate assessment order in view of the findings from the TPO. The assessee filed an appeal before the Tribunal in which it claimed that the CIT had no jurisdiction over the TPO administratively and, therefore, he could not have revised the order u/s. 92CA(3) passed by the TPO and that, therefore, the s. 263 order was without jurisdiction.

The Commissioner cannot exercise revisionary jurisdiction u/s. 263 on the transfer pricing order passed u/s. 92CA(3) by the TPO. As regards the assessment order, it cannot be said to be "erroneous" because the AO is bound by the transfer pricing order u/s. 92CA(4) is binding on the AO. Consequently, the CIT's order is without jurisdiction.

Tata Communications Limited v. DCIT (ITAT Mumbai); www.itatonline.org

4. S.195: TDS obligation depends on law prevailing on date of payment and is not affected by retrospective amendment No. s.40(a)(i) disallowance can be made if that law did not require TDS to be deducted

Though the law was amended retrospectively, so far as tax withholding liability is concerned, it depends on the law as it existed at the point of time when payments, from which taxes ought to have been withheld, were made. The tax deductor cannot be expected to have clairvoyance of knowing how the law will change in future. A retrospective amendment in law does change the tax liability in respect of an income, with retrospective effect, but it cannot change the tax withholding liability, with retrospective effect. As there is no material whatsoever to establish that the design and development services were rendered in India, the assessee did not have any liability under s.195 r.w.s. 9(1)(vii) to deduct tax at source from these payments. As a corollary thereto, no disallowance can be made in respect of these payments u/s. 40(a)(i).

DCIT v. Virola International (ITAT Agra), www.itatonline.org

5. S.50C: Sale price as determined by the Stamp value transfer of capital asset while calculating capital gain – Flats in present case were stock-in-trade – Burden on Revenue to prove actual consideration was more than disclosed by assessee

The assessee in the business of 'Builders and Developers' had been engaged in development of project and was following project completion method. Assessee accounted sale of flats at ₹ 3,22,33,750/- including the value of unsold flat at ₹ 66,00,000/-. After debiting construction expenses, the net profit was disclosed at ₹ 67,528/-.

During the assessment proceedings the A.O. noticed from the sale agreement that there was a huge difference between the sale price as per agreement and stamp duty valuation. The assessee submitted that the area was taken 20% higher for the purpose of stamp duty calculation by the authorities. However, the A.O. observed that whatever method might have been adopted by the stamp authorities, the purpose was to calculate the market value of the flats at the time of sale. Further observed that the value shown *vide* sale agreement was about 30% lower than was adopted by the stamp duty authority. He further observed that it was a known fact that in the suburbs, the builders generally sell their flats to the buyers at a price which consists of both cheque component and cash component. A.O. held that it was a case of suppression of sale price by the assessee. Therefore, A.O. adopted the sale price ascertained by the stamp duty authorities and added back into the income, the difference of price between that of sale agreement and stamp duty authorities arrived at ₹ 1,10,58,909/-.

The CIT(A) confirmed the addition so made by the assessing officer on this account.

Before the Hon'ble ITAT the assessee contented that the sale price shown by the assessee was the actual and correct sale price and there was no suppression of the income.

The Hon'ble ITAT observed and held that the issue of applicability of or resort to the provisions of s. 50C in this concern, it is not the case of the revenue,

that s. 50C is applicable or has been applied in this case, neither there is any necessity nor it is proper to deliberate.

It is an admitted fact that the A.O. had adopted the value of stamp valuation authorities while adopting the sale price of the flats in question. The CIT(A) while confirming the additions made by the A.O. also observed that the stamp valuation authorities calculated the area of individual flat after verification and thus it was a case of sale of more carpet area than that was actually mentioned in the sale agreement. However, a perusal of the ready reckoner/ departmental instructions reveals beyond doubt that the stamp valuation authorities calculate the saleable area for the purpose of levying of stamp duty in a mechanical manner adopting the formula provided therein, and there remains no occasion for the assessee to rebut or deny the same but to pay the stamp duty arrived after calculations made according to the said formula.

There was made no actual verification of the carpet area of the flats in question but the same was increased/ converted into built-up area in a mechanical manner on the basis of formula as reproduced above. Merely because the assessee /purchaser had to pay the stamp duty as per the departmental instructions at a higher rate on the basis of so increased saleable area calculated on the basis of above departmental instruction/formula, that itself cannot be a sufficient basis for the revenue authorities to hold that the actual sale consideration of the flats was more than that was mentioned in the sale agreement, especially, in the absence of any other evidence / incriminating material brought by the Assessing Officer. The assessee had given justification as to why the flats could not fetch the highest market price such as no parking space available to the purchasers and other contributing factors like noise of trains and two dilapidated buildings in the surroundings. The finding of the learned CIT(A) that the assessee had tried to suppress the actual carpet area of the flat as it was mentioned in the sale agreement that carpet area mentioned in the deed was exclusive of area of balconies, niches and door jambs, in our view, is not well founded. When it was mentioned in the agreement that the value/cost of balcony area was inclusive in the sale value of the carpet area and the said area was excluded for the purpose of calculating the carpet area, then under such circumstances, the reasonable inference can be that the cost of balcony area has been taken into consideration and embedded into, while fixing the rate ITA of carpet area exclusive of area of balconies. The conclusions arrived at by the lower authorities are based on conjectures and surmises and not based on any plausible evidence.

The burden is on the Revenue to prove that actual consideration was more than that was disclosed by the assessee, which in this case the Revenue has failed to discharge. The Revenue could not bring out any cogent and convincing evidence to show that any extra consideration had changed hands over and above the sale consideration mentioned in the sale agreement.

The ITAT held that the difference between sale price of the agreement and stamp valuation authorities is to be set aside for actual valuation and the additions deleted.

M/s. Yes Associates v. Income Tax Officer, Ward – 15(1)(1), ITA No.831/M/10, dated 8-1-2014.

STATEMENT AS PER PRESS AND REGISTRATION OF BOOKS ACT
FORM IV
[See Rule 8]

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I, Shri Kotecha Mitesh Ashwin, hereby, declare that the particulars given above are true to the best of my knowledge and belief.

KOTECHA MITESH ASHWIN
Signature of the Publisher

Date : 28-2-2014.

INDIRECT TAXES

SALES TAX

D. H. Joshi, Advocate

1. Entry Tax

In this case, entry tax was levied on Soyabean purchased by the appellant from a registered dealer, delivery of which was given at the factory site of the appellant. Appellant contended that they are not liable for entry tax on these goods, as entry into the local area is by the selling registered dealer and not by the appellant. Appellant also contended that the decision of the Appellate Board in the case of *Ruchi Soya (2011) 18 STJ 143 (M.P. Bd),* needs reconsideration. However, the appellate board did not accept the said contention of the appellant and followed its decision in Ruchi Soya and therefore rejected the appeal.

Adani Enterprises, Indore v. CCT, M.P. (2014) 24 STJ 187 (M.P. Bd)

2. Entry Tax – Reassessment

In the assessee's case by reopening Entry tax assessment order, tax was levied on goods purchased from a unit in Chhattisgarh on which there was no seal of local goods. Assessee-appellant contended that in the absence of seal of local goods, no entry tax could be levied on him. Appellate Board remanded the case to Assessing Authority to examine the case in the light of decision of M.P. High Court in *Mohansingh & Sons (2004) 4 STJ 330 (M.P.) (FB),* in which it was held that purchasing dealer is entitled to take advantage of absence of seal of local goods on the bill, and for making purchasing dealer liable for entry tax. It is therefore for Revenue to prove that the taxable event had not occurred earlier and the goods had not been subjected to entry tax.

Chaudhari Traders, Burhanpur v. CCT, M.P. (2014) 24 STJ 166 (M.P.-Bd)

3. Input Tax rebate

In the present case of the appellant, taxing authority opined that as the dealer used soya seed in the manufacture of edible oil and DOC (a bye-product), and as DOC is tax free, hence, the dealer was not entitled to input tax rebate of VAT Act and was liable to tax at 4% to the extent of production of DOC. However, by applying the decision of the Supreme Court in the case of *Bharat Petroleum Corpn. Ltd. (2005) 7 STJ 312 (SC),* Division Bench of the M.P. High Court held that the petitioner is eligible for Input Tax Rebate (ITR) on the entire amount of tax paid on raw material and the AO could not determine the ITR after deducting the percentage of manufacture of DOC on the ground that the DOC was tax free. Accordingly, writ petition was allowed.

Ruchi Soya Industries Ltd. v. State of M.P. and Ors. (2014) 24 STJ 235 (M.P.)

4. Penalty for evasion of tax

The Tamil Nadu High Court in the present case by following *Kathiresan Yarn Stores v. State of Tamil Nadu (2014) 24 STJ 244 (Mad.) (FB); (1978) 42 STC 121 (Mad.),* stated that the considerations to be taken in connection with the assessment were different from the considerations which had to weigh in the matter of levy of penalty. In the matter of assessment, the assessee's non-explanation for certain incriminating documents may be taken into account for holding that certain figures referred to in the documents would represent the turnover of the assessee. But in the matter of levy of penalty, the fact that the assessee was not able to explain certain documents would not *ipso facto* led to the fact that the assessee had wilfully suppressed the turnover. Accordingly, revision dismissed.

State of Tamil Nadu v. Thangadurai (2014) 24 STJ 242 (M.D.)

5. Penalty – Tax evasion – Check post

In the present case, the Intelligence Officer intercepted and checked the goods vehicle carrying goods consigned by the petitioner on 9-8-2006 and found it to be an attempt to evade tax, on the reason that the goods were not declared in the enroute check post at Kunhippalli and that the invoices issued are not in the prescribed form under Kerala VAT Act, 2003. The Intelligence Officer conducted enquiry and converted security deposit as penalty. The First Appellate Authority refused to interfere but the Tribunal noted that there is nothing on record to show that the petitioner has proceeded legally against transporting agency, even when transport agency failed to declare the goods at the check post and thus presumed evasion of tax. Accordingly, penalty was imposed as equal amount of tax sought to be evaded.

In revision proceedings, in the facts and circumstances, the Kerala High Court held that the carrier in this case would be the agent of the petitioner. When the agent commits an act, or is guilty of an omission in the context of the tax regime, at least it may not be appropriate for the dealer to put the blame at the doors of its carrier. The act of the agent would be treated as the act of the principal. Therefore, the blame cannot be shifted to the transport agency. Hence, it may not be justifiable to interfere with the order of penalty imposed by the Tribunal.

Anchor Electricals (P) Ltd. v. State of Kerala (2014) 22 KTR 65 (Ker.)

6. Stock Transfer – Form 'F'

In this case, the facts were the appellant made stock transfer to its other unit in M.P. and also made transfer outside the State. AO and appellate authority treated stock transfer within the State as outside the State and levied tax at 10% CST for want of 'F' form. Appellant contended before the Board that a list and other evidence of such stock transfer were submitted before appellate authority, but the same had not been considered by him. Before the Board also the same evidence was produced. Appellate Board considered the same and remanded the case to AO to consider appellant's claim for stock transfer in the light of the evidence after giving an opportunity of hearing to the appellant.

Associated Electrical Agency, Jabalpur v. CCT, M.P. (2014) 24 STJ 175 (M.P.Bd)

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4.	Third cover page	₹ 7,500/-
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There shall be Discounts on bulk advertisements.

Membership of AIFTP as on 26-2-2014
Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	790	23	3	816
Eastern	3	1144	35	3	1185
Northern	0	939	17	0	956
Southern	1	872	13	5	891
Western	4	1690	33	16	1743
Total	8	5435	121	27	5591

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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