



All India Federation of Tax Practitioners

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(For Members only)

AIFTP TIMES

Volume 2 - No. 3 • March, 2011

| FORTHCOMING PROGRAMMES | |
|----------------------------------|---|
| Date & Month | Programme |
| 5th March, 2011 | Full Day Seminar on Direct & Indirect Taxes with focus on Union Budget, 2011 at Kolkata |
| 11th & 12th March, 2011 | Two Days Conference at Junagadh |
| 15th January to 30th April, 2011 | Workshop on MVAT and Service Tax at Mumbai |
| 22nd April, 2011 | National Executive Committee Meeting at Jodhpur |
| 23rd & 24th April, 2011 | Two Days National Tax Conference at Jodhpur |
| 13th August, 2011 | National Executive Meeting at Kochi |
| 13th & 14th August, 2011 | Two Days National Tax Conference at Kochi |

LIST OF PUBLICATIONS

| Sr. No. | Name of Publication | Edition | Price | | Courier Charges |
|----------------|--|----------------|----------------|--------------------|------------------------|
| | | | Members | Non-Members | |
| 1. | Wills & Bequests – Strategies – 151 Questions & Answers with 6 Specimens | Jan., 2011 | 160.00 | 180.00 | 50.00 |
| 2. | 151 Frequently Asked Questions on Survey | July, 2010 | 160.00 | 180.00 | 50.00 |
| 3. | Media & Entertainment Industry (Normal Bound) | Dec., 2009 | 280.00 | 315.00 | 80.00 |

Notes:

1. The above publications are available for sale; those who desire to buy may contact the office of the Federation.
2. Local/Outstation members not collecting from office are requested to add courier charges, as mentioned above.
3. Please draw Cheque/Draft in favour of "All India Federation of Tax Practitioners" payable at Mumbai for above publications.

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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FEDERATION NEWS

J. K. Ranka, Secretary General

WE ARE PLEASED TO ANNOUNCE
FULL DAY SEMINAR ON VAT & INCOME TAX
Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS (WESTERN ZONE)
JOINTLY WITH
TAXATION ADVISERS ASSOCIATION of JUNAGADH (GUJARAT)
On
Saturday, 12th March, 2011
at Hotel Indralok, Junagadh

PROGRAMME

| Timings | Subject | Speaker | Chairman |
|----------------|--|--|---|
| 9.00 to 9.30 | REGISTRATION & BREAKFAST | | |
| 9.30 to 11.00 | In sight to Finance Budget | Dr. K. Shivaram – Adv. & Past President, AIFTP, Mumbai | |
| 11.00 to 11.30 | TEA BREAK | | |
| 11.30 to 01.30 | TECHNICAL SESSION I Tax Planning in respect of HUF | Shri Vipul Joshi Adv. Mumbai | Shri Bharatji Agarwal Sr. Advocate & Immediate Past President, AIFTP, Allahabad |
| 01.30 to 02.30 | LUNCH BREAK | | |
| 02.30 to 04.00 | TECHNICAL SESSION II Issues on Central Sales Tax Act | Smt. Nikita R. Badheka Advocate, Mumbai | Shri M. L. Patodi Advocate & National President, AIFTP, Kota |
| 04.00 to 05.30 | TECHNICAL SESSION III Capital Gain Residential Property Sec. 54/54F | CA H. N. Motiwalla Mumbai | Shri S. K. Poddar Advocate & Dy. President, AIFTP, Ranchi |

Note – The last 10 minutes of each session will be followed by question answer relating to the said session. Delegates may send their query in advance by e-mail to samirjani@yahoo.co.in

Delegates Fees: Tax Practitioners/Adv./CAs – ₹ 350

Cheque be drawn in favour of "All India Federation of Tax Practitioners - Western Zone" payable at Mumbai

Harish Motiwalla
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Treasurer – TAA

CA Atul Lakhani – 9426213901
Jt. Secretary – TAA

AIFTP – Mumbai – Chirag Parekh & Avinash Lalwani Secretaries (WZ) -022-2200 6342/43

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)

Organised by

WORKSHOP ON MVAT & SERVICE TAX

Jointly with

BCAS, CTC & STPAM

Venue : STPAM Library-104, Vikrikar Bhavan, Mazgaon, Mumbai – 400 010

Time : 2.30 p.m. to 5.00 p.m.

We request all our members to take benefit of the Workshop organised by AIFTP (WZ) along with BCAS, CTC & STPAM on the subject of MVAT and Service Tax. The details are as under:

| Sr. No. | DATE | DAY | SUBJECT | MONITOR & SPEAKER |
|----------------|--------------------|--------------|--|------------------------------|
| 1 | 12th March, 2011 | 2nd Saturday | Intricate Issues under Works Contracts/ Lease Tax & Provisions of Composition Schemes under MVAT Act | CA. Mayur Parekh |
| | Service Tax | | | |
| 2 | 19th March, 2011 | 3rd Saturday | Export & Import of Services, Valuation of Services Rules, 2006, | CA. Manish Gadia |
| 3 | 2nd April, 2011 | 1st Saturday | Construction Services, Works Contract Services, Management, Maintenance & Repair Services, Renting of immovable Property | CA. Naresh Sheth |
| 4 | 16th April, 2011 | 3rd Saturday | Information Technology Services, Health Services, Commercial Coaching & Training, Supply of Tangible Goods Services | CA. Ashit Shah |
| 5 | 30th April, 2011 | 5th Saturday | CENVAT Credit Rules, 2004 | CA. Rajiv Luthia |

Fees : Rs. 1,750/- for Members & Rs. 2,500/- for Non-Members.

Please enroll early as limited seats are available.

Workshop of 15th January 2011, i.e., Intricate Issues under MVAT Act, 2002 by C. B. Thakar, Workshop of 29th January, 2011 on Filing of Returns (including E-filing and payment of taxes, Assessment Procedures, Interest, Penalties and Prosecutions by Ashvin Acharya, Workshop of 12th February, 2011 on Practical Aspects under Business & Refund Audit by Deepak Bapat and Workshop of 19th February, 2011 on Intricate Issues under Input Tax Credit & Refunds (Set-off) by Kiran Garkar.

For All India Federation of Tax Practitioners (Western Zone)

Harish N. Motiwalla

Chairman

Chirag S. Parekh & Avinash Lalwani

Jt. Secretaries

Note: Cheque/DD to be drawn in favour of "All India Federation of Tax Practitioners-Western Zone", payable at Mumbai.

Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Western India Regional Council for the year 2011-12.

Chairman : CA. Shrinivas Y. Joshi

Vice Chairman : CA. B. K. Patel

Secretary : CA. Shardul Shah

Treasurer : CA. Julfesh M. Shah

NATIONAL TAX CONFERENCE-JODHPUR

April 23rd -24th, 2011

Organized by

ALL INDIA FEDERATION OF TAX PRACTITIONERS [CZ]

Jointly with

JODHPUR BRANCH OF CIRC OF ICAI

RAJASTHAN TAX CONSULTANTS' ASSOCIATION

&

TAX BAR ASSOCIATION, JODHPUR

THEME : ROLE OF PROFESSIONALS IN CHANGING SCENARIO

Venue : Dr. S.N. Medical College Auditorium, Residency Road, Jodhpur, Rajasthan

SATURDAY 23rd APRIL, 2011

08.00 a.m. to 09.00 a.m. : Registration & Breakfast

09.00 a.m. to 10.30 a.m. : **INAUGURAL SESSION**

Chief Guest : Shri Ashok Gehlot, Chief Minister, Rajasthan

Presiding Guest : * Hon'ble Mr. Justice G.S. Singhvi, Judge,
Supreme Court of India

Guest of Honour : * Hon'ble Mr. Justice Arun Mishra, Chief Justice,
Rajasthan High Court
* Mr. G. Ramaswami , President, The Institute of
Chartered Accountants of India
* Shri H.N. Bangur, MD. Shree Cements Ltd.

10.30 a.m. to 10.45 a.m. : Tea Break

10.45 a.m. to 01.30 p.m. : **FIRST TECHNICAL SESSION**

Subject : Direct Tax Code
By CA. Harish N. Motiwalla, Mumbai

Subject : Issues & recent Judgments in TDS on Resident &
Non-Resident payments
By CA. Prakash Chhajer, Jodhpur and CA Padam Khicha,
Bangalore

01.30 p.m. TO 02.30 p.m. : LUNCH

02.30 P.m. to 04.30 P.m. : **SECOND TECHNICAL SESSION**

Subject : Recent issues & judgments on Central Sales Tax Act &
Works Contract
By Adv. T.C. Jain, Jaipur & Adv. Nikita R. Badheka, Mumbai

Subject : Road Map of GST
By Adv. P.C. Joshi, Mumbai & CA. Sanjay Dhariwal,
Bangalore

04.30 p.m. to 04.45 p.m. : Tea/Coffee Break

04.45 p.m. to 06.30 p.m. : **THIRD TECHNICAL SESSION**

Subject : Service Tax with reference to Builders & Contractors
By Adv. Gajendra Maheshwari, New Delhi

07.00 p.m. to 10.00 p.m. : Cultural Programme followed by DINNER

SUNDAY 24TH APRIL, 2011

- 08.00 a.m. to 09.00 a.m. : Breakfast
- 09.00 a.m. to 11.15 a.m. : **FIRST TECHNICAL SESSION**
 Subject : Issues & recent Judgments in Capital Gains
 By CA. Ashvin C. Shah, Ahmedabad
 Subject : Limited Liability Partnership
 By CA. Pankaj Jain, New Delhi
- 11.15 a.m. to 11.30 a.m. : Tea Break
- 11.30 a.m. to 01.30 p.m. : **SECOND TECHNICAL SESSION**
 Subject : Brains' Trust Session
 Chairman : Adv. N.M. Ranka (Senior Advocate)
 Trustees : Adv. Bharatji Agrawal (Senior Advocate)
 Adv. S.K. Poddar (Senior Advocate)
 Dr. A.K. Doshi (Ex-Member, Company Law Board)
 Adv. H.C. Bhatia; Adv. R.C. Agarwal; CA. Amit Kothari
- 01.30 pm to 02.30 p.m. : Lunch
- 02.30 p.m. to 03.30 p.m. : **THIRD TECHNICAL SESSION**
 Subject : Capital Market : *By CA. Sumer Patwa
- 03.30 p.m. to 03.45 p.m. : Tea / Coffee Break
- 03.45 p.m. to 05.45 p.m. : Valedictory Session

*Subject to confirmation

| DELEGATE FEES | MEMBER | NON-MEMBER | SPOUSE |
|----------------------|---------|------------|---------|
| Up to 31.03.2011 | Rs.1500 | Rs.1700 | Rs.1000 |
| After 31.03.2011 | Rs.1750 | Rs.1850 | Rs.1250 |

Favouring "NATIONAL TAX CONFERENCE 2011"
UCO Bank : Sardarpura Branch Jodhpur (Raj)
IFSC Code : UCBA 0000569
Current Account No. 05690210001349

- Special arrangements have been made for sightseeing for Spouse & Kids for two hours on 23rd & 24th April, 2011
- CA delegates can claim Unstructured CPE 12 Hours on self declaration basis as per Rules of ICAI
- Delegates are requested to send their queries in regard to Brains' Trust by April 10, 2011 **positively**

ALL INDIA FEDERATION OF TAX PRACTITIONERS (CZ) Office,
 57-58, Manji Ka Hatha, Paota, Jodhpur (Raj.) • Phone: 0291-2555842, Mobile 7597367780.
 E-mail: nationaltaxconference2011@gmail.com

Congratulations

Mrs. Prem Lata Bansal, Chairperson (Northern Zone) of AIFTP has been designated as Sr. Advocate by the Delhi High Court in its Full Court Meeting held on 27th January, 2011. Our Congratulations to her.

Shri Sanjeev Kumar Anwar has been nominated as member of the Regional Direct Tax Advisory Committee (RDTAC), Muzaffarpur. He was the member of AIFTP. We wish him all the success.

DIRECT TAXES

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

SUPREME COURT

1. S. 68 : Cash credits – Books of account – Failure to produce – Presumption

In view of section 68, where any sum is found credited in the books of the assessee in any previous year, the same may be charged to income tax as the income of the assessee of that previous year, if the explanation offered by the assessee about the source and nature thereof in the opinion of the Assessing Officer, not satisfactory. On the facts the conclusion of Tribunal could not be said to be perverse hence no question of law arise.

Vijay Kumar Talwar vs. CIT (2011) 330 ITR 1 (SC)

2. S. 269UA(f)(i) : Purchase of immovable property by Central Government – Lease for 9 years – Renewable at the option for a further period of 9 years

Lease for 9 years renewable at option of lessee for a further period of 9 years, amounts to lease for more than 12 years. Parties obliged to submit Form No. 37-I, within 15 days of draft agreement.

Govind Impex P. Ltd & Others vs. Appropriate Authority (2011) 330 ITR 10 (SC)

HIGH COURT

3. S. 9(1)(i) : Income deemed to accrue in India – No income deemed to arise even if revenue arises due to viewers in India

For income to be taxable under section 9(1)(i), the carrying of operations in India is a sine qua non. It was held that merely because the footprint area included India and programmes were watched by Indian viewers, it did not mean that the assessee was carrying out business operations in India. The transponder used was in orbit and merely because its footprint was on India did not mean that the process had taken place in India. Ishikawaima-Harima Heavy Industries 288 ITR 408 (SC) followed. It was further observed that the payment by the telecast operators outside India to the assessee cannot be taxed on the basis that the end consumers are in India.

Asia Satellite Telecommunication Co. Ltd. vs. DIT, (Delhi High Court) Source: www.itatonline.org

4. S. 57(iii) : Deductions – Interest – Assessing Officer can lift veil and determine legal effect but cannot ignore legal effect on ground of “substance”

It is held by the Larger Bench that under section 57(iii), expenditure laid out or expended wholly or exclusively for the purpose of making or earning income is deductible. It is the purpose of the expenditure that is relevant but the purpose need not be fulfilled. *R. P. Moody 115 ITR 519 (SC)* followed. The assessee must act *bona fide* & show nexus between the advancing of funds and his business interest. The dominant purpose for making the investment must be to earn income & to ascertain the purpose the Assessing Officer may lift the veil (*Swapna Roy 233 CTR 10 (All) & Punjab Stainless 324 ITR 396 (Del.)* followed);

It was also held that legal effect of a transaction cannot be displaced by probing into the “substance of the transaction”. Thus, the exercise of jurisdiction cannot be stretched to hold a roving enquiry or deep probe.

CIT vs. Rockman Cycles Industries (High Court) (Larger Bench)(P&H) Source: www.itatonline.org

5. S. 73 : Loss on Speculation Business – Delivery based loss on shares also Speculation Loss

It is held that the Explanation to section 73 creates a fiction that the loss suffered by certain companies from the business of purchase and sale of shares shall be deemed to be speculation loss. The definition of speculative transaction in section 43(5) not applicable to Explanation to section 73. The CBDT Circular dated 24-7-1976 cannot be treated as guide for interpretation of section 73 when the provision is very clear and free from any ambiguity.

Paharpur Cooling Towers Ltd. vs. ACIT (Calcutta High Court) www.itatonline.org

6. S. 80HHC : Deduction – Export – Profits of business – Interest on deposits – Inter-corporate deposits

Finding of the authorities below that interest income received by the assessee company on bank deposits and inter-corporate deposits is a part of business profit not having been shown to be perverse, the same cannot be excluded from the business profit while calculating the deduction under section 80HHC.

CIT vs. Sociendade De Fomento Industrial Ltd. (2011) 237 CTR 141 / 49 DTR 161 (Bom.)

7. S. 80-IB(10) : Deduction – Housing Projects – Eligible irrespective of extent of commercial user

It was held that in case of projects prior to A.Y. 2005-06, deduction u/s 80-IB(10) is available once the local authority has sanctioned the project as Housing Project irrespective of the extent of commercial use. Thus even projects with commercial user approved as a "housing project" are eligible for deduction.

CIT vs. Brahma Associates (Bombay High Court) www.itatonline.org

TRIBUNALS

8. S. 28(va) : Business income – Share transfer agreement – Non compete covenant – No transfer of controlling interest

It was held that a Share Transfer Agreement is merely agreement for sale of shares is a non compete covenant. It does not in any manner refer to transfer of any controlling interest. Thus, the amount assessable as business income.

ACIT vs. R.K.B.K. Fiscal Services Ltd. (Kolkata ITAT) www.itatonline.org

9. S. 45 : Profit on sale of shares – Capital gain – Consistently been shown as Investments in books of account

Wherever there is purchase or sale of shares and the same is being consistently shown in the books of account under the head of Investments, the same shall be treated as capital gain and not business profit. The Hon'ble Tribunal relied on Circular 4 of 2007 dated 15-6-2007 issued by CBDT, which gives test of compliance for verifying whether purchase and

sale of share fall in the category of trading activity or investment activity.

DCIT vs. Shri Bharat Kunverji Kenia, ITA No. 929 /M/ 10 dt. 2-2-2011 (ITAT Mumbai)

10. S. 80-IA(8) : Deduction – Industrial Undertaking – Tariff fixed by MERC for sale of power does not reflect "market value"

It is held that u/s 80-IA(8), the transfer of goods from an eligible business to a non-eligible business is required to be taken at "market value". But the tariff determined by MERC is based on the concepts of 'clear profits' and 'reasonable return' and does not reflect the "market value" of the electricity. Further, the tariff is fixed for both activities of generation and distribution of power and may not reflect the true rates with regard to only the activity of generation. Thus, even after the fixation of tariff by MERC, the profits from the business of generation of power has to be worked out on the basis of the price paid to the outside party for purchase of power.

Reliance Infrastructure Ltd. vs. ACIT (ITAT Mumbai) source : www.itatonline.org

11. S. 148 : Reopening of assessment – Non-supply of 'Reasons For Reopening' within the limitation period time - Reopening void

where the notice has been issued within the said period of six years but the reasons have not been furnished within that period is hit by the bar of limitation because the issuance of the notice and the communication and furnishing of reasons go hand-in-hand. A notice u/s 148 without the communication of the reasons therefor is meaningless inasmuch as the AO is bound to furnish the reasons within a reasonable time. The expression 'within a reasonable period of time' as used in GKN Driveshafts 259 ITR 19 (SC) cannot be stretched to such an extent that it extends even beyond the six years stipulated in s. 149.

Balwant Rai Wadhwa vs. ITO (ITAT Delhi) source : www.itatonline.org



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/- |

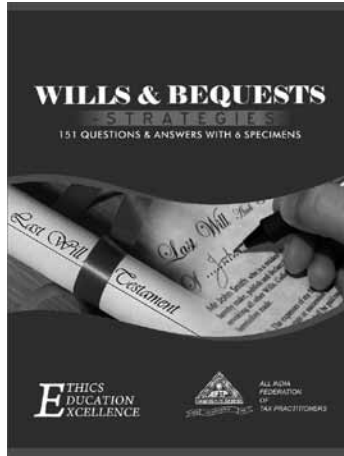
J. K. RANKA
Secretary General

**Membership of AIFTP
as on 20-02-2011**

Life Members

| | Associate | Individual | Association | Corporate | Total |
|--------------|-----------|-------------|-------------|-----------|-------------|
| Central | 0 | 701 | 21 | 2 | 724 |
| Eastern | 2 | 889 | 33 | 0 | 924 |
| Northern | 0 | 818 | 17 | 0 | 835 |
| Southern | 0 | 742 | 13 | 3 | 758 |
| Western | 3 | 1552 | 32 | 14 | 1601 |
| Total | 5 | 4702 | 116 | 19 | 4842 |

BOOK RELEASE ANNOUNCEMENT



We are pleased to make the announcement of the release of publication of the All India Federation of Tax Practitioners titled **"Wills & Bequests - Strategies - 151 Questions & Answers with 6 Specimens"**. Hon'ble Mr. Justice Anil R. Dave, Judge, Supreme Court of India has released the publication on 8th January, 2011 at Ahmedabad in a National Tax Conference organised by the AIFTP (Western Zone) in association with All Gujarat Federation of Tax Consultants and other local associations.

This publication is a unique publication in a questions answers format explaining the provisions and various controversies relating to Wills & Bequests. In this publication 151 questions of practical importance are answered in a simple and lucid language. It is divided into 6 Chapters along with 6 specimens. The highlights of the said publication are Advantages of making Will, Caveat, Charitable Trust, Codicil, Discretionary Will, FEMA, Foreign Properties, Formalities for making valid Will, HUF - Will, Joint Will, Law which should be considered while preparing Will, Non-resident, Probate and Succession Certificate, Registration, Taxation, Trust through Will, What Will should contain, etc.

This publication will be a useful guide to tax payers, tax consultants, as well as tax department.

This publication is authored by S/Shri N. M. Ranka, Sr. Advocate, Jaipur, K. H. Kaji, Advocate, Ahmedabad, Bharat R. Damodar, Advocate & Solicitor, Mumbai, Pradip Kapasi, Chartered Accountant, Mumbai and Dr. K. Shivaram, Advocate, Mumbai.

The price of publication is ₹ 200/-.

For members of the Federation, the same is available at a price of ₹ 160/-.
Outstation members are requested to add ₹ 50/- per publication as courier charges.

Please make all drafts payable to "All India Federation of Tax Practitioners".

For further details please contact:

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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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To

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